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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**

*Eugene and Glendon*  
**EUGENE AND SYLVIA GLENDON**

and

**GEMMA DESMOND**

**Applicants**

**AND**

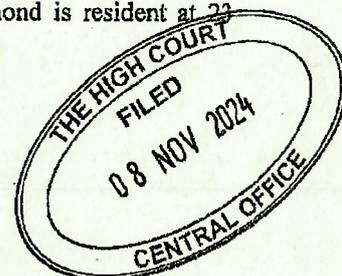
**TOWERCOM LIMITED**

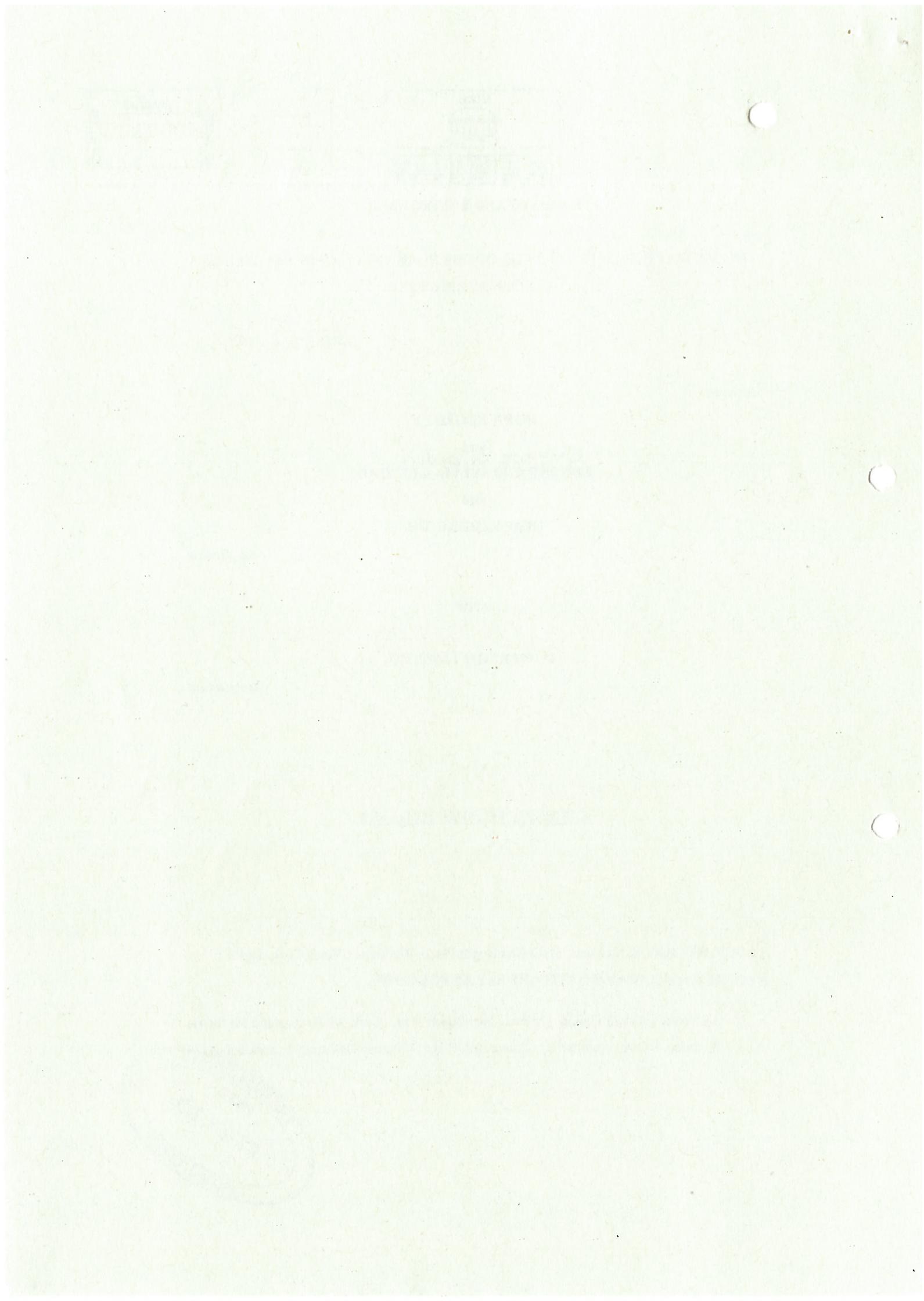
**Respondent**

**AFFIDAVIT OF JOHN HEGARTY**

I **JOHN HEGARTY**, architect, of 22 Connaught Place, Wellington Road, Cork, aged 18 years and upwards, **MAKE OATH AND SAY AS FOLLOWS.**

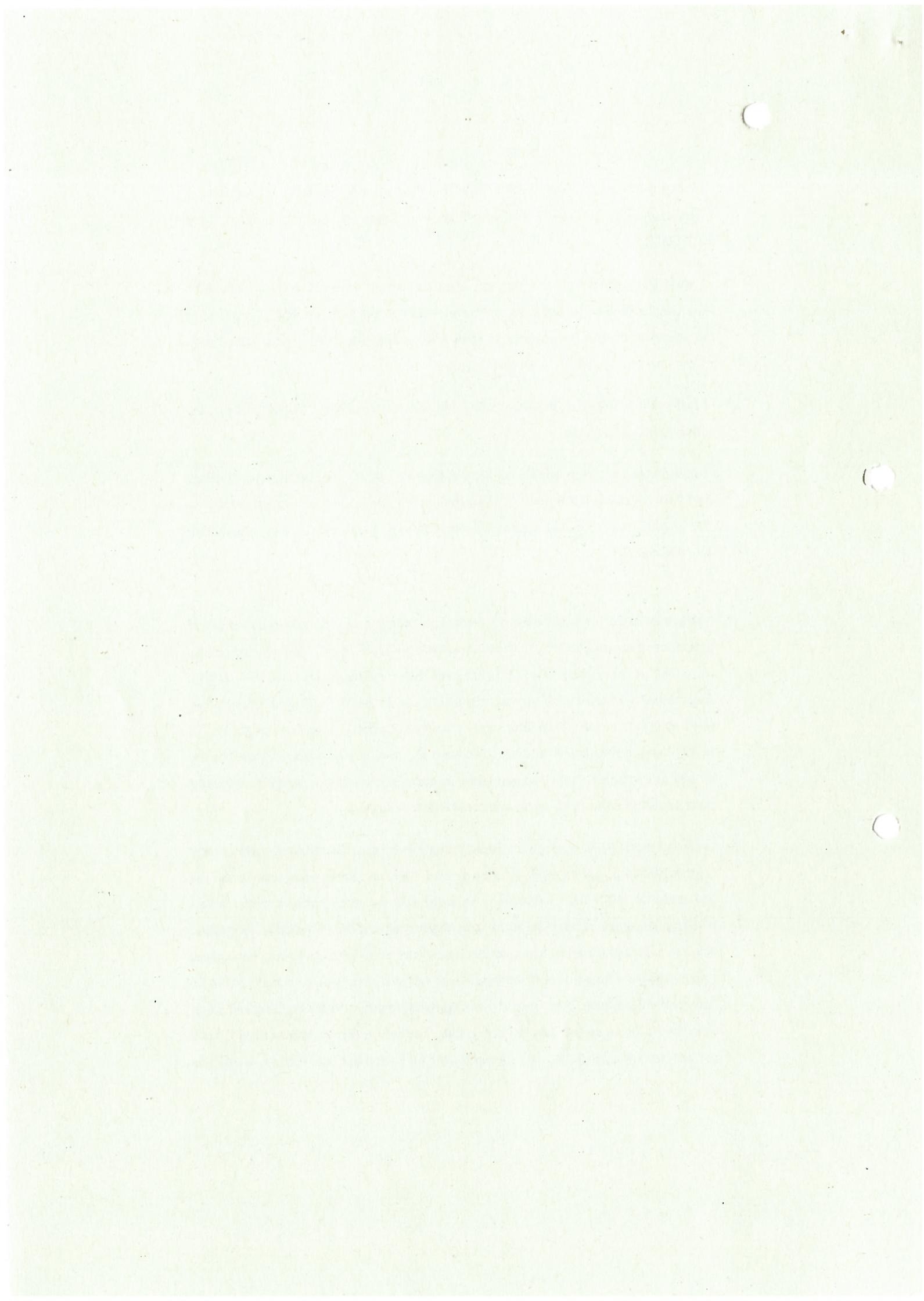
- I am resident at 22 Connaught Place Wellington Road, Cork. Mr Eugene and Ms Sylvia Glendon live in number 21 Connaught Place. Gemma Desmond is resident at 22





Connaught Place adjoining the site. There is an Eir telephone exchange site adjacent to Connaught Place, where I live (Eir Telephone Exchange, Wellington Road, Cork T23E302).

2. I make this Affidavit for the purposes of grounding my application for an injunction pursuant to S160 of the Planning and Development Act 2000 as amended. I beg to refer to a booklet of relevant documents upon which marked with the letters JH1. I have signed my name prior to the swearing hereof.
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 these proceedings 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. The houses at Connaught Place are protected structures in an architectural conservation area. One of my neighbours, Gemma Desmond, has lived at No. 23 Connaught Place since 2000, and her immediate family has lived in the house since the early 20<sup>th</sup> Century. Eugene and Sylvia Glendon moved into their house in the 1979. Eugene's family had lived on the other side of the telephone exchange at Garfield Terrace. I bought No. 22 in 1997 and moved into it in 2000. We have all cared in a dedicated manner for the houses as Protected Structures according to good practice in conservation, investing much time and effort in doing so and considerable resources.
6. On 26th August 2024, works were carried out at the Eir site. The works involved a very large apparatus pounding a pile into the ground. I and another resident went to the site and spoke to a Mr Pat Gallagher. We were told the work being carried on was investigation work. The noise levels were significant and the vibration to the ground was also very significant to the point that items were moving on surfaces in the houses. I stated to Mr Gallagher that if work was to be carried out the houses would need to be structurally monitored. This would mean applying monitors to the building and I said there should be no reason they cannot do that. I stated we (my neighbours and I) were not necessarily opposed to any development they intended but that we should be



involved in the decision in a defined process and that we were reasonable people who would be willing to talk. He stated they were putting up a telecom pole. I asked him to stop working noting the conservation area and the protected nature of the houses and ultimately, he stopped work leading us to believe that the works could not be concluded due to our objections. Mr Gallagher sympathised with our predicament and said he was only a subcontractor to the site owners. We learned from Mr Gallagher that Towercom Ltd was the company that had commissioned him to carry out the works. He said that he was a sub-contractor to Towercom. We informed Towercom through Mr Gallagher that we were willing to speak to them and discuss their proposals and that there were options that could be considered relating to the height of any mast, the location of any mast and measures that could mitigate impact at the site such as planting, type etc.

7. Gemma Desmond of No. 23 Connaught Place informed the planning enforcement department of Cork City Council of the issue of unauthorised work on August 26th corresponding by email with them and noting a conversation with John Summers an officer in the City Council stating:

*"I am emailing to inform you of unauthorised development that is taking place today at the Eir Building which is located next door to my property- 23 Connaught Place, Wellington Road Cork.T23K2P5. I am seriously concerned about my property being structurally undermined by this excavation drilling. This is unauthorised drilling and as confirmed by your colleague John Sommers, there has been no planning permission sought for such excavation and or erection of a mast. I am asking for you to enforce a cessation to this drilling and planned erection of a mast immediately"*

8. Mr Eugene and Ms Sylvia Glendon of No 21 Connaught Place wrote to planning enforcement on the same day:

*"We wish to make a formal complaint in relation the above development which we understand relates to the proposed construction of a tele mast on the Eir property at Wellington Road. My wife and I live at No. 21 Connaught Place ,Wellington Road,Cork.T23 W2X0 and were alarmed to discover that this development had commenced today without any permission being sought or granted by the City Council. We were kindly copied on an email sent to you*



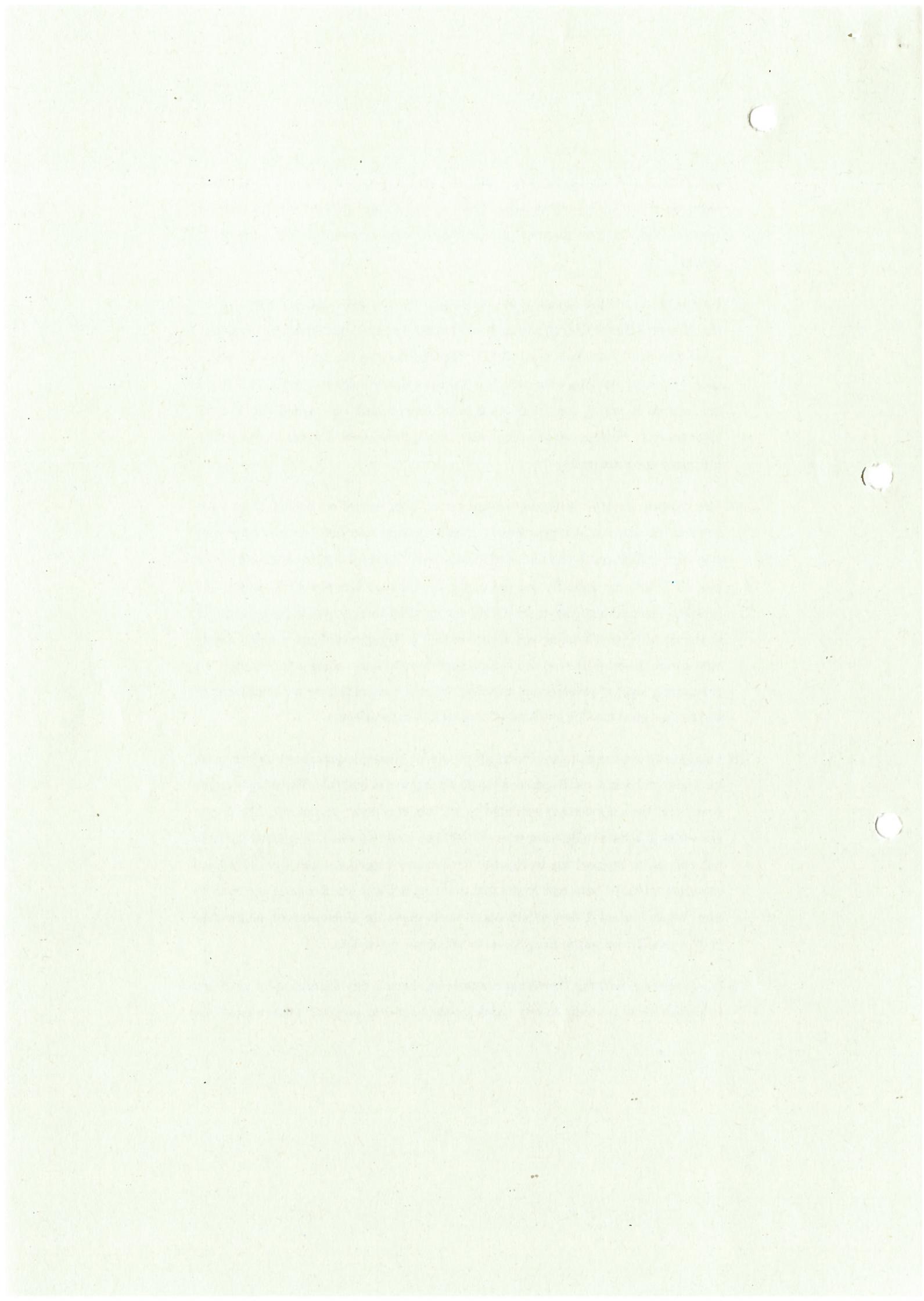
*today by our neighbour Gemma Desmond (see email below) and we fully endorse the contents of that email and request that you take such steps as are necessary to ensure that this unauthorised development ceases forthwith."*

9. Copies of both sets of correspondence were sent to me on the same day.
10. On the morning of 6 November 2023, Gemma Desmond informed me of works being carried out at the Eir telephone exchange site. She had noticed and heard the work but had to leave for work. I went to the site and asked to speak to someone about the work. I met with Mr Ray Ryan who informed me he was the manager for the works. I stated to him that the works were not authorised and had no planning permission and that we had no knowledge of them. I stated the area was a conservation area and the houses protected structures.
11. Mr Ryan informed me that their work was to replace a pole that was on the site. I pointed out the works were in a different location. Mr Ryan stated the works were in fact exempt. I asked for the paperwork on an exemption stating it must have been carried out and would clarify the matter for all. I asked that they cease work. I stated that the buildings around should be monitored if they are carrying out work and he said they were.
12. On the 6th November 2024 when works started again the company they seemed to be more highly organised than before in that they were organised to happen swiftly and decisively with far more machinery and workers on site. There is no doubt in my mind that what we witnessed was an effort to get surprise works done and avoid objection or discussion on the issue with an aim to instal a telecom pole on the site before objections could be effective. When asked to cease work Mr Ryan repeatedly stated that he would not cease the work. I asked to speak to someone about the work in his company. He said he was the person to speak to and said a number of times that he was the "point of contact". I stated that there is someone who would be instructing his actions and making strategic decisions in the company and I stated that I would like to contact that person in the company directly to speak to them and he said that he was that person only. I repeated that I would like the contacts of the company, and he told me it was him and gave me his number. He repeated that he would be there to talk to me or anyone and



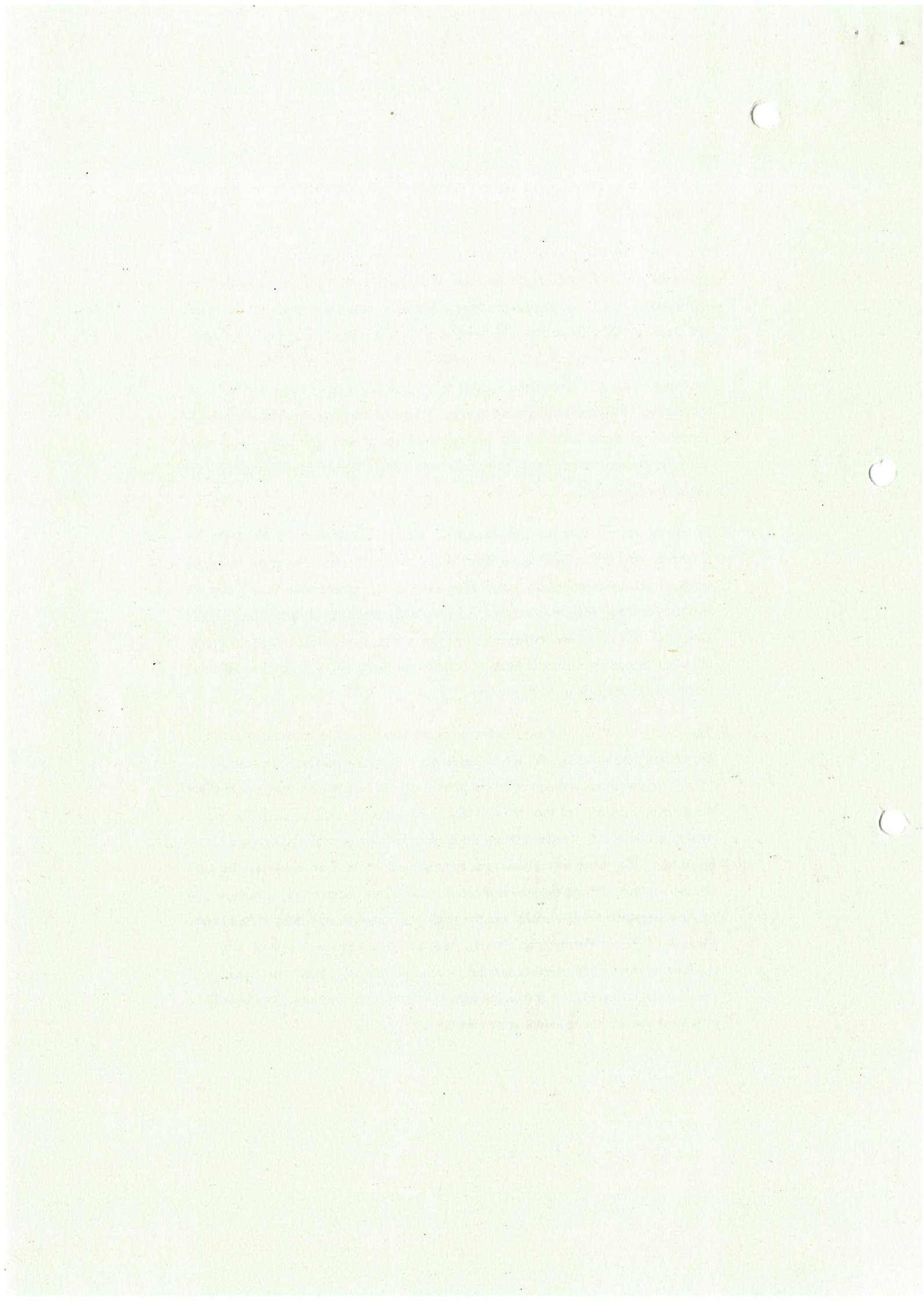
that they would not be stopping work. My feeling was that this was a rehearsed response. At all time work continued. As I explained the difficulty we had with the works and the fact that we would discuss the proposals reasonably Mr Ryan began to smirk.

13. I outlined to Mr Ryan the structural issues with the site, the vulnerable nature of the retaining wall for the Church (which is a Protected Structure) next to the proposed mast site (identified by the hole being dug). I disputed the idea that they were replacing a pole. I disputed that they were exempt from seeking permission for the works. I found the manner in which the works were being orchestrated and carried out, and the response from Mr Ryan, to be intimidating and aggressive, and I found Mr Ryan to be inflexible in his responses.
14. The site has an electric gate and the works were being carried out behind the gate and screened by vehicles. A digger was excavating a large hole and a cage of reinforced steel sat beside it and in the course of the day on 6<sup>th</sup> November 2024 rods were placed in a circle into the cage. By the end of the day the cage was placed in the hole and levelled. The next morning on the 7<sup>th</sup> November 2024 the cage was in the ground with the circle of bolts protruding and a kerb around it. The ground level is unfortunately raised from the original level and is far higher than the surrounding area. For us, it is a devastating sight of development affecting our environment that we are uninformed of and has not gone through any kind of process to mitigate impact.
15. I rang the Towercom company looking for someone in complaints or a manager to speak to. Although I was assured someone would contact me, nobody did. When I rang again, I was told the only contact available to me was Ray Ryan on the site. The person answering the phone said there was nothing they could do when I explained the issue and refused to connect me to anyone. I received a subsequent call from Ray Ryan restating what had been said to me that morning and with no change in approach by him. When I asked if they would cease works given the circumstances, he repeated "no". I stated there was nothing for us to talk about in that case.
16. My experience with the Towercom company has been highly distressing for us all and is perceived as contrary to our rights as residents and property owners under the



circumstances. Personally, I found Towercom's approach towards us extremely distressing.

17. As a result of my interaction with Mr Ryan, I contacted FP Logue solicitors, who have acted for me in the past. I instructed them to contact Towercom and demand that they cease works on site, as I considered those works to be unauthorised and not exempted. Mr Brady wrote to Towercom on 6 November 2024, demanding that they cease works by 2pm on 7 November. He received a reply from William Fry, solicitors for Towercom, on the morning of 7 November, seeking more time while they took instructions. No further reply has been forthcoming to date. No further reply has been forthcoming to date but works continued and the foundation was completed after contact was made with the solicitor representing Towercom who sought further time within the time period that he sought.
18. As an architect, I consider the erection of a telecommunications mast at the Eir Exchange building on Wellington Road would materially affect the character of the architectural conservation area, constituting a discordant and obtrusive modern element in a protected 19<sup>th</sup> century townscape. I have asked a respected conservation engineer about this, and they have confirmed to me that such a mast would indeed materially affect the character of the architectural conservation area, and I beg to file additional information in that regard in due course.
19. They confirmed to me that the foundation is to be placed next to a retaining wall which boundaries the church and the church lands have been lowered since its construction. In their opinion the excavation and the applied weight of the proposed mast would affect the structural integrity of the wall and this is a health and safety concern that would need to be addressed. In their opinion the existing pole appears to be sound from visual inspection. They consider that it is at an early stage in its life span which is c. 50 years or more. In their opinion the new structure would seriously impact the landscape value of the conservation area visually and the setting of protected structures at Connaught Place and at Trinity Presbyterian Church. They are of the opinion that the Eir site is on the former grounds of the Church and the mast would seriously affect views to and from the Church and houses at Connaught Place and the conservation area generally. They noted that the site is a local landmark view towards the city.



20. I believe the site presents safe opportunities that would allow for some mitigation of concerns relating the character of the conservation area landscape should the addition of a structure be agreeable in theory (which it may not be).

21. I do not believe there has been any determination by Cork City Council or An Bord Pleanála as to whether the erection of a mast on this site would affect the character of the site.

22. The Eir exchange is on a site approximately 60m long by 13m to 15m deep. Again, I am seeking independent evidence to confirm this opinion.

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

**JOHN HEGARTY**

who is personally known to me

this 7<sup>th</sup> day of November 2024

at MAECURZAN STREET,

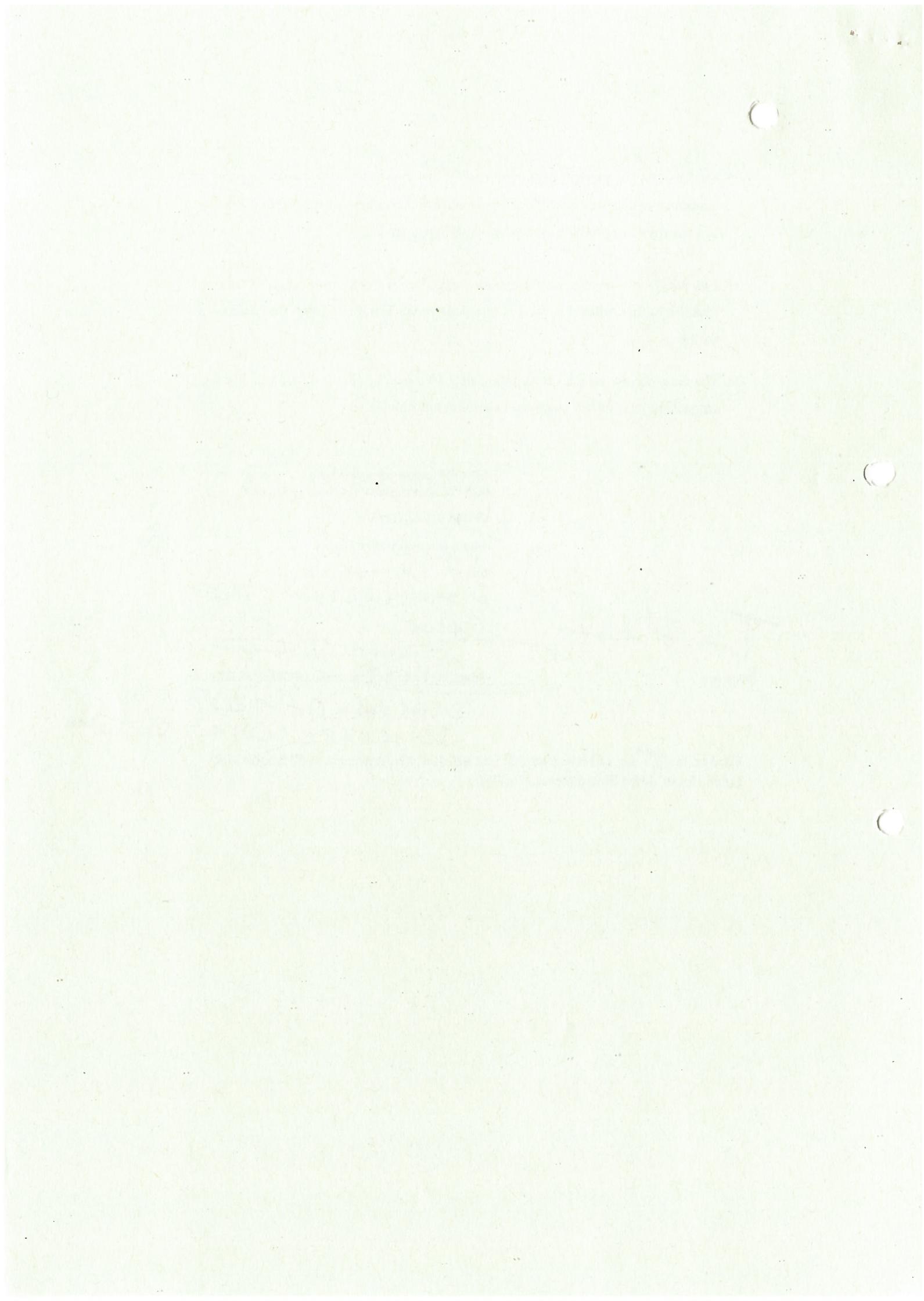
CORK

Deponent

~~Practising Solicitor/Commissioner for Oaths~~

~~DIARMAID FAHEY  
SOLICITOR, CORK, CO. CORK~~

Filed on the 8<sup>th</sup> day of November 2024 on behalf of the Applicants by FP Logue LLP,  
Lenin House, Great Strand Street, Dublin 2



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**Respondent**

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**GROUNDING AFFIDAVIT OF JOHN HEGARTY**

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