

Appendix 2

Appendix 2 – Section 5 Application, cover letter and supporting documents submitted by the applicant

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

CORK CITY COUNCIL
PLANNING & DEVELOPMENT

19 MAR 2025

Development Management
Email: DevelopmentManagement@corkcity.ie

Phone: 021-4924029

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Peter Thomson

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

3. EIR Exchange site, Wellington Road, Cork City, T23 E302

4. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: *Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

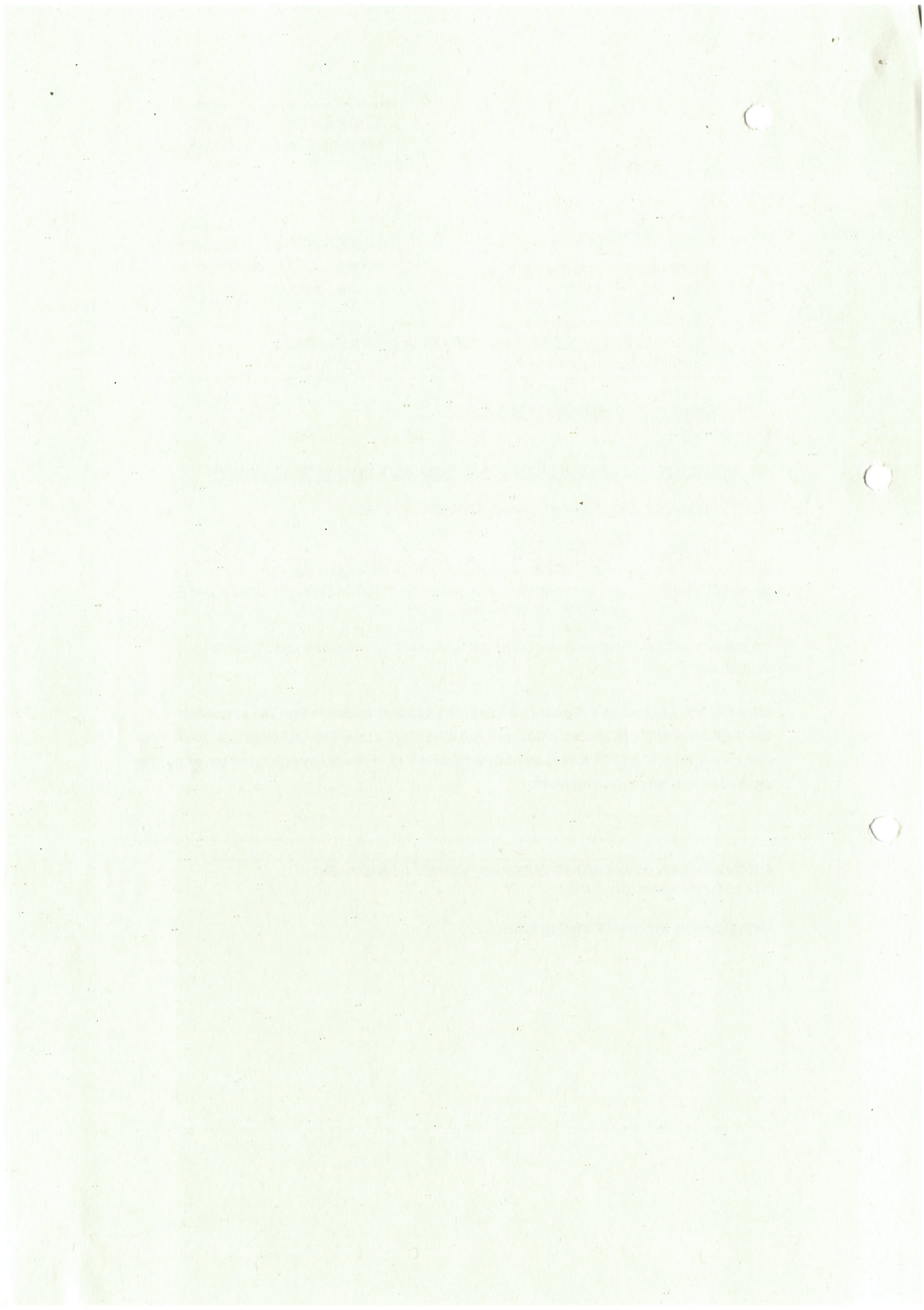
Note: only works listed and described under this section will be assessed under the section 5 declaration.

Whether the erection of a replacement antenna support structure and the attachment of antennae and other telecommunications infrastructure at the EIR Exchange site, Wellington Road, Cork City, T23 E302 is or is not development and, if development, whether or not the works are exempted development

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

Please refer to attached Planning Report



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

Enforcement ID ref: E8799

6. Is this a Protected Structure or within the curtilage of a Protected Structure?

Yes, within the curtilage of a Protected Structure

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

No

7. Was there previous relevant planning application/s on this site? No
If so please supply details:

8. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	c2.5m2 concrete antennae platform
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes ☐ No ☐ If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Other ☒
Where legal interest is 'Other', please state your interest in the land/structure in question	Concerned neighbours	
If you are not the legal owner, please state the name of the owner if available	Trinity Presbyterian Church with a freehold lease to Eir	

8. I / We confirm that the information contained in the application is true and accurate:

CONFIDENTIAL CONTACT DETAILS

These details will not be made available to the public.

9. Applicant:

Name(s)	Eugene Glendon & Sylvia Glendon, John Hegarty, Gemma Desmond
Address	21, 22 & 23 Connaught Place, Wellington Road, Cork

10. Person/Agent acting on behalf of the Applicant (if any):

Name(s):	Peter Thomson, Peter Thomson Planning Solutions		
Address:	Kells, County Kilkenny, R95FT89		
Telephone:	086 819 5656		
E-mail address:	peter@ptplanning.ie		
Should all correspondence be sent to the above address? (Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)		Yes ☒	No ☐

11. Owner Details (if the applicant above is not the legal owner):

Name(s)	Vodafone Ireland Limited
Address	Mountainview, Leopardstown, Dublin 18, Dublin, Ireland

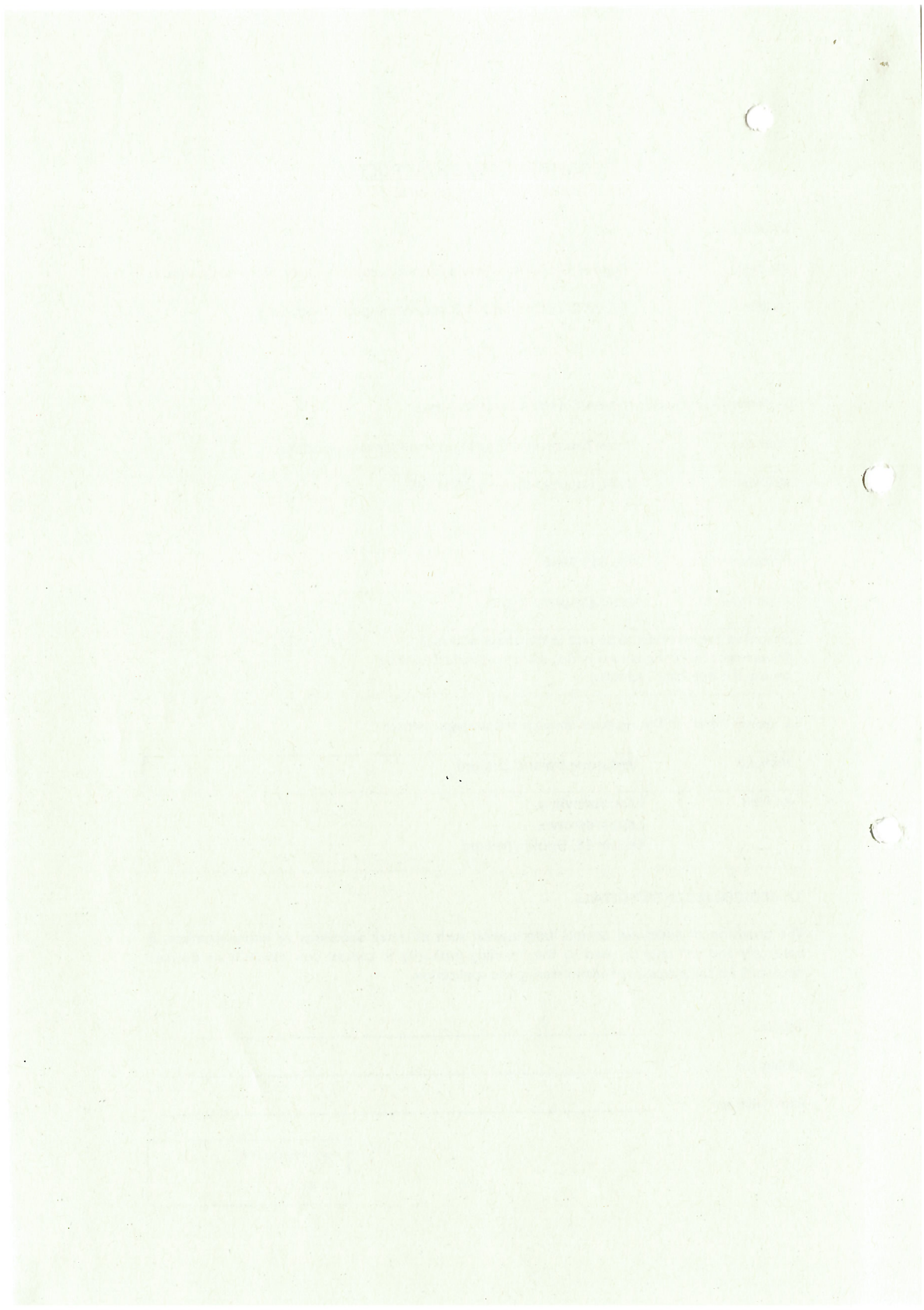
12. ADDITIONAL CONTACT DETAILS

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application.

Tel. No. _____

Mobile No. _____

Email Address: _____



Signature *Peter Thomson*

Date: 18 March 2025

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ADVISORY NOTES:

The application must be accompanied by the required fee of €80. Payment may be made at the Cork City Council cash desk, by cheque, by telephone with a credit/debit card, or by electronic fund transfer.

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

**The Development Management Section, Community, Culture & Placemaking
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.**

Please email planning@corkcity.ie with any queries.

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

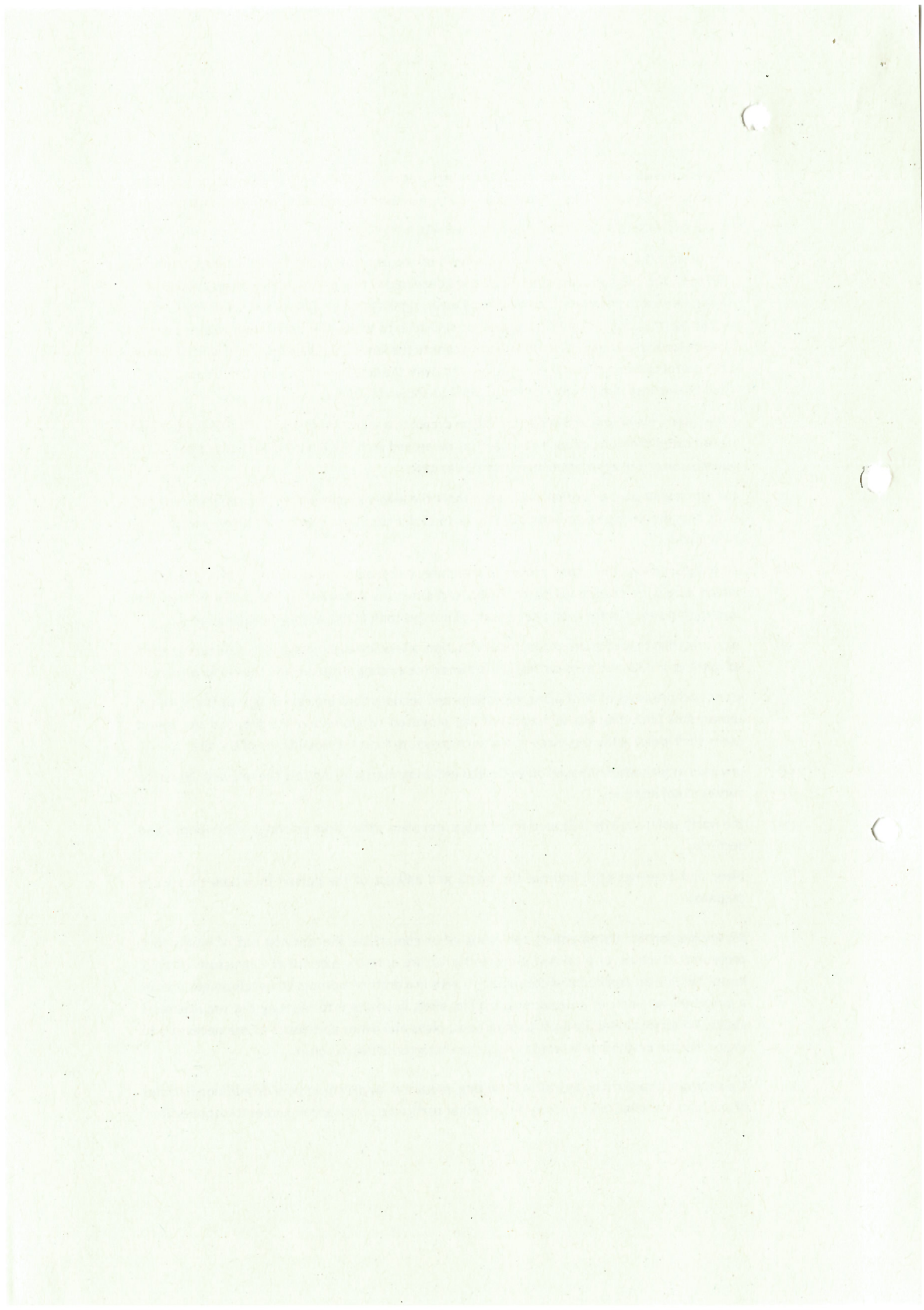
"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protection policy is available at <https://www.corkcity.ie/en/council-services/public-info/gdpr>

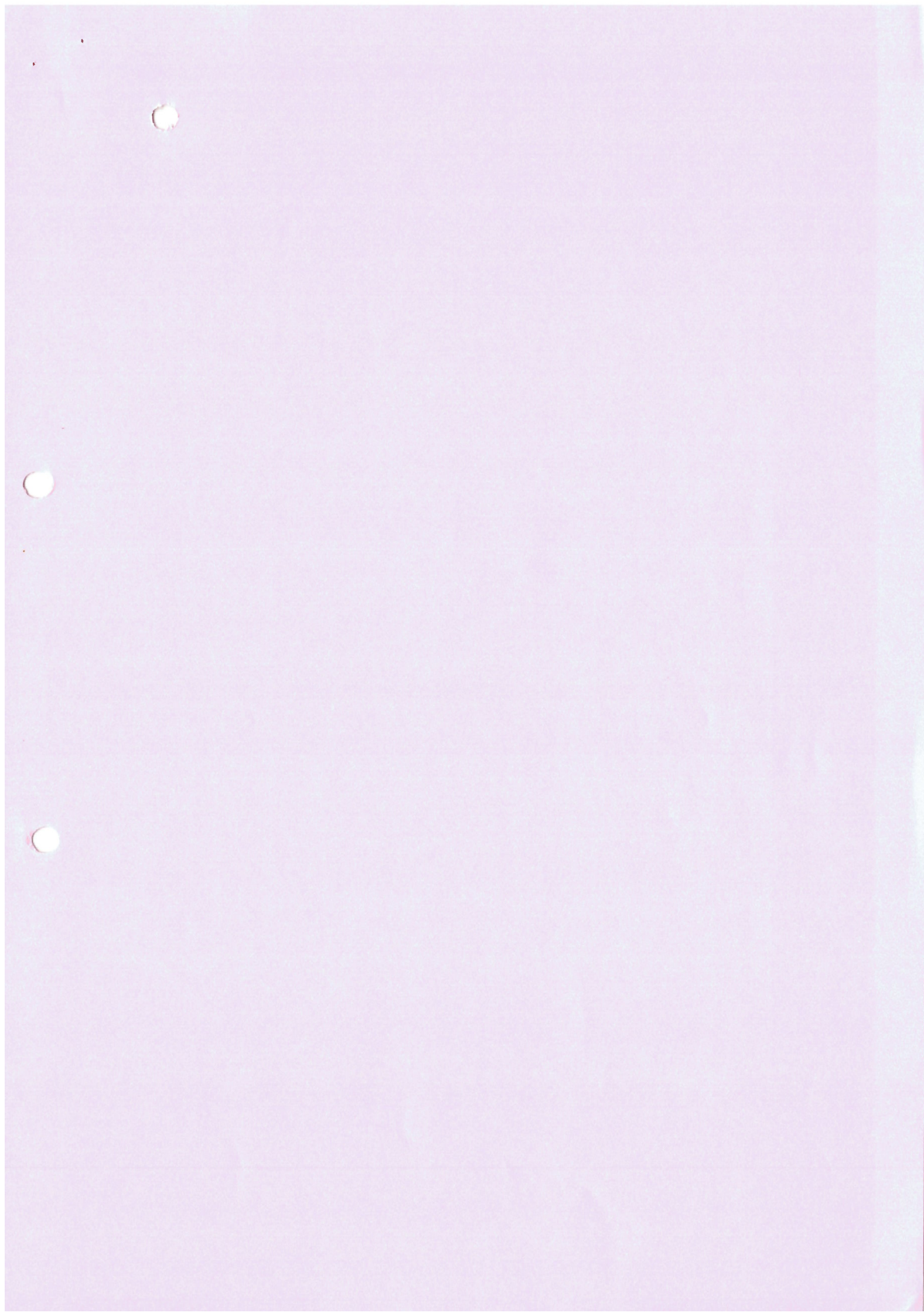
We request that you read these as they contain important information about how we process personal data.

1. Plan, drawings and maps accompanying an application for a Section 5 Declaration on exempted development shall all be in metric scale and comply with the following requirements:-

* NOTE 2 COPIES OF PLANS AND PARTICULARS ARE REQUIRED

- (a) site or layout plans shall be drawn to a scale of not less than 1:500 (which shall be indicated thereon), the site boundary shall be clearly delineated in red, and buildings, roads, boundaries, septic tanks and percolation areas, bored wells, significant tree stands and other features on, adjoining or in the vicinity of the land or structure to which the application relates shall be shown, land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant or the person who owns the land, which is subject of the application, shall be outlined in blue and wayleaves shall be shown in yellow,
 - (b) other plans, elevations and sections shall be drawn to a scale of not less than 1:200 (which shall be indicated thereon), or such scale as may be agreed with the Planning Authority prior to the submission of the application in any particular case,
 - (c) the site layout plan and other plans shall show the level or contours, where applicable, of any land and the proposed structures relative to Ordnance survey datum or a temporary local benchmark,
 - (d) drawings of elevations of any proposed structure shall show the main features of any buildings which would be contiguous to the proposed structure if it were erected, whether on the application site or in the vicinity at a scale of not less than 1:200, as may be appropriate,
 - (e) plans relating to works comprising reconstruction, alteration or extension of a structure shall be so marked or coloured as to distinguish between the existing structure and the works proposed,
 - (f) plans and drawings of floor plans, elevations and sections shall indicate in figures the principal dimensions (including overall height) of any proposed structure and the site, and site layout plans shall indicate the distances of any such structure from the boundaries of the site,
 - (g) any map or plan which is based on an Ordnance Survey map shall indicate the relevant Ordnance survey sheet number,
 - (h) the north point shall be indicated on all maps and plans other than drawings of elevations and sections,
 - (i) plans and drawings shall indicate the name and address of the person by whom they were prepared.
2. An application for development consisting of or comprising the carrying out of works to a protected structure, or proposed protected structure or to the exterior of a structure which is located within an architectural conservation area in a draft of a proposed development plan or a proposed variation of a development plan, shall, in addition to meeting the requirements above, be accompanied by such photographs, plans and other particulars as are necessary to show how the development would affect the character of the structure.
 3. A planning authority may, by notice in writing, require an applicant to provide additional copies of any plan, drawing, map, photograph or other particular, which accompanies the application.







Peter Thomson Planning Solutions



Community, Culture & Placemaking Directorate,
Cork City Council,
City Hall,
Anglesea Street,
Cork

18 March 2025

Re: Application for Section 5 Declaration for works involving the erection of a replacement antenna support structure and the attachment of antennae and other telecommunications infrastructure at the EIR Exchange site, Wellington Road, Cork City, T23 E302 is or is not development and, if development, whether or not the works are exempted development

Dear Sir/ Madam,

Introduction and background

Please find enclosed an application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended).

This Section 5 application is being made in the context of current legal proceedings in the High Court pursuant to Section 160 of the Planning and Development Act 2000 (as amended).¹ Those proceedings have been taken by my clients John Hegarty, Eugene and Sylvia Glendon, and Gemma Desmond against Towercom Limited alleging unauthorised development comprising the erection of a mobile telecommunications mast adjacent to their homes at Connaught Place, Wellington Road, Cork. An interim injunction was granted by the High Court in those proceedings preventing the erection of the mast pending further order of the Court. Those proceedings have been adjourned generally with the consent of the parties, to enable this application for a Declaration under Section 5 of the Planning and Development Act 2000 to be made.

In these legal proceedings, the case has been made that Towercom Limited, which is seeking to erect a replacement antenna support structure and the attachment of antennae and other telecommunications infrastructure at the EIR Exchange site, Wellington Road, Cork City, is not a Statutory Undertaker as defined in the Planning and Development Acts and, therefore, is not authorised to carry out the works it has commenced and seeks to complete without the benefit of planning permission.

Furthermore, without prejudice to the above, our clients assert that the proposed development is located within the curtilage of the Trinity Presbyterian Church. Our clients have obtained a report of a Grade I Conservation Architect who has

¹ High Court Reference 2024/562

concluded that the proposed development would have a significant impact on the Protected Structures. Consequently, in our client's submission, Towercom Limited are unable to erect the proposed development without the benefit of planning permission.

Relatedly, our client considers that the proposed development as part of the deployment of telecommunications infrastructure across the State by Towercom Limited, is an urban development project for the purposes of the EIA Directive, and requires EIA in light of the conclusions of the Conservation Architect and therefore the development cannot have the benefit of exempted development having regard to Section 4(4) of the Planning and Development Act 2000.

Enclosed with this application are the Pleadings and Exhibits pertaining to the legal proceedings. They can be found on the following link.

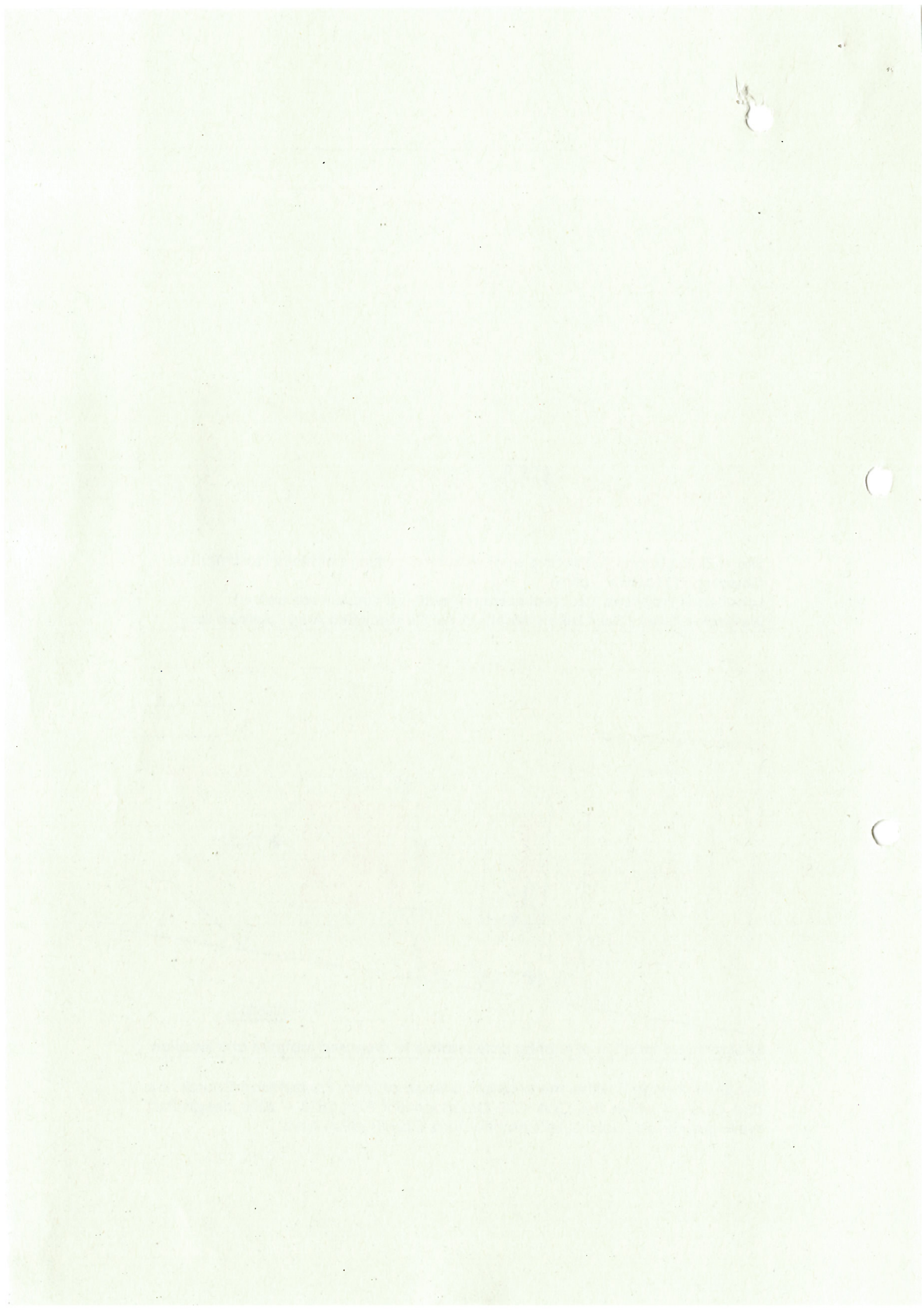
[Links here to exhibits and pleadings [Wellington Road](#)]

These Pleadings are the following:

Originating Notice of Motion
Grounding Affidavit of John Hegarty
Affidavit of Eoin Brady
Attested Copy Order of Humphreys J.
Affidavit of Eugene Glendon
Affidavit of Mairi Henderson
Affidavit of Morag Pollock
Affidavit of Sean Bradley
Affidavit of Una Sugrue
Affidavit of Colm O'Sullivan

We include all exhibits to affidavits for completeness.

Towercom Limited proposed to replace an existing telecommunication pole with a new pole within the boundary of the Eir Exchange at Wellington Road, St Lukes, Cork City. The replacement is to be located approximately 3.2m northeast of the existing wooden pole support structure, at a ground level of 0.6m higher than the existing structure. It is proposed to be a painted metal structure that is wider than the existing wooden support structure.



The existing original wooden pole antennae support structure is 12m in height and 320mm wide at its widest point and was erected in 1999 by Vodafone, at the Eir Exchange site, Wellington Road, Cork City. It is located next to the gable of Eir Exchange building, behind a low stub wall.

Sometime after, at an unspecified date, 3m high extension bars were added at the top of the wooden pole to support additional antennae, giving a total height to the support structure and extension of 15m.

In late 2024, Towercom Limited commenced works to replace the existing antennae support structure which they claimed was exempted development under Section 4 (1) (g) of the Planning and Development Act 2000 (as amended). However, they also claim that, in the event Section 4(1)(g) is not applicable, its replacement is exempted under Class 31(b) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

The replacement support structure is to be a 12m metal pole that would be 508mm wide with a 3m pole extension added, giving a total height of 15m. It is to be located in the open ground used for parking between the Eir Exchange and Connaught Place to the east.

This application for a Declaration will address the following points:

1. Towercom Limited as Undertaker
2. Protected Structure
3. Architectural Conservation Area
4. EIA and 'Significance'
5. Unauthorised Existing Structure

1. Towercom Limited as Undertaker

Under Section 2 of the Act "statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

Both Section 4(1)(g) of the Act and Class 31(b) of Part 1 of Schedule 2 of the Regulations apply only to 'Statutory Undertakers'.

Towercom are not, and have confirmed that they are not, authorised to provide telecommunications services (see paragraph 15 of the Affidavit of Morag Pollak). However, they maintain that they are a Statutory Undertaker on the basis that they have a contractual relationship for the upgrade of the pole which is owned by Vodafone. However, it is not Vodafone which is carrying out the works. It is our understanding that the leasehold interest to the subject lands is held by Eircom.

Towercom have not disclosed the nature of the contract with Vodafone or Eircom on the basis of which they are asserting that they are a Statutory Undertaker.

There is however, no suggestion that anyone other than Towercom are proposing to carry out the development. The legislation states that it must be the Statutory Undertaker who 'carries out' the development.

The provisions in Section 4(1)(g) of the Act and Class 31(b) of Part 1 of Schedule 2 of the Regulations recognise that the benefit of exempted development may be bestowed on developments being carried out by 'statutory undertakers' and thereby serve some public interest. As such the exemption from the requirement to apply for planning permission must be construed strictly as only applying to Statutory Undertakers.

Notably, Vodafone Ireland in their letter of 15th November 2024 do not confirm that Towercom Limited were acting as their agents in replacing the mast. Vodafone Ireland is a Statutory Undertaker, but the fact that they may have a private contractual relationship with Towercom Limited, does not bestow the status of statutory undertaker on Towercom. Only a licence to provide telecommunications services in the State can do that.

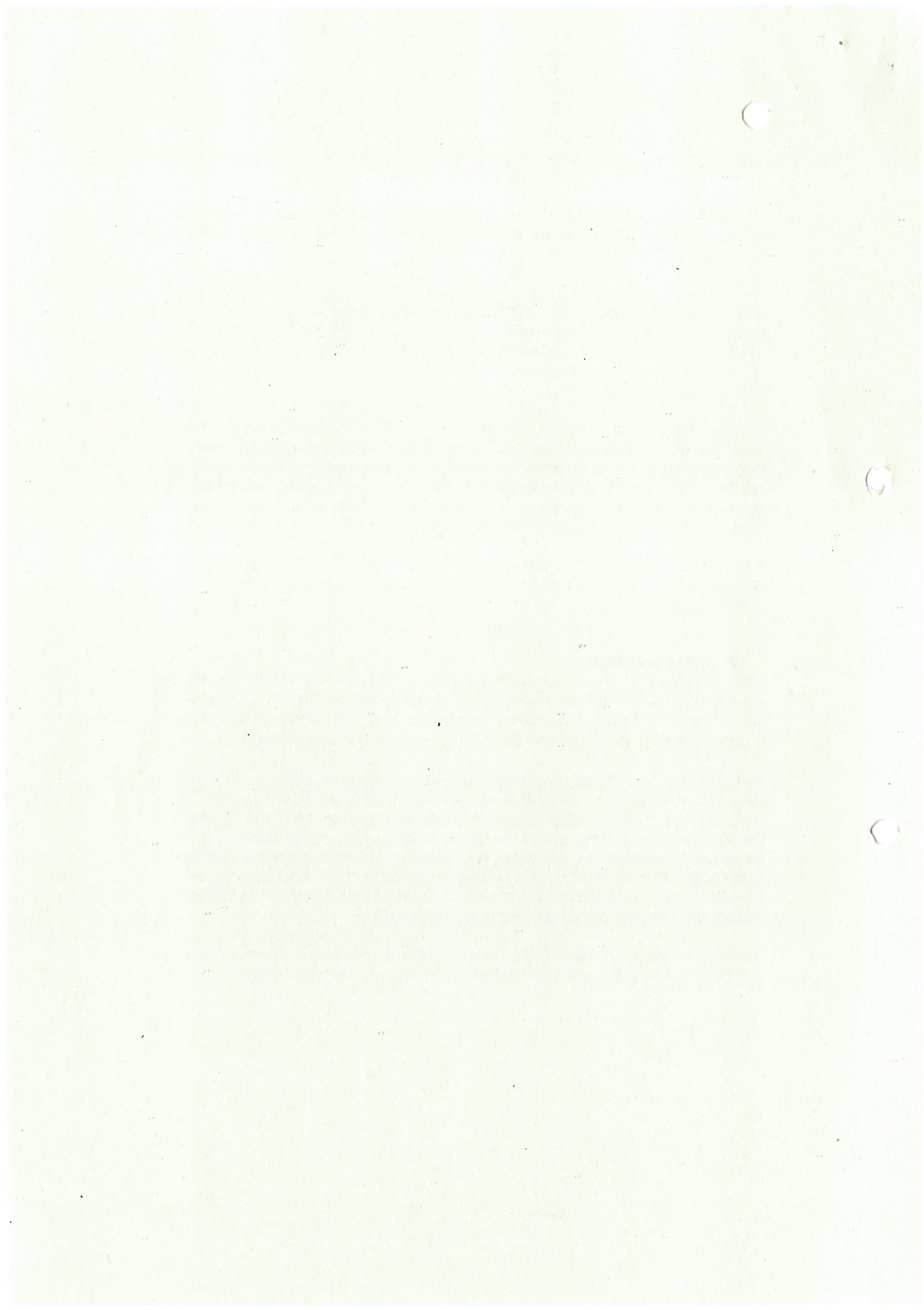
A simple solution exists if Vodafone wish to use the services of Towercom to erect mobile telecommunications masts – they can apply for planning permission in the normal course.

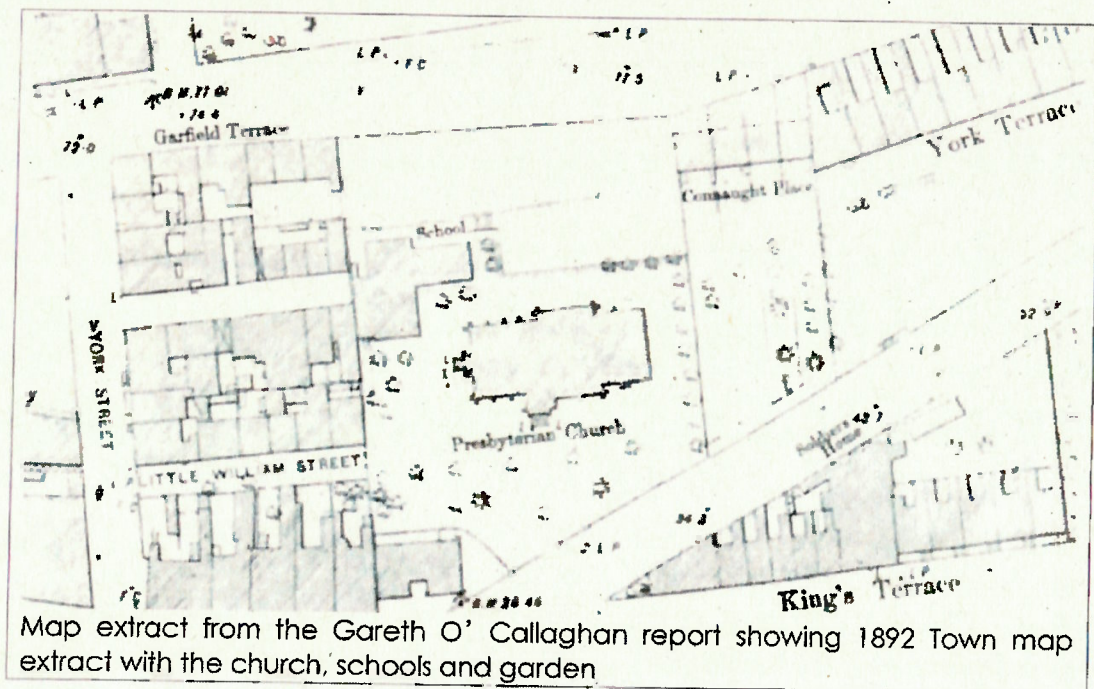
2. Protected Structure

Trinity Presbyterian Church is a protected structure. Enclosed with this application is an Architectural Heritage Impact Assessment report by Gareth O' Callaghan, RIAI Grade 1 accredited Conservation Architect, of JCA Architects which gives a detailed description of the site of the church and its curtilage.

He notes in his report that the church was built on a plot of sloping land stretching between Summerhill North and Wellington Road at a significant junction in the area. At the time of construction, the site was sloping from the gradient of Wellington Road, starting about 1m below Wellington Road and sloping down to Summerhill generally in line with the gradient at the adjoining terrace at Connaught Place. The church was completed in 1861 and developed two schools on the grounds as well as a garden to Wellington Road on the higher area landscaped to provide flat ground to build the church.

Connacht Place on Wellington Road is also a protected structure and lies adjacent to the open ground located at the side of the Eir Exchange.



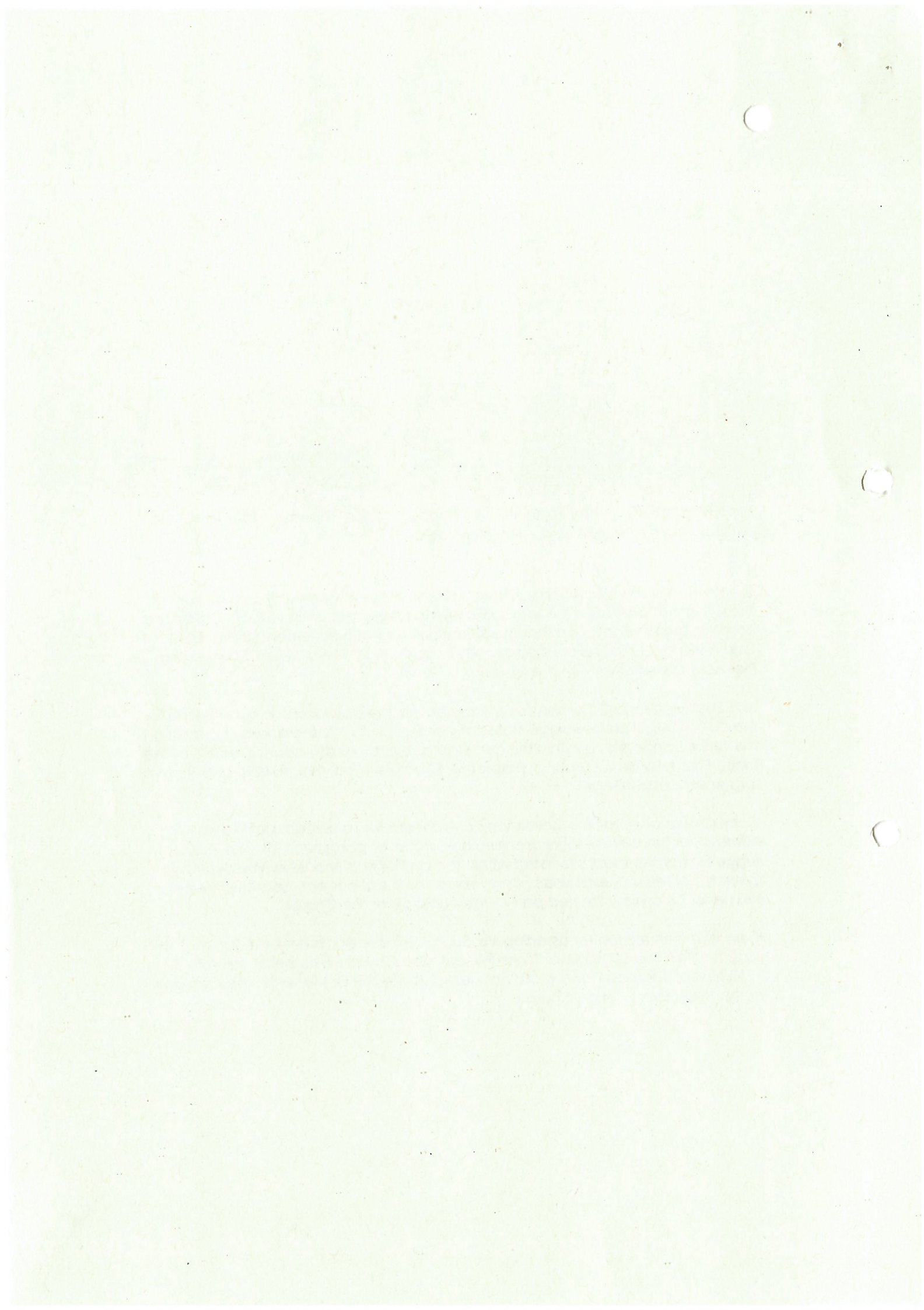


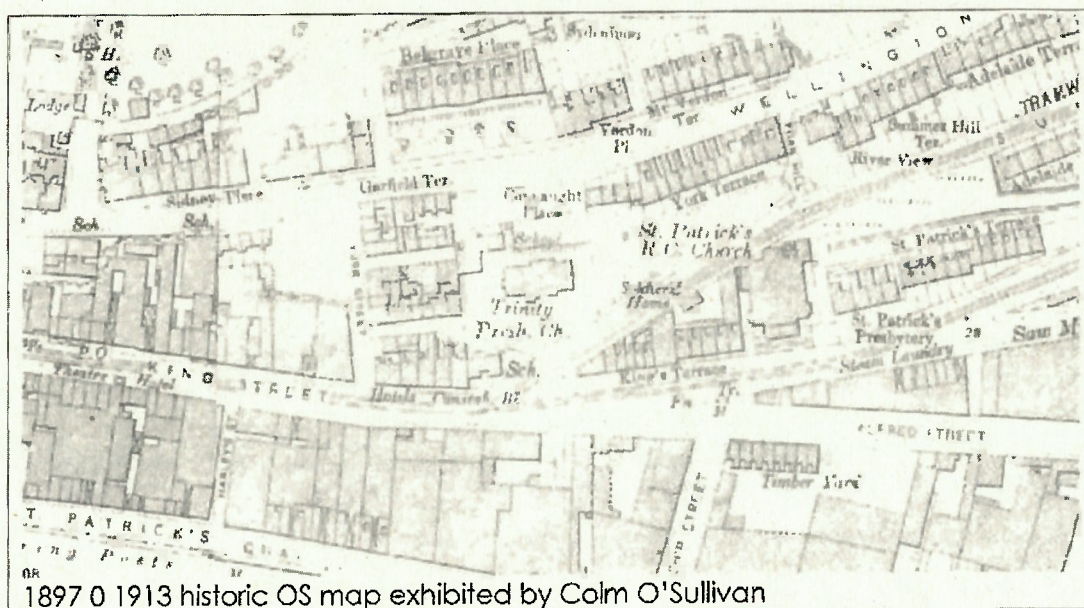
The Posts and Telegraph Service built a telephone exchange building on part of the site of the garden in the late 1960s altering the ground to facilitate an access from Wellington Road and the one storey building with basement under. The land is leasehold to the building owners Eir from Trinity Presbyterian Church. The Freehold title remains with the Church.

Una Sugrue, Grade 2 Conservation Architect for the applicants, in her affidavit for the current legal proceedings, states at paragraph 11, "The proposal, located on the Eir Exchange site, is within the curtilage and present attendant grounds of the Trinity Presbyterian Church, a Protected Structure, (Ref: No. PS425) and its two former school buildings".

Colm O'Sullivan, Grade 3 Conservation Architect for Towercom Limited in his affidavit for the current legal proceedings, states at paragraph 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".

In his report his reason for asserting Ms. Sugrue is incorrect in her assertion that the mast is within the curtilage of Trinity Presbyterian Church, is his belief the 1897 - 1913 historic OS map (below) did not demonstrate the Eir site within the curtilage of the Trinity Presbyterian Church.





1897 O 1913 historic OS map exhibited by Colm O'Sullivan

Colm O'Sullivan's view that the Eir site was never within the curtilage of the Trinity Presbyterian Church conflicts with evidence by Gareth O'Callaghan, RIAI Grade 1 Conservation Architect, which is that the church was built on a plot of sloping land stretching between Summerhill North and Wellington Road and that the church developed two schools on the grounds as well as a garden to Wellington Road on the higher area landscaped to provide flat ground to build the church. Colm O'Sullivan's view also fails to acknowledge the Eir Exchange site is leased by Eir from Trinity Presbyterian Church.

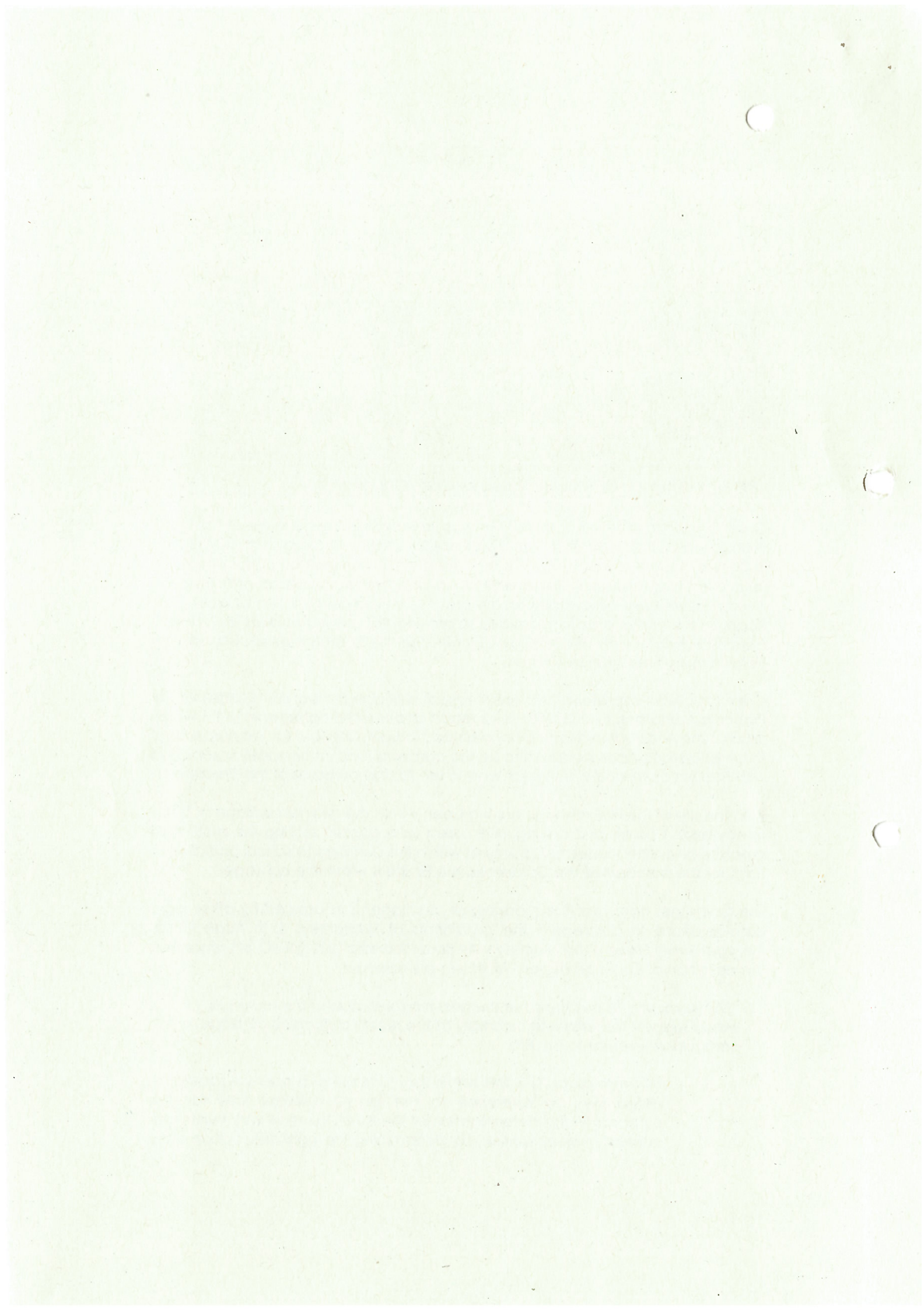
Colm O'Sullivan did refer to the Architectural Heritage Protection - Guidelines for Planning Authorities, DAHG, 2001 in his report and quoted paragraph 13.1.1 which reads, "The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure".

With the site of the Eir Exchange having been within the original curtilage of Trinity Presbyterian Church and having been used as a garden serving the protected structure and other protected structures within the curtilage (a school and church hall), for the purposes of the Guidelines, the Eir site is within the curtilage.

The Guidelines note that the meaning of 'curtilage' is influenced by other legal considerations. In this regard the comments of Humphreys J. in *North Great Georges Street Preservation Society v An Bord Pleanála* [2023] IEHC 241 regarding the definition of curtilage at para 87 et seq are relevant:

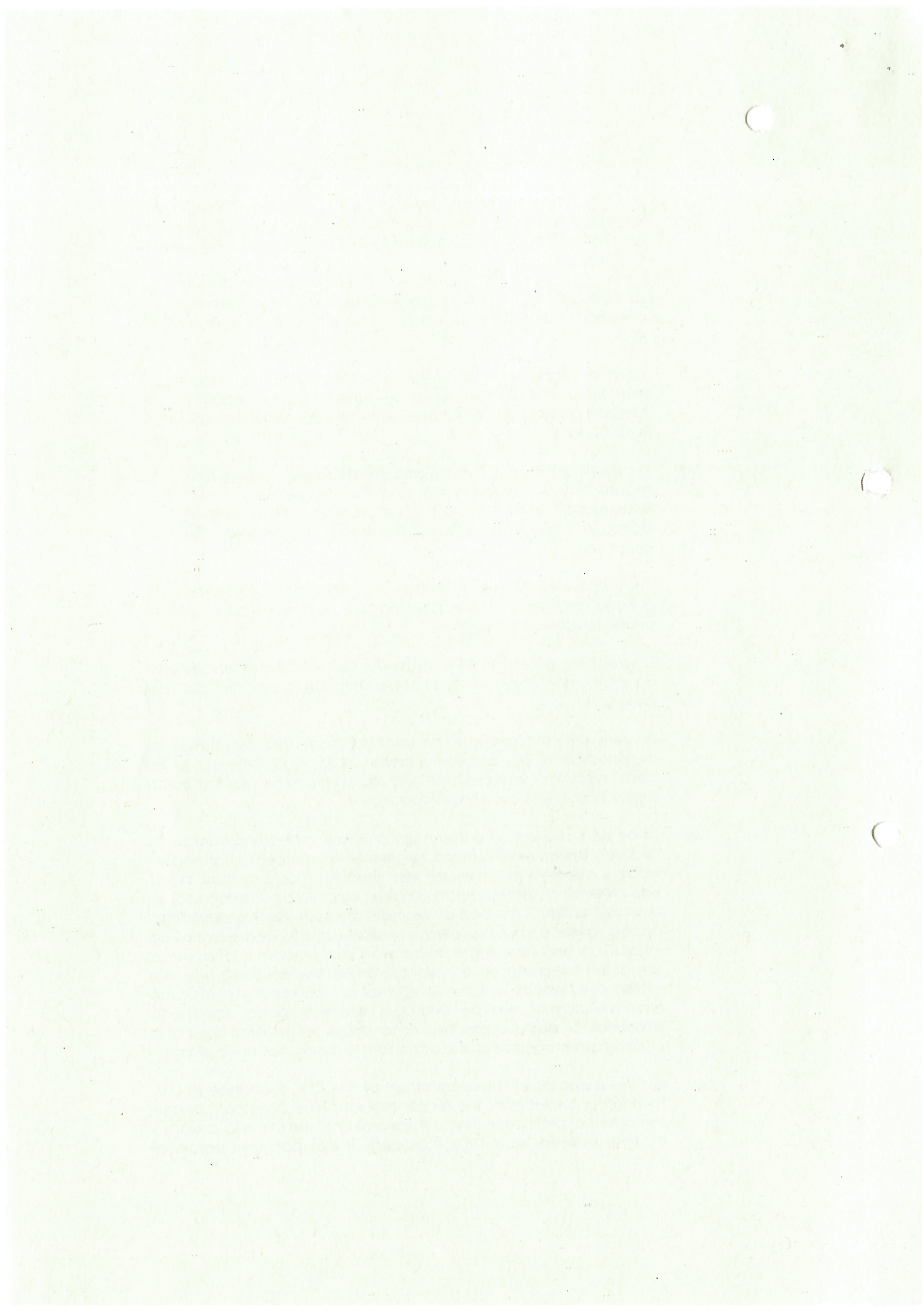
"Endeavouring to pull together the best interpretation of the materials, I would suggest the following summary of the test to determine curtilage, with particular reference to the RPS.

- (i) Whether property B falls within the curtilage of property A should be determined by reference to the legally relevant time for the purposes of the determination of the issue. This may vary from legal context to legal context. For determining the legal effect of an entry



in the RPS, the "legally relevant time" is the date on which the structure on property A was first listed prior to the establishment of the RPS system or first included in the RPS, whichever was earlier, unless the wording of the RPS has changed in a relevant way in the meantime or has made express relevant provision to determine the curtilage.

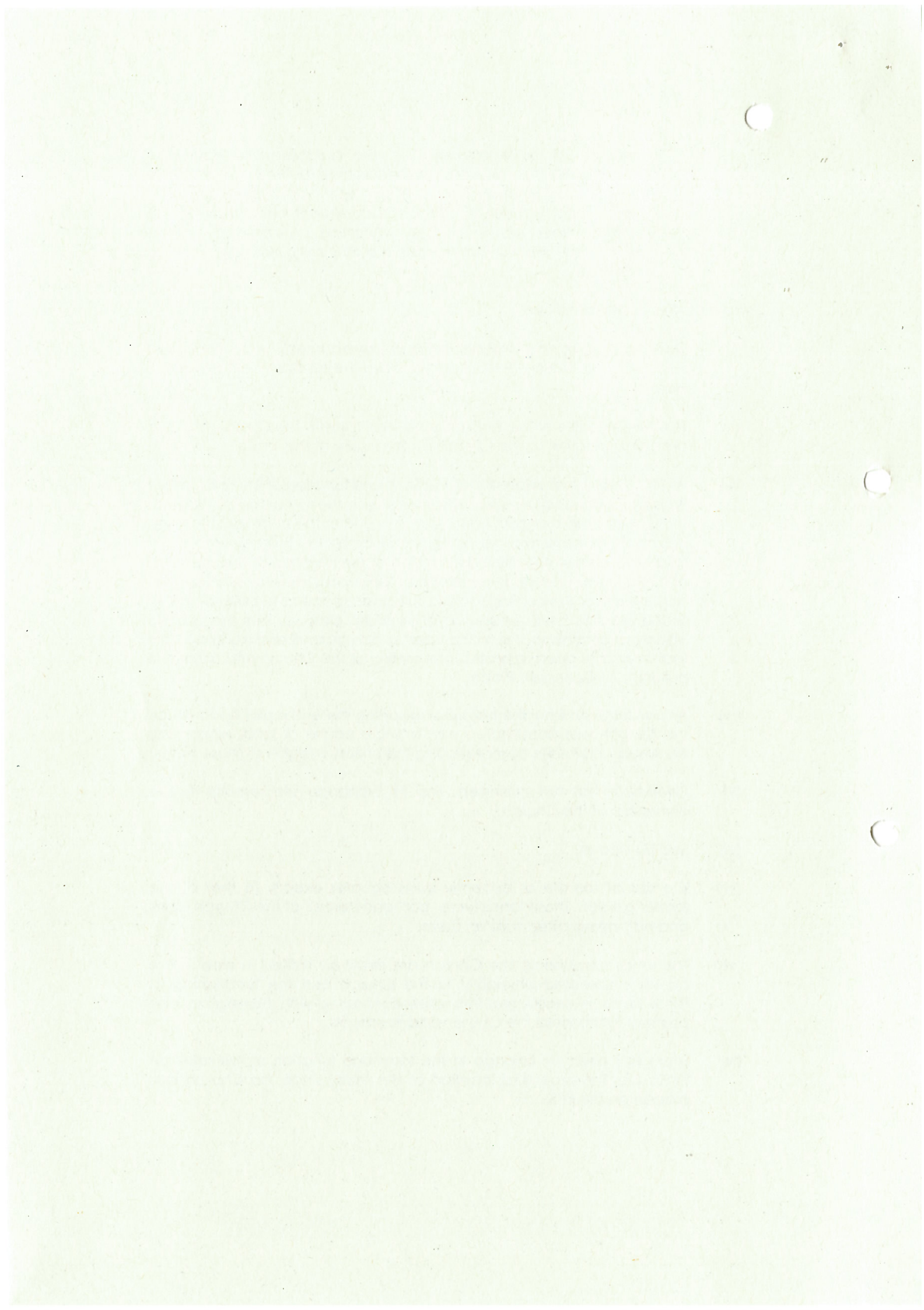
- (ii) At the legally relevant time, properties A and B must have formed a common unit such that property B was part and parcel of property A.
- (iii) Whether properties A and B formed a common unit at the legally relevant time is primarily to be determined having regard to use, function or layout as of that time, with due regard to use, function or layout prior to that.
- (iv) Enclosure or lack of it is not in and of itself relevant. There is no legal requirement for properties A and B to have been collectively enclosed, although the presence or absence of enclosure may be considered insofar as it is an aspect of the question of use, function or layout.
- (v) Ownership or a change in ownership is not in and of itself relevant, although a diversity of ownership may be evidence of a lack of unity of use, function or layout.
- (vi) Character, context and the aesthetic are not separately relevant but only arise if they form part of the question of use, function and layout.
- (vii) Property B is not required to be small but its size may be relevant to the questions of use, function or layout. Its size is also relevant to the basic question of whether land surrounding the main structure is part and parcel of it or merely attendant on it.
- (viii) To be part and parcel of the main structure, property B must be of relatively limited extent, that is, relative to the concept of attendant lands, a concept that may be very sizeable. Thus, any front, back, side, internal or subterranean gardens, courtyards, parking spaces or walls (insofar as not part of the main structure itself), outbuildings, access routes such as laneways or driveways, limited surrounding lands up to and including a ha-ha, walled or otherwise, lands within any of the foregoing, or extensions to any of the foregoing, whether walled or otherwise, or other lands that are part and parcel of the main structure, could be curtilage, whereas forests, farmlands, parklands or pastures centred on a house, or airfields around a control tower, are part of the attendant grounds, not the curtilage.
- (ix) For the purposes of the legal effect of the RPS, a change in use, function or layout after the legally relevant time does not change the extent of protection, unless the wording of the RPS also changes in some material way. Thus, if property B was part and parcel of



property A at the legally relevant time, a subsequent separation does not nullify the protection of the curtilage for the purposes of the RPS. Likewise, if property B was not part of the curtilage of property A at the legally relevant time, a subsequent unification of the properties does not extend the meaning of curtilage for the purposes the RPS. In either case the RPS may expressly provide otherwise".

I would address each as follows:

- (i) The Local Government (Planning and Development) Act 1999 came into effect on 30 June 1999. This introduced the establishment of the RPS system.
- (ii) The Freehold title of the Eir Exchange remains with the Church and the property will revert to the Church on the expiry of the lease.
- (iii) As (ii). While it is accepted that the form and function of the Eir Exchange Building itself was altered from that relative to the rest of the curtilage of the Church and is accordingly no longer part of the curtilage, this does not apply to the land surrounding the Eir Exchange Building whose use and function has not altered from that of the balance of the curtilage of the Church. The use and function of that land is in effect open space, as is the rest of the curtilage lands. The open space to the side of the Eir Exchange has been altered and used for parking, but this has no apparent permission, it remains open space ground and it is important that it remains open to protect the setting of the Church and adjacent buildings at Connaght Place.
- (iv) As can be seen from the historical mapping the entire plot upon which the Church was constructed was a single parcel of land, which was enclosed on all sides demonstrating the unitary integrity of those lands.
- (v) Ownership has not changed. The Eir Exchange site remains in the ownership of the Church.
- (vi) See (iii) above.
- (vii) The size of the site as currently exists equates exactly to that of the former garden. Those lands were 'part and parcel' of the Church lands and not merely attendant on them.
- (viii) The lands surrounding the Church are relatively limited in extent, are closely connected physically to the Church and the functioning of those lands historically was intimately connected with the religious and pastoral functions of the Church and its schools.
- (ix) There has been no change in the form and function of the relevant lands (i.e. the proposed location of the mast) since the Church was placed on the RPS.



It is considered the conservation architect for Towercom Limited is incorrect in his assertion the site of the Eircom Exchange was never part of the Trinity Presbyterian Church. It clearly was and for the purposes of the Architectural Heritage Protection Guidelines, it remains part of the curtilage.

Applying the legal test for curtilage, the open ground between the Eir Exchange and at adjacent protected structures at Connaught Place has remained open ground since the church and the church grounds were first developed, albeit it is now used for parking. It has remained undeveloped since the Church became a protected structure c2003.

As an open area on which cars are parked, it is no different to parking areas within the remainder of the curtilage of the Church which are also more recent developments. However, the form and characteristic of this ground remains open space and provides an important relatively uninterrupted view of the Church from Wellington Road. The importance of same in relation to the setting of the Trinity Presbyterian Church was addressed in the report of Mr O' Callaghan and the Affidavit of Una Sugrue.

The erection of the proposed antennae support structure and attachment of antennae thereon within this open space is proposed to be undertaken within the curtilage of the protected structure and would adversely impact the setting of the Church and the adjoining protected structures at Connacht Place. It will be a significantly wider structure than the existing, it is proposed to be erected on higher ground and in a far more exposed location in the open space.

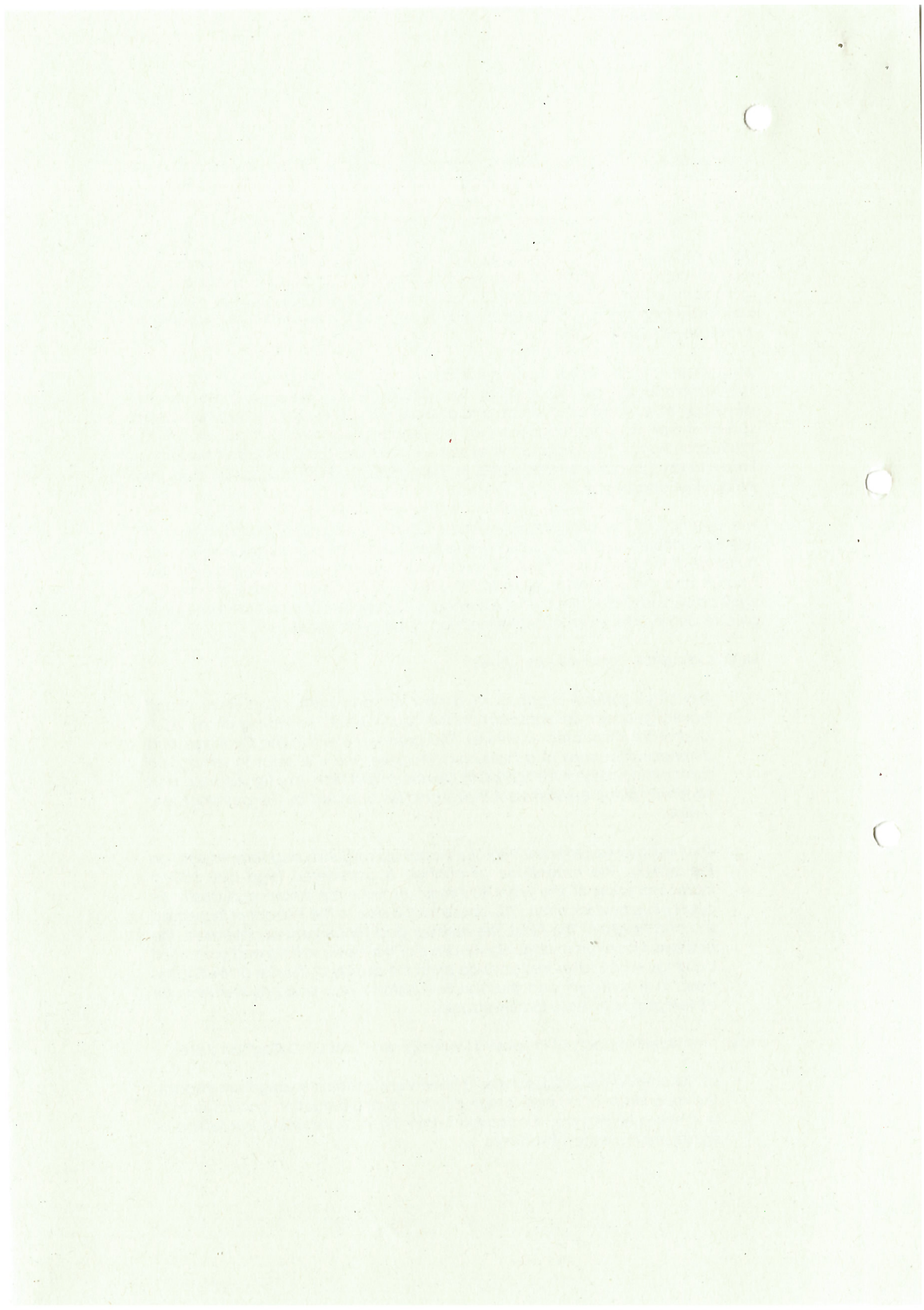
Mr O' Callaghan concludes as follows:

The development proposal of a new telecommunications mast would have significant visual impact on the character of the setting of the ACA and of the Protected Structures. The proposal is within the Curtilage and Attendant Grounds of a Protected Structure and is subject to landscape protection policy of the Cork City Development Plan. The significance and sensitivity of the environment that would be affected by the development is High.

The proposal would have Very Significant or Profound Long Term impact on the setting. The magnitude of change is considered High due to the increased scale of the proposed mast, its industrial nature and aesthetic quality in a new location. This assessment is due to the impact of increased size and height of the mast, the number and placement of antennae, the proposed location and the significance of the views, setting and protected buildings. It also takes into consideration the quality of the site at Wellington Road in a reduced and thus rarefied historic view and requirements for development in these circumstances.

Under "Predicted Impacts of Proposed Development", Mr O' Callaghan states:

Left unaltered the proposal would have Very Significant Long Term Impact. The magnitude of change is High due to Visual Obstruction and Intrusion of and into a setting and landscape within the ACA including the setting of significant Protected Structures.



His conclusions in relation to 'significance' have impacts in relation to EIA which will be addressed further below.

3. Architectural Conservation Area

The site Trinity Presbyterian Church is located in the Wellington Road/ St. Lukes Architectural Conservation Area. The Architectural Heritage Impact Assessment prepared by Gareth O' Callaghan describes in detail the characteristics of the ACA, the policies and objectives towards development in and duty to protect, ACAs, and appraises the impact of the existing mast and proposed mast on the ACA.

Colm O'Sullivan, conservation architect for Towercom Limited in his affidavit for the current legal proceedings, states at paragraph 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 it is replacing like with like – an existing mast with a very similar mast. They are both telecommunication masts and ultimately neither is desirable....".

At paragraph 12 he states, "The existing telecommunication mast is one of the ACAs's most undesirable physical features... It does nothing to add to the physical amenity of the ACA, and in fact detracts from it.....".

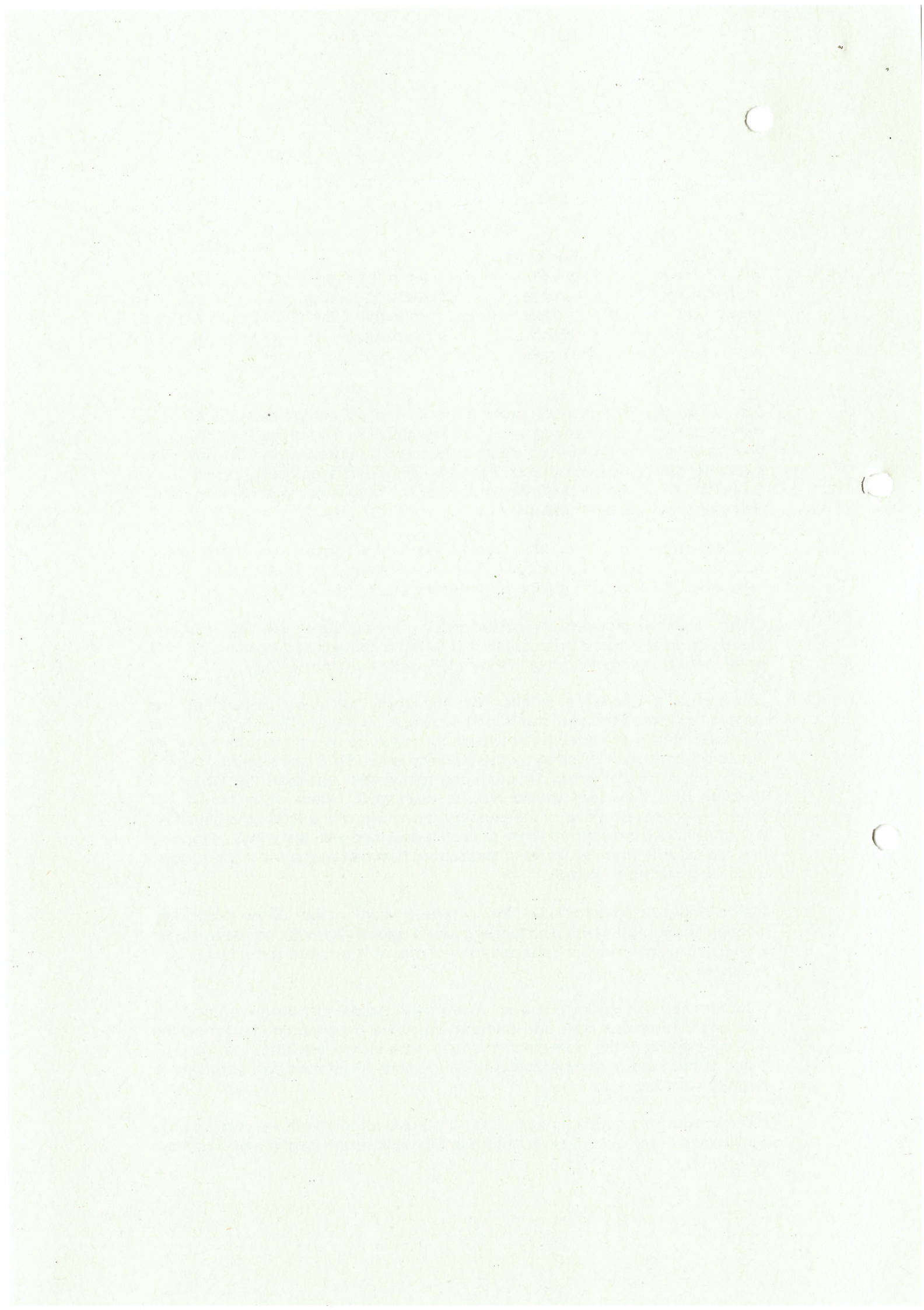
Colm O'Sullivan is incorrect in his assertion the mast is a 'like-for-like' replacement. The replacement mast is proposed in a different more exposed location, and it is significantly bulkier, having a girth that is 59% wider than the existing.

Una Sugrue, conservation architect for the applicants in her affidavit for the current legal proceedings, states at paragraph 16 states, "It is noted in the Guidelines that new development within the curtilage of a Protected Structure should be carefully scrutinized by the planning authority. It also states in section 13.5.2 that for a Protected Structure the relationship between the Protected Structure and the street should not be damaged. New works should not adversely impact on views of the principal elevations of the Protected Structure. In that regard, it is clear that Trinity Church is designed with the principal façade and the steeple (the south front) addressing Summerhill and the north façade addressing Wellington Road".

She continues at paragraph 17, "the increased visual impact of the proposed location of the mast which is no longer placed against the Eir Exchange building interrupts a unique gap in the urban form of the ACA addressing the Protected Structures".

In his Architectural Heritage Impact Assessment, Gareth O'Callaghan considers the current telegraph pole and attachments have a significant impact on the ACA and setting of the Protected Structures in the vicinity. He notes the planning status of the pole given the cumulative additions of attachments including to height is not clear.

With respect to the proposed support structure and attachments, he considers the significance of the current environment as High and sensitivity of the environment



also as High. Left unaltered the proposal would have Very Significant Long Term Impact. The magnitude of change is High due to Visual Obstruction and Intrusion of and into a setting and landscape within the ACA including the setting of significant Protected Structures.

It is evident that the three conservation architects for both Towercom Limited and the applicants consider the proposed antennae support structure and attachments would detract from the physical amenity of the ACA.

4. EIA and 'Significance'

In October 2024, the EU Commission published updated Guidelines on the Interpretation of definitions of project categories of annex I and II of the EIA Directive.

These Guidelines are available at this link <https://op.europa.eu/en/publication-detail/-/publication/e7f9c73c-86ba-11ef-a67d-01aa75ed71a1/language-en>

We refer you to page 59 of the Guidelines which states in relation to 'urban development projects' that:

Projects to which the terms 'urban' and 'infrastructure' can relate, such as the construction of sewerage and water supply networks as well as telecommunications/wireless communication deployment, could also be included in this category.

It had hitherto been assumed by planning authorities and An Bord Pleanála that telecom masts did not fall within a category of development to which the EIA Directive applies.

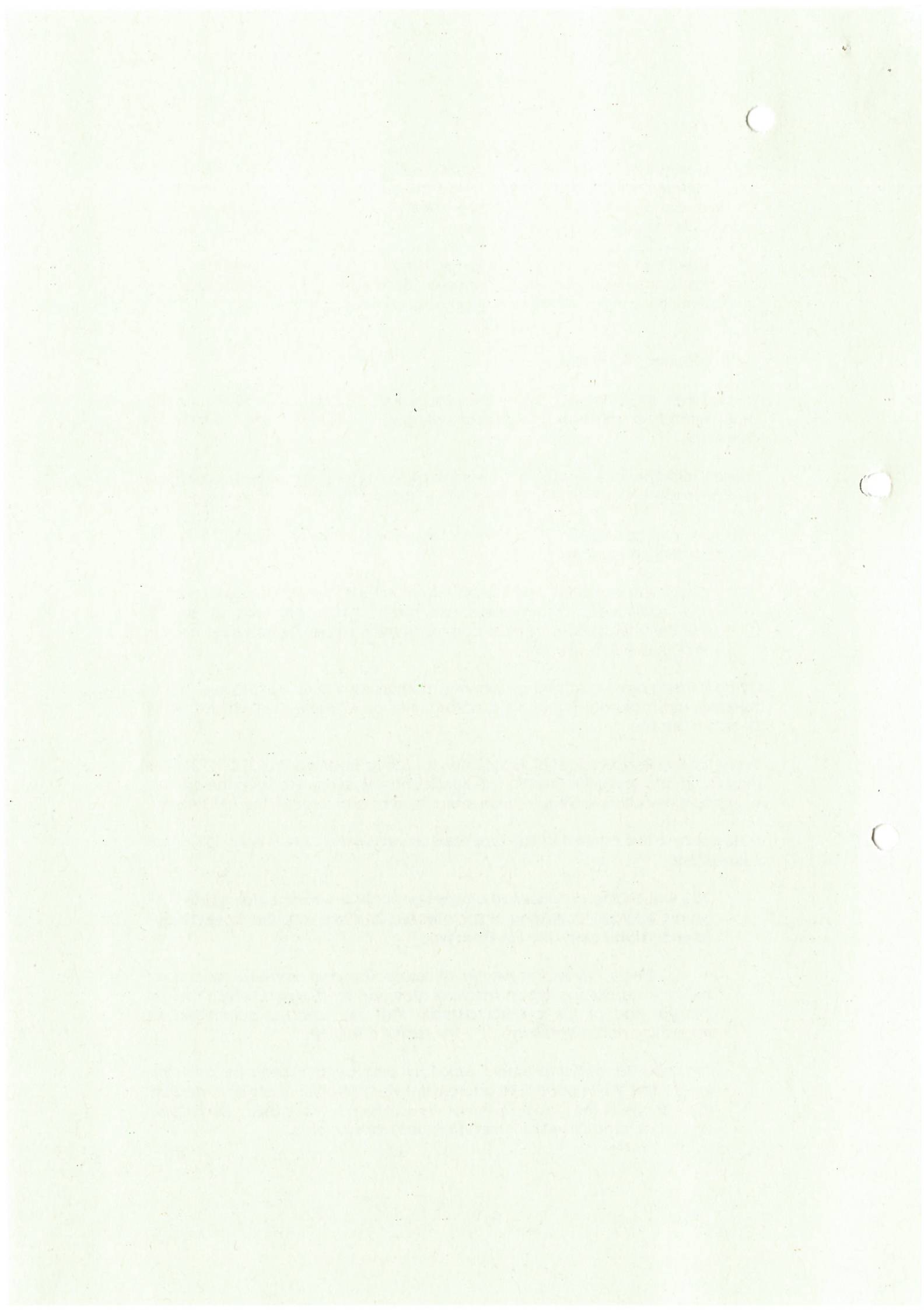
In *Monkstown Road Residents' Association v An Bord Pleanála* [2022] IEHC 318 the High Court addressed the question of 'significance' in relation to EIA in the context of impacts on cultural heritage given effect to in Ireland through the RPS system.

Noteworthy in the context of the proposed development here is para 181 of the Judgement:

181. The finding of "absence of any significant environmental sensitivities" on a site largely consisting of a protected structure is all the more difficult to understand given the EIA Directive:

- Specifically recites the aim of "protection and promotion of cultural heritage comprising urban historical sites and landscapes, which are an integral part of the cultural diversity that the Union is committed to respecting and promoting". The recital continues:*

"In order to better preserve historical and cultural heritage and the landscape, it is important to address the visual impact of projects, namely the change in the appearance or view of the built or natural landscape and urban areas, in environmental impact assessments."



- At Article 3, requires EIA of significant effects on "cultural heritage and the landscape" and Annex III, setting out the Criteria for EIA Screening – replicated in Schedule 7 PDA 2001 - lists "The environmental sensitivity of geographical areas likely to be affected by the proposed development, with particular regard to (a) the existing and approved land use (c) the absorption capacity of the natural environment, paying particular attention to the following areas: (viii) landscapes and sites of historical, cultural or archaeological significance."

Furthermore para 182 is of relevance, particularly in relation to the finding of 'significance' in Mr O' Callaghan's report:

Once one identifies that the Site has "significant environmental sensitivities" as to "cultural heritage and the landscape", reflected in its Protected Status and which extends to a curtilage which will, in the Inspectors' terms, be "no doubt" irreversibly transformed as the "only way to develop the site is by the infilling and loss of the grounds and gardens of Dalguise House" involving inevitable "irreversible impact on the setting of the protected structure and a visual impact on the surrounding area", it is impossible on the information before me to see from the Impugned Decision how it was concluded that, as to Cultural Heritage, EIA was not required.

Development which is urban development for the purposes of the EIA Directive, which this telecoms mast is that has a significant impact on a Protected Structure and an ACA which the evidence suggests this would have, cannot be expected development having regard to Section 4(4) of the Planning and Development Act, which prohibits development requiring EIA from having the benefit of exempted development.

Therefore, the proposed mast cannot avail of exempted development status having regard to the requirements of Section 4(4) of the Act on account of its significant impact on cultural heritage.

5. Unauthorised Existing Structure

Application of relevant legislation

Planning and Development Act 2000 (as amended)

Section 57 of the Act reads: "Notwithstanding section 4(1)(a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 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,
- (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Under Section 2 of the Act, "protected structure" means—

- (a) a structure, or

(b) a specified part of a structure, which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

As noted earlier, both conservation architects for the applicants consider the site of the proposed antennae support structure to be within the curtilage of a protected structure and that its erection would adversely affect its character and setting. Therefore, the replacement antennae support structure cannot be exempted development having regard to Section 57.

Section 82(1) of the Act reads: "Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area".

Under Section 2 of the Act, "structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

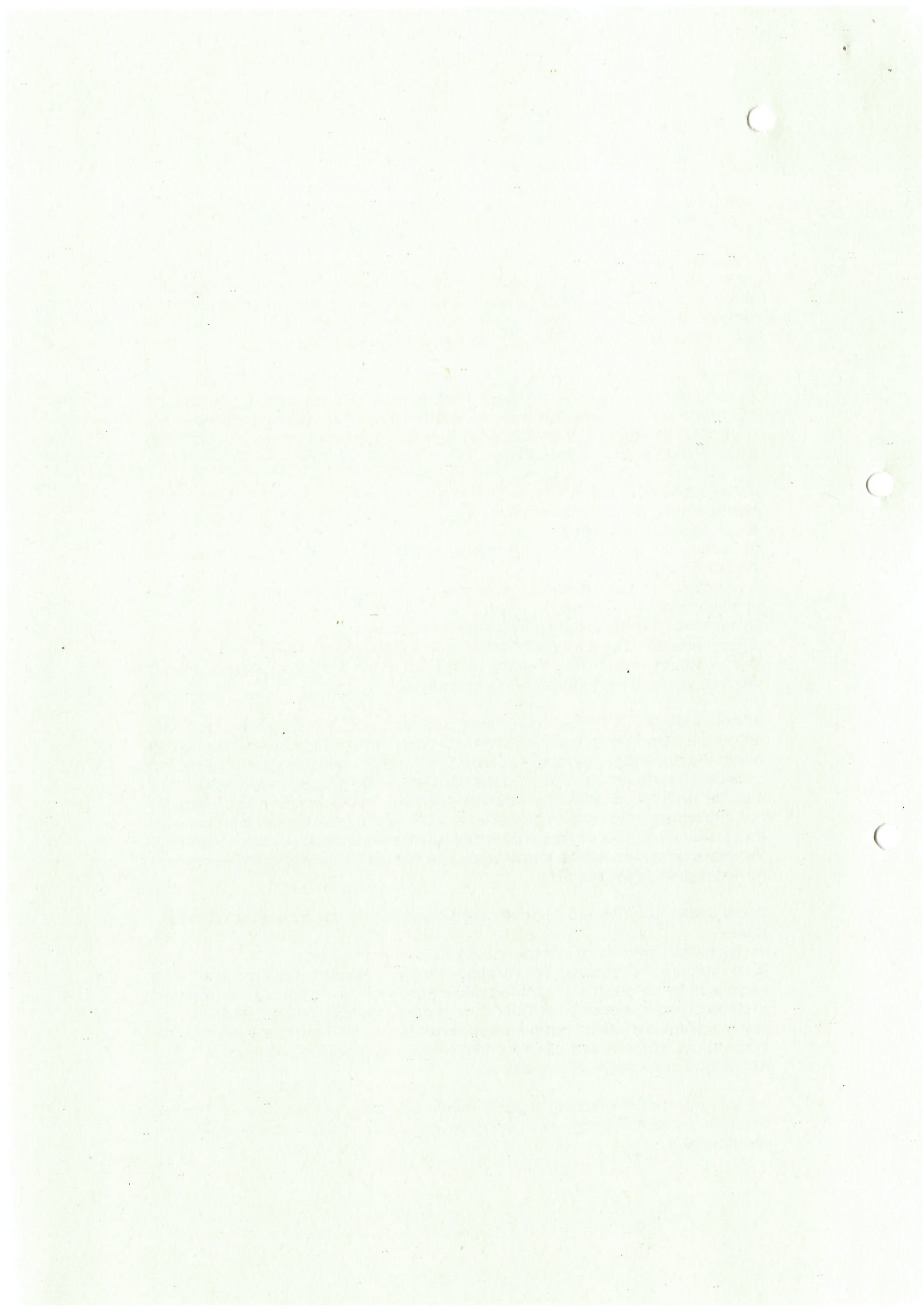
As noted earlier, all three conservation architects note the site of the proposed antennae support structure is within the ACA and that its erection would materially affect the character of the ACA. Colm O'Sullivan for Towercom Limited does not consider that de exempts the replacement antennae support structure, but that is on the basis he considers the replacement a like-for-like replacement, which it is not. The replacement mast is proposed in a different more exposed location, and it is significantly bulkier, having a girth that is 59% wider than the existing. Therefore, the replacement antennae support structure cannot be exempted development having regard to Section 82(1).

Under Section 2 of the Act, "unauthorised structure" means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

If it is found that the existing support structure to be replaced is an authorised structure, its replacement must conform with Section 82(1) to be exempted development.



Local Government (Planning and Development) Regulations 1994 (SI No 86/1994)

The existing 12m high wooden pole antennae support structure was erected when the Regulations 1994 were in force. The wooden pole structure would have been exempted under the provisions of Class 29 (f) of Part 1 of Schedule 2 of the Regulations.

Planning and Development Regulations 2001

The extension bars to the 12m wooden pole to support additional antennae were erected in the 2000s, but the precise date is unknown.

A Vodafone "Non-compliance" report dated 13 March 2024 states, "A Towercom report from 15/11/2010 did not indicate the p[t]ower leaning. Photos from this report shows that Vodafone equipment was 4No. panels & 1No. 0.3m dish as well as 2No. RRU's approx. 2.8m height.

The photos of the wooden pole in 05/03/2020 shows that the Vodafone equipment had been upgrade in the time period between 2010 & 2020. Additional steelwork was installed as well as 3No. larger panels than what was previously there. Also an additional RRU was installed at approx. 2.8m height. In this period between 2010 & 2020 it appears the pole started to lean. This most likely occurred as a result of the additional loading applied to the wooden pole following Vodafone's upgrade".²

The extension bars were, therefore, added in or around 2010 or later, thereby achieving the overall 15m height.

Class 31(b) of the Planning and Development Regulations 2001 exempted poles for carrying telecommunications equipment not exceeding 10m in height and 0.6m in width.

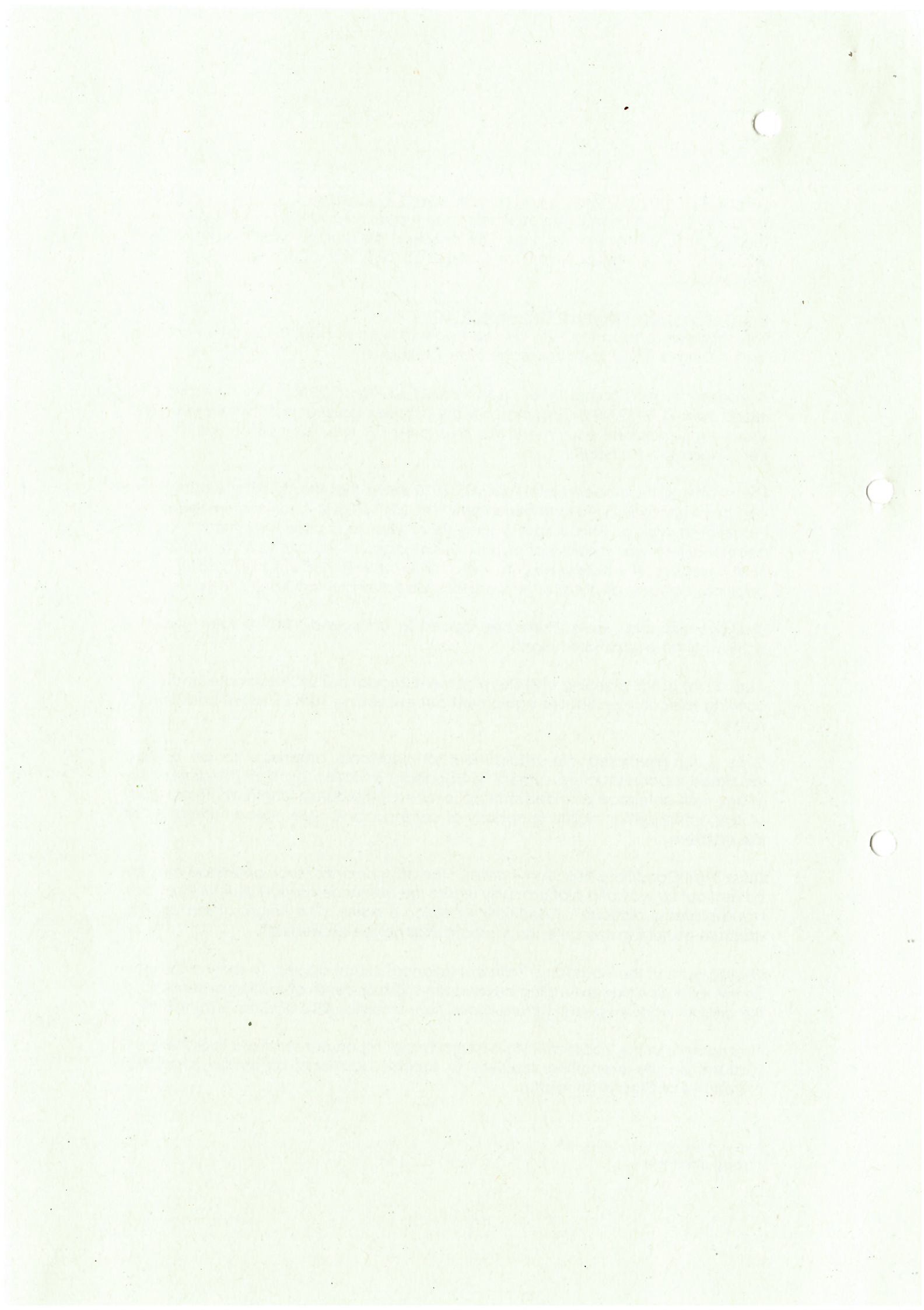
Class 31(h) exempted the attachment of additional antennae to an existing antennae support structure, subject to Condition/ limitation 2(a) that the dimensions of any such antennae provided shall not exceed the greatest length, width or depth of any antennae for mobile telephony of corresponding type already attached to the structure.

Class 31(h) Condition/ limitation 4 states, "The attachment of such antennae may be carried out by way of a platform only where the antennae support structure already incorporates a platform". Condition/ limitation 5 states, "The height of the existing structure (including any antenna thereon) shall not be exceeded".

Photographs in the Vodafone "Non-compliance" report appear to show antennae on the extension bars extending beyond the width or depth of existing antennae on the original wooden pole structure (Condition/ limitation 2(a) of Class 31(h) refers).

Photographs in the Vodafone "Non-compliance" report demonstrate that there is no platform on the supporting structure to support additional antennae (Condition/ limitation 4 of Class 31(h) refers).

² Copy attached



Photographs in the Vodafone "Non-compliance" report demonstrate that the attachment of extension bars to support additional antennae to the existing 12m high wooden pole support structure exceeded the height of the existing structure (Condition/ limitation 5 of Class 31(h) refers).

Class 31(j) exempts an antenna support structure in place of an existing antenna support structure, subject to Conditions and limitations.

Planning and Development (Amendment) (No. 3) Regulations 2018

Under Class 31(b) of Part 1 of Schedule 2 of this amendment, the maximum height of telecommunication poles and structures was increased to 12m.

Under Class 31(j) of Part 1 of Schedule 2 of this amendment, an antenna support structure in place of an existing antenna support structure, was exempted subject to conditions/ limitations.

Condition/ limitation 3 of Class 31(j) was amended to state,

"(a) The height of the replacement structure shall not exceed the height of the replaced structure,

(b) (i) Subject to sub-paragraph (ii), the width of the replacement structure shall not exceed the width of the replaced structure,

(ii) Where the replaced structure was 2 metres or less in width, the width of the replacement structure may not be more than twice the width of the replaced structure, all measurements to be taken at the widest point,

(c) Where the replaced structure did not incorporate an antenna platform, the replacement shall not incorporate such a platform".

The extension to the original wooden pole structure to increase the support structure height to 15m was carried out before the Regulations were amended in 2018. Therefore, for the purposes of assessing the status of the existing structure, only the Regulations in force in 2001 are relevant.

Restrictions on Exemption under the Regulations

Restrictions on exemption are found in Article 9 of the Planning and Development Regulations 2001 (as amended).

Article 9 provides that, development to which article 6 relates (exempted development) shall not be exempted development for the purposes of the Act, if the carrying out of such development would

"(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,....."

Observations on the status of existing structures

The original 12m high wooden pole antennae support structure with attachments erected in 1999 was exempted development under the 1994 Regulations.

The 3m extension in the height of the original 12m high wooden pole antennae support structure in or around 2010 increased its overall height to 15m, thereby rendering the structure in breach of Condition/ limitation 5 of Class 31(h) and, therefore, an unauthorised structure.

Being an unauthorised structure, having regard to the restriction on exempted development under Article 9(viii) of the Regulations, it was not possible for a statutory undertaker authorised to provide a telecommunications service, to undertake the attachment of additional antennae.

The antennae added to the support structure in or around 2010 were attached to an unauthorised structure. They also extended beyond the width or depth of existing antennae on the original wooden pole structure in breach of Condition/ limitation 2(a) of Class 31(h) and were, therefore, also unauthorised.

As there was no platform attached to the original supporting structure to support additional antennae, the antennae added to the support structure in or around 2010 were in breach of Condition/ limitation 4 of Class 31(h) and are, therefore, unauthorised.

The original 12m high wooden pole antennae support structure was erected prior to Trinity Presbyterian Church being designated a protected structure (c2003). The protected structure status came into effect after the Local Government Planning and Development (Amendment) Act 1999 and the Planning and Development Act 2000 came into force, and it included the protection of its curtilage. It was also erected prior to Wellington Road / Saint Luke's Architectural Conservation Area being designated after the 1999 and 2000 Acts came into force.

The 3m extension to the original 12m wooden pole structure and the antennae that were attached in or around 2010 would also not have been exempted development under Section 57 of the Act, as the works were to an unauthorised structure and, notwithstanding, would have materially affected the character of Trinity Presbyterian Church, the protection of which includes its curtilage, particularly having regard to the elevated nature of the site within the original curtilage of the protected structure. The site of the Eir exchange and pole structure was the fruit and vegetable garden of Trinity Presbyterian Church.

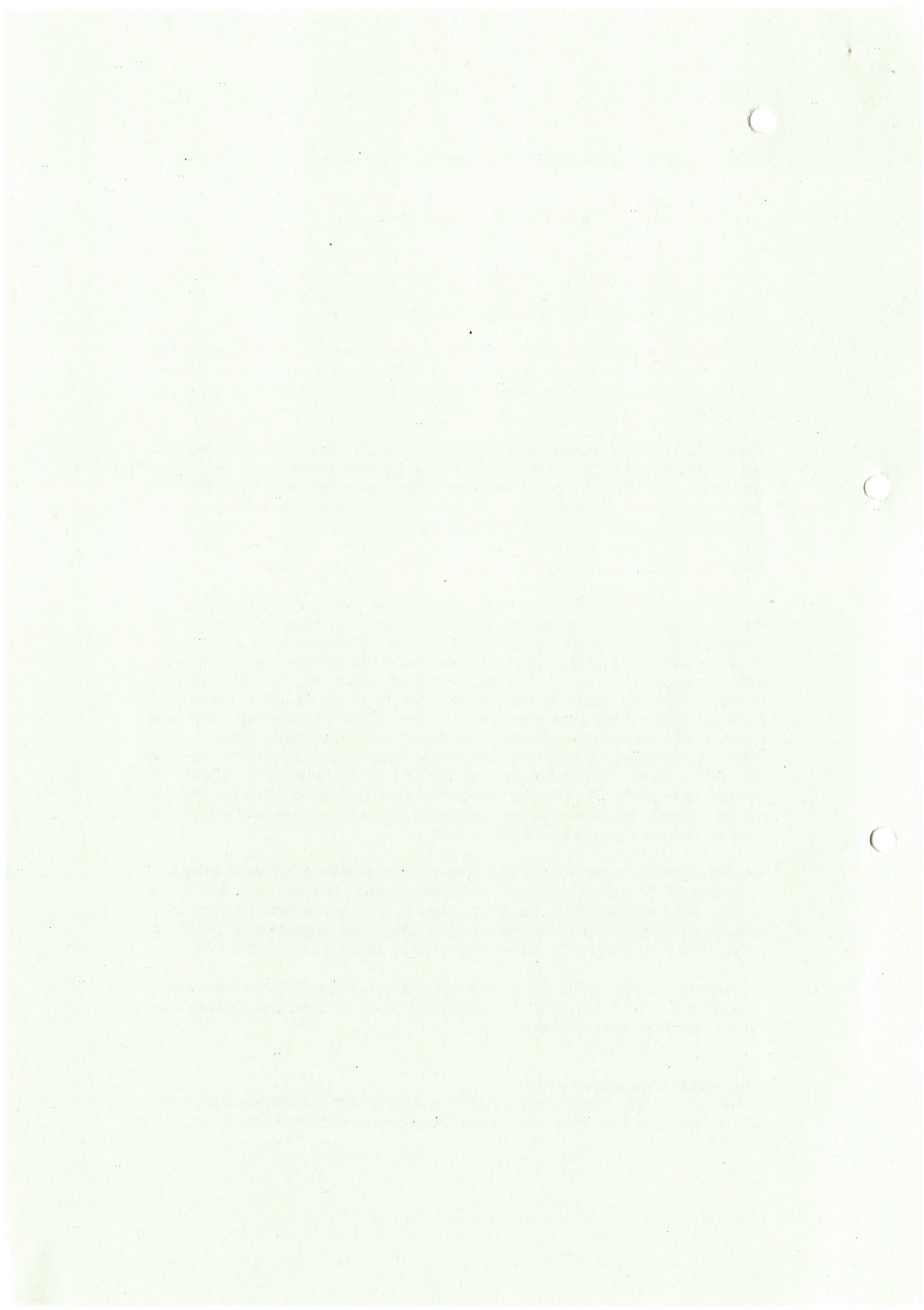
[NB as noted earlier, the Architectural Heritage Protection - Guidelines for Planning Authorities, DAHG, 2001, states in paragraph 13.1.1, "*The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure*".]

The 3m extension to the original 12m pole and the antennae that were attached in or around 2010 would also not have been exempted development under Section 82(1) of the Act, as the works were to an unauthorised structure and, notwithstanding, would have materially affected the character of the ACA, particularly having regard to the elevated nature of the site within the ACA.

The existing 15m support structure within the original curtilage of Trinity Presbyterian Church and within the Wellington Road / Saint Luke's Architectural Conservation Area is, therefore, unauthorised.

Observation on proposed works

Towercom Limited proposes to replace the existing 15m antennae support structure with a new wider 15m antennae support structure in a different location on the site.



Towercom Limited is not a Statutory Undertaker by definition under the Planning and Development Acts. Therefore, it is submitted the works that are the subject of this Section 5 application cannot be exempted development if undertaken by Towercom Limited.

The following is submitted for a determination, regardless of who undertakes the works.

Agents for Towercom advise they considered such works to be exempted development under Section 4 (1) (g) of the Planning and Development Act 2000 (as amended) ("the Act").

Section 4 (1) (g) provides that the following shall be exempted development for the purposes of the Act:

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

It is respectfully submitted this Section does not apply. Firstly, the existing structure is unauthorised. Section 4(1)(g) does not exempt renewing unauthorised structures.

Secondly, and notwithstanding the unauthorised status of the existing support structure, Section 4(1)(h) relates to sewers, mains, pipes, cables, overhead wires, or other apparatus. The support structure to be replaced is not 'apparatus' or anything else specified. It is a structure designed to support apparatus. Being a structure it has quite different planning considerations to apparatus, including considerations of conservation and heritage.

Thirdly, the proposed replacement structure is to be located 3.2m northeast of the existing structure and would be a materially wider structure erected on higher ground. It is therefore not a like-for-like replacement.

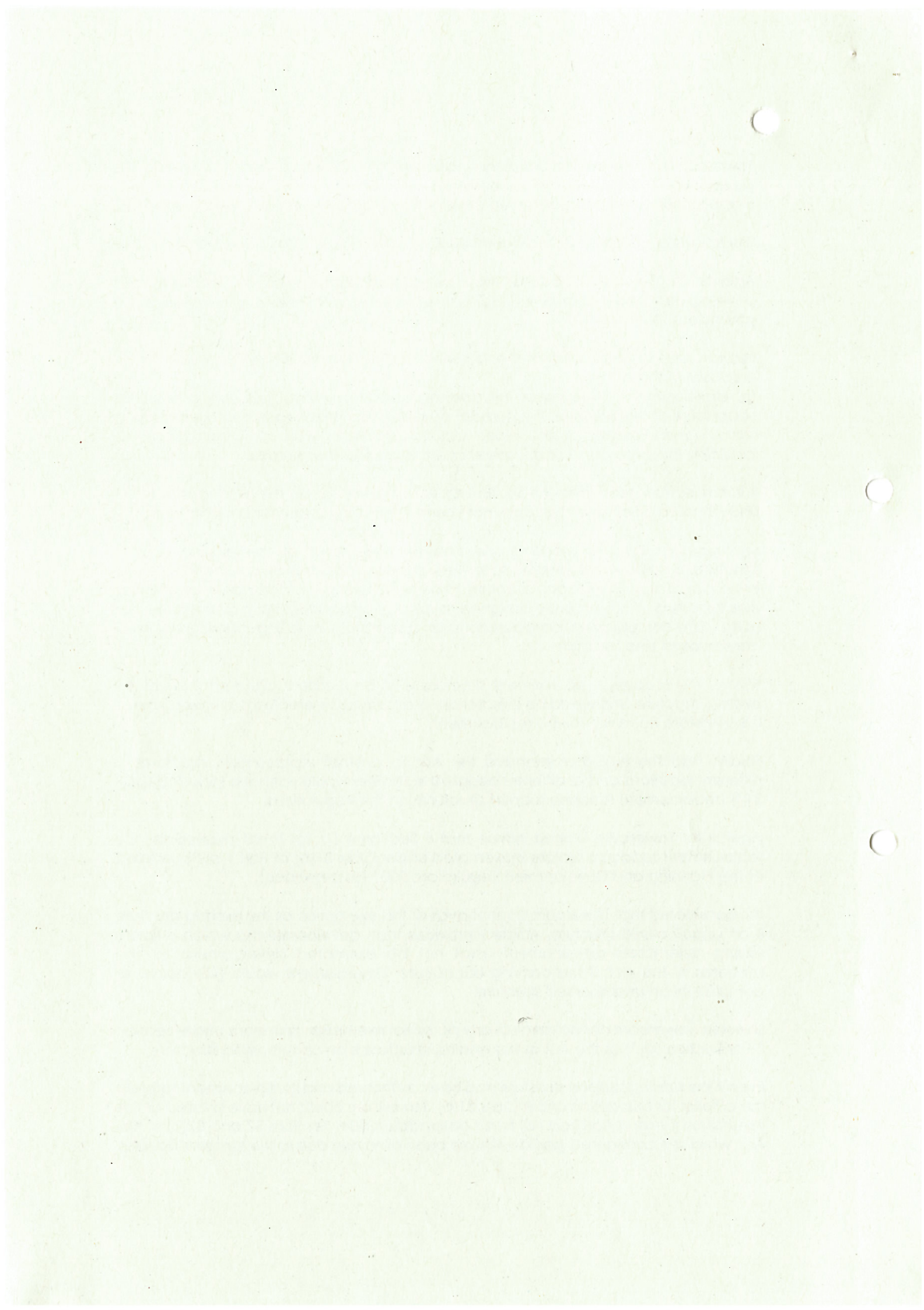
Finally, had the legislator intended the Act to exempt replacement structures in different locations and of different design, the Minister would not have included Class 31(j) (replacement antenna support structures) in the Regulations.

Agents for Towercom Limited advise that if Section 4 (1) (g) is not applicable, the replacement support structure is exempted under Class 31(b) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

It is considered that Towercom cannot avail of this exemption as the existing structure is an unauthorised structure. Article 9 provides that, development to which article 6 relates (exempted development) shall not be exempted development for the purposes of the Act, if the carrying out of such development would (viii) consist or comprise of an unauthorised structure.

Likewise, Towercom cannot avail of any potential exemption provisions under Section 57 or Section 82(1) of the Act as the existing structure is an unauthorised structure.

Even if the existing support structure had been authorised and its replacement satisfied the criteria for exemption under Class 31(b), Towercom could not have availed of the exemption if exemption had not been obtainable under Sections 57 and 82(1) of the Act, which it is considered could not have been obtained due to the material adverse



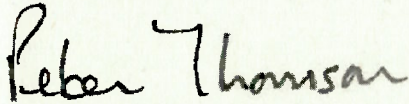
impact of the replacement structure within the curtilage of the protected structure and architectural conservation area.

Conclusion

While the original 12m high wooden pole antennae support structure was erected as an exempted development under the Regulations 1994, its extension in or around 2010 to 15m was unauthorised and not in accordance with the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 in force at the time. This rendered the extended structure an unauthorised structure. Likewise, the additional antennae erected at that time were not exempted and were, therefore, also unauthorised.

Towercom Limited, which in any event is not a Statutory Undertaker, cannot claim an exemption under the Act or Regulations for a replacement structure as the existing structure is unauthorised.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Peter Thomson'. The signature is written in a cursive, slightly slanted style.

Peter Thomson, MSc, MIPI

