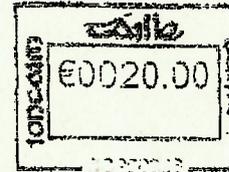
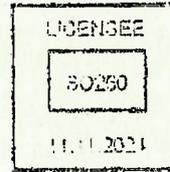


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**PLANNING AND ENVIRONMENT**

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

**2024/ 562 MCA**

**Between**

**JOHN HEGARTY  
and  
EUGENE AND SYLVIA GLENDON  
and  
GEMMA DESMOND**

**Applicants**

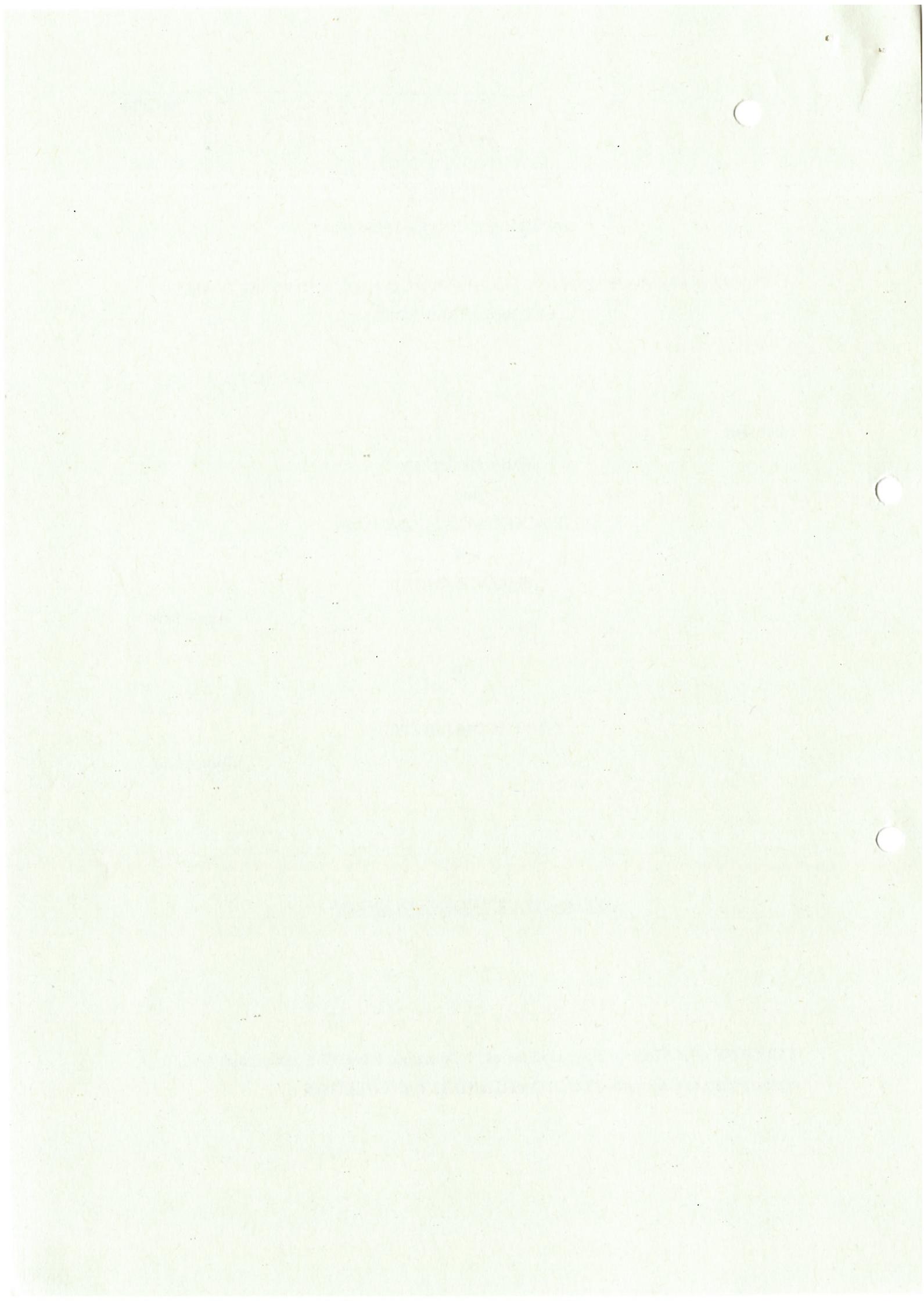
**AND**

**TOWERCOM LIMITED**

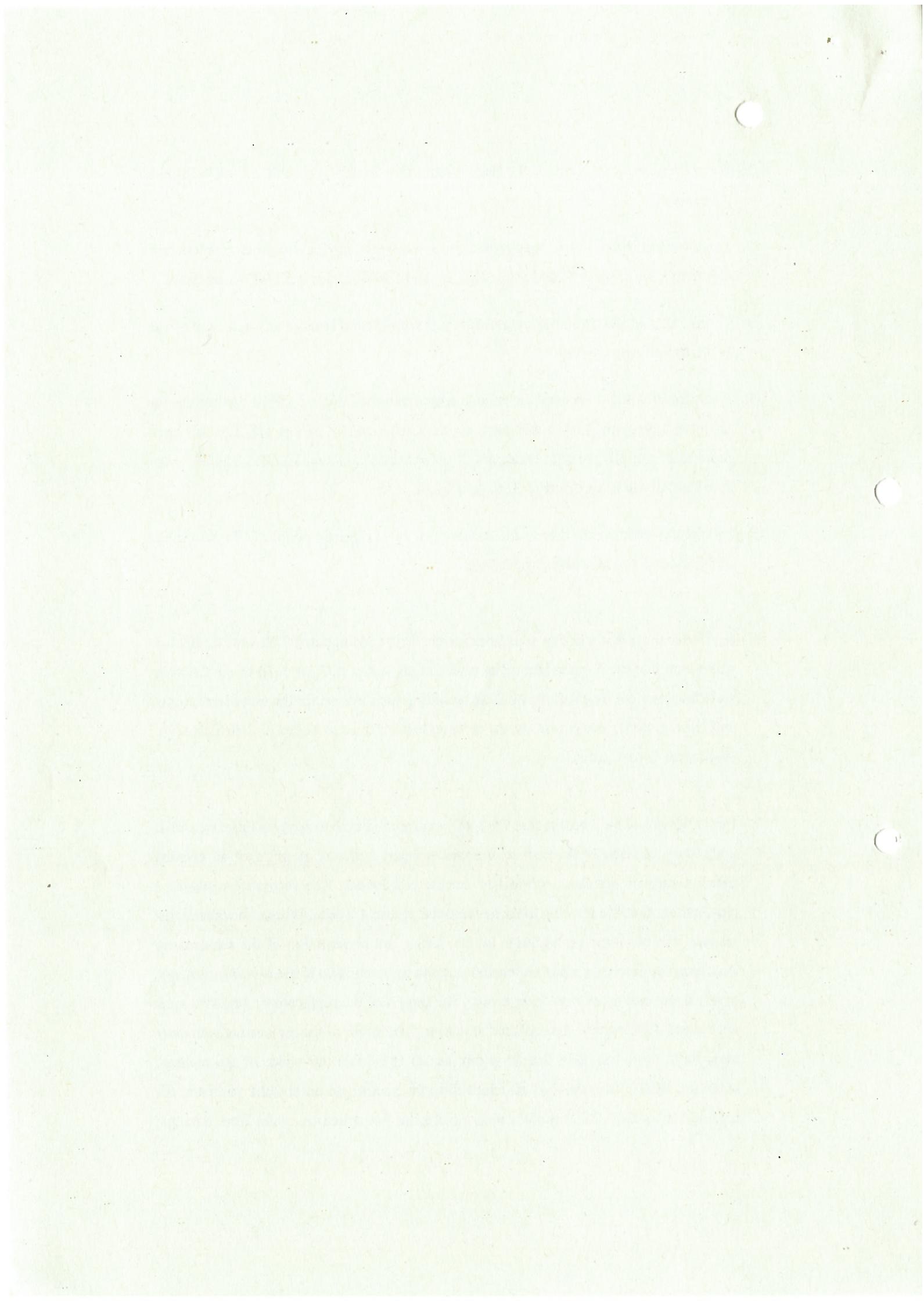
**Respondent**

**AFFIDAVIT OF EUGENE GLENDON**

**I EUGENE GLENDON, retired solicitor, of 21 Connaught Place, Wellington Road, Cork,  
aged 18 years and upwards, MAKE OATH AND SAY AS FOLLOWS.**

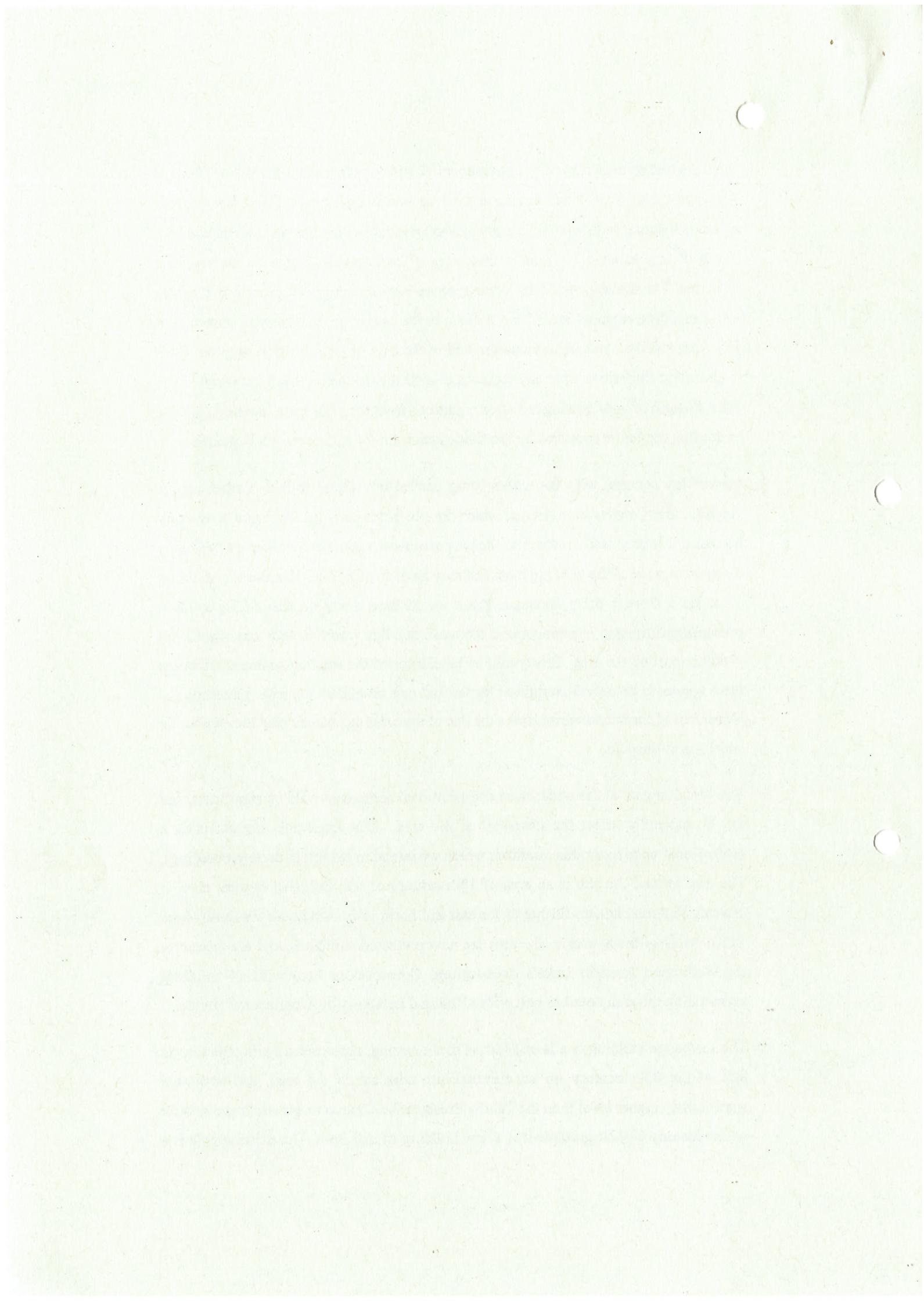


1. I am resident at 21 Connaught Place Wellington Road, Cork with my wife, Sylvia Glendon.
2. I make this Affidavit for the purposes of grounding my application for an interlocutory injunction pursuant to S160 of the Planning and Development Act 2000 as amended.
3. I make this Affidavit on my own behalf and with the knowledge and authority of the other named Applicants.
4. I confirm that the other applicants have authorised the bringing of this application for an interlocutory injunction and have approved the content of this affidavit and have done so in compliance with paragraph 73 of Practice Direction HC 126, signed by the President of the High Court on 19th June 2024.
5. I make this affidavit further to the Affidavit of John Hegarty sworn on 7th November 2024, grounding the within proceedings.
6. In a letter from William Fry, solicitors for the Respondent, dated 7 November 2024, it was stated that the Respondent relies on Schedule 2 Part A Class 31(j) of the Planning and Development Regulations 2001 as providing justification for the erection of a mast and for the works carried on by the Respondent on the site at the Eircom Exchange, Wellington Street, Cork.
7. I am advised and believe that that Class of exemption alleged to apply in this case allows a statutory undertaker to erect an antenna support structure in place of an existing antenna support structure, subject to certain restrictions. The restrictions include a requirement that the existing mast be removed within 4 weeks. Where, for operational reasons, the old structure remains in use during the construction of the replacement structure, the new mast must be located as close as practicable to the existing mast, and in any event not more than 20m away. The height of the replacement structure must not exceed the height of the replaced structure. The width of the replacement structure may, for a mast less than 2m in width, be up to double the width of the replaced structure. Where the replaced structure did not incorporate an antenna platform, the replacement must not incorporate such a platform. For structures under 12m in height,



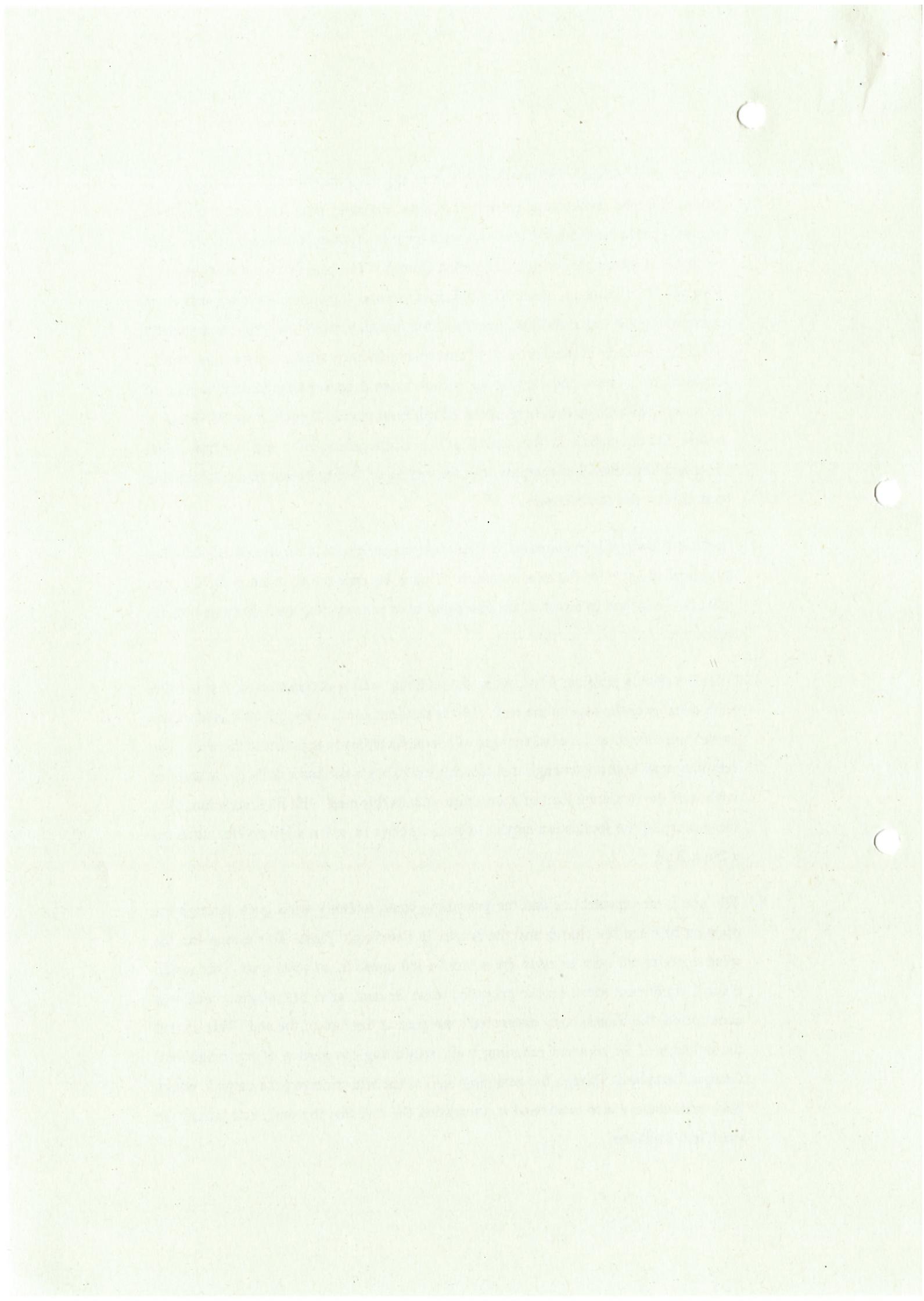
the replacement mast may have an additional 12 antennae for mobile telephony attached (not more than 8 of which antennae shall be of the dish type). The dimensions of additional antennae for mobile telephony shall not exceed the greatest length, width or depth of any antenna for mobile telephony of corresponding type on the replaced structure. The dimensions of any other antenna provided must not exceed: in the case of a panel type antenna, 3m x 0.6m x 0.2m; in the case of a co-linear type antenna, 5m in length x 0.1m x metres in diameter; and in the case of any dish type antenna, 1.8m in diameter. Emissions from any replaced or additional antennae shall not result in the field strength of non-ionising radiation emissions from the radio installations on the site exceeding the limits specified by the Commission for Communications Regulation.

8. Part of my concern with the works being carried out relates to their impact on the Architectural Conservation Area of which the site forms part. I do not know how many antennae it is proposed to attach to the proposed new mast, clearly the mast itself may be twice as wide as the existing mast and may have an additional 12 antennae. If it had 12 x 3m x 0.6m x 0.2m antennae, these would have a visible area of 3m x 7.2m, presumably arranged in rows around the mast, and this would have a very significant visual impact on the area. This would be in addition to the existing antennae, of which there appear to be only 3 straight antennae and one small dish antenna. I question the placement of current antennae above the line of the existing pole and that they are recent additions to the pole.
9. The visual impact of the wider mast and additional antennae would be significant, and would materially affect the character of the area. The Applicants are obtaining a professional opinion on this question, which we intend to exhibit in these proceedings. The area around the site is an area of 18th century or late Georgian houses, moving towards Victorian houses further to the east and north. My own house was built about 1820. Most of the houses in the area are now protected structures, and are located in the Wellington Road/St Luke's Architectural Conservation Area with all buildings surrounding the area noted as part of the National Inventory of Architectural Heritage.
10. The Exchange building is a later addition to the setting, constructed during the second half of the 20th century on an elevated site adjacent to the road, and it is at a significantly higher level than the Trinity Presbyterian Church to the south and as built on the historic church grounds it is a low building of one floor. The existing pole is a

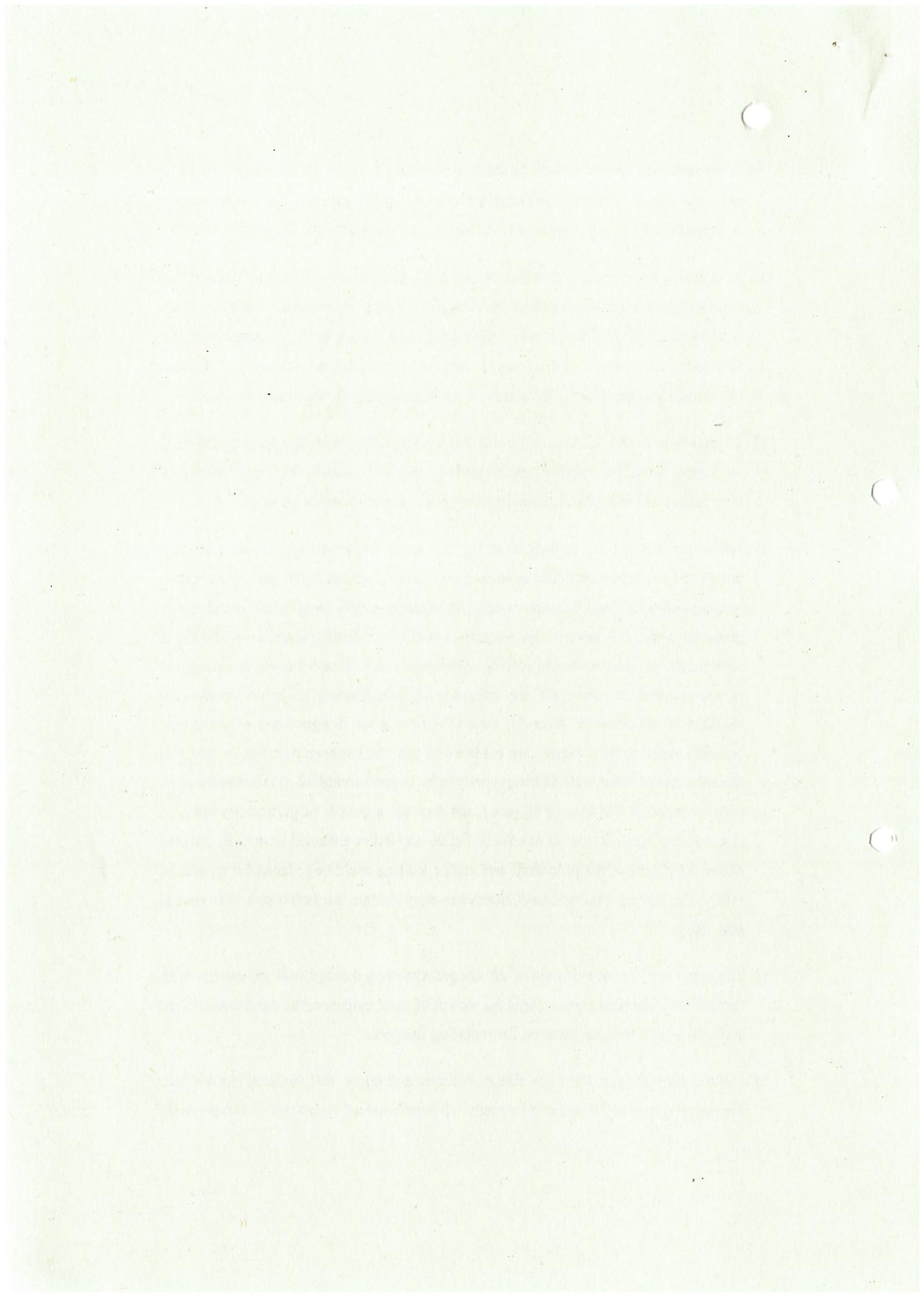


wooden pole, virtually indistinguishable from any other telephone pole, of which there are many in the architectural conservation area. However, over the years, it has had a number of antennae added to it, which were not present when it was erected (after 2011 by report of the neighbouring Presbyterian Church). The construction of a wider mast, with additional antenna, made of a different material (presumably metal), and of an unknown colour in a significantly more visible location, would be likely to materially affect the character of the architectural conservation area by adding a discordant vertical emphasis to the area, and altering the current balance between the horizontal lines of the housing and the vertical lines of the Trinity Presbyterian Church. It would be highly visible and discordant in the setting of the Conservation Area and the individual Protected Structures and compete with the setting of Trinity Presbyterian Church and its dominant and notable spire.

11. In the Affidavit of John Hegarty, he stated that the applicants were concerned about the structural integrity of the new structure. This is because the foundation for the new mast has been laid in a part of the site adjacent to the retaining wall that supports the entire site.
12. This is a double problem. First, when the retaining wall was constructed, it was filled with earth up to the edge of the wall. This is standard construction practice, and results in the presence of an inverted triangle of uncompacted earth adjacent to the wall. The retaining wall is strong enough to retain this earth, but is not necessarily constructed to withstand the structural load of a structure such as this mast with its foundation. (The dimensions of the foundation appear to be more than 1m x 1m x 1m and less than 2m x 2m x 2m.)
13. The site is an exposed one and the prevailing south westerly wind gusts through the opening between the church and the houses in Connaught Place. This means that the wind experienced here exceeds the normal wind speed in an open area. This would place a significant stress on the proposed mast. Second, after the retaining wall was constructed, the church body excavated a car park at the foot of the wall. This caused the collapse of an adjacent retaining wall, supporting the garden of my neighbour, Gemma Desmond. Though the retaining wall at the site is newer, the carpark works have undoubtedly also weakened it, increasing the risk that the wall, and indeed the mast, may collapse.



14. If the proposed new mast were to fall, due to failure of the retaining wall, it could fall onto the nearby property of Gemma Desmond or towards the church, potentially causing damage to the architectural heritage (apart from potential injury).
15. In claiming to be entitled to rely on Class 31(j), Towercom is representing that it is a "*statutory undertaker authorised to provide a telecommunications service*". I am advised and believe that it is not: it does not have a licence from the Commission for Communications Regulation to provide such a service and does not meet the definition of "statutory undertaker" in Section 3 of the Planning and Development Act 2000.
16. I beg to refer to the Affidavit of Eoin Brady sworn on 8th November herein, exhibiting an extract from the register, maintained by the Commission for Communications Regulation, of persons authorised to provide telecommunications services.
17. I note that William Fry in their letter say that the existing mast on the site, a wooden pole, has been structurally compromised and poses a serious health and safety risk to passing pedestrian and vehicular traffic, in addition to providing a risk of damage to property. It says it is advised that remedial works to the existing structure would likely result in its collapse, rendering such an option non-viable. It says that any strain applied to the existing structure for the 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. No evidence of this risk has been provided to date, and the pole appears from outside the property to be in good condition. It is a wooden pole, with an expected life span of 50 years, and does not appear to be particularly old or in any way damaged. It may be overloaded at the top where antennae have been attached above the height of the pole itself and such a loading could be reduced for reasons of safety. The Trinity Presbyterian Church has reported that the timber pole was erected after 2011.
18. The Applicants await evidence of the alleged structural damage, and will comment on same if and when received. Pending receipt of such evidence, the Applicants do not accept the proffered justification for replacing the pole.
19. I find it surprising, if there is a risk of collapse and injury, that the mast has not been decommissioned and dismantled already. If there is indeed such a risk, it is remarkable



that the preparatory works for the mast took place in August in circumstances of significant vibration, and that the mast is still in operation in November.

20. I say that the balance of convenience favours the grant of an interlocutory injunction in the present proceedings. The Applicants have no objection to the removal of the existing mast, if that is required for safety reasons, but it would serve little purpose to erect a new mast which might then have to be taken down later.
21. If there is truly an urgency to the provision of a new mast, the Respondent could have met this by applying for permission back in August, when it learned that the Applicants objected to its proposal. It would by now have obtained a decision from the Council as to whether a mast was appropriate here and if so, the nature and placement of such in respect of the significance of the site, and the Applicants would have had the opportunity to make submissions to the Council to express our concerns, and the Council could have imposed appropriate conditions.
22. I do not accept that the Respondent can put itself in a better position by failing to take the actions that were open to it, and by returning to the site 3 months later to continue work that it had begun and, the Applicants believed, decided not to complete in August because of our objections.
23. I say and believe, insofar as it is applicable, that damages are clearly not an adequate remedy in view of the impact on the cultural heritage of Cork City which would arise from the erection of the proposed mast, and the health and safety risk of structural failure. I further say and believe and have been advised that there is no requirement for the Applicants to provide an undertaking as to damages as same would be inconsistent with our rights pursuant to Article 9(3) of the Aarhus Convention, the special cost rules pursuant to section 50B of the Planning and Development Act, 2000 and the decision of the Court of Justice in *Commission v. United Kingdom* (Case C-530/11).
24. I say and believe that there are no compelling contrary reasons which outweigh the application for interim or interlocutory relief. I say that the Respondents are a commercial entity which is seeking to develop a significant portfolio of telecommunications masts across the State. This is one of hundreds of such masts developed or being developed by the Respondent. However, the erection of this mast



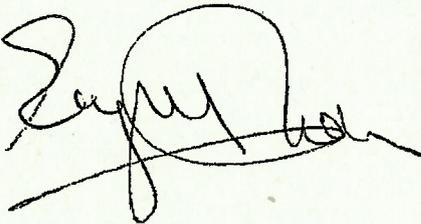
without planning permission and assessment of structural stability in a very sensitive site could result in injury or perhaps worse to local residents or property damage including to cultural heritage.

25. I say that the respondent could apply for planning permission if it believes that the provision of an alternative mast at this location is necessary, and the balance of convenience favours interlocutory relief until the planning status of the proposed mast can be determined in accordance with law.

26. I say that the Applicant's case is that the proposed mast has not been subject to assessment for the purposes of the EIA Directive and accordingly damages are not an adequate remedy.

27. I say that if this Honourable Court is minded to grant interlocutory relief the Applicants will co-operate with whatever reasonable directions are deemed appropriate to have this matter heard as expeditiously as possible.

28. I beg the Court for relief in terms of the Notice of Motion herein.



Deponent

SWORN before me a praetising <sup>D.W. 2</sup>  
solicitor/commissioner for oaths by the said

**EUGENE GLENDON**

a) who is personally known to me; or  
b) ~~who has been personally identified to me by~~  
who is personally known to me and who has certified  
to me his/her personal knowledge of the Deponent;  
or  
c) the identity of the Deponent has been established  
by me by reference to a <sup>D.W. 2</sup>

containing a photograph of the Deponent.

this 11<sup>th</sup> day of November 2024

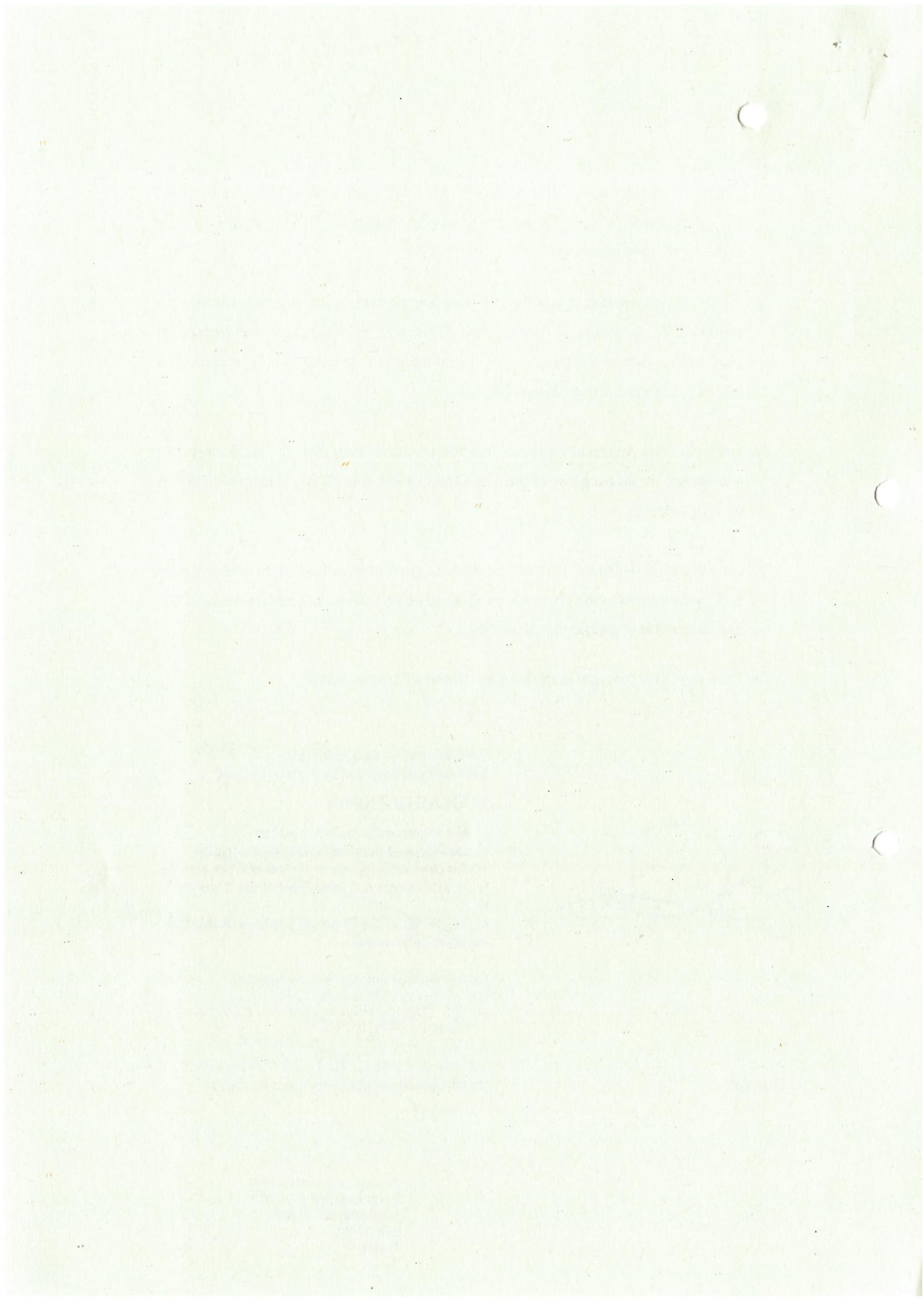
at ~~Smithfield~~ <sup>Smithfield Village</sup>

in ~~Dublin~~ <sup>the city of Dublin</sup>

~~Practising Solicitor~~ <sup>Practising Solicitor</sup> Commissioner for Oaths

<sup>D.W. 2</sup>

Deirdre NicFhionnlaoin  
Commissioner for Oaths  
5, Smithfield Village.  
Smithfield  
Dublin 7  
01 804 4500



Filed on the 14<sup>th</sup> 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  
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**Respondent**

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**AFFIDAVIT OF EUGENE GLENDON**  
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