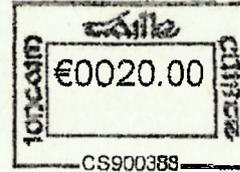
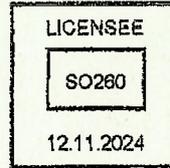


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IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT
ACT 2000 AS AMENDED

2024/ 562 MCA

Between

JOHN HEGARTY

Eugene Glendon and
~~EUGENE~~ AND SYLVIA GLENDON

and

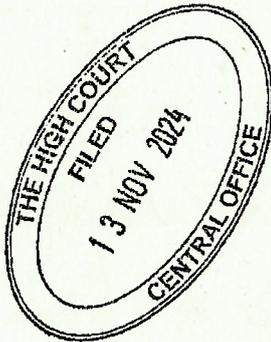
GEMMA DESMOND

Applicants

AND

TOWERCOM LIMITED

Respondent

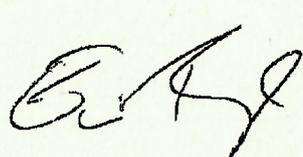


AFFIDAVIT OF EOIN BRADY

I EOIN BRADY, solicitor, of FP Logue, Solicitors, Lenin House, Great Strand Street, Dublin 1, aged 18 years and upwards, DO SOLEMNLY AND SINCERELY AFFIRM AND SAY AS FOLLOWS.

1. I am a solicitor in the firm of FP Logue, solicitors for the Applicants herein. I make this Affidavit from facts within my own knowledge save where otherwise appears and where so appearing I believe the same to be true. I make this Affidavit with the knowledge and authority of the Applicants.

2. I make this Affidavit for the purposes of confirming certain facts relating to the Applicants' application for an injunction pursuant to S160 of the Planning and Development Act 2000 as amended which have been clarified since the Affidavit of John Hegarty was sworn by him. I beg to refer to a booklet of relevant documents upon which marked with the letters **EB1**, I have signed my name prior to the affirmation hereof.
3. I say and believe that the Respondent is not a statutory undertaker authorised to provide telecommunications services for the purposes of Regulation 6 and Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001 as amended. I have verified this fact by searching on the public register maintained by the Commission for Communications Regulation, ComReg, at <https://serviceregister.comreg.ie/>, in accordance with advice provided to me in a response by ComReg to a Freedom of Information request which I received from it on or about 7 October 2024. That response is at Tab 7b to Exhibit **JH1**. I beg to refer to a screenshot of the ComReg public register taken this morning 8th November 2024 illustrating that Towercom is not an authorised undertaking, which is at Tab 1 to **EB1**.
4. I confirm that I received, during the evening of 7 November, a reply from the Respondents' solicitors, William Fry, to the letter which I sent to them on 6 November 2024. My letter is at Tab 6 to Exhibit **JH1**. Their reply is at Tab 2 to Exhibit **EB1** and claims that the works which it is carrying out are exempted development pursuant to Class 31(k) of Schedule 2 Part 1 of the 2001 Regulations.



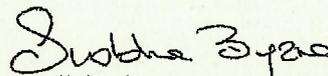
AFFIRMED before me a practising
solicitor/~~commissioner for oaths~~ by the said

EOIN BRADY

who is personally known to me

this ^{8th} day of November 2024

at **MAIN STREET, CARRICK ON SHANNON,
COUNTY LEITRIM**



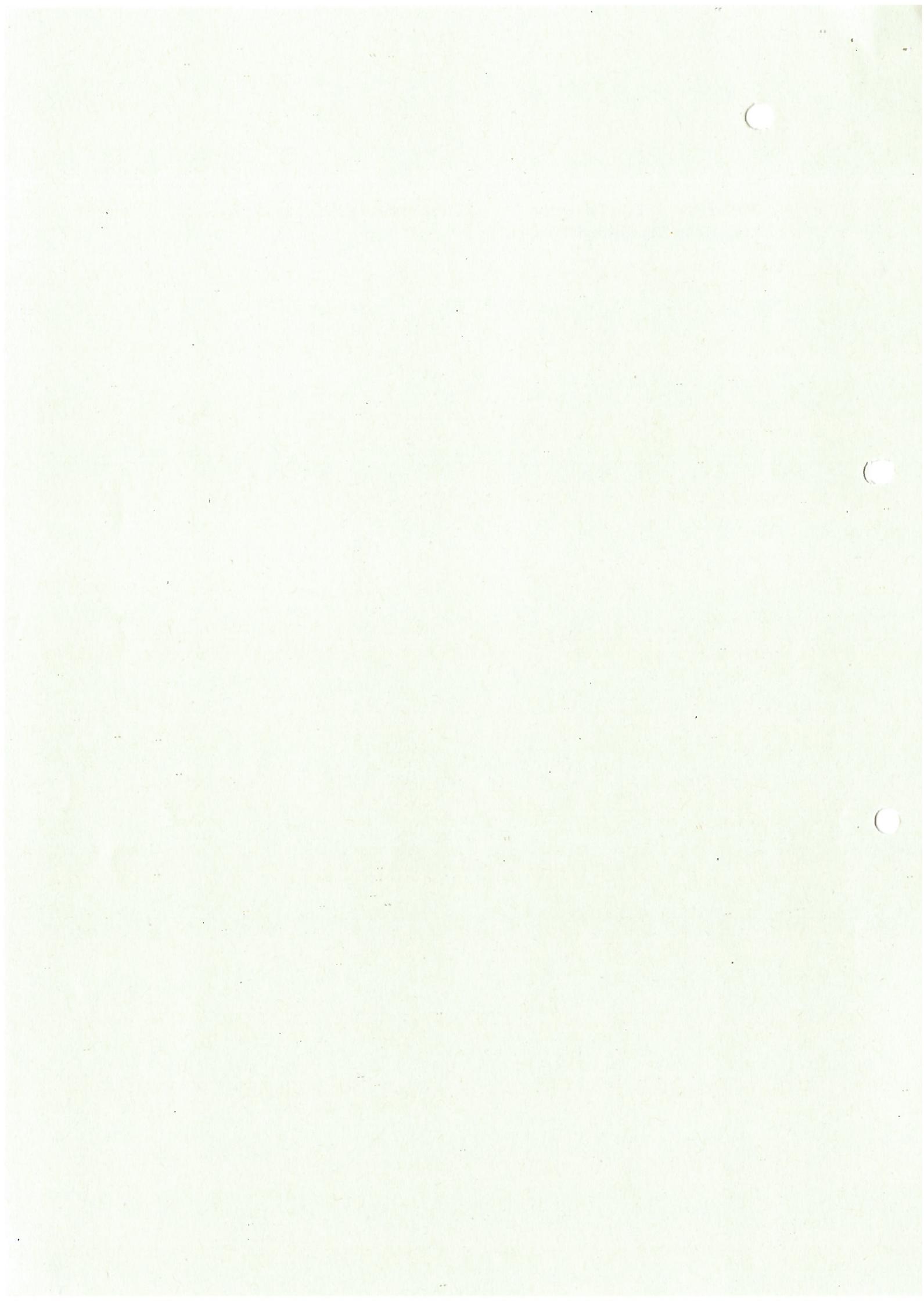
Practising Solicitor/~~Commissioner for Oath~~

Deponent

Siobhán Byrne
SIOBHÁN BYRNE SOLICITORS
Main Street,
Carrick-on-Shannon
Co. Leitrim N41 X5H9

Filed on the 13th day of November 2024 on behalf of the Applicants by FP Logue LLP,
Lenin House, Great Strand Street, Dublin 1

Filed on the day of November 2024 on behalf of the Applicants by FP Logue LLP,
Lenin House, Great Strand Street, Dublin 1



HIGH COURT
PLANNING AND ENVIRONMENT

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT
ACT 2000 AS AMENDED

2024/

MCA

Between

JOHN HEGARTY
and
EUGENE AND SYLVIA GLENDON
and
GEMMA DESMOND

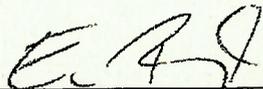
Applicants

AND

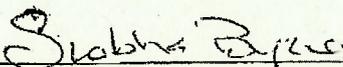
TOWERCOM LIMITED

Respondent

EXHIBIT EB1 TO AFFIDAVIT OF EOIN BRADY

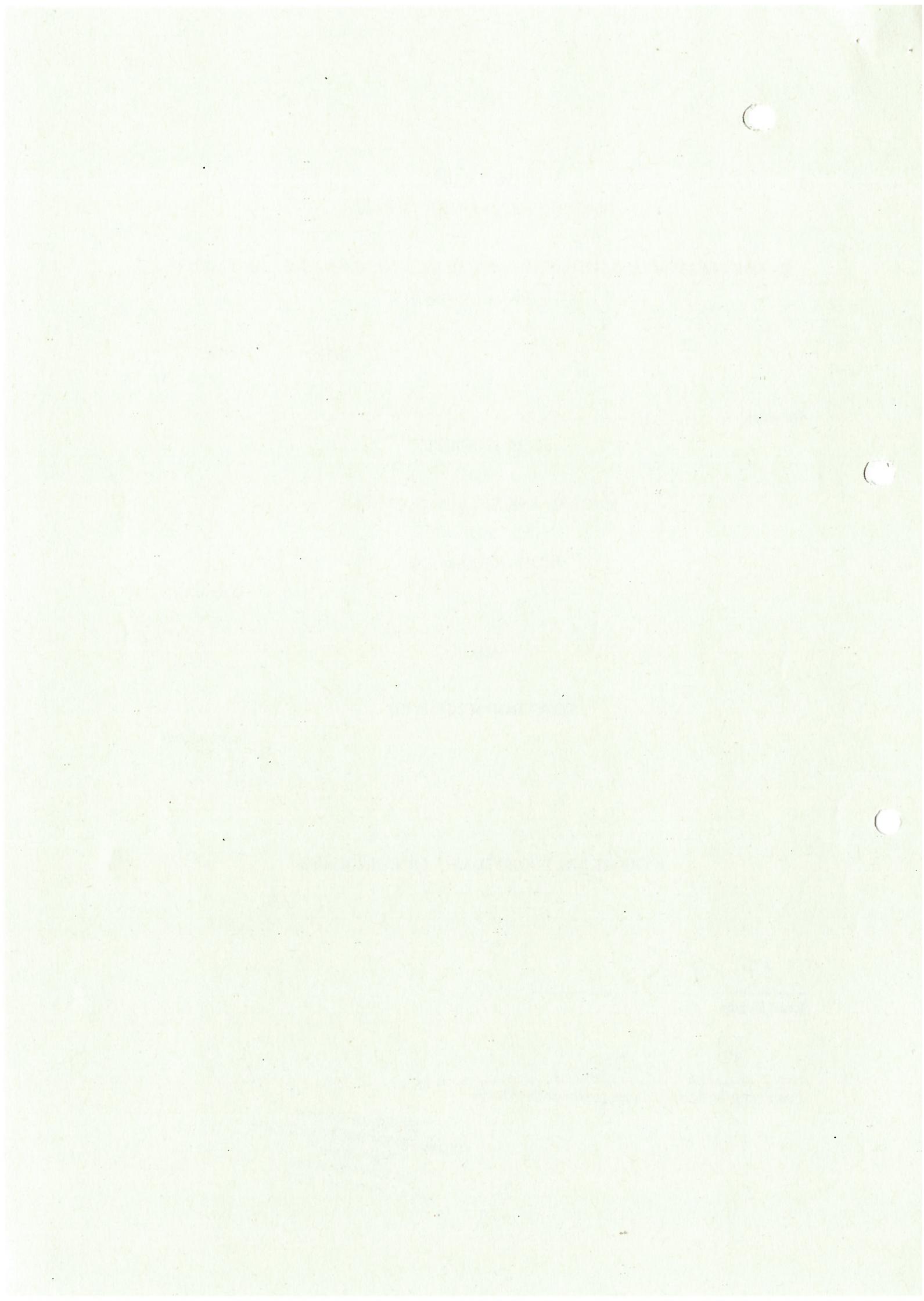


Eoin Brady



Practising Solicitor / Commissioner for Oaths

Siobhán Byrne
SIOBHÁN BYRNE SOLICITORS
Main Street,
Carrick-on-Shannon
Co. Leitrim N41 X5H9



TAB 1



SEARCH

Add filter...



All fields: towercom



Remove all filters

Provider Name ^

Trading As

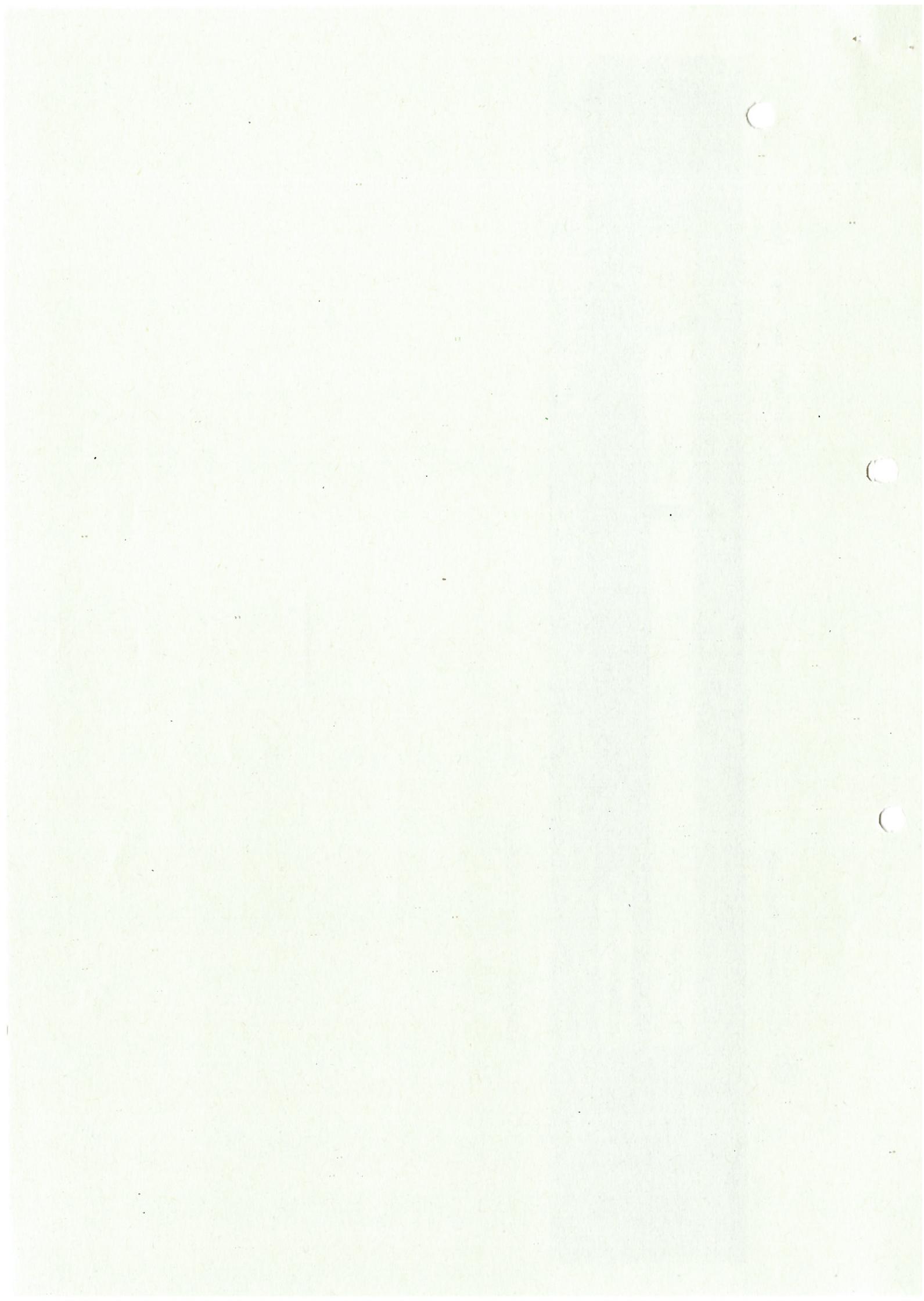
Network Type

Service Type

Area

Commencement

No Results Found!



TAB 2

Our Ref 022490.0050.GHJ/KABE
 Your Ref EJB

7 November 2024

By email (eoin.brady@fplogue.com)

F. P Logue Solicitors
 Lenin House
 Rear 25 Strand Street Great,
 Dublin 1
 Ireland

Notice of Imminent Legal Proceedings
Ongoing works at Eir Exchange, Wellington Road, Cork
Our client: Towercom Limited
Your client: John Hegarty

Dear Colleagues

We refer to the above matter and specifically to your letter dated 6 November 2024 addressed to our client (received at 16.02) which sought to impose a unilateral deadline for response of 14.00 today. This letter was the first formal notice provided by your client of his concerns.

Your letter alleges that our client is carrying out "works for the erection of a telecommunications mast... which have involved deep excavations resulting in significant ground vibrations" and threatens the issue of proceedings seeking interlocutory relief without further notice, unless our client undertakes to cease the works to erect the telecommunications mast pending a grant of planning permission authorising the same.

As a preliminary comment, we are instructed that our client's monitoring does not substantiate the allegations made by your client regarding "significant ground vibrations" and any works conducted by our client and its agents have been conducted to a high objective standard.

The Works

Having taken our client's instructions on the issues raised in your correspondence, we understand that the works being conducted by our client consist of the urgent replacement of the existing pole structure, which is severely structurally compromised, with an adjacent structure of similar height and profile (the "Works") and identical utility telecommunications infrastructure.

The Works are both urgent and necessary due to the structural integrity of the existing structure having been irreparably compromised. As a result, the existing structure poses a serious health and safety risk to passing pedestrian and vehicular traffic, in addition to providing a risk of damage to property.

We are further advised that remedial works to the existing structure would likely result in its collapse rendering such an option non-viable. Specifically, any strain applied to the existing structure for the

CHAIRMAN L. McGuire	PARTNERS M. Gannon D. Smith D. Quinn D. Kelly A. Conboy R. Conboy C. Collins B. Maczko C. Linnane	P. Ryan D. O'Connell C. Lillis M. Doherty C. Callaghan K. Keenan J. Heinegan F. Egan E. Kelly A. Murphy V. Collins	C. Deen M. Moore R. Ennis C. Walshe L. O'Leary D. Maughan M. O'Leary D. Ryan M. Toner V. Collins	J. Heenan F. Conery S. Torney L. O'Connell M. O'Leary C. O'Connell P. Keenan L. O'Connell M. O'Leary K. Ryan J. Heenan	J. Ahern I. Deane L. Brennan C. Egan C. Toner E. O'Connell I. Murray C. O'Leary K. Claffin L. Heenan	L. Heenan L. Murphy L. O'Connell M. O'Leary R. O'Connell L. Heenan L. M. Neenan M. O'Connell L. Heenan M. O'Leary	F. O'Connell C. O'Connell B. O'Connell N. Joyce D. O'Connell B. O'Connell B. O'Connell A. O'Connell F. O'Connell T. O'Connell	CONSULTANTS* T. O'Connell M. O'Connell C. O'Connell D. O'Connell A. O'Connell G. O'Connell A. O'Connell B. O'Connell H. O'Connell	E. O'Connell J. O'Connell S. O'Connell R. O'Connell C. O'Connell G. O'Connell J. O'Connell B. O'Connell N. O'Connell R. O'Connell	B. O'Connell P. O'Connell S. O'Connell S. O'Connell S. O'Connell
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In association with: Logue, Northern Ireland *Not a member of the Law Society of Ireland

WILLIAM FRY

purposes of straightening it would involve the application of horizontal force for which the pole is not designed and would almost certainly result in its collapse.

Given the serious risk posed by the existing comprised structure to *inter alia* passing pedestrian and vehicular traffic, our client is satisfied that urgent and essential remedial action is required and is taking such reasonable steps to mitigate that risk. Arguably, the provisions of Class 31 Planning and Development Regulations 2001 (as amended) ("PDR") are intended to facilitate essential works of the nature being undertaken by our client in the current circumstances.

Exempted Development

In addition to the foregoing, the Works are exempted development under Class 31 (j) of the PDR.

While we note your reference to Article 9(1)(vi) of the PDR, the existing structure is a long-standing mast that has been in place at that location for in excess of twenty years (if not longer). Our client is replacing this structure with a similar structure, the only notable difference being the replacement of the existing wooden pole with a painted steel pole (which is in line with industry standard), in accordance with the requirements of Class 31(j).

Therefore, given the distinct similarities between the existing and replacement structure, we are at a loss to understand how it could reasonably be deemed to interfere with the character of a landscape of special amenity value or special interest.

In all of these circumstances and for the reasons set out above, our client is not in a position to provide the confirmations being sought, nor does it believe that they are reasonable or necessary, and furthermore, to do so would cause unacceptable levels of risk of serious harm and/or damage. We are therefore instructed to request that your client withdraw its request and confirm that it will not seek to escalate matters through the commencement of proceedings

If, notwithstanding the contents of this letter, your client should proceed to issue proceedings on the basis set out in your correspondence, we confirm that we have authority to accept service on behalf of our client; furthermore, we have instructions to fully defend any such proceedings and to seek to hold your client liable for all costs incurred as a result.

Yours faithfully

William Fry LLP

William Fry LLP

**HIGH COURT
PLANNING AND ENVIRONMENT**

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