

THE HIGH COURT
PLANNING AND ENVIRONMENT

Record No. 2024/562MCA

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

BETWEEN:

JOHN HEGARTY, EUGENE GLENDON AND SYLVIA GLENDON AND GEMMA DESMOND

Applicants

-and-

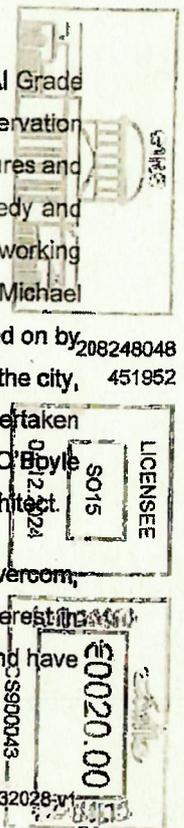
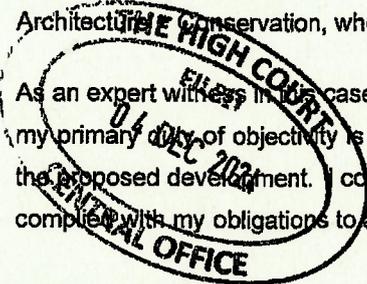
TOWERCOM LIMITED

Respondent

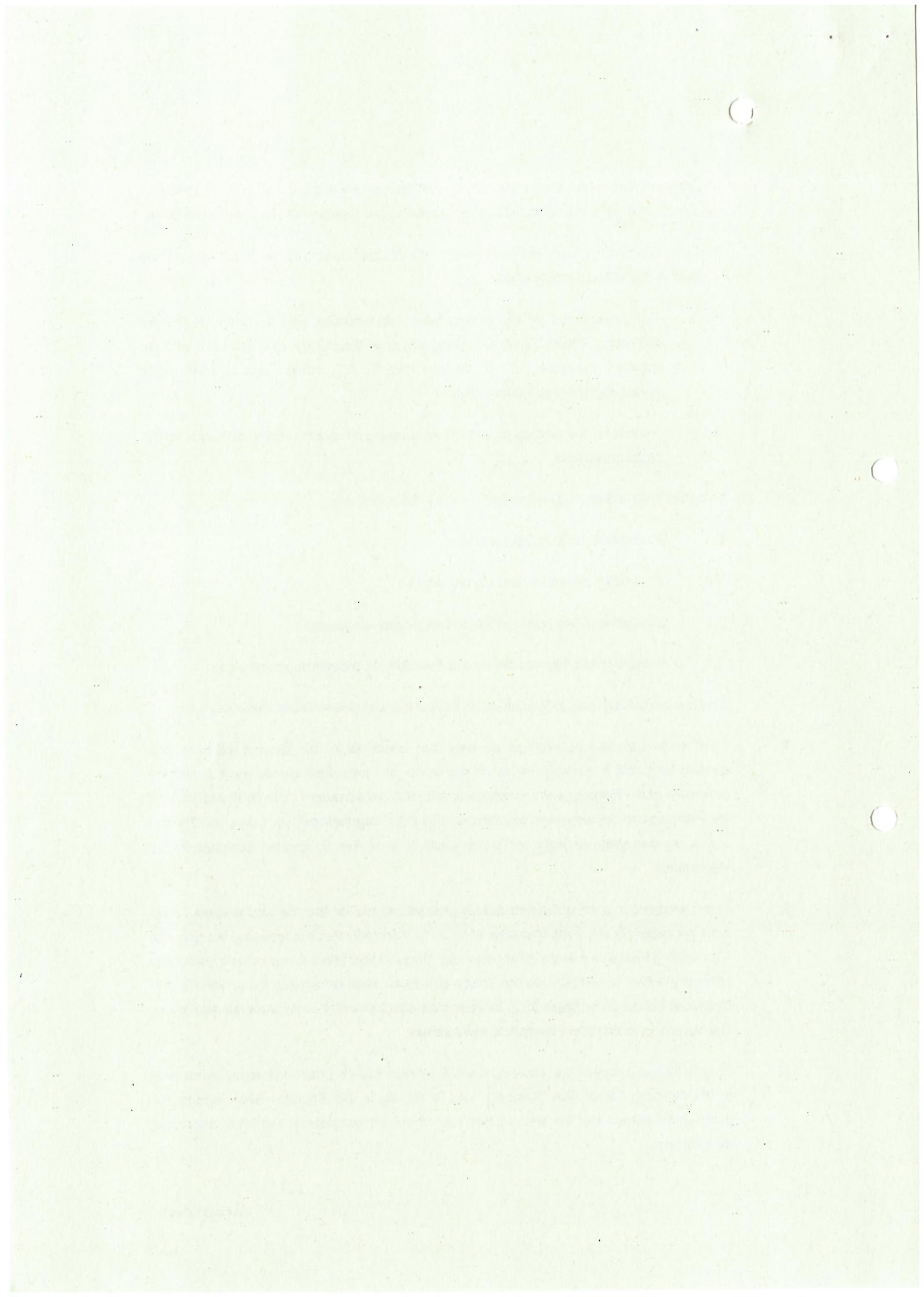
AFFIDAVIT OF COLM O'SULLIVAN

I, COLM O'SULLIVAN, Conservation Architect, of 44 Richmond Street South in the City of Dublin, aged eighteen years and upwards, MAKE OATH and say as follows:

1. I make this Affidavit on behalf of the Respondent ("Towercom") from facts within my own knowledge save where otherwise appears and where so otherwise appears, I believe those facts to be true and accurate in every respect
2. I am a member of the RIAI and an employee of Deaton Lysaght Architects. I am an RIAI Grade 3 Accredited Conservation Architect with 20 years' experience working on conservation architecture projects throughout Ireland, having worked on numerous Protected Structures and a handful of National Monuments. This experience has been gained with T.P. Kennedy and Partner Architects, Roisin Hanley Architects and Deaton Lysaght Architects, and by working in concert with RIAI Grade 1 Accredited Conservation Architects Mr. John Deaton, Mr. Michael Lysaght and Ms. Roisin Hanley on conservation projects. National Monuments worked on by the author include 9-9A Aungier Street, Dublin, some of the oldest surviving houses in the city, and a current project on site for the renovation of Bellew's Castle in Dundalk being undertaken with the aforementioned Mr. John Deaton and Mr. Michael O'Boyle of Michael O'Boyle Architects Conservation, who is also a RIAI Grade 1 Accredited Conservation Architect.
3. As an expert witness in this case, I am aware that whilst I have been engaged by Towercom, my primary duty of objectivity is to the Court. I do not have any financial or other interest in the proposed development. I confirm that I understand the nature of my obligations and have completed my obligations to assist the Court in making this affidavit.



4. In preparing this report, I have considered the affidavit of Una Sugrue, a conservation architect retained on behalf of the Applicants. I beg to refer to Ms. Sugrue's affidavit, when produced.
5. It is my understanding that Towercom are undertaking the following development, which is the subject matter of these proceedings:
 - 5.1 The replacement of an existing telecommunications pole on lands at the Eir Exchange, Wellington Road, Cork, which is structurally compromised, with an adjacent structure of a similar height and profile and similar utility telecommunications infrastructure.
 - 5.2 Removal of the existing pole structure following completion of the installation of the replacement pole.
6. I say and believe that the development consists of the following:
 - 6.1 Excavations for foundation works
 - 6.2 Foundation installation and ducting works
 - 6.3 Installation of new pole and telecommunication equipment
 - 6.4 Remove of existing wooden pole and equipment and reinstatement works.
7. The communications pole is located within an Architectural Conservation Area (ACA).
8. I am advised and so believe that an issue has arisen as to the planning status of this development and in particular whether the works are exempted development under the provisions of the Planning and Development Act 2000 (as amended) ("the 2000 Act") and/or the Planning and Development Regulations 2001 ("the Regulations"), including whether the works are exempted development under Class 31(j) of Part 1, Second Schedule to the Regulations.
9. I have prepared a report which sets out my professional opinion that the proposed new mast does not materially affect the character of the ACA – primarily that it is replacing like with like – an existing mast with a very similar new mast. They are both telecommunications masts and ultimately neither is desirable. As the design of the new mast is following the conditions and limitations set out under Class 31 (j) for exempted development, it is my professional opinion that the proposed works are exempted development.
10. I beg to refer to a copy of my report upon which marked "COS1" I have signed my name prior to the swearing hereof (the "Report"). As is set out in the Report, I have formed the professional opinion that the works being carried out are development which is exempted development.



11. I have inspected the locus and can confirm that the original communications pole remains in place and that foundation works have been carried out at the proposed location of the replacement pole, approximately 3.2m north-east of the existing structure
12. The existing telecommunications mast is one of the ACA's most undesirable physical features. It does nothing to add to the visual amenity of the ACA, and in fact, detracts from it. The ACA was designated after its construction *despite* its presence, not because of it. However, it far from the only such feature. There are numerous examples of unsightly infrastructure, as the photographs in the report identify. Replacing the mast with the proposed new mast will *not* improve the visual amenity of the ACA. But it will also not detract from it more than the existing mast does.
13. Ms. Sugrue suggests that the mast is located within the curtilage of the Trinity Presbyterian Church. For reasons explained in my report, this is not correct, because the Eir site never historically formed part of the curtilage of the Church. Given that the mast does not form part of the curtilage of a Protected Structure, nor is on the list of Protected Structures itself and that Cork City Council have not notified the owners that it is within the curtilage of a Protected Structure, the relevant legislation to consider is section 82 of the Planning and Development Act 2000 (as amended) which requires that in order for works within an ACA to be considered Exempted Development, they should not materially affect the character of the ACA.
14. Having assessed the site, proposed works and visited the wider ACA to see how the works would impact on the area, it is my professional assessment that the proposed works will not materially affect the character of the ACA in which it is located.
15. It therefore follows that the works should be allowed to proceed without the need to obtain planning permission for the works.

SWORN by COLM O'SULLIVAN

this 3 day of December 2024

at 46 HARRINGTON STREET

in the City/County of Dublin

before me a Practising Solicitor/ Commissioner for 4th

Oaths and [~~I personally know the Deponent.~~] OR

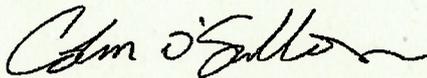
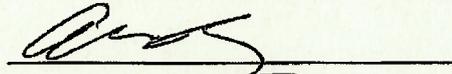
[the Deponent has been identified to me by REFERENCE TO

~~_____~~] who is personally known to me and A.A.

who certifies that the Deponent is personally known to

him/her.] HIS IRISH DRIVER'S LICENCE No. 170123097

CONTAINING A PHOTOGRAPH OF THE DEPONENT A.A.

Practising Solicitor/ Commissioner for Oaths
Alexander Ryan

Practising Solicitor
RYANS SOLICITORS LLP
46 Harrington Street
Portobello
Dublin 8

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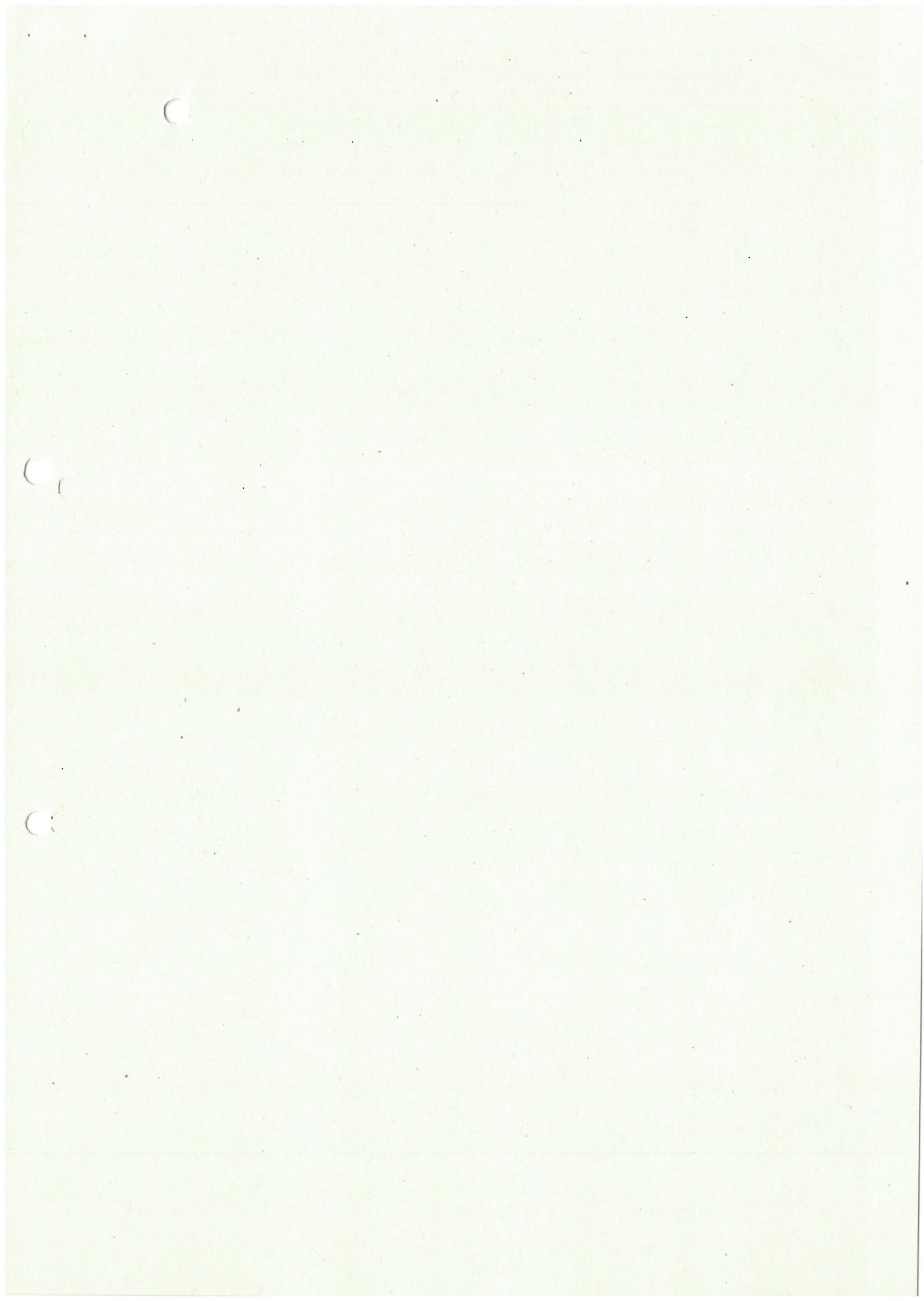
[[] hereby certify that the Deponent
is personally known to me.

W.F.

Person identifying Deponent]'

This Affidavit is filed on behalf of the by WILLIAM FRY LLP, Solicitors, 2 Grand Canal, Dublin 2.

Filed this day of 20 .





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