

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01V902

AN BORD PLEANÁLA	
LDG-	037436-21
ABP-	
11 MAR 2021	
Fee: €	220
Type:	CHEQUE
Time:	
By:	REG POST

10 March 2021

Re: **'Whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the War Memorial, O'Connor Square, Tullamore is or is not development or exempted development'** (S.5 Reference)

Dear Sir

I ask the Board to determine the above Reference in accordance with the procedures under S. 5 of the Planning and Development Act 2000,

I enclose a fee of €220 in accordance with Regulations.

This reference was first presented to Offaly County Council, who on the 17th February decided (DEC 21/02, copy attached) that the works constituted development but are exempted development. I attach also a copy of my submission to the Council in the first instance and ask that the Board would take it into account..

I believe that the background to the initiation of this reference is relevant.

O'Connor Square

O'Connor Square is the central and principal urban space of Tullamore and it is here that all great public events are celebrated. Dominated by the 1798 Market House, it contains the largest single assembly of Protected Structures in the town which includes the War Memorial standing on a generous setting in the exact centre of the Square.

In 1998 a new Town Plan, prepared by the Senior Executive Planner Vincent Hussey made the imaginative proposal of removing some parking spaces, pedestrianising the northern side of the Square and creating a link via the ancient but inaccessible bridge across the Tullamore River to the Market Square.

This objective was repeated in successive Plans. The current 2010-2016 (extended to 2020) Tullamore Town Development Plan contains specific objective TTEO-08-12 to **'Pedestrianise**

North side of O'Connor Square to provide a focal urban space' The Plan requires this objective to be achieved during its lifetime.

Following inclusion in Ireland's EU Structural and Investment Funds Programme 2014-2020, the Council initiated a pre Part 8 application consultation process for the Tullamore Street Enhancement Scheme which included O'Connor Square and published four layout options for discussion.

Ninety seven responses were received. Most objected to the loss of parking and suggested that at least forty spaces be retained. Some suggested dual usage with the pedestrianisation being activated only for special events. A few welcomed the part pedestrianisation option. None sought the removal of the War Memorial which is designated as a Protected Structure of Regional Importance in the Development Plan (23-221 and NIAH 1480725).

The memorial which was unveiled in 1926, was designed by the architect E.W. Doyle Jones and executed in local Ballyduff limestone. It comprises an obelisk on a plinth standing on two steps and whose height is c.7.0 m and width 1.7m x 1.7m at the base. It is surrounded and defined by a 3.4m x 3.4m dressed raised stone kerb, 17cm. wide and 20 cm high and an intervening gravelled area which is an integral part of its design and execution.

The Part 8 Scheme

Insofar as it related to O'Connor Square, the Part 8 Scheme formally proposed by the Council and published for public comment in October 2017, included 34 parking spaces. However.

- (a) More than half of these were located within the North side of the Square
- (b) Their layout was dependant on the removal of the War Memorial from its historic location

Whatever about the former, the latter proposal was extraordinary. Whether occasioned by a profound ignorance of heritage legislation or by an outdated historical analysis, the error was compounded by the omission of any reference to its removal in the public notices. This created an impression of an intention to conceal the proposal from scrutiny, but it soon became public knowledge and evoked strong responses.

Following objections from both national and local bodies, individuals and, in particular the Minister for Arts, Heritage and the Gaeltacht and An Taisce, the Members of Offaly County Council directed that the War Memorial be retained and the proposed adjoining pedestrian crossing adjacent to it, relocated.

It would appear the Executive of the Council decided that the pedestrian crossing couldn't be moved but that they were still bound to provide 34 spaces. However, if the Memorial and its surrounding raised kerb and intervening gravelled area now had to be kept as the Councillors had directed, one or possibly two parking spaces would have to be incorporated into the proposed paved area in order for wheelchairs and buggies to get past it to the pedestrian crossing.

In this conflict between parking spaces and the architectural integrity of the Memorial, the Memorial would prove to be the loser.

In July 2020 without any further public notice, applications, assessments or consultation, the Council dug up the raised surrounding kerb, turned it upside down, buried it flush with the ground and then extended the paving over the gravelled area up to the base of the obelisk.

What now remains of a unified historic ensemble is the isolated stub of the obelisk, closely hedged by parked cars and vans unlike its previous setting. Its original architectural design intent is degraded and its context and dignity removed.

The central question in this Reference therefore is whether or not the raised kerb and the surrounding gravelled area are or are not integral elements of the Protected Structure. In my firm opinion as a qualified architect and town planner of over forty years experience, it is abundantly clear that they are and I offer in support the independent opinions which I have sought from two respected Conservation Architects.

Susan Roundtree observes that *'the raised kerb, which previously surrounded the War Memorial, was an intrinsic component of its setting'* while Grainne Shaffrey states that *'My reading of what constituted the original 1950s (sic) monument comprises the obelisk, the outer kerb and the gravel area'*.

Ms Shaffreys error as to the date of the erection of the structure derives from the RPS entry whose image nonetheless shows the kerb and gravelled area.

At no stage in my correspondence with the Council since October 2017 regarding the alterations, the subject of this Reference, has the Council or its agents ever contested my consistent and repeated assertion that these elements are integral parts of the Protected Structure.

The Council's Decision

In paragraphs (a) and (b) of their declaration, the Council agrees that the alterations to the Memorial constitute 'development' having regard to S.s 2 and 3 of the Planning and Development Act 2000. It claims however that:

(c) The works were authorised having been carried out under a Part 8 consent by Offaly County Council

Article 81 (1) (a) and 2 (b) of the Planning and Development Regulations 2001 as amended, requires that any works to be carried out in accordance with the provisions of Part 8, shall give public notice of their nature and extent, while S.81 (c) (i) requires that where these works would materially affect the character of a Protected Structure, this must be specifically mentioned in notices.

None of the works, the subject of this reference, were included in the notices advertising the Part 8 process.

Article 83 (1) of the Planning and Development Regulations 2001 as amended provides that:

'The local authority must make available for inspection a document describing the nature and extent of the proposed development which must provide, where the proposed development would relate to a protected structure or a proposed protected structure, an indication of that fact'

This was not done.

Article 81 (1) (e) also requires that an application shall be accompanied by such plans and drawings as are necessary to describe the proposed development and Article 23 (2) requires that an application which proposes works to a Protected Structure shall be accompanied by drawings, photographs or images which describe their nature and extent.

No such drawings, photographs or images of the works that were actually carried out to the War memorial were made available for public inspection as part of this Part 8 application.

Ministerial Guidelines require the provision of a Heritage Impact Assessment in relation to intended works to Protected Structures.

No such assessment was provided.

I submit that as the works the subject of this Reference were not proposed by or formed any part of the Part 8 process for the Tullamore Street Enhancement Scheme, they cannot have been authorised by it.

I referred the procedures adopted by Offaly County Council in proposing and carrying out works to the War Memorial to the Office of the Planning Regulator for review. The Council conceded that in this instance a *'recognised lapse in procedure'* had occurred. I attach a copy of my complaint (20-134-8-OPR) entitled *'Observations on the Performance of Offaly County Council in relation to a Part 8 application affecting the War Memorial in O'Connor Square Tullamore-a Protected Structure'* and the Regulator's letter of the 15 January 2021 and would request that the Board would take them into account in deciding this Reference.

(d) The works were exempt having regard to Section 4 (1) (f) of the Planning and Development Act 2000 as amended.

The Council cannot rely on Section 4 (1) (f) because the works have materially affected the character of the Protected Structure and therefore the provisions of S.57 (1) (a) and (b) apply .

Furthermore, a Planning Authority is specifically prohibited by S.178 (1) from carrying out any works in contravention of its own Development Plan and in my submission, the alterations are in clear breach of Objectives TTEO-12-01 and TTEO-09-07.

It is difficult to understand the Council's claim for exemption under S. 4 (1) (f) for the following reason:

S. 4 (1) (aa) authorises a local authority to carry out any works within its functional area.

S. 4 (1) (f) exempts development carried out on behalf of a local authority or in partnership the planning authority pursuant to a contract entered into by the local authority. However, in the case of works being carried out to protected structures, both of these provisions must be read subject to the restriction under Section 57 (1) of the 2000 Act, which provides as follows:

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

(a) the structure, or

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

Section 4(1)(f) simply allows others to carry out development utilising the Council's powers under S 4 (1) (aa) with their consent. A well known and somewhat controversial case is that of

the erection of a sculpture of a walking bear on the seafront in Greystones Co. Wicklow by a donor who carried out the works with the consent of the Council who had conferred on him their powers under this Section.

Thus, if a private individual or company wished to erect a sculpture in O'Connor Square and if its value were less than € 126,000, the Council could rely on this section to assist. It is hard however, to see the relevance of this Section to the instant case. The Council could have claimed exemption under S. 4 (1) (aa) but chose not to. Whether the works were carried out by the Council or by a contractor acting on their behalf, the outcome is the same in that they resulted in alterations to a Protected Structure.

In order to ascertain whether or not the Council have entered into a partnership with others to carry out these works, as their declaration suggests, I sought sight of the planners report informing the Council's decision. As this Reference was not listed on the Council's planning search website as having been lodged, they could not be accessed online. An email requesting them on the 23rd Feb. went unanswered and a response under the Freedom of Information Act 2014 (FOI 12/21) will not be replied to until the 29th March, so I am unable to furnish the Board with this information.

The essence of the planning authority's claim would appear to be the assertion that, as the part of the Protected Structure in question remains in its original location, its presentation is immaterial. By extension, the burial of the remainder of the structure could be regarded as exempt also, as its location would not have altered. The absurdity of this proposition is obvious and the implications of an approval extremely significant in the light of the Council's original intention to remove the War Memorial entirely to provide parking spaces.

I submit that the works the subject of this Reference do not fall within the ambit of S. 4 (1) (f), but are governed by S.57 (1) (a) and (b) and S. 178 (1) and are therefore not exempt.

Tullamore Town Development Plan 2010-2016 (Extended to 2020)

On the basis that these works have altered a Protected Structure, I ask the Board to consider the Strategies, Policies and Objectives of the current Development Plan relating to architectural heritage. I have highlighted certain passages for emphasis.

STRATEGY

12.2.1.3 Alterations/Extensions to Protected Structures

The Council will ensure that alterations or extensions to Protected Buildings and Structures will only be permitted if the proposals are in keeping with the character of the building and preserve

the architectural and historic features of the building or structure. The Planning and Development Acts 2000-2009 remove exempted development rights where works to a Protected Structure will materially affect the character of the structure. Planning permission will be required where such works are proposed.

Protected Structure status automatically includes the curtilage of the structure listed.

12.2.1.5

*There is a presumption against the demolition of Protected Structures. **Planning permission is required for any works which materially affect the character of a Protected Structure.** It should be noted that planning permission for the demolition of a Protected Structure will be granted only in exceptional circumstances in accordance with S.57 (10) (b) of the Planning and Development Acts 2000-2009.*

POLICY

TTEP 12-01 It is the Council's policy to ensure that the alteration or extension to Protected Structures will only be permitted if the proposals are in keeping with the character of the building and safeguard the special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest of the building or structure.

TTEP-12-03

It is the Council's policy, where appropriate to exercise the powers conferred by Sections 59-80 of the Planning and Development Acts 2000-2006 (stet) to ensure the conservation of Protected Structures.

TTEP 12-07

It is the Council's policy to preserve and protect Tullamore's built environment and heritage in terms of streetscapes, structures and features of architectural heritage interest using the legislative provisions of the Planning and Development Acts 2000-2009.

TTEP-09-11 It is the Council's policy to protect and enhance the architectural heritage of the town and streetscapes.

OBJECTIVES

TTEO-12-01 To protect all structures listed in the Tullamore Town Record of Protected Structures, that are of special, architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest in Tullamore

TTEO-09-07 It is an objective of the Council to protect and enhance the architectural heritage of the town and streetscapes.

In the light of the concern expressed by the Council regarding the protection of the architectural heritage of the town, the alteration of integral parts of a prominent and historic Protected Structure in order to provide one or at most two, parking spaces is not in accordance with the provisions of the Development Plan or any reasonable concepts of proper planning and development. In my opinion, the works that have been carried out to the War Memorial materially contravene the provisions of the Development Plan, as set out above.

Wording

Ironically, considering that the Council did not refer to the Protected status of the War Memorial in their notices, I omitted this designation also in setting out my own Reference. I would have no objection were the Board to consider rewording it as follows:

'Whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the War Memorial, O'Connor Square, Tullamore (A Protected Structure) is or is not development or exempted development'

and of course to direct that it is development and is not exempted development

Yours Sincerely



Fergal MacCabe B.Arch. Dip. Tp.
4 Summerhill Parade
Sandycove
Co. Dublin
A96H0C6



Susan Roundtree, Conservation Architect
Dip Arch., B Arch Sc., MUBC, M Litt (TCD), FRIAI (Rtd.)
6 Lower Beechwood Avenue
Ranelagh, Dublin 6, D06 VP63

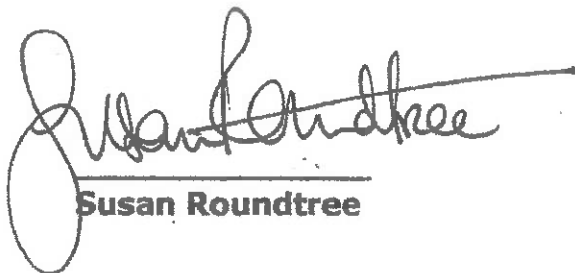
Email: susan.roundtree53gmail.com

01 August 2020

RE: WAR MEMORIAL, O'CONNOR SQUARE, TULLAMORE, CO. OFFALY
[Tullamore Town Record of Protected Structures ref. 23-221]

Dear Fergal,

Further to our discussions re the above, I am writing to confirm my opinion that the raised kerb, which previously surrounded the War Memorial, was an intrinsic component of its setting. The kerb enclosed a small but important space around the base of the obelisk and its stepped plinth, necessary for its protection and for dignified wreath-laying and ceremonial events.



Susan Roundtree

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/02

NAME OF APPLICANT: FERGAL MCCABE

ADDRESS 4 SUMMERHILL PARADE,
SANDYCOVE,
CO. DUBLIN

ADDRESS FOR CORRESPONDENCE: 4 SUMMERHILL PARADE,
SANDYCOVE,
CO. DUBLIN.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000 as amended as to whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, Tullamore, Co Offaly is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: O CONNOR SQUARE, TULLAMORE, CO OFFALY

WHEREAS a question referred to Offaly County Council on 21/01/2021 as to whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, Tullamore, Co Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2 of the Planning & Development Act 2000 as amended
- (b) Sections 3 of the Planning & Development Act 2000 as amended
- (c) That the works were carried out under a Part 8 consent by Offaly County Council
- (d) Section 4(1)(f) of the Planning & Development Act 2000 as amended

AND WHEREAS Offaly County Council has concluded that the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, Tullamore, Co Offaly is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended hereby decides that the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial is development and is exempted development at O Connor Square, Tullamore, Co Offaly.

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.


A/Senior Executive Officer

17/2/2021
Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

The Administrative Officer
Planning Section
Offaly County Council
Aras an Chontae
Charleville Road
Tullamore

18 January 2021

Re: War Memorial, O'Connor Square, Tullamore (S.5 REFERENCE)

Dear Sir

I ask Offaly County Council to determine the following Reference in accordance with the procedures under S. 5 of the Planning and Development Act 2000,

'Whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the War Memorial, O'Connor Square, Tullamore is or is not development or exempted development'

I enclose a fee of €80 in accordance with Regulations.

The Memorial was erected in 1926 by a committee of local people led by the Town Council and with the participation of British Legion members. Its inscription reads *'Erected to the glorious memory of the men of Offaly (King's County) who gave their lives in the Great War 1914-1919'*

The Memorial, which is in the ownership of Offaly County Council, stands in the axial centre of O'Connor Square (red dot on the attached site map), the principal public space of the town and was intended to be an important civic design feature.

It was designed by the architect E.W. Doyle Jones and executed in local Ballyduff limestone. It comprises an obelisk on a plinth standing on two steps and whose height is c.7.0 m and width 1.7m x1.7m at the base. It is surrounded and defined by a 3.4m x 3.4m dressed raised stone kerb, 17cm. wide and 20 cm high and an intervening gravelled area which is an integral part of its design and execution.

The Memorial is included as Item 23-221 of Regional Importance in the list of Protected Structures of the Tullamore Town Development Plan 2010-2016 whose life has been extended to 2020 and whose listings are reiterated in the recently published Draft Co. Offaly Development Plan 2021-2027. It is also included in the National Inventory of Architectural Heritage as Item 1480725. The images attached to both records show the raised kerb and intervening gravelled area.

As the attached photos of the 1926 unveiling and of the Square c. 1940 confirm, the raised kerb and gravelled area is an integral element of the design of the Memorial. The attached photographs taken c. 1950 shows that the gravelled area performs the ceremonial function of defining a distinct space between the surrounding public area and the semi-sacred nature of the obelisk and is used for laying wreaths at ceremonies, while together with the raised kerb, it serves as a barrier to discourage the public from directly interacting with the obelisk.

In architectural and civic design terms, the raised stone kerb defines an intermediate space whose proportions contribute to the setting, appreciation and dignity of the obelisk. In my firm opinion the raised kerb and gravelled area is an integral element of the Protected Structure and its curtilage and any alteration would seriously degrade the civic design character and historical meaning of the overall ensemble of which it is part.

This is also the opinion of Conservation Architects Susan Roundtree and Grainne Shaffrey (copies attached).

Sometime in the 1980s as the attached photo shows, a generous and symmetrical paved area was created all around the Memorial while retaining the raised kerb and gravel finish. This space defined the curtilage of the Memorial and avoided the visual intrusion of parked vehicles on its appreciation. This was the condition and setting of the Memorial up to August 2020.

I attach a photo taken in August 2020 showing that the raised kerb and gravel surfacing have now been altered or removed and the surrounding new paving extended so as to directly abut the base of the obelisk, thereby altering its original civic design format and function. It would appear that the former raised kerb was taken up, turned upside down and buried so as to be flush with the surrounding ground level. As the attached photo shows, this has permitted the parking of cars closer to and within the curtilage of the Memorial so that the view of it which was previously available from either side (see Photo 2000) is now obscured.

As a result of these alterations, the obelisk now stands in an asymmetrical area of paving quite unlike its previous axial and ordered setting. This visual imbalance is further emphasised by the off centre location of the new pedestrian crossing which is also within the curtilage of the Memorial, so that the previous sense of symmetry which was part of its original and intended civic setting is lost.

I submit that these alterations which have materially and adversely affected the architectural and civic design integrity of this Protected Structure, constitute "*works*" as defined at S. 2 of the Planning and Development Act 2000 and are therefore "*development*" as defined in S. 3 and are not exempted development.

I am unaware of any procedurally sound planning consents which have specifically authorised the alterations the subject of this reference.

As the Council itself has carried out these works, it may not be in a position to adjudicate on its own actions and issue the declaration I have requested.

Should the Council decline to issue the declaration sought, I would ask that I be facilitated in bringing the matter directly to An Bord Pleanála for adjudication, as provided for at S.5 (3) (b) of the Planning and Development Act 2000.

Yours Sincerely



Fergal MacCabe B.Arch, Dip. Tp.
4 Summerhill Parade
Sandycove
Co.Dublin
A96H0C6



The Administrative Officer
Planning Section
Offaly County Council
Siobhán An Chonrath
Charleville Road
Tullamore

W. War Memorial, O'Connell Sq
Tullamore (S.5 Refuse)

Dear Sir.

Further to the above reference
posted to you this morning
I attach a signed application
form and a second copy
of the accompanying plans
and particulars, as your
website requires.

Yours Sincerely

Fergal MacCann.



OFFALY COUNTY COUNCIL

Áras an Chontae, Charleville Road, Tullamore, Co. Offaly.

Tel: (057) 9346800 Fax: (057) 9346868

Website: www.offaly.ie Email: planning@offalycoco.ie

FEE: €80.00

DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT

SECTION 5 APPLICATION FORM

1. Name and Address of the applicant and of the person, if any, acting on behalf of the applicant.
FERCAL MAC CABE
4 SUMMERHILL PARADE
BANDYCOVE
C. DUBLIN.
2. Address to which any correspondence relating to the application should be sent.
AS ABOVE.
3. Location, townland or postal address of the land or structure concerned as may be appropriate.
O'CONNOR SQUARE
TULLAMORE
4. Legal interest in the land or structure held by the applicant. If applicant is not owner of site, please provide name & address of owner:
OFFALY COUNTY COUNCIL
Áras an Chontae.
Charleville Road
Tullamore.
5. Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)
(see attached
report)
6. List of plans, drawings etc. submitted with this application
see attached report.

7. Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

No.

8. Where there previous planning application/s on this site?
If so please supply details:

TULLAMORE STREET
ENHANCEMENT
SCHEME PART 8

FEE: €80.00

Signature:

Fergal MacDon

Date:

18 Jan 2021

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Offaly County Council, Áras an Chontae, Charleville Road, Tullamore, Co. Offaly.



SITE LOCATION MAP



SHAFFREY ASSOCIATES • ARCHITECTS • HISTORIC BUILDINGS • PLANNING • URBAN DESIGN

29 Lower Ormond Quay, Dublin 1, Ireland tel + 353 1 872 5602 email studio@shaffrey.ie

19 October 2020
Fergal MacCabe
Architect and Town Planner
fergal.maccabe@gmail.com

Dear Fergal

Re: Resetting of War Memorial O'Connor Square, Tullamore, a Protected Structure

Further to your enquiry, I have taken a look at the recent public realm works at O'Connor Square, in particular focusing on the setting of the War Memorial/Freestanding Limestone Obelisk, a protected structure (RPS No 23-221).

My review has been desktop only – the recent and current restrictions on movement have not allowed a site visit. Following my review, I note the following observations and comments.

In general the upgrading of the public realm is to be welcomed, bringing focus and status to this central element of the town. This is an important investment in the civic amenity of the town and will serve its citizens and visitors well.

The public realm works have included alteration of the War Memorial in that the original monument kerb which defined the boundary of the monument itself has been removed as has the gravel inset area between outer kerb and obelisk base. The kerb and gravel, which formed part of the original monument have been removed and the new paving extended to the base of the obelisk. My reading of what constituted the original 1950's monument comprises the obelisk, the outer kerb and the gravel area.

Therefore, in my opinion the removal of the kerb and gravel area alters the monument. It is not just the kerb but the space between it and the main structure of the monument. This zone creates a setting and has a purpose (function). This is the space where wreathes are laid, it invokes a sense of solemnity and status to the main structure. It is also protective, further emphasising the importance of the monument. I would consider that the kerb, the space between kerb and obelisk and, the gravel finish of this space, were all consciously formed. Therefore, it can be argued that these are all part of the monument and therefore, the protected structure.

In my opinion the removal of the kerb should form part of the architectural heritage impact assessment. I consider the removal of the kerb and the space it creates around the obelisk structure to have a material impact. It is my own view that the monument would be better protected, its historic reading and visual setting better served, by the retention of the kerb and gravel enclosure.

Yours sincerely

Gráinne Shaffrey
RIAI Grade 1 Conservation Architects



Oifig an
Rialaitheora Pleanála
Office of the
Planning Regulator

20-134-8-OPR

Mr Fergal MacCabe
fergal.maccabe@gmail.com

15 January 2021

Dear Mr MacCabe,

I refer to your correspondence with this Office, dated 18 August 2020, in relation the systems and procedures used by Offaly County Council in the context of the 'Tullamore Street Enhancement' Part 8 Development and, as part of that development, the carrying out of works to a protected structure, namely the War Memorial, O'Connor Square, Tullamore. The Office of the Planning Regulator (OPR) would like to thank you for raising this matter.

Section 31AU of the Planning & Development Act 2000, as amended, (the Act) sets a high threshold for a complaint to be formally examined OPR. In the first instance, for a complaint to be considered valid it must relate to the organisation of the relevant local authority and of the systems and procedures used by it in relation to the performance of its functions under the Act. For a complaint to then be upheld the case must demonstrate evidence of significant and systemic shortcomings in the relevant authority's procedures.

Given that matters to be examined must be systemic in nature, in standard circumstances a case raised in relation to a single planning application would not be considered as valid for the purposes of section 31AU(1). However, given the details provided in your correspondence, the Office sought a report on the matter from Offaly County Council.

The Council has confirmed that a recognised lapse in procedure occurred in relation to this development and outlined at length the steps it took to address the matter.

The Council has further confirmed the detail of the internal systems and procedures it has in place in relation to the preparation, consideration and implementation of Part 8 development, including supervision by appropriately qualified personnel and, notwithstanding the above, has demonstrated that broadly robust systems and procedures are in place.

Given the information received from Offaly County Council, the OPR has concluded its consideration of the matter in accordance with section 31AU(4) of the Act.

While your complaint has not been upheld, you will note that Offaly County Council has accepted a lapse of procedure did arise but that this was once-off in nature.

I would like to re-assure you that the Office will be keeping the record of this engagement on file, as we do with all complaints received in a geographical area and that as we come to review Offaly County Council as part of our local authorities review programme (which commenced this year), we will keep the issue of handling of Part 8's in the scope of that review.

I would like to thank you once again for raising this matter.

Yours sincerely,

Enda Torsney

Enda Torsney

Assistant Director, Reviews & Examinations

Email: Enda.Torsney@opr.ie

**OBSERVATIONS ON THE PERFORMANCE OF OFFALY COUNTY
COUNCIL IN RELATION TO A PART 8 APPLICATION AFFECTING THE
WAR MEMORIAL, O'CONNOR SQUARE, TULLAMORE -A PROTECTED
STRUCTURE**

Fergal MacCabe

1.0

I am a qualified architect and town planner, a past President of the Irish Planning Institute and a Fellow of the Royal Institute of the Architects of Ireland. I have almost forty years experience as a town planning consultant and am a co-author of *'Tullamore-A Portrait'* and *'Irish Planning and Development Law'*.

I am a native of Tullamore and have taken a consistent interest in its architectural heritage. I am a nephew of Thomas Holohan who was killed in Gallipoli in August 1915 and who is one of those commemorated by the War Memorial in O'Connor Square, Tullamore.

2.0

The Memorial was erected in 1926 by a committee of local people led by the Town Council and with the participation of British Legion members. Its inscription reads *'Erected to the glorious memory of the men of Offaly (King's County) who gave their lives in the Great War 1914-1919'* The Memorial, which is now in the ownership of Offaly County Council, stands in the axial centre of the Square, the principal public space of the town.

It was designed by the architect E.W. Doyle Jones and executed in local Ballyduff limestone. It consists of an obelisk on a plinth standing on two steps and whose height is c.7.0 m and width 1.7m x1.7m at the base. It is surrounded and defined by a 3.4m x 3.4m dressed raised stone kerb, 17cm. wide and 20 cm high which is an integral part of its design and execution.

3.0

As the attached photos of the 1926 unveiling and of the Square c. 1940 confirm, the raised kerb is an integral element of the Memorial. The attached photographs taken c.1950 shows that it performs the ceremonial function of defining a distinct space between the surrounding public Square and the semi-sacred nature of the obelisk. Finished in loose gravel, this space is used for laying wreaths at ceremonies and also serves as a barrier to discourage the public from directly interacting with the obelisk. Sometime in the 1980s as the attached photo shows, a generous and symmetrical paved area was created all around the Memorial while retaining the raised kerb. This was the condition and setting of the Memorial up to recently.

In architectural and civic design terms, the raised stone kerb defines an intermediate space whose proportions contribute to the setting, appreciation and dignity of the obelisk. In my firm opinion the raised kerb is an integral element of the Protected Structure and its curtilage and its loss would seriously degrade the civic design character and historical meaning of the overall ensemble of which it is part. This is also the opinion of Conservation Architect Susan Roundtree (copy attached).

4.0

The Memorial is included as Item 23-221 of Regional Importance in the list of Protected Structures of the Tullamore Town Development Plan 2010-2016 whose life has been extended to 2020 and whose listings are reiterated in the recently published Draft Co. Offaly Development Plan 2021-2027. It is an objective of the Tullamore Plan (TTEO-12-01) *'To protect all structures listed in the Tullamore Town record of Protected Structures, that are of architectural, historical, archaeological, cultural, scientific, social or technical interest in Tullamore'*.

The Memorial is also included in the National Inventory of Architectural Heritage as Item 1480725. The images attached to both records show the raised kerb.

5.0

In September 2017 Offaly County Council gave notice (copy attached) in accordance with Part 8 of the Planning and Development Regulations 2001 of its intention to carry out works consisting inter alia of:

- Street enhancement on High Street, Bridge Street, William Street and Columcille Street including the realignment of the existing road, undergrounding of cables, installation of pedestrian crossings, new street furniture, signage, paving, planting and associated works
- Works to O'Connor Square consisting of a new road layout, parking, street furniture, signage, paving, planting and associated works

and invited submissions or observations with respect to the proposed development, dealing with the proper planning and sustainable development of the area.

Though located in the centre of O'Connor Square, no reference was made in the newspaper or site notices to the War Memorial or its status as a Protected Structure or to any of the other nine Protected Structures in the Square or the other forty three in High Street, Bridge Street and William Street within whose curtilage the works were proposed.

6.0

The documents included with the application consisted of a map and four illustrations of the finished scheme in O'Connor Square (copy attached). The latter showed the Memorial removed and the former contains the notation *'Plaque to mark former location of War Memorial'*. The plans and particulars did not advance any justification for this proposal or provide an Architectural Heritage Impact Assessment as required by S.6.4 of the Architectural Heritage Guidelines 2011.

Despite the lack of reference in the notices, the proposal to remove the Memorial became public knowledge and submissions from An Taisce, local organisations and many individuals including myself, urged its retention. In particular the Department of Culture, Heritage and the Gaeltacht observed inter alia that:

'The Department are concerned that the description of the proposed development does not specify that it would comprise the carrying out of works which would materially affect the character of a Protected Structure. This is required of proposals under Article 81 (2) (c) of the Planning and Development Regulations in relation to works to Protected Structures.

Paragraph 6.9.1 of the statutory Architectural Heritage Protection Guidelines 2011 advise that where a Planning Authority proposes to carry out works to a Protected Structure in its ownership it must take into account the same considerations as those expected of private development. In addition to indicating the status of the structure on the site notice and the development proposal document, the Planning Authority should ensure that information on the impact of the proposed development on the structure is included in the information available to the public and the prescribed bodies.

It is the opinion of the Department that the Part 8 description and documentation do not comply with the requirements of Article 81 (2) (c) of the Planning and Development Regulations 2001 (as amended).'

7.0

At their meeting of the 17th December 2017 the Members of Offaly County Council approved the Part 8 Scheme subject to amendments including the retention of the War Memorial and the relocation of the proposed pedestrian crossing in its vicinity. Neither the report and recommendations of the Chief Executive and her professional advisors on the Part 8 application nor the identity, summaries and comments on the submissions received, were included in the published minutes of the meeting or posted on the Authorities website.

8.0

On the 27th February 2018 I wrote to Offaly County Council asking inter alia:
'Whether any drawings, photographs, historical assessments, as required by S. 6.4 of the Heritage Protection Guidelines were prepared in relation to the impact of the proposed development on Protected Structure 23-221 and its curtilage?'

I received no reply but following recourse to the Freedom of Information Act 2014, on the 25th May the Council stated:

'The Design Team was led by a qualified Conservation Architect and the final proposal was referred for assessment to Offaly County Council's Senior Executive Architect Ms. Rachel McKenna who works as Offaly County Council's Conservation Architect.

It was considered that the drawings and particulars provided as part of the Part 8 provided adequate information to allow an assessment and additional information was not required to demonstrate that the proposal would not have negative impacts on protected structures subject to leaving the War Memorial in its current position in O'Connor Square. As the monument is to remain in O'Connor Square, and no works are proposed to the monument, it is our opinion that the enhancement of the Square would have no negative impact on the monument.'

9.0

On 2nd May 2018 I wrote to the Conservation Officer seeking an assurance that the present dignity and importance of the Memorial would be maintained or, ideally enhanced and asking for a sight of or input into, the final plans in order to put my concerns to rest.

On the 15th May I received a very small scale drawing which appeared to show that the retention of the raised kerb would be incompatible with the provision of the pedestrian crossing whose location as shown on the Part 8 plans had been maintained despite the amendment voted on by the Council.

10.0

On the 22nd May 2018 I wrote to the Conservation Officer pointing out the conflict between the retention of the raised kerb and the proposed pedestrian crossing together with the adverse visual impact that would be caused to the setting of the Memorial by the proximity of parked cars and suggested that either several of the proposed parking spaces be omitted or if that was unfeasible the entire Memorial be moved back c. 1.00 metres on its north/south axis.

On the 5th June I received a reply from the Administrative Officer which rejected my second suggestion as it would involve recourse to a new Part 8 process with consequent endangerment to the timescale of the project and its funding. In response to my first suggestion the AO quoted the text of the amendment to the Part 8 passed by the elected members:

'Given the concerns raised by the Department of Culture Heritage and the Gaeltacht and the overwhelming public wish to retain the War Memorial, it is considered that the Members should amend the proposal to keep the War Memorial in its current location and relocate the pedestrian crossing'. The AO went on to say that:

'The Council is obliged to ensure that the Tullamore Town Enhancement project be carried out in accordance with the Part 8 consent which was approved by the Members after extensive consultation had been completed'.

11.0

On 30th November 2018, I wrote to the Director of Services of Offaly County Council asking for sight of the detailed plans for the Memorial prior to the commencement of works. I expressed my concern as the nephew of one of those commemorated by the Memorial, that it would continue to be accorded a setting appropriate to its dignity, historical association and status. I received no reply.

I wrote again on the 21st December expressing concern that though the start of the works had been announced for the 7th January 2019, no detailed plans had been made public which clarified the manner in which the Memorial was to be protected and displayed.

12.0

Having received no acknowledgement or reply, on the 8th January 2019, I sought the following information under the Freedom of Information Act 2014:

(a) Details of the setting for the retained War Memorial (Protected Structure 23-221) as part of the works to be carried out in O'Connor Square in fulfilment of the Street Enhancement Scheme contract with David Walshe Engineering Ltd.

(b) Copies of any drawings, photographs, reports or historical assessments which informed the nature and extent of the proposed setting.

On the 1st February 2019 I was given a copy of the General Arrangement Drawing (Dwg.No. 5812-L-220) prepared by Park Hood Chartered Landscape Architects and Environmental Consultants. I was not supplied with any of the information requested at Par. (b) above and no reason was given for its unavailability.

On inspection of the above drawing, I noted that the proposed works required the removal of the raised stone kerb, while the pedestrian crossing remained in the position shown on the original Part 8 drawings.

13.0

On the 13 February 2019 I wrote to the Director of Services of Offaly County Council pointing this out and outlining options for the retention of the raised stone kerb. I also drew the attention of the Department of Culture Heritage and the Gaeltacht to its intended removal.

I received no reply from the Council. On the 1st May the Department replied stating that:

'As you will be aware, the Council modified their original proposals on foot of concerns raised by the public and by this Department in its role as consultee. On foot of your latest letter, the Department raised the matter with Offaly County Council and conveyed suggestions to them on possible solutions to address the issues arising.'

14.0

On the 9th May 2019, I wrote to the Director of Services asking to see and comment on any final design solutions arising from the Departments suggestions before construction commenced. I received no reply.

15.0

In early July 2020, Offaly County Council posted a video online of the completed works which appeared to show that the raised stone kerb had now been removed and the pedestrian crossing installed in the location originally proposed. On the 19th July, as I was reluctant to travel to Tullamore due to the current pandemic, I wrote to the Director of Services asking if he could clarify whether the kerb had been removed or not.

The Director replied on the 4th August stating that;

'The stone kerb was left in place and incorporated into the new paving but turned upside down following consultations with the Conservation Officer to allow us to have a flush detail with the paving. The top side of the kerb had a chamfer which would have created a trip hazard'.

This statement describes excavations and alterations which constitute "works" as defined at S. 2 of the Planning and Development Act 2000 and are therefore "development" as defined in S. 3 and are not exempted development. As the works were neither proposed nor authorised by the Part 8 application, I submit that they are in contravention of Objective TTEO-12-01 of the adopted development plan.

16.0

I had travelled to Tullamore on the 28th July and observed that the raised kerb no longer existed and that its former location was occupied by a roughly finished line of stone paving. I am now aware from the letter of the DOS of the 4th August that this was the uncut underside of the now fully concealed raised kerb which had been dug up and buried upside down in a deeper trench so as to be flush rather than raised.

I attach a photo showing the present ground treatment directly abutting the obelisk which now stands in an asymmetrical area of paving quite unlike its previous axial and ordered setting. This visual imbalance is further emphasised by the off centre location of the new pedestrian crossing so that all the previous sense of symmetry which was part of its architectural character is lost. The general paving of the Square now directly abuts the obelisk, thereby removing its original civic design format and intervening defined space.

As the attached photo shows, the proximity of adjoining parked cars (in contrast to the predevelopment condition) now obscures views of the Memorial from either side and creates a cramped and undignified setting. An Architectural Heritage Impact Statement would have anticipated and resolved these negative outcomes had it been prepared.

17.0

At no time has Offaly County Council disputed my assertion that the raised stone kerb is an integral and contributing element of the Protected Structure or produced any of the studies required by S. 6.4.5 of the Heritage Protection Guidelines to suggest that it is not. The Council has never presented any information on the impact of its Part 8 works on the setting and historical significance of the Protected Structure as required by Article 23 (2) of the Planning and Development Regulations 2001, - or indeed to the impact of the overall application on the other fifty two Protected Structures which lie within its curtilage.

Over the past three years I believe I have taken every reasonable step available to engage positively with the Council regarding the protection of the integrity of this Protected Structure. My last letter of the 9th May 2019 remains unanswered. As the application was processed

under Part 8, I have had no rights to an appeal or to an independent review of the Council's actions. The Council's response of the 4th August shows that none of the representations that I made drawing attention to the heritage implications of their intended development were considered and the work has now been carried out as a fait accompli.

18.0

I submit that in processing this Part 8 application, Offaly County Council has:

- (a) Sought to mislead the public by publishing notices concealing its intention to remove a Protected Structure
- (b) Misled me by its assurance of the 25th May 2018 that *'no works are proposed to the Monument'*
- (c) Not taken into account the same considerations which it would have applied (and has applied generally in the case of ordinary planning applications affecting Protected Structures) were the works to have been proposed by a private developer. In this instance at least the Council has discriminated against the general public in its own favour.
- (d) Been neither transparent nor timely in relation to the provision of information on its assessments, decisions or intentions.

19.0

I submit that the works carried out to this Protected Structure represent a material contravention of the Tullamore Town Development Plan 2010-2020 and that Offaly County Council is in breach of Section 178 (1) of the Planning and Development Act 2000.

I also submit that the Council has contravened Articles 23 (2) and 81(2) (c) of the Planning and Development Regulations 2001 and has failed to comply with Sections 6.4.5 and and S. 6.9.1 of the Architectural Heritage Protection Guidelines 2011. In addition, as the owner of the structure, the Council has not discharged its duties of protection under S.58 of the Act.

Furthermore, the practice of Offaly County Council of carrying out significant works affecting the character of a Protected Structure on the sole basis of the internal, unsubstantiated and unchallengeable opinion of its Conservation Officer, is contrary to the letter and spirit of Planning and Heritage legislation and if accepted will set a most unfortunate precedent.

Site Notice

Planning & Development Act 2000, as amended (Section 179)

Part 8 of the Planning & Development Regulations

2001 (as amended)

TULLAMORE STREET ENHANCEMENT

Notice is hereby given that Offaly County Council proposes the following works at

High Street, Bridge Street, William Street and Columcille Street in Tullamore, Co. Offaly consisting of:

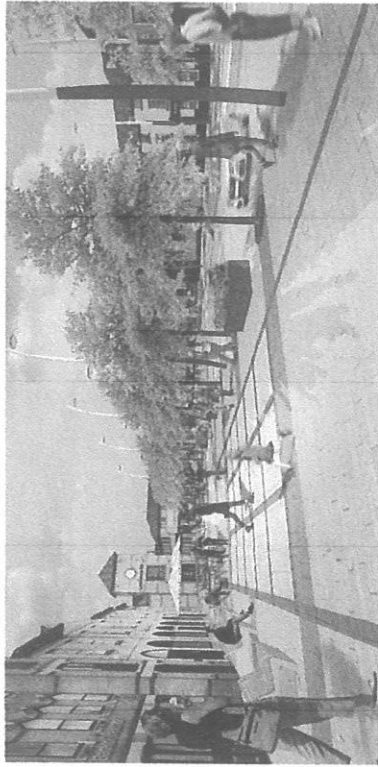
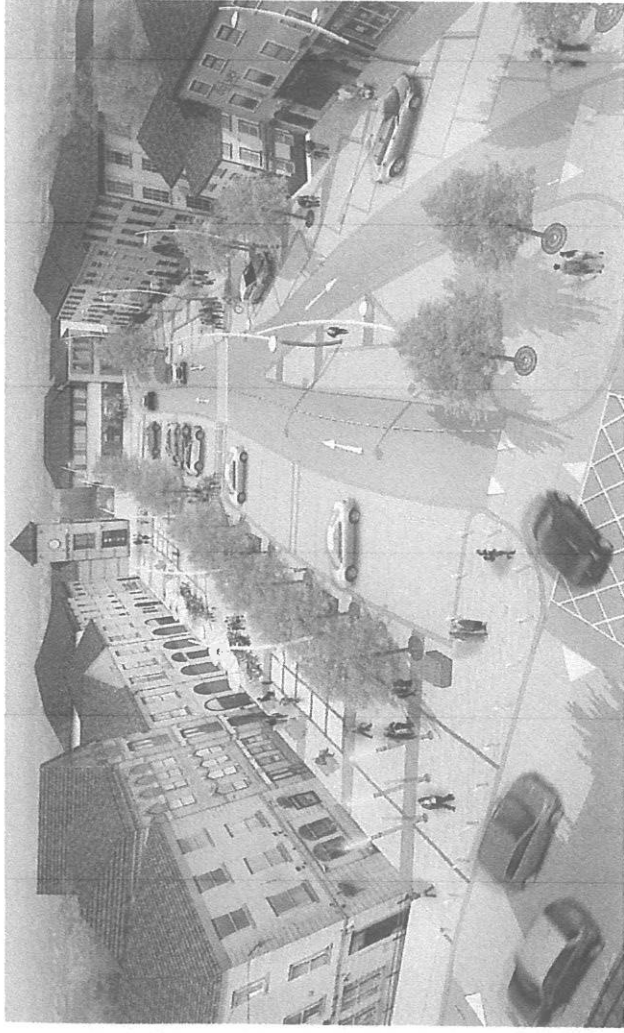
- Street enhancement works to High Street, Bridge Street, William Street and Columcille Street including the realignment of the existing road, undergrounding of cables, installation of pedestrian crossings, new street furniture, signage, paving, planting and associated works.
- Works to O'Connor Square in Tullamore, County Offaly consisting of a new road layout, parking, street furniture, signage, paving, planting and associated works.
- A new pedestrian bridge and associated works from Millennium Square to the Bridge Centre carpark, Tullamore, Co Offaly.

Plans and particulars of the proposed development will be available for inspection or purchase at a fee not exceeding the reasonable cost of making a copy during office hours at the offices of the Planning Section, Offaly County Council, Áras an Chontae, Charleville Road, Tullamore, County Offaly for a period beginning on 28th of September 2017 and ending on 26th October 2017.

Submissions or observations with respect to the proposed development, dealing with the proper planning and sustainable development of the areas in which the development would be situated may be made in writing to Mr. Sean Murray, Director of Services, Offaly County Council, Áras an Chontae, Charleville Road, Tullamore, County Offaly **not later than the 9th of November 2017.**

**Mr. Sean Murray, Director of Services
Offaly County Council.**

Tullamore Street Enhancement



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100-110 SOUTH STREET, NEWARK, NJ 07102
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www.jredmond.ie

KENNY LYONS ASSOCIATES ARCHITECTS
100-110 SOUTH STREET, NEWARK, NJ 07102
TEL: 973-261-1100 FAX: 973-261-1101
WWW.KENNYLYONS.COM

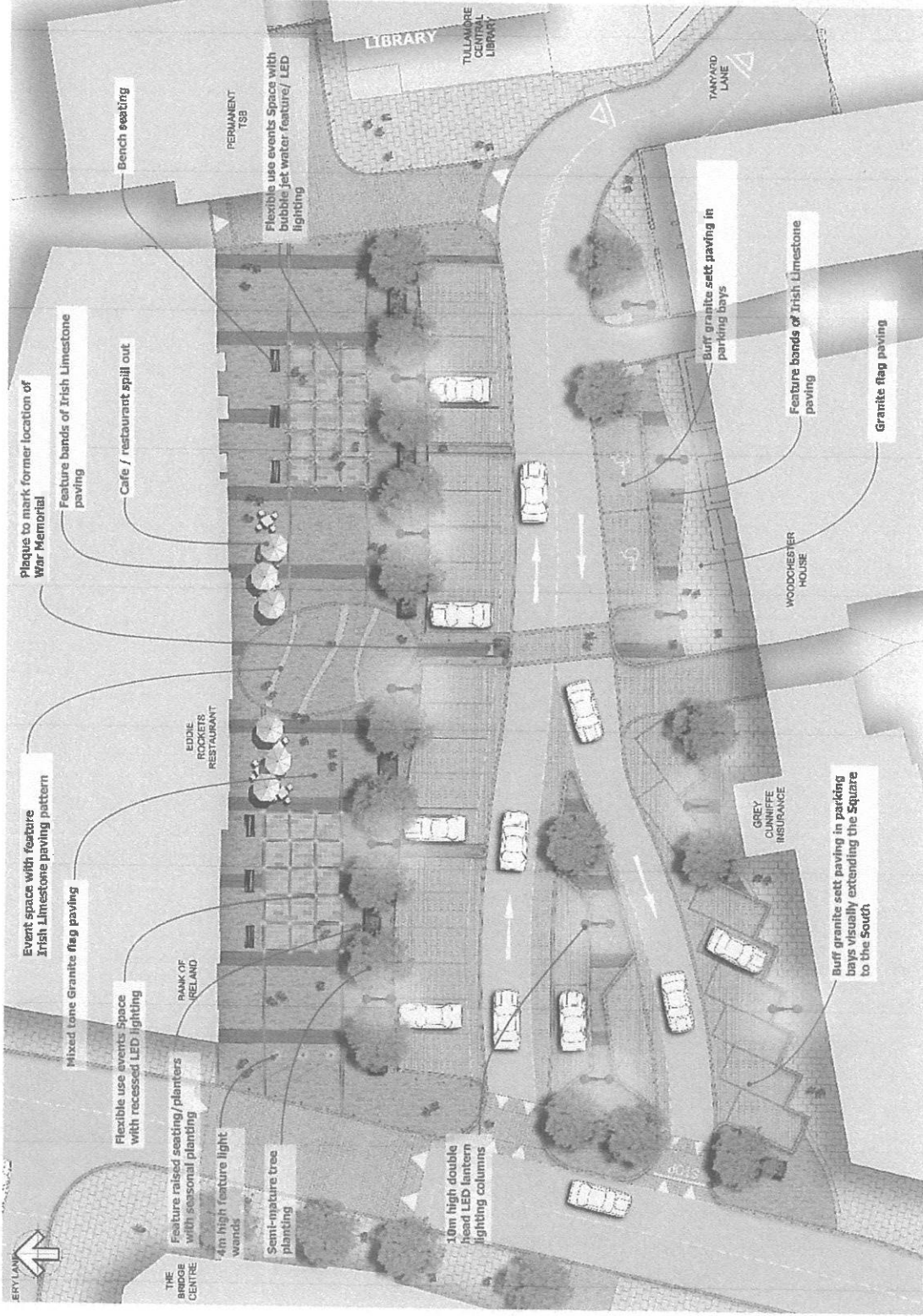
Project 15
Central Business Park
Co. Dublin
Tel: 01 832 1215
Fax: 01 832 1216
www.kennylyons.ie

Ireland's EU Structural and Investment Funds Programmes 2014 - 2020
Co-funded by the Irish Government and the European Union

1.7 02

O'Connor Square - Landscape Proposals

Scale 1:200 @ A1



Revised scheme with 34 car parking spaces and two way traffic.
Public realm designed for year round enjoyment with water and lighting features enhancing a flexible space for events such as street performance or pop up markets.



M J TURLEY | ASSOCIATES
CHARACTER PLANNING & STRATEGIES
LEADER CONSULTANTS / TRAFFIC MANAGEMENT

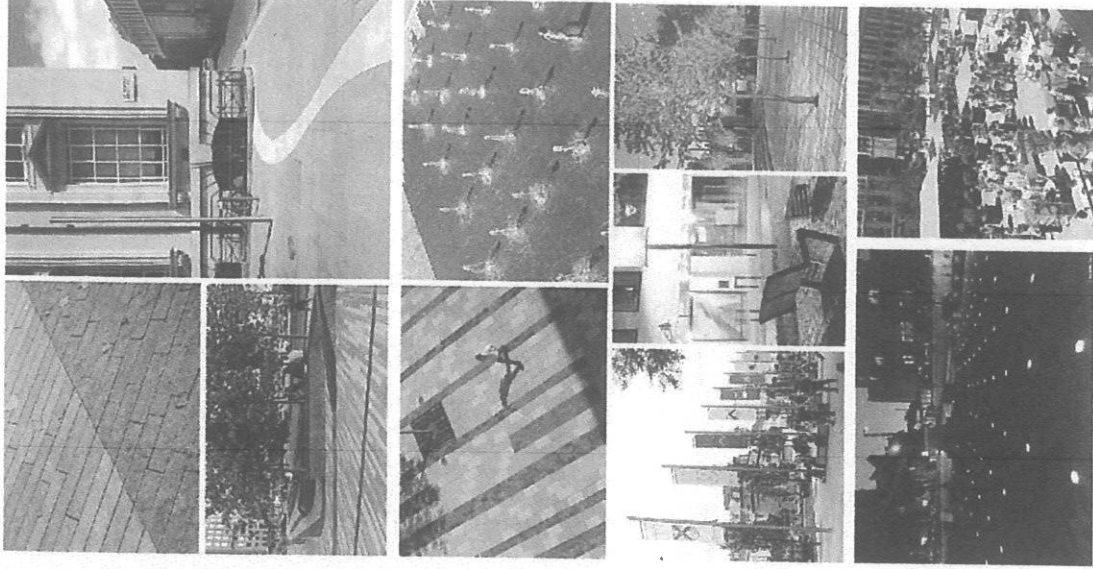
Jason Redmond and Associates
Consulting Engineers
31 Jepson St, Portlaoise, Co. Laois

KENNY LYONS
ASSOCIATES
Architects

Project 2: O'Connor Park
Urban Regeneration
Dublin City Council
The project is a regeneration of an urban area in Dublin City Council area.
www.kennylions.ie

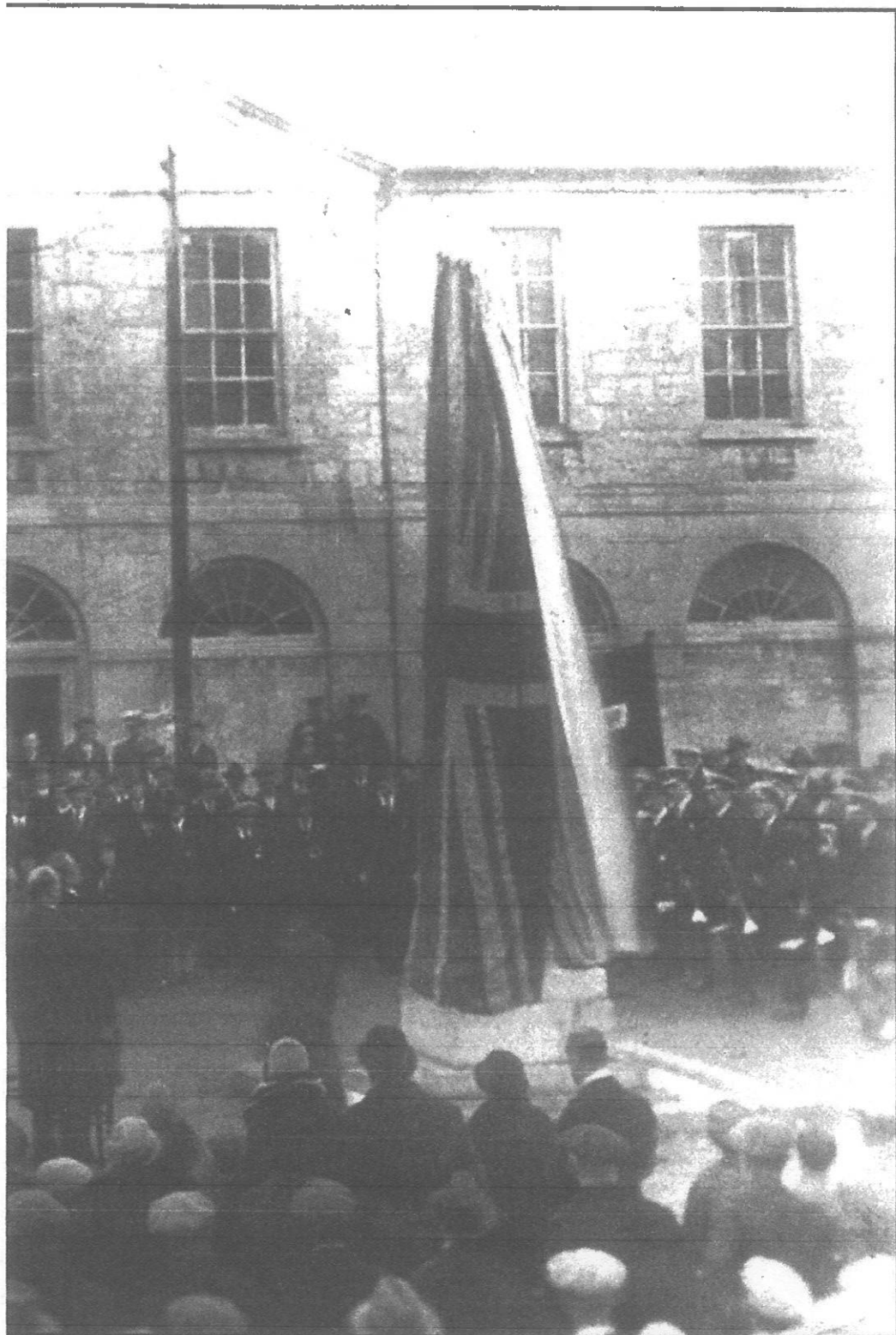


Ireland's EU Structural and Investment Funds Programme 2014-2020
Co-funded by the Irish Government and the European Union

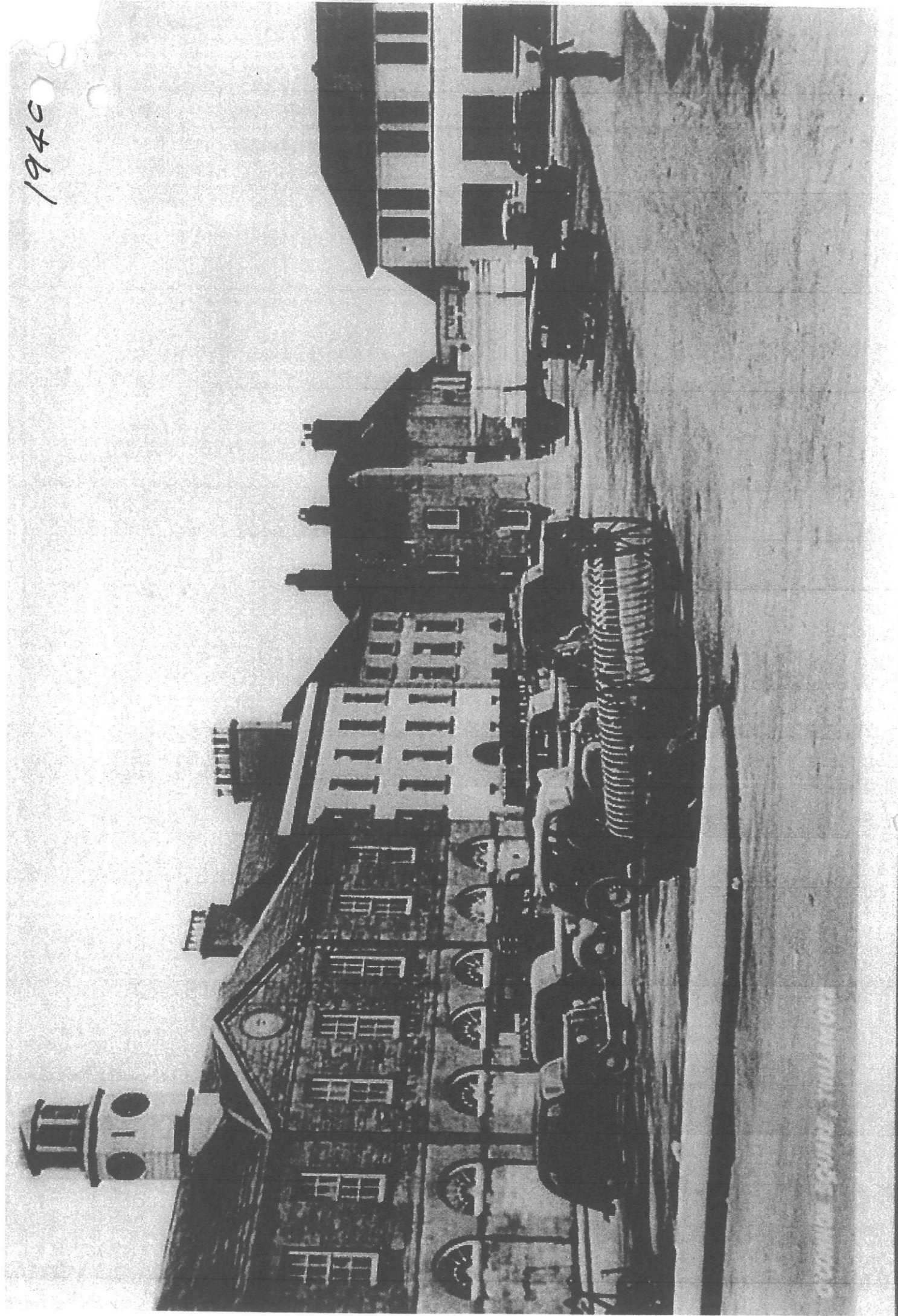


1926

The County Offaly First World War memorial, O'Connor Square, Tullamore



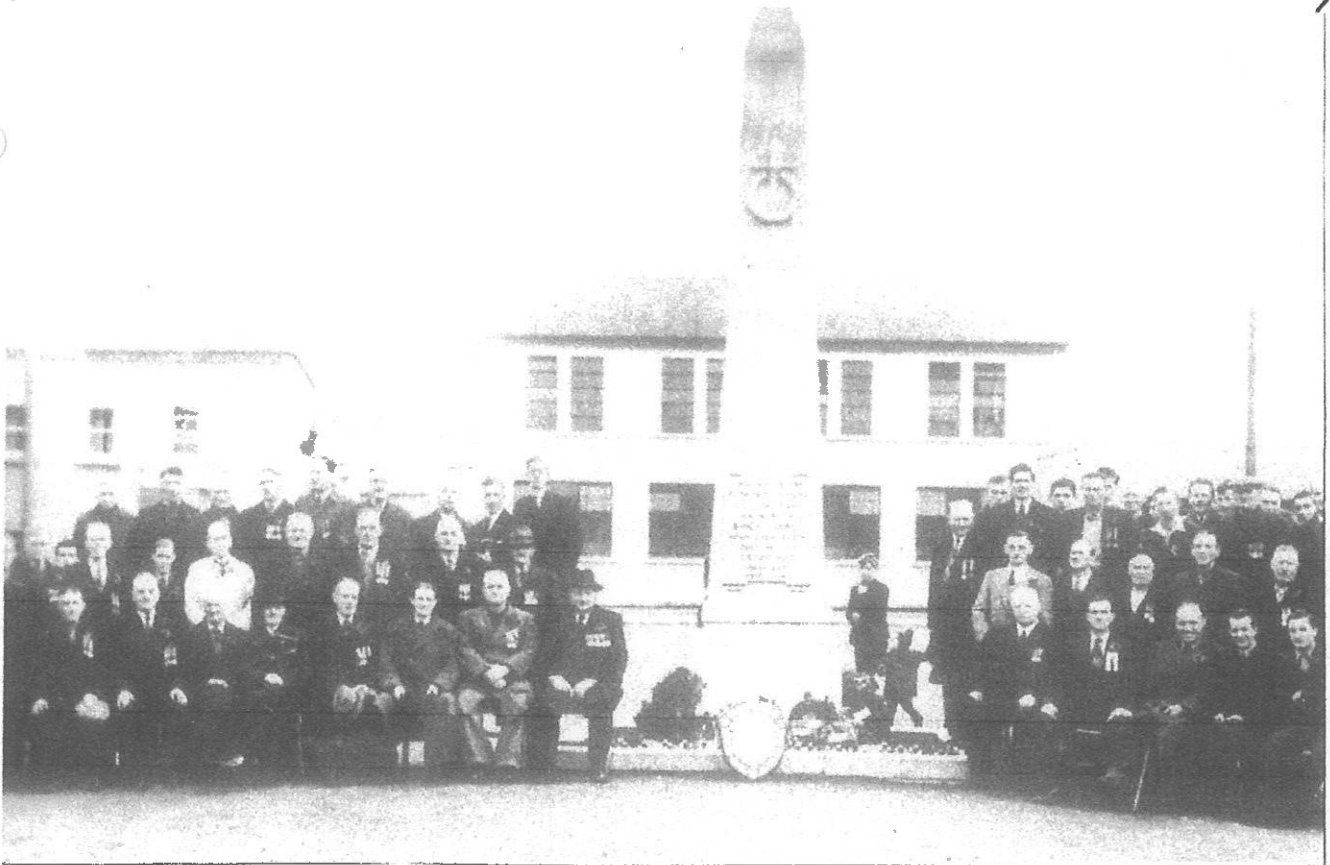
1940



1950



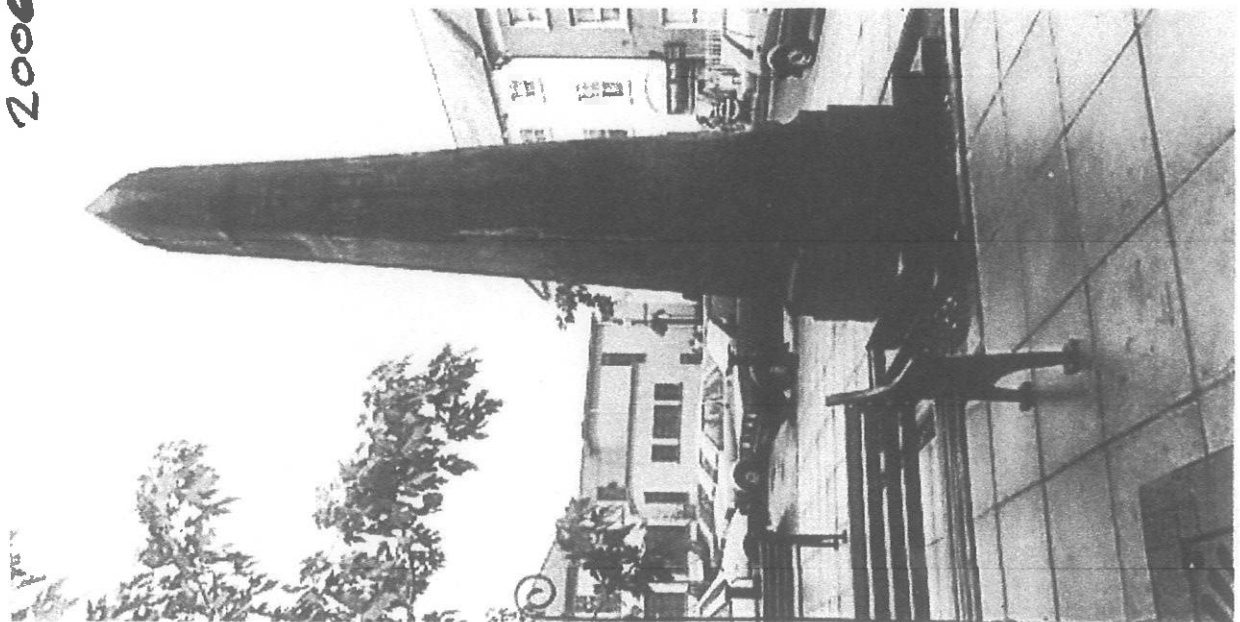
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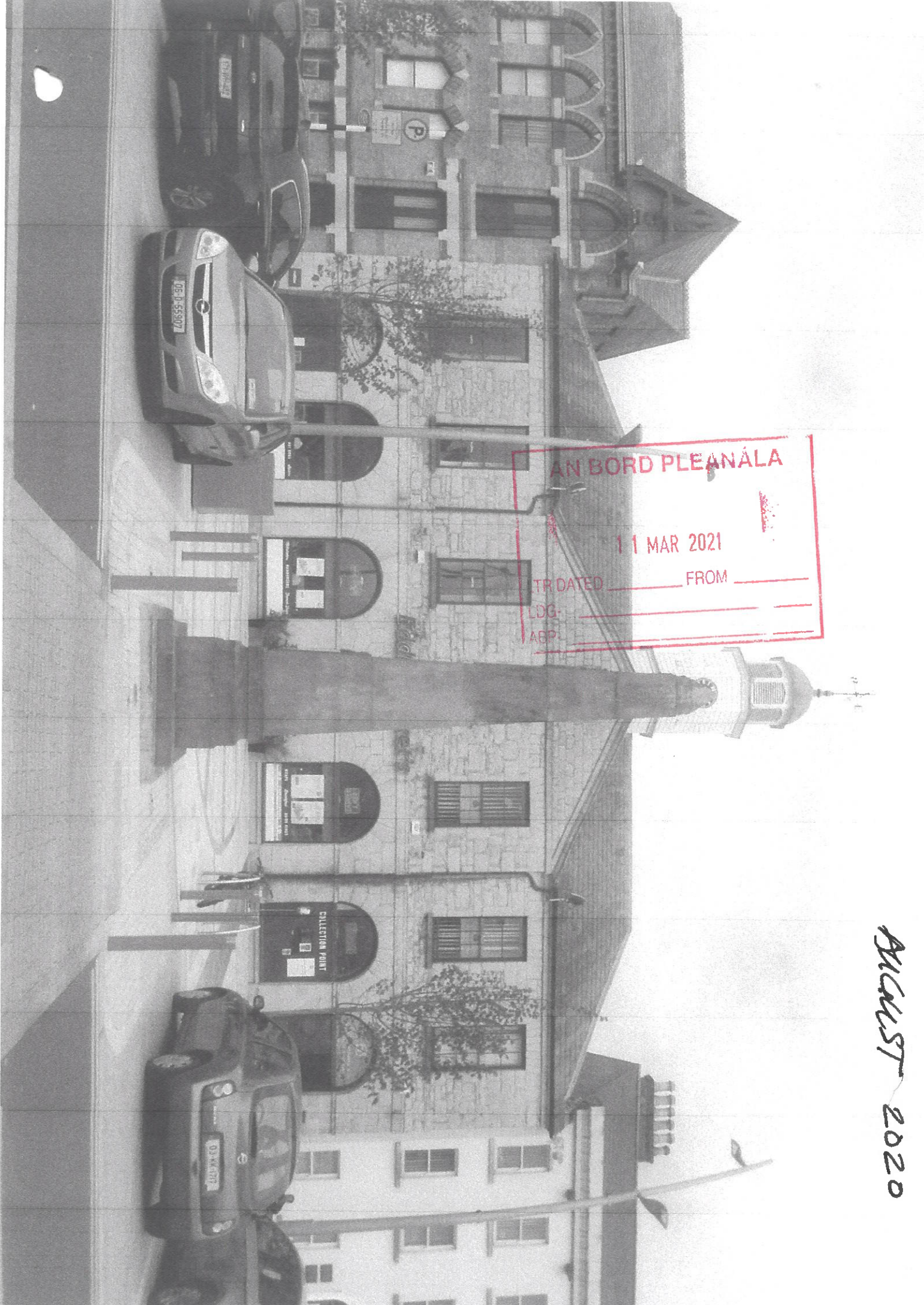
2020



2000



AUGUST 2020



AN BORD PLEANÁLA

11 MAR 2021

TR DATED _____ FROM _____

LDG- _____

APP- _____