

Alfie Staunton

From: Áine Mccarthy <amccarthy@mhplanning.ie>
Sent: Tuesday 1 July 2025 15:07
To: Appeals2
Cc: Orla O'Sullivan
Subject: Section 5 Referral Ref: ABP-322335-25 - Cork City Council Ref. R93125
Attachments: ABP322335-25_LTR_250701_Towercom ACP Referral Submission Inc Appendices_FINAL.pdf

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Good Afternoon,

I refer to the letter from An Coimisiún Pleanála (ACP) dated 4th June 2025 inviting a submission or observation in relation to the Section 5 Referral by Cork City Council to ACP as to **Whether the assembly of a replacement 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 or is or is not exempted development** (Section 5 Referral Ref: ABP-322335-25 - Cork City Council Ref. R93125).

On behalf of our client, Towercom Limited, please see attached our submission on the above-mentioned referral.

Should you require any additional information, please do not hesitate to contact me. Please confirm receipt of the attached at your earliest convenience.

Kind regards,
Áine McCarthy

Áine McCarthy
Planning Consultant
McCutcheon Halley
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An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
D01 V902

1 July 2025

Re: ABP-322335-25 / Cork City Council Ref. R93125 - Submission on Section 5 Declaration Referral – Whether the assembly of a replacement 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 or is or is not exempted development.

Dear Sir / Madam,

I refer to the letter from An Coimisiún Pleanála (ACP) dated 4th June 2025 inviting a submission or observation in relation to the above-mentioned referral. On behalf of Towercom Limited, I wish to make a submission to the Section 5 Declaration Referral, referred to ACP by Cork City Council following the receipt of an application lodged by Peter Thomson Planning Solutions, on behalf of John Hegarty, Eugene and Sylvia Glendon and Gemma Desmond. The Section 5 question posed in that application is:

Whether the erection of a replacement antenna support structure and the attachment of antenna 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.

The Section 5 application is accompanied by a planning report prepared by Peter Thomson Planning Solutions which makes the following points:

1. The works do not fall within the provisions of section 4(1)(g) of the Planning and Development Act 2000 (as amended), because the support structure does not fall within the definition of 'other apparatus'.
2. Towercom Limited are not a 'statutory undertaker'.
3. The works fall within the curtilage of protected structure of Trinity Presbyterian Church and have a significant negative impact on the structure.
4. The works fall within an ACA and have a significant negative impact on the ACA.
5. The works would require an EIA due to the significant impact on cultural heritage.
6. The original structure is unauthorised and therefore cannot rely on Class 31 (j) in terms of its replacement.

Each of these points are considered in turn within this submission.

Further, Section 7 outlines the replacement structure's compliance with the relevant planning policy in relation to telecommunication antennae and support structures.

The Board will also note that a submission in response to the initial Section 5 application was made to Cork City Council by William Fry Solicitors on behalf of Towercom Limited, dated 16th April 2025. A copy of this submission is enclosed with this letter.

1 Provisions of Section 4 (1) (g)

The works involve the removal and replacement of telecommunications apparatus that has been in place for over 20 years, providing important signal connections to Wellington Road, Summerhill North, MacCurtain Street, Lower Glanmire Road and Saint Patrick's Quay. These works involve the removal of the existing wooden antennae structure and the replacement with a steel antennae structure, giving rise to a renewal of the infrastructure. The planning report prepared by Peter Thomson Planning Solutions has incorrectly made assumptions regarding the factual position and status of the existing antennae structure. As detailed in the letter from Vodafone to Towercom dated 15 November 2024, "*an existing wooden Vodafone antenna support structure*" which is 15 metres (12 metre pole with antenna), has been in place since 1999.

Should the telecommunications not be replaced there will be a negative impact on the services as these areas would experience a loss of indoor coverage and the continuity of coverage would be broken, resulting in drop calls for customers travelling through these areas. The Wellington Road exchange is connected to the Vodafone national fibre network, which allows Vodafone to offer high speed data services to any connected site. Currently CK055 Cork Opera house is connected onto this network via radio link on the pole. This connection allows Vodafone to offer high 5G speed data services to the central Cork City area. Without this link, 5G speeds in the city centre would be reduced, which would have a negative impact on business and residential premises in the area.

It is our contention that the provisions of 4(1)(g) were intended by the legislator to ensure that "*any works for the purpose of...*" essential services and infrastructure provided by statutory undertakers, required to support employment and residential uses, could be repaired, renewed or altered without the need for planning consent. Maintaining essential telecommunication services within the heart of Cork City is critical to supporting the economy and residential amenity.

However, should ACP consider that the provisions of 4(1)(g) are not applicable, the provisions of Class 31(j) of the Planning and Development Regulations 2001 (as amended) will apply.

2 Statutory Undertaker

The Section 5 application argues that Towercom Limited are not a statutory undertaker, as they are working under contract to Vodafone.

We would refer ACP to its own precedent on this question, in ABP-302441-18, Telecommunications Mast on Monkstown Road, Co. Dun Laoghaire Rathdown.

In relation to the argument that Signal did constitute a statutory undertaker, the Inspector noted that telecommunication rights are controlled by the compliance regulator ComReg, which issues general authorisation to carry out works for the provision of telecommunications under license. Signal Infrastructure Ltd were authorised to provide Electronic Communication Networks and Services for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure in 2016. The Inspector also noted that the occupants of the structure are both licensed

and operators in the state – namely Vodafone and Eir Mobile. The Inspector was satisfied, having regard to the information submitted that both Cignal Infrastructure Ltd and the occupants came with the classification of 'statutory undertaker'.

Vodafone Ireland Limited (VIL) is a statutory undertaker. The proposed works are being undertaken by Towercom who are contractually responsible to VIL. An Bord Pleanála precedent establishes that the exempted development provisions extend to the contractor undertaking the works on behalf of a statutory undertaker. To suggest otherwise would have wide ranging implications. For example, Uisce Éireann, Electricity Supply Board, and Gas Networks Ireland are all statutory undertakers, but frequently contract out works, including exempted development works. To exclude contractors from the exempted development provisions would unduly burden the planning system with no obvious benefit to any third party. On Towercom's status as a statutory undertaker, see also the letter from William Fry LLP, Towercom's solicitors, which accompanies this submission, as well as the letter from VIL to Towercom dated 15 November 2024.

3 Protected Structure

The Section 5 application argues that the works would have a significant negative impact on the protected structure of Trinity Presbyterian Church.

In planning terms, it is important to recognise that the level of impact to be assessed is the development to be undertaken and not the principle of a new telecommunications pole in the location which has been established for well over 20 years. The works to be assessed in terms of impact consist of:

- The minor relocation of the existing pole approximately 3.2m north-east of the existing pole, at a ground level of 0.6m higher than the existing pole.
- The change in the dimension of the pole from its existing dimension of 320mm at its widest point, to 508mm from the base to the top.
- The reduction from 6 antenna and dishes to 5 antenna and dishes.

In response, please find attached a report by Deaton Lysaght Architects, which in summary notes:

- The site of the proposed development is, in their professional opinion, not located within the curtilage of the Trinity Presbyterian Church (Protected Structure), and therefore Section 57 of the Act does not directly apply.
- Even under the hypothetical assumption that the site was within the curtilage, the proposed replacement would not materially affect the character of the Trinity Presbyterian Church or any element contributing to its special interest.

4 Impact on ACA

The Section 5 application argues that the works would have a significant negative impact on the Wellington Road / St Luke's Architectural Conservation Area.

For context we note that the site is located in a highly urbanised environment within Cork City. Utility structures, such as telegraph poles, wires, lighting and telecommunication structures are an everyday part of the City and the immediate area and are essential to support employment and residential uses and for the continued economic development of the City. The Cork City Development Plan 2022 (CDP) recognises the importance of efficient telecommunications, noting in paragraph 9.26 that an efficient telecommunications system is important in the development of the economy.

While the CDP seeks to protect and enhance Architectural Conservation Areas (ACA), there is no restriction within the development plan to the provision of utility infrastructure, or indeed a restriction on the repair or replacement of existing equipment.

Objective 8.23 of the CDP restricts development that would impact negatively upon features within the public realm, such as stone setts, cobbles or other historic paving, railings, street furniture, stone kerbing etc. However, the works in this case are outside the public realm, within the boundary of the long-established EIR exchange site, and have no impact on any historic street furniture or paving etc.

The designation of an ACA is not intended to sterilise particular parts of the City from economic growth or access to utility and telecommunication services expected in a modern city centre.

In response to the applicants' contention, please find attached a report by Deaton Lysaght Architects, which in summary notes that the replacement will not materially affect the character of the Wellington Road / St. Lukes Architectural Conservation Area, as it involves the replacement of an existing, similar structure within an urban context that already accommodates such infrastructure. The limitation provisions of exempted development detailed by section 82 (1) therefore do not apply.

5 Requirement for an EIA

The Section 5 application argues that, as a result of the publication of the 'Interpretation of definitions of project categories of Annex I and II of the EIA Directive' guidance in October 2024, the works require EIA due to significant effects on cultural heritage and the landscape. The applicants refer to page 59 of the guidance, 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 communications deployment, could also be included in this category.

The reference to telecommunications / wireless communications is subject to a footnote (81), which states that:

Commission Recommendations (EU) 2020/1307 of 18 September 2020 on a common Union toolbox for reducing the cost of deploying very high-capacity networks and ensuring timely and investment-friendly access to 5G radiot spectrum, to foster connectivity in support of economic recovery from the COVID-19 crisis in the Union points out to the application of the EIA Directive to this type of infrastructure.

There are important points to make in respect of the applicants' arguments that EIA is applicable to the work:

- i. The proposed works and development (as outlined and described above) is not an Annex I or Annex II Project within the meaning of the EIA Directive.
- ii. Guidance issued by the European Commission is not legally binding on Ireland or any other member state. Indeed, recently in *Ryan v. An Bord Pleanála* [2025] IEHC 111, when commenting on the 2024 guidance, Mr. Justice David Holland stated that "[s]uch guidance is not binding or even formally authoritative and this guidance appears to be more descriptive than prescriptive of Member States' approaches" [§173 of the judgment). The Guidelines and relevant provisions need to be considered as a coherent whole and reference to the wording telecommunications alone does not bring all works to masts (and renewal/repair works) within the meaning of the EIA Directive.

- iii. The guidance refers to a Commission Recommendation, and not to any judgement of the Court of Justice. The Commission Recommendation was drafted in respect of ensuring the timely and cost-effective deployment of telecoms infrastructure, which it identified as essential for people and businesses in the Union.
- iv. The guidance has not been transposed into any Irish legislation and cannot be considered to be legally definitive in terms of requirement for telecommunications to be subject to an EIA.
- v. Even if (which is disputed) telecommunications development was to be subject to EIA requirements, the works in question would be subject to a screening process. At a high level we contend that the works would be screened out of EIA requirements, as the magnitude of the impact is not significant and as detailed in the report by Deaton Lysaght Architects the proposed works will not materially affect the character of the Wellington Road / St. Lukes Architectural Conservation Area. The benefit of an exemption in section 4(1) of the Act or in the Regulations is only lost where an environmental impact assessment is required, not where an EIA screening is required: section 4(4) of the Act.

6 Unauthorised Works

The Section 5 application argues that the original structure is unauthorised and therefore it is not possible to rely on Class 31(j) due to the provisions of Article 9 (viii) which do not permit renewal of an unauthorised structure. This contention is incorrect.

For a point of clarity, the title of the Towercom 'Non-compliance' Report refers to a technical or engineering non-compliance and, in this instance, refers to the fact that the existing pole is structurally unsound. This report is incorrectly referred to in the planning report on behalf of Peter Thomson Planning Solutions as the "Vodafone "Non-compliance" Report". It has no bearing on and is not intended to relate to the planning authorisation or planning status of the structure.

The original structure was constructed around 1999, at which time the provisions of SI no 86/1994 - Local Government (Planning and Development) Regulations 1994 were in force. Class 29, of Exempted Development - General (Part 1) provided an exemption for:

The carrying out, by Bord Telecom Éireann — The Irish Telecommunications Board, or by any person to whom a licence under section 111 of the Postal and Telecommunications Services Act, 1983 has been granted, of development consisting of the provision of—

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<i>(f) antenna support structures</i>	<i>The height of any such structure shall not - (a) If constructed or erected on the ground exceed 15 metres.</i>

The existing structure is therefore authorised.

As set out above, the works involve the removal of the existing structure and replacement with a new steel pole and antennae, to renew essential infrastructure. We submit that the provisions of section 4(1)(g) are applicable because the works are for the renewal of existing telecommunications apparatus, as the pole, although not under immediate danger of failure, is at a higher risk of failure. However, should ACP consider that the provisions of 4(1)(g) are not applicable, the provisions of Class 31(j) of the Planning and Development Regulations 2001 (as amended) will apply, because:

- The antenna support structure is in place of an existing antenna support structure.

None of the conditions or limitations on the exempted development are applicable. In summary:

- (1) The replaced structure shall be removed no later than 4 weeks following its decommissioning.
- (2) The replacement structure is located approximately 3.2m to the north-east of the existing structure. This is well within the limit of 20m provided in the regulations.
- (3.a.) The height of the replacement structure at 15m does not exceed the height of the replaced structure.
- (3.b.ii) The original structure is less than 2m in width. Therefore, the replacement structure may not be more than twice the width of the replaced structure (all measurements to be taken at the widest point). The existing pole is 320mm, therefore the maximum replacement width permitted under exempted development provisions would be 640mm. The replacement pole is 508mm wide, well within the exempted development provisions.
- (4) The antenna to be attached to the replacement structure does not exceed the number of antennae on the replaced structure.
- (5) The conditions and limitations provided in subsection (5) are not applicable, as no additional antenna are proposed.
- (6) The replacement of the antenna support structure, together with replaced antenna do not result in the field strength of the non-ionising radiation emissions from the radio installations on site exceeding the limits specified by the Communications Regulations, (see accompanying letter of ICNIRP compliance from Vodafone Ireland Ltd).

None of Article 9 Restrictions are applicable to the proposed development, as summarised in table 1, attached to this submission.

7 Compliance with Planning Policy

Notwithstanding the above sections which demonstrate that the replacement structure and associated telecommunication infrastructure is exempted development, Policy 11.253 of current CDP 2022 outlines the relevant best practice criteria that new telecom antennae and support structures would be assessed against:

1. Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, DECLG, 1996 and Circular Letter PI 07/12 published by the DECLG in 2012.
2. The co-location of existing structures is encouraged and the construction of any new antennae or structure will only be considered when co-location is not a feasible option. Any proposal for a new structure or antennae should detail the requirements for the infrastructure and if so, why co-location is not feasible.
3. In identifying a suitable location for telecommunications structures consideration shall be given to the potential visual impact of the development and any sensitivities in the area in which the structure is proposed to be located. A Visual Impact Assessment of the development, including photomontages, may be required, depending on the nature of the development proposed.

4. Telecommunications Structures on visually sensitive elevated lands will only be considered where technical or coverage requirements mean the infrastructure is essential.

Points 2-4 above are based generally on the content of the guidance document and associated circular in point 1. These documents set out the basic parameters that should be considered when locating telecommunications antennae and support structures, where it is generally accepted that:

- The design and location of such structures will be dictated by radio and engineering parameters.
- Co-location, in the guidelines, means the use / addition to existing telecom support structures, but where co-location is not a feasible option, the guidelines also state that applicants are *"encouraged to share a site or to site adjacently so that masts and antennae may be clustered."* In urban settings, sites already developed for utilities should be considered.
- Planning Authorities should indicate in their development plans any locations where telecommunications infrastructure would not be favoured or where special conditions would apply – suggested locations might include lands whose high amenity value is already recognised, protected structures, architectural conservation areas etc.
- Visual impact and impacts on designated structures / sites under planning and other legislation are an important consideration but in the majority of cases there is limited flexibility as regards location, given the constraints arising from radio planning parameters. Design and scale of the structure is the primary mitigatory principle where support structures should be kept to the minimum height for effective operation and should be monopole in design as opposed to tripod / square structures.

The new, replacement antennae structure is in complete accordance with the relevant planning policy and best practice guidance relating to such infrastructure at national and local level, summarised as follows:

- The removal of the existing wooden antennae structure and the replacement with a steel antennae structure, will give rise to a renewal of the infrastructure in the optimal location to adequately service the surrounding area.
- Co-location (i.e. utilisation of the existing structure) is not possible given the structural deficiency of the existing support structure to be replaced and the location of the new antennae structure within the same site is in accordance with best practice principles.
- The subject site or surrounding area has not been indicated as being inappropriate for this type of infrastructure within the current CDP 2022.
- Notwithstanding surrounding sensitivities, all efforts have been made to reduce the visual impact of the structure, which is required at this location for engineering reasons. A monopole design has been adopted, similar to the structure to be replaced, and the size of the structure is designed to meet minimum operational requirements. There is an absence of protected views of the site and as previously confirmed, there no impact on the ACA or setting of the adjacent protected structure.

Summary

Thank you for consideration of this submission on behalf of Towercom Limited. In summary we ask that the Board consider the section 5 Declaration application in the following context:

- That the existing structure is an authorised telecommunications structure, which has been in place for well over 20 years, set within an urban environment, providing essential

telecommunication services for the area and 5G speed data service to the central Cork City area. The provision of such services is consistent with the Cork City Development Plan 2022 which recognises the importance of efficient telecommunications to the economy.

- Towercom Limited are acting under contract on behalf of Vodafone Ireland Limited, who are statutory undertakers. The exempted development provisions applicable to statutory undertakers extend to contractors working on their behalf.
- That the assessment of the impact of the development on the Cultural Heritage issues must be based on the replacement works, and not the principle of a new structure in the location. The replacement works are minor and do not have a significant impact on either the protected structure of Trinity Presbyterian Church, or Wellington Road / St Lukes ACA. Therefore, the restrictions / limitations to exempted development in section 57 and section 82(1) of the Planning and Development Act 2000 (as amended), or Article 9 of the Planning and Development Regulations 2001 (as amended), do not apply.
- That there is no requirement in Irish legislation for the proposed works to be subject to EIA. Even if this were hypothetically the case (which is disputed), the works would be screened out from EIA at a high level due to their minor nature.
- That the provisions of section 4(1)(g) are applicable, as the works are for the removal and replacement of structurally unsound telecommunications apparatus, resulting in the renewal of the infrastructure.
- Should the Board consider that section 4(1)(g) is not applicable, the works fall within the exempted development provisions of Schedule 2, Part 1, Class 31 (j) of the Planning and Development Regulations 2001 (as amended). None of the conditions or limitations of this exempted development class are applicable and none of Article 9 restrictions are applicable.
- The new, replacement, antennae structure is in complete accordance with the relevant planning policy and guidance at national and local level.

In support of this submission, please find attached a separate report in letter form by Deaton Lysaght Architects addressing the impact of the proposed work on Cultural Heritage, separate letter by William Fry solicitors addressing the Statutory Undertaker point, letter from VIL to Towercom dated 15th November 2024, and letter of ICNIRP compliance from VIL.

Yours sincerely,



Orla O'Sullivan
McCutcheon Halley

Encls.

- Copy of the Submission on the initial Section 5 Application by William Fry Solicitors (on behalf of Towercom Limited) to Cork City Council
- Table 1: Assessment of Article 9 Restrictions.

- Letter by Deaton Lysaght Architects on Cultural Heritage Impact.
- Letter from William Fry Solicitors on Statutory Undertaker definition.
- Letter from VIL to Towercom, dated 15 November 2024
- Letter of ICNIRP compliance from Vodafone Ireland Ltd



Our Ref 022490.0050.GHJ/KABE/AGAR

16 April 2025

By Hand and By Email: planning@corkcity.ie

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

Re – Eir Exchange Site, Wellington Road, Cork City, T23 E302 (the "Site")

Dear Colleagues

We act on behalf of Towercom Limited. We refer to the Site and the Section 5 Application (the "**Application**") dated 18 March 2025 submitted by Peter Thomson as agent for Eugene and Sylvia Glendon, John Hegarty, and Gemma Desmond (the "**Applicants**"). This Application was made against the backdrop of High Court proceedings (the "**Proceedings**") between our client and the Applicants which have been adjourned generally, with the consent of the parties, to facilitate the Application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) ("**the Section 5 Referral**"). A copy of the Application was furnished to us by the Solicitors for the Applicants on 18 March 2025. Copies of the pleadings in the Proceedings were provided to the City Council in the Application.

While our client has not yet been invited to submit information in relation to the Section 5 Referral given the serious and comprehensive issues raised in the Application, any steps to make a decision (within 4 weeks) without hearing from our client, as the relevant respondent in respect of allegations the subject matter of the Section 5 Referral as well as the Respondent in the Proceedings, would be highly prejudicial and contrary to fair procedures. We understand that no third party has yet been invited to provide input/information as part of the Section 5 Referral.

We also refer to a letter from our client to the Enforcement Section of the Planning Department dated 6 March 2025, written in response to a Warning Letter from the City Council to Eircom Limited dated 3 December 2024. In this letter, our client indicated that it expected a Section 5 application to be submitted imminently and asked that that the City Council request our input in the process.

Please see enclosed our client's submission in relation to the Application. We would urgently request the City Council to consider this submission when making the decision relating to the Application. Our client is agreeable to providing any further information that may be required.

CHAIRMAN L.M. Cobe	PARTNERS M. Cahill E. Scully D. Galloway G. Kinsella B. Conboy E. Linnane S.M. Higgins P. Flavin C. O'Sullivan	Colin L. McCarthy R. O'Callaghan S. O'Sullivan J. Heneghan P. O'Sullivan I. Linnane A. McInerney G. Brien L. Moore	P. Bee C. Worsley I. O'Sullivan D. Maughan M. Gately R. Ryan M. Talbot V. Coyne J. Dwyer E. Cowley	S. Toney J. O'Connell M. Ward S. Dolan P. Kinsella D. Flynn G. Kelly J. O'Sullivan L. Lynch I. Lynch E. Kelly	C. Tiner C. Tiner B. O'Leary I. Alun-Jones C. Kelly M. O'Sullivan C. O'Sullivan C. O'Sullivan L. O'Sullivan L. O'Sullivan C. O'Keefe	M. O'Neill R. Sherrington L. Harrison L. Mahony M. Gately S. O'Sullivan M. O'Sullivan H. O'Sullivan G. O'Sullivan B. O'Sullivan	N. Joyce D. O'Sullivan S. O'Sullivan R. O'Sullivan A. O'Sullivan E. O'Sullivan F. O'Sullivan C. O'Sullivan G. O'Sullivan H. O'Sullivan I. O'Sullivan	CONSULTANTS J. O'Sullivan M. O'Sullivan C. O'Sullivan D. O'Sullivan E. O'Sullivan F. O'Sullivan G. O'Sullivan H. O'Sullivan I. O'Sullivan J. O'Sullivan K. O'Sullivan L. O'Sullivan M. O'Sullivan N. O'Sullivan O. O'Sullivan P. O'Sullivan Q. O'Sullivan R. O'Sullivan S. O'Sullivan T. O'Sullivan U. O'Sullivan V. O'Sullivan W. O'Sullivan X. O'Sullivan Y. O'Sullivan Z. O'Sullivan	S. O'Sullivan O. O'Sullivan A. O'Sullivan B. O'Sullivan C. O'Sullivan D. O'Sullivan E. O'Sullivan F. O'Sullivan G. O'Sullivan H. O'Sullivan I. O'Sullivan J. O'Sullivan K. O'Sullivan L. O'Sullivan M. O'Sullivan N. O'Sullivan O. O'Sullivan P. O'Sullivan Q. O'Sullivan R. O'Sullivan S. O'Sullivan T. O'Sullivan U. O'Sullivan V. O'Sullivan W. O'Sullivan X. O'Sullivan Y. O'Sullivan Z. O'Sullivan
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WILLIAM FRY

Should you have any queries in relation to the above, please contact Aoife Garvey of this office at aoife.garvey@williamfry.com or 01 489 6616, or Gerard James at gerard.james@williamfry.com or 01 489 6460.

Yours faithfully

William Fry LLP

William Fry LLP

Our Ref 022490.0050.GHJ/KABE/AGAR

16 April 2025

By hand and email: planning@corkcity.ie
Community, Culture & Placemaking Directorate
Cork City Council
City Hall
Anglesea Street
Cork

Re - Towercom Limited as servant or agent carrying on works on behalf of Vodafone - Section 5 Submission in response to Section 5 Declaration dated 18 March 2025 sought by Peter Thomason Planning Solutions

We are instructed on behalf of Towercom Limited ("Our client"). Our client has instructed us in relation to a referral made to the planning authority under section 5 of the Planning and Development Act 2000 ("the 2000 Act") on lands at the Eir Exchange on Wellington Road in Cork City, in connection with the replacement of a wooden telecommunications pole with a new steel pole.

As is clear from the section 5 referral, the applicants, who live in the vicinity of the works, contend that the works are development which requires planning permission.

It is our client's position that the works in question are exempted development, having regard to section 4(1)(g) of the 2000 Act and Class 31(j) in Schedule 2, Part 1 of the Planning and Development Regulations 2001 ("the 2001 Regulations").

Section 4(1)(g) provides the following category of exempted development:

"(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;"

Class 31 provides, *inter alia*, for the following category of exempted development:

"The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of-

...

(j) An antenna support structure in place of an existing antenna support structure."

It is our client's position that it is entitled to the exemptions in question because it is a statutory undertaker. Section 2(1) of the 2000 Act contains the following definition of "statutory undertaker":

CHAIRMAN E. M. Cullen	PARTNERS M. Garrahy E. Spain D. Cullen B. Keeney E. Conway F. Twomey S. Marzani H. Barry D. Callahan	C. Little L. McCarthy B. O'Callaghan S. Kelleghan J. Heneghan H. Derry I. Baslin A. Ní Riada G. Brennan L. Moran	R. Egan C. Whelan L. Scott D. Maughan M. Quail B. Ryan M. Talbot V. Conboy J. Heelan P. Conboy	S. Tomney L. O'Connor M. Ward S. Dolan P. Kistella R. Ryan J. Sullivan J. McInerney L. Brennan	C. Byrne C. Whelan B. Butterwick I. Moran C. Brady N. Clavin C. Healy L. Healy L. Muddock C. O'Keefe	M. O'Neill R. Shanahan L. Hammond I. McElbanna M. Coohey C. Haines M. Martin F. Cork J. Butler B. Galvin	M. Joyce D. O'Donovan B. Scannell R. Hayes A. O'Gorman E. O'Rourke T. Diamond O. R. Rigby	CONSULTANTS S. Larkin S. Kelly R. Shendon C. McLaughlin C. Manning N. Campbell N. Crowley N. Dhan P. Taylor S. Walsh	S. Murray O. O'Sullivan A. Corbett
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WILLIAM FRY

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

(a) [...]

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) [...]

We are instructed the wooden antenna support structure was originally erected by Eir as part of the Eircell mobile telephone network in or around 1999 and that Eir occupies the site at Wellington Road under lease from Trinity Presbyterian Church. Subsequently, Eir separated its Eircell mobile phone business from its main operations and sold that business to Vodafone Ireland Limited (“Vodafone”). As part of that transaction, title in the pole (and the equipment on the pole) passed to Vodafone and a licence agreement was put in place whereby Vodafone were granted the rights necessary to retain and operate the mobile telephone infrastructure including the wooden pole on the land leased by Eir at the site. We are instructed that this was a common mechanism used in the transaction for transfer of network related assets from Eir to Vodafone.

We are instructed that the wooden pole at the Eir Exchange on Wellington Road is owned by Vodafone and is used exclusively by Vodafone to accommodate network equipment essential to the operation of its mobile telephone network in Cork.

Vodafone is listed on the public register maintained by the Commission for Communications Regulation, ComReg, at <https://serviceregister.comreg.ie/> as a person, for the time being, authorised by or under any enactment or instrument under an enactment to provide, or carry out works for the provision of, gas, electricity or telecommunications services.

Towercom is contractually responsible to Vodafone for the maintenance of certain Vodafone-owned mast structures, one of which is the wooden pole at Wellington Road. In circumstances where it is necessary to repair or replace such a structure, Towercom is required to perform the works. In this regard, our client is an agent of Vodafone with maintenance rights to Vodafone’s structures, including the wooden pole on the Eir site.

Vodafone provided a letter to our client dated 15 November 2024 confirming this position (**copy attached**). This letter makes clear that Vodafone is authorised by or under Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, to provide, or carry out works for the provision of telecommunications services. Vodafone is therefore a statutory undertaker, as defined in section 2(1) of the 2000 Act.

As appears from the Vodafone letter, the works at issue involve the carrying out of works for the provision of telecommunications services in circumstances where Towercom is contractually obliged to Vodafone to repair and maintain (including, where appropriate, to replace) the pole and is, accordingly, acting as Vodafone’s servant or agent in carrying out the works.

In carrying out repairs of Vodafone’s mast under contract with Vodafone, Towercom acts as Vodafone’s servant or agent and is, therefore, a “statutory undertaker” in section 2(1) of the 2000 Act.

The position with regard to this referral is analogous to that which gave rise to the decision of An Bord Pleanála under its reference ABP-302441-18, concerning whether the erection of a telecommunications mast on Monkstown Road, Co. Dun Laoghaire Rathdown was development which was exempted development. In that case, the Board’s Inspector was satisfied, *inter alia*, that because the occupants of the structure were both licensed operators in the state – namely Vodafone and Eir Mobile, they were statutory undertakers and the works in question were accordingly being undertaken by a statutory undertaker. The same premise applies in the present case and, accordingly, our client is a statutory undertaker on the basis that it is carrying out the works on behalf of Vodafone.

WILLIAM FRY

In all the circumstances, our client is a statutory undertaker for the purposes of the works the subject matter of the section 5 referral and, accordingly, is entitled to avail of the exemptions in section 4(1)(g) of the 2000 Act and Class 31(j) of the 2001 Regulations.

Yours faithfully

William Fry LLP

William Fry LLP



15th April 2025

Vodafone Ireland Ltd
Mountainview
Leopardstown
Dublin 18

Confidential

Our ref: CK103

Declaration of Conformity with ICNIRP Public Exposure Guidelines (“ICNIRP Declaration”)

Vodafone Ireland Radio Engineering

Declares that the replacement equipment for:

TCK5225
Wellington Road Exchange
Co. Cork

is designed to be in full compliance with the requirements of the radio frequency (RF) public exposure guidelines of the International Commission on Non-Ionizing Radiation (ICNIRP), as expressed in the EU Council recommendation of 12 July 1999 “on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)”.

Yours sincerely

A handwritten signature in black ink that reads "Michael Brolly".

Michael Brolly
Network Engineering
Vodafone Radio Networks

Vodafone Ireland Limited

T - +353 (0)1 203 7777 W - www.vodafone.ie

Vodafone Ireland Limited is a Private Company Limited by Shares, registered in Ireland with registered office at MountainView, Leopardstown, Dublin, D18 XN97. Company Reg No.: 326967. Directors: Amanda Nelson (GB), Liam O'Brien and Brice Evin (FR).



15 November 2024

Private and confidential

By email: mpollock@towercom.ie

Towercom Limited
Usher House,
Main St,
Dundrum, Dublin 14
D14 N7Y8

John Hegarty & Ors -v- Towercom Limited
High Court Record No. 2024/ 562 MCA

Dear Ms. Pollock

We refer to the above proceedings which we are advised and understand relate to works to replace an existing wooden Vodafone antenna support structure (the "**Structure**") at Eir Exchange, Wellington Road, Cork with a new steel antenna support structure. These essential replacement works are required to mitigate health and safety hazards to the surrounding property associated with the deteriorating condition of the Structure and to ensure the longevity and structural integrity of the antenna support system into the future.

Vodafone Ireland Limited ("**VIL**") confirms that it is the owner of the Structure which is used exclusively by VIL, and has been in place since 1999, to accommodate equipment that is essential to its telecommunications network in Cork.

Towercom is contractually responsible to VIL, on an exclusive basis, for the upkeep and maintenance of certain VIL-owned mast structures, including the Structure, for and on behalf of VIL. This contractual obligation extends, where appropriate, to the replacement of a structure covered by the contract. Once replaced, VIL will be the owner of the replacement structure, to which the antennae equipment will be transferred.

VIL obtained a report from a third party on the condition of the Structure in January 2024. These replacement works, which were identified as being required by that report, commenced on 6 November 2024 and were expected to be completed in or around December 2024, with minimal disruption to third parties. However, we understand as a result of an injunction granted by the High Court on 8 November 2024, no further replacement works will occur until such order is varied or discharged.

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin, D18 XN97, Ireland
T - +353 (0)1 203 7777 W - www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin, D18 XN97. Registered in Ireland No. 326967.
Directors: Amanda Nelson (CEO), Brice Evin (FR) and Liam O'Brien



We further confirm that VIL is a "statutory undertaker" for the purposes of section 2(1) and section 4(1)(g) of the Planning and Development Act 2000 (as amended) and Regulation 6 and Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001 (as amended), being a person, for the time being, authorised by or under any enactment or instrument under an enactment, namely, Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, to provide, or carry out works for the provision of telecommunications services.

Yours sincerely

Fiona Sheridan

DocuSigned by:

fiona sheridan

A51C14728D4745A...

For and on behalf of Vodafone Ireland Limited

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin, D18 XN97, Ireland

T - +353 (0)1 203 7777 W - www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin, D18 XN97. Registered in Ireland No. 326967.
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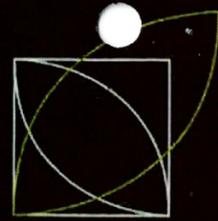
Table 1: Assessment of Article 9 Restrictions

Exception (summarised)	Assessment
(a) If the carrying out of such development would:	
(i) contravene a condition attached to a permission;	There is no known condition which would be contravened by the development.
(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road	The development will not impact any access to a public road.
(iii) endanger public safety by reason of traffic hazard or obstruction of road users;	There development will not result in a traffic hazard.
(iv) (except in specified cases) to bring forward the building, or any part of the building, beyond a line determined as the building line.	The development does not involve any works to a building.
(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Par 1 of Schedule 2 applies.	The development does not involve any works to a public road.
(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or of archaeological, geological, historical, scientific or ecological interest. the preservation, conservation or protection of which is an objective of a development plan or local area plan.	There are no protected views from or to the site. The site is located within an architectural conservation area (ACA). The development involves the replacement of an existing structure and does not interfere with the character of the area. There are no other special amenity or protection designations of the site detailed within the CDP.
(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, the preservation, conservation or protection of which is an objective of a development plan or local area plan.	The development does not comprise the excavation, alteration or demolition of any place which is protected in a development or local area plan.
(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.	The development does not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.
(viiB) comprise development which would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,	The development has no known source / pathway or route to a protected European site.
(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area	The development has no known source / pathway or route to a designated natural heritage area.
(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,	There is no indication that the structure is unauthorised. The Applicant alleges that the

Exception (summarised)	Assessment
	additional 3 metre antenna is unauthorised but their understanding is incorrect.
(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use ...where it is an objective of the planning authority to ensure that the building or other structure would in use...	The development does not involve any works to a building.
(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years	The development does not consist of any fencing or enclosure of land habitually open to the public.
(xi) obstruct any public right of way,	The development does not obstruct any public right of way.
(xii) consist of or comprise the carrying out of works to the exterior of a structure located within an architectural conservation area ... which would materially affect the character of the area.	The development does not materially affect h the character of the ACA, as it is minor in nature and is replacing an existing long-established structure.
(b) in an area to which a special amenity area order relates, if such development would be development: — ...	The site is not located within any special amenity area as designated under section 202 of the Planning and Development Act.
(c) If it is a development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directives	The development does not fall within a class to which Part 10 applies and / or can be screened out from the provisions of Part 10.
(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.	The development will not have any repercussions on major accident hazards.

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deatonlysaght.ie



Deaton Lysaght
Architects

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

15th April 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.

Introduction:

This document is a response addressing points raised in the submission prepared by Peter Thomson Planning Solutions regarding whether the proposed works constitute development and, if so, whether they are exempted development. I have prepared this submission to address three key items raised in the Section 5 submission:

1. **Protected Structure (Curtilage):** The opinion has been proffered by the applicant that the proposed mast is within the curtilage of Trinity Presbyterian Church. This is disputed.
2. **Protected Structure (Impact):** The argument that whether or not it is within the curtilage (which is disputed), the replacement would materially affect the Protected Structure's character.
3. **Architectural Conservation Area (ACA):** That the replacement antenna support structure and antennae will materially affect the character of the ACA.



The Eir Exchange site has a distinct history and function, serving as a telecommunications exchange since its construction in the latter half of the 20th century. Its use has been consistently related to telecommunications infrastructure, entirely separate from the religious, educational, and pastoral purposes of the Trinity Presbyterian Church and its associated former school buildings.

While acknowledging the proximity of the Eir Exchange site to the Protected Structure, mere adjacency does not automatically equate to inclusion within the curtilage. As highlighted in the guidelines, functional and historical connections are key determinants. The historical mapping and the subsequent independent development and use of the Eir Exchange site demonstrate a lack of the direct functional or historical relationship necessary to consider it part of the Church's curtilage.

The fact that the Eir Exchange site is currently held under a leasehold from Trinity Presbyterian Church does not, in my professional opinion as a Conservation Architect assessing historical and functional relationships, retroactively alter the historical separation and distinct usage of the land that existed at the time the Church was designated a Protected Structure. The establishment of the RPS system, as noted in the applicant's submission, occurred in 1999, after the Eir Exchange building was constructed and the function of the site was already clearly established.

Therefore, based on historical mapping, the distinct development and use of the Eir Exchange site, and the principles for determining curtilage as outlined in planning guidelines, it remains my professional opinion that the proposed mast replacement is not situated within the curtilage of the Trinity Presbyterian Church.

I acknowledge in the applicant's submission their reliance on the judgment of Humphreys J. in *North Great Georges Street Preservation Society v An Bord Pleanála* [2023] IEHC 241 regarding the interpretation of "curtilage." While this judgment provides valuable guidance, I respectfully disagree with the applicant's application of its principles to the specific circumstances of the Eir Exchange site and its relationship to the Trinity Presbyterian Church.

To address the applicant's interpretation, I will consider each of the nine points outlined by Humphreys J. in paragraph 87 et seq. of the judgment in relation to the historical layout, use, and ownership of the Eir Exchange site:

(i) Legally Relevant Time: The applicant correctly identifies the legally relevant time for determining the curtilage in the context of the RPS as the date the structure on Property A (Trinity Presbyterian Church) was first listed. While the exact date may require verification, it is likely to be around the establishment of the RPS system post-1999. My assessment considers the historical situation *prior* to and at this legally relevant time.

(ii) Common Unit: The applicant argues that the Freehold title remaining with the Church and the eventual reversion of the lease indicates a common unit. However, the crucial

aspect here is the *use, function, and layout* at the legally relevant time. As evidenced by the historical mapping (1897-1913), the Eir Exchange site was already physically distinct and, upon its development in the latter 20th century, acquired a completely separate and distinct function as a telecommunications exchange. This separation in use and function at the legally relevant time undermines the argument for a common unit.

(iii) Use, Function, or Layout: The applicant contends that the land surrounding the Eir Exchange Building retained the "open space" use of the original garden. I disagree with this characterisation. While the area may currently include parking, its primary function since the construction of the Eir Exchange has been ancillary to the telecommunications facility, providing access and operational space, a function entirely distinct from a garden serving the Church. The alteration of the ground to facilitate access from Wellington Road further supports this distinct functional change.

(iv) Enclosure: The applicant notes the historical enclosure of the entire plot. While this demonstrates a former unity of ownership, Humphreys J. explicitly states that enclosure alone is not decisive. The subsequent division and separate development of the Eir Exchange site are more pertinent to the question of a common unit at the legally relevant time.

(v) Ownership: The applicant emphasizes the continued Freehold ownership by the Church. However, Humphreys J. clearly states that a change or diversity of ownership is not *in and of itself* relevant, although diversity *may be evidence* of a lack of unity. Conversely, continued unified ownership does not automatically equate to a common unit if the use, function, and layout have diverged significantly, as is the case here with the development of a distinct telecommunications facility.

(vi) Character, Context, and Aesthetic: The applicant suggests these are relevant if they form part of use, function, and layout. My assessment of the distinct historical mapping and the separate functional development of the Eir Exchange site demonstrates a divergence in use and layout, rendering these aspects relevant to concluding a lack of a common unit.

(vii) Size: The applicant notes the size equates to the former garden. While size can be relevant to distinguishing curtilage from attendant lands, the fundamental shift in *use and function* from a garden serving the Church to land serving a telecommunications exchange is the more critical factor here.

(viii) Part and Parcel vs. Attendant Grounds: The applicant argues the lands were "part and parcel" of the Church lands. I contend that the development of the Eir Exchange as a distinct and substantial building with its own operational requirements, separate from the religious and pastoral functions of the Church, transformed the nature of this portion of land from being integral to the Church to being attendant to a separate undertaking. The telecommunications mast is further ancillary to this separate function.

(ix) Change in Use, Function, or Layout After Legally Relevant Time: The applicant argues there has been no change in the relevant lands since the RPS. I disagree. The construction of the Eir Exchange building in the late 1960s and its subsequent use for telecommunications represent a significant change in use and layout from that of a garden serving the Church. This change predates the establishment of the RPS system.

In conclusion, while acknowledging the guidance provided by Humphreys J., my professional assessment of the historical layout, distinct development, and separate functional use of the Eir Exchange site, particularly at and before the legally relevant time for RPS designation, leads me to the firm opinion that this site does **not** fall within the curtilage of the Trinity Presbyterian Church.

The applicant's interpretation, in my view, overemphasizes continued ownership and downplays the significant divergence in use, function, and physical layout that has occurred over time. Therefore, the assessment of the proposed works should proceed under Section 82 of the Act, concerning structures within an ACA, rather than Section 57 relating to Protected Structures and their curtilage.

Item 2: Regarding the Potential Impact on the Character of Trinity Presbyterian Church (Protected Structure), *Hypothetically Assuming Curtilage:*

While I maintain my professional opinion, as previously stated, that the proposed mast replacement is *not* located within the curtilage of the Trinity Presbyterian Church, I will now address the potential impact on the Protected Structure's character *solely for the sake of argument*. Even if the planning authority were to determine, contrary to my assessment, that the Eir Exchange site falls within the curtilage, it is my professional conservation opinion that the proposed replacement mast would **not materially affect the character** of the Trinity Presbyterian Church or any element contributing to its special architectural, historical, or cultural interest.

My original Conservation Report of November 2024 details the architectural character of the Wellington Road/St. Lukes ACA and provides context for the existing telecommunications infrastructure within it. The Trinity Presbyterian Church, while a significant Protected Structure, exists within an urban environment that has inevitably absorbed modern infrastructure, including the existing telecommunications mast which has been present since the 1990s, predating the Protected Structure designation.

The proposed development involves the replacement of an existing telecommunications mast with a new mast of similar height (15m) and a design that, while slightly wider, remains recognisably a piece of functional telecommunications infrastructure. As highlighted in the photomontages prepared by RME Digital Solutions and referenced in my report, the visual difference between the existing and proposed masts is minimal. Both are vertical structures

of a utilitarian nature, and neither contributes positively to the aesthetic character of the surrounding built environment.

The key consideration under Section 57 of the Planning and Development Act 2000 is whether the *works* would materially affect the *character* of the Protected Structure. In this context, the "works" involve replacing one telecommunications structure with another in a location already accommodating such infrastructure. The visual impact of the replacement, as demonstrated, is not significantly greater than the existing structure. It does not introduce a fundamentally new type of development or a structure of a dramatically different scale or form that would impinge upon the architectural integrity, historical context, or visual setting of the Trinity Presbyterian Church in a material way.

Furthermore, my report emphasizes the functional necessity of telecommunications infrastructure in a modern urban area. The replacement of a structurally unsound existing mast with a modern equivalent ensures the continuation of essential services. From a conservation perspective, ensuring the structural stability of the surrounding area, particularly in proximity to a Protected Structure, is also a relevant consideration.

In conclusion, even under the hypothetical assumption that the Eir Exchange site is within the curtilage of the Trinity Presbyterian Church (which I dispute), it is my professional conservation opinion that the proposed replacement telecommunications mast, being a similar structure replacing an existing one with minimal additional visual impact, would **not materially affect the character** of the Protected Structure or its setting to a degree that would warrant refusal of exempted development status under Section 57 of the Planning and Development Act 2000. The proposal represents an upgrade of existing, albeit unappealing, infrastructure within an urban context that already accommodates such elements.

Item 3: Regarding the Potential Impact on the Character of the Wellington Road/St. Lukes Architectural Conservation Area (ACA):

As detailed in my Conservation Report, it remains my professional opinion that the proposed replacement telecommunications mast at the Eir Exchange, Wellington Road, will **not materially affect the character** of the Wellington Road/St. Lukes Architectural Conservation Area (ACA). The proposal represents the replacement of an existing, similar structure within an urban environment that has already absorbed such infrastructure.

My assessment of the ACA, outlined in my report, highlights its varied architectural character, defined by south-facing terraced houses on a sloping topography, and the presence of modern infrastructural elements, including existing telegraph poles, electricity lines, and the current telecommunications mast. While acknowledging that the existing mast

is not an aesthetically desirable feature, it is an established part of the visual environment, having been erected in the 1990s, prior to the area's designation as an ACA.

The ACA designation occurred *despite* the presence of such infrastructure, indicating that these elements, while perhaps not contributing positively, were not deemed fundamentally incompatible with the area's overall character.

The proposed replacement mast is similar in height (15m) to the existing and, while slightly wider (as permitted within the conditions and limitations of Class 31(j) of the Planning and Development Regulations), retains the fundamental form and function of a telecommunications support structure. The proposed brown paint finish is intended to further visually align it with the existing, albeit wooden, structure.

The photomontages referenced in my report accurately illustrate the minimal visual difference between the existing and proposed masts. The replacement does not introduce a radically new form, scale, or material that would be jarring or out of context within the ACA. It is an upgrade of existing infrastructure, necessary for the continued provision of essential telecommunications services in the area.

To argue that this like-for-like replacement would *materially affect* the character of an ACA that already accommodates a similar structure, as well as other visually intrusive infrastructural elements, would, in my professional opinion, be an overstatement. The replacement addresses the structural deficiencies of the existing mast and ensures the ongoing functionality of a service that is now an integral part of modern urban life.

While the removal of all such infrastructure might be aesthetically preferable in an ideal scenario, the reality of modern urban environments necessitates their presence. The proposed replacement represents a necessary upgrade that maintains the status quo in terms of visual impact within the ACA. It does not introduce a significant new element that would fundamentally alter the area's established visual character, which, as my report demonstrates, already includes such infrastructural features.

Therefore, based on my professional assessment as a Conservation Architect, the proposed replacement telecommunications mast will not materially affect the character of the Wellington Road/St. Lukes Architectural Conservation Area and should be considered permissible as exempted development under the relevant provisions of the Planning and Development Act and Regulations.

Overall Conclusion and Request for Declaration:

Based on my professional assessment as a Grade 3 Accredited Conservation Architect, and for the reasons detailed above and in my Conservation Report dated November 2024, it is my considered opinion that the proposed 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:

- **Constitute development.** The replacement of an existing structure with a new one falls under the definition of development within the Planning and Development Act 2000 (as amended).
- **Qualify as exempted development** under the relevant provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), specifically Class 31(j) of Part 1 of Schedule 2, which permits the replacement of an existing antenna support structure subject to certain conditions and limitations that the proposed development adheres to.

Furthermore, and as detailed in my response:

- The site of the proposed development is, in my professional opinion, **not located within the curtilage** of the Trinity Presbyterian Church (Protected Structure), and therefore Section 57 of the Act does not directly apply. I have given a detailed breakdown of why I believe the applicant's reliance on the judgment of Humphreys J. in *North Great Georges Street Preservation Society v An Bord Pleanála* [2023] IEHC 241 does not prove otherwise.
- Even under the hypothetical assumption that the site were within the curtilage, the proposed replacement would **not materially affect the character** of the Trinity Presbyterian Church or any element contributing to its special interest.
- The proposed replacement **will not materially affect the character** of the Wellington Road/St. Lukes Architectural Conservation Area (ACA), as it involves the replacement of an existing, similar structure within an urban context that already accommodates such infrastructure.

Therefore, in light of the above assessment and my professional expertise in architectural conservation, I respectfully request that Cork City Council issue a **Declaration under Section 5 of the Planning and Development Act 2000 (as amended)** confirming that the proposed works are exempted development and do not require planning permission.

Yours sincerely,



Colm O'Sullivan MRIAI B.Arch, B.Sc (Arch), Dip. Arb.

Our Ref 022490.0050.GHJ/KABE/AGAR

16 April 2025

By hand and email: planning@corkcity.ie
Community, Culture & Placemaking Directorate
Cork City Council
City Hall
Anglesea Street
Cork

Re - Towercom Limited as servant or agent carrying on works on behalf of Vodafone - Section 5 Submission in response to Section 5 Declaration dated 18 March 2025 sought by Peter Thomason Planning Solutions

We are instructed on behalf of Towercom Limited ("Our client"). Our client has instructed us in relation to a referral made to the planning authority under section 5 of the Planning and Development Act 2000 ("the 2000 Act") on lands at the Eir Exchange on Wellington Road in Cork City, in connection with the replacement of a wooden telecommunications pole with a new steel pole.

As is clear from the section 5 referral, the applicants, who live in the vicinity of the works, contend that the works are development which requires planning permission.

It is our client's position that the works in question are exempted development, having regard to section 4(1)(g) of the 2000 Act and Class 31(j) in Schedule 2, Part 1 of the Planning and Development Regulations 2001 ("the 2001 Regulations").

Section 4(1)(g) provides the following category of exempted development:

"(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;"

Class 31 provides, *inter alia*, for the following category of exempted development:

"The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of-

(j) An antenna support structure in place of an existing antenna support structure."

It is our client's position that it is entitled to the exemptions in question because it is a statutory undertaker. Section 2(1) of the 2000 Act contains the following definition of "statutory undertaker":

CHAIRMAN I. McCann	PARTNERS M. Barrett E. Spain D. Cullen B. Kenny B. Conway E. Tomlinson S. Mangan P. O'Connell	C. Little J. McCarthy B. O'Callaghan S. Kellerman J. Heinegan F. Doran I. Barrin A. N. Kelly G. Brennan J. Moore	R. Green C. Waterson L. Scott D. Macgibbon M. O'Leary B. Ryan M. Talbot V. Connolly J. Phelan P. Conway	S. Torney J. O'Connor M. Ward S. Dolan P. Kinsella R. Ryan J. Fullin J. Ahern I. O'Brien L. Brennan	C. Eagar C. Treacy B. Butlerwick I. Wunav C. Brady A. Claven C. Heaney C. Healy I. Brennan L. Murdoch C. O'Keefe	M. O'Neill K. Shanahan L. Harmon I. McLabala M. Goney G. Hannon N. Martin F. Cook C. Blayney B. Galvin	T. Joyce D. O'Donovan B. Scammell R. Hayes A. O'Gorman E. O'Rourke T. Diamond C. Ruane	CONSULTANTS J. Larkin S. Kelly R. Shendon C. McLaughlin C. Manning N. Campbell N. Crowley N. Moran P. Taylor S. Walsh	S. Murray D. O'Sullivan A. Conroy
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WILLIAM FRY

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

(a) [...]

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) [...]"

We are instructed the wooden antenna support structure was originally erected by Eir as part of the Eircell mobile telephone network in or around 1999 and that Eir occupies the site at Wellington Road under lease from Trinity Presbyterian Church. Subsequently, Eir separated its Eircell mobile phone business from its main operations and sold that business to Vodafone Ireland Limited ("**Vodafone**"). As part of that transaction, title in the pole (and the equipment on the pole) passed to Vodafone and a licence agreement was put in place whereby Vodafone were granted the rights necessary to retain and operate the mobile telephone infrastructure including the wooden pole on the land leased by Eir at the site. We are instructed that this was a common mechanism used in the transaction for transfer of network related assets from Eir to Vodafone.

We are instructed that the wooden pole at the Eir Exchange on Wellington Road is owned by Vodafone and is used exclusively by Vodafone to accommodate network equipment essential to the operation of its mobile telephone network in Cork.

Vodafone is listed on the public register maintained by the Commission for Communications Regulation, ComReg, at <https://serviceregister.comreg.ie/> as a person, for the time being, authorised by or under any enactment or instrument under an enactment to provide, or carry out works for the provision of, gas, electricity or telecommunications services.

Towercom is contractually responsible to Vodafone for the maintenance of certain Vodafone-owned mast structures, one of which is the wooden pole at Wellington Road. In circumstances where it is necessary to repair or replace such a structure, Towercom is required to perform the works. In this regard, our client is an agent of Vodafone with maintenance rights to Vodafone's structures, including the wooden pole on the Eir site.

Vodafone provided a letter to our client dated 15 November 2024 confirming this position (**copy attached**). This letter makes clear that Vodafone is authorised by or under Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, to provide, or carry out works for the provision of telecommunications services. Vodafone is therefore a statutory undertaker, as defined in section 2(1) of the 2000 Act.

As appears from the Vodafone letter, the works at issue involve the carrying out of works for the provision of telecommunications services in circumstances where Towercom is contractually obliged to Vodafone to repair and maintain (including, where appropriate, to replace) the pole and is, accordingly, acting as Vodafone's servant or agent in carrying out the works.

In carrying out repairs of Vodafone's mast under contract with Vodafone, Towercom acts as Vodafone's servant or agent and is, therefore, a "*statutory undertaker*" in section 2(1) of the 2000 Act.

The position with regard to this referral is analogous to that which gave rise to the decision of An Bord Pleanála under its reference ABP-302441-18, concerning whether the erection of a telecommunications mast on Monkstown Road, Co. Dun Laoghaire Rathdown was development which was exempted development. In that case, the Board's Inspector was satisfied, *inter alia*, that because the occupants of the structure were both licensed operators in the state – namely Vodafone and eir Mobile, they were statutory undertakers and the works in question were accordingly being undertaken by a statutory undertaker. The same premise applies in the present case and, accordingly, our client is a statutory undertaker on the basis that it is carrying out the works on behalf of Vodafone.

WILLIAM FRY

In all the circumstances, our client is a statutory undertaker for the purposes of the works the subject matter of the section 5 referral and, accordingly, is entitled to avail of the exemptions in section 4(1)(g) of the 2000 Act and Class 31(j) of the 2001 Regulations.

Yours faithfully

William Fry LLP

William Fry LLP



15 November 2024

Private and confidential

By email: mpollock@towercom.ie

Towercom Limited
Usher House,
Main St,
Dundrum, Dublin 14
D14 N7Y8

John Hegarty & Ors -v- Towercom Limited
High Court Record No. 2024/ 562 MCA

Dear Ms. Pollock

We refer to the above proceedings which we are advised and understand relate to works to replace an existing wooden Vodafone antenna support structure (the "**Structure**") at Eir Exchange, Wellington Road, Cork with a new steel antenna support structure. These essential replacement works are required to mitigate health and safety hazards to the surrounding property associated with the deteriorating condition of the Structure and to ensure the longevity and structural integrity of the antenna support system into the future.

Vodafone Ireland Limited ("**VIL**") confirms that it is the owner of the Structure which is used exclusively by VIL, and has been in place since 1999, to accommodate equipment that is essential to its telecommunications network in Cork.

Towercom is contractually responsible to VIL, on an exclusive basis, for the upkeep and maintenance of certain VIL-owned mast structures, including the Structure, for and on behalf of VIL. This contractual obligation extends, where appropriate, to the replacement of a structure covered by the contract. Once replaced, VIL will be the owner of the replacement structure, to which the antennae equipment will be transferred.

VIL obtained a report from a third party on the condition of the Structure in January 2024. These replacement works, which were identified as being required by that report, commenced on 6 November 2024 and were expected to be completed in or around December 2024, with minimal disruption to third parties. However, we understand as a result of an injunction granted by the High Court on 8 November 2024, no further replacement works will occur until such order is varied or discharged.

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin, D18 XN97, Ireland
T - +353 (0)1 203 7777 W - www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin, D18 XN97. Registered in Ireland No. 326967.
Directors: Amanda Nelson (CEO), Brice Evin (FR) and Liam O'Brien



We further confirm that VIL is a “statutory undertaker” for the purposes of section 2(1) and section 4(1)(g) of the Planning and Development Act 2000 (as amended) and Regulation 6 and Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001 (as amended), being a person, for the time being, authorised by or under any enactment or instrument under an enactment, namely, Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, to provide, or carry out works for the provision of telecommunications services.

Yours sincerely

Fiona Sheridan

DocuSigned by:

fiona sheridan

A51C14728D4745A...

For and on behalf of Vodafone Ireland Limited

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin, D18 XN97, Ireland

T - +353 (0)1 203 7777 W - www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin, D18 XN97. Registered in Ireland No. 326967.
Directors: Amanda Nelson (CEO), Brice Evin (FR) and Liam O'Brien

15th April 2025



Vodafone Ireland Ltd
Mountainview
Leopardstown
Dublin 18

Confidential

Our ref: CK103

Declaration of Conformity with ICNIRP Public Exposure Guidelines ("ICNIRP Declaration")

Vodafone Ireland Radio Engineering

Declares that the replacement equipment for;

TCK5225
Wellington Road Exchange
Co. Cork

is designed to be in full compliance with the requirements of the radio frequency (RF) public exposure guidelines of the International Commission on Non-Ionizing Radiation (ICNIRP), as expressed in the EU Council recommendation of 12 July 1999 "on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)".

Yours sincerely

A handwritten signature in cursive script that reads "Michael Brolly".

Michael Brolly
Network Engineering
Vodafone Radio Networks

Vodafone Ireland Limited

T - +353 (0)1 203 7777 W - www.vodafone.ie

Vodafone Ireland Limited is a Private Company Limited by Shares, registered in Ireland with registered office at MountainView, Leopardstown, Dublin, D18 XN97. Company Reg No.: 326967. Directors: Amanda Nelson (GB), Liam O'Brien and Brice Evin (FR).

An Coimisiún Pleanála
64 Marlborough Street
Dublin 1
DO1 V902

1 July 2025

Re: ABP-322335-25 / Cork City Council Ref. R93125 - Submission on Section 5 Declaration Referral - Whether the assembly of a replacement 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 or is or is not exempted development.

Dear Sir / Madam,

I refer to the letter from An Coimisiún Pleanála (ACP) dated 4th June 2025 inviting a submission or observation in relation to the above-mentioned referral. On behalf of Towercom Limited, I wish to make a submission to the Section 5 Declaration Referral, referred to ACP by Cork City Council following the receipt of an application lodged by Peter Thomson Planning Solutions, on behalf of John Hegarty, Eugene and Sylvia Glendon and Gemma Desmond. The Section 5 question posed in that application is:

Whether the erection of a replacement antenna support structure and the attachment of antenna 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.

The Section 5 application is accompanied by a planning report prepared by Peter Thomson Planning Solutions which makes the following points:

1. The works do not fall within the provisions of section 4(1)(g) of the Planning and Development Act 2000 (as amended), because the support structure does not fall within the definition of 'other apparatus'.
2. Towercom Limited are not a 'statutory undertaker'.
3. The works fall within the curtilage of protected structure of Trinity Presbyterian Church and have a significant negative impact on the structure.
4. The works fall within an ACA and have a significant negative impact on the ACA.
5. The works would require an EIA due to the significant impact on cultural heritage.
6. The original structure is unauthorised and therefore cannot rely on Class 31 (j) in terms of its replacement.

Each of these points are considered in turn within this submission.

Further, Section 7 outlines the replacement structure's compliance with the relevant planning policy in relation to telecommunication antennae and support structures.

The Board will also note that a submission in response to the initial Section 5 application was made to Cork City Council by William Fry Solicitors on behalf of Towercom Limited, dated 16th April 2025. A copy of this submission is enclosed with this letter.

1 Provisions of Section 4 (1) (g)

The works involve the removal and replacement of telecommunications apparatus that has been in place for over 20 years, providing important signal connections to Wellington Road, Summerhill North, MacCurtain Street, Lower Glanmire Road and Saint Patrick's Quay. These works involve the removal of the existing wooden antennae structure and the replacement with a steel antennae structure, giving rise to a renewal of the infrastructure. The planning report prepared by Peter Thomson Planning Solutions has incorrectly made assumptions regarding the factual position and status of the existing antennae structure. As detailed in the letter from Vodafone to Towercom dated 15 November 2024, "*an existing wooden Vodafone antenna support structure*" which is 15 metres (12 metre pole with antenna), has been in place since 1999.

Should the telecommunications not be replaced there will be a negative impact on the services as these areas would experience a loss of indoor coverage and the continuity of coverage would be broken, resulting in drop calls for customers travelling through these areas. The Wellington Road exchange is connected to the Vodafone national fibre network, which allows Vodafone to offer high speed data services to any connected site. Currently CK055 Cork Opera house is connected onto this network via radio link on the pole. This connection allows Vodafone to offer high 5G speed data services to the central Cork City area. Without this link, 5G speeds in the city centre would be reduced, which would have a negative impact on business and residential premises in the area.

It is our contention that the provisions of 4(1)(g) were intended by the legislator to ensure that "*any works for the purpose of...*" essential services and infrastructure provided by statutory undertakers, required to support employment and residential uses, could be repaired, renewed or altered without the need for planning consent. Maintaining essential telecommunication services within the heart of Cork City is critical to supporting the economy and residential amenity.

However, should ACP consider that the provisions of 4(1)(g) are not applicable, the provisions of Class 31(j) of the Planning and Development Regulations 2001 (as amended) will apply.

2 Statutory Undertaker

The Section 5 application argues that Towercom Limited are not a statutory undertaker, as they are working under contract to Vodafone.

We would refer ACP to its own precedent on this question, in ABP-302441-18, Telecommunications Mast on Monkstown Road, Co. Dun Laoghaire Rathdown.

In relation to the argument that Cignal did constitute a statutory undertaker, the Inspector noted that telecommunication rights are controlled by the compliance regulator ComReg, which issues general authorisation to carry out works for the provision of telecommunications under license. Cignal Infrastructure Ltd were authorised to provide Electronic Communication Networks and Services for the establishment of over ground electronic communications infrastructure and any associated physical infrastructure in 2016. The Inspector also noted that the occupants of the structure are both licensed

and operators in the state – namely Vodafone and Eir Mobile. The Inspector was satisfied, having regard to the information submitted that both Cignal Infrastructure Ltd and the occupants came with the classification of ‘statutory undertaker’.

Vodafone Ireland Limited (VIL) is a statutory undertaker. The proposed works are being undertaken by Towercom who are contractually responsible to VIL. An Bord Pleanála precedent establishes that the exempted development provisions extend to the contractor undertaking the works on behalf of a statutory undertaker. To suggest otherwise would have wide ranging implications. For example, Uisce Éireann, Electricity Supply Board, and Gas Networks Ireland are all statutory undertakers, but frequently contract out works, including exempted development works. To exclude contractors from the exempted development provisions would unduly burden the planning system with no obvious benefit to any third party. On Towercom’s status as a statutory undertaker, see also the letter from William Fry LLP, Towercom’s solicitors, which accompanies this submission, as well as the letter from VIL to Towercom dated 15 November 2024.

3 Protected Structure

The Section 5 application argues that the works would have a significant negative impact on the protected structure of Trinity Presbyterian Church.

In planning terms, it is important to recognise that the level of impact to be assessed is the development to be undertaken and not the principle of a new telecommunications pole in the location which has been established for well over 20 years. The works to be assessed in terms of impact consist of:

- The minor relocation of the existing pole approximately 3.2m north-east of the existing pole, at a ground level of 0.6m higher than the existing pole.
- The change in the dimension of the pole from its existing dimension of 320mm at its widest point, to 508mm from the base to the top.
- The reduction from 6 antenna and dishes to 5 antenna and dishes.

In response, please find attached a report by Deaton Lysaght Architects, which in summary notes:

- The site of the proposed development is, in their professional opinion, not located within the curtilage of the Trinity Presbyterian Church (Protected Structure), and therefore Section 57 of the Act does not directly apply.
- Even under the hypothetical assumption that the site was within the curtilage, the proposed replacement would not materially affect the character of the Trinity Presbyterian Church or any element contributing to its special interest.

4 Impact on ACA

The Section 5 application argues that the works would have a significant negative impact on the Wellington Road / St Lukes Architectural Conservation Area.

For context we note that the site is located in a highly urbanised environment within Cork City. Utility structures, such as telegraph poles, wires, lighting and telecommunication structures are an everyday part of the City and the immediate area and are essential to support employment and residential uses and for the continued economic development of the City. The Cork City Development Plan 2022 (CDP) recognises the importance of efficient telecommunications, noting in paragraph 9.26 that an efficient telecommunications system is important in the development of the economy.

While the CDP seeks to protect and enhance Architectural Conservation Areas (ACA), there is no restriction within the development plan to the provision of utility infrastructure, or indeed a restriction on the repair or replacement of existing equipment.

Objective 8.23 of the CDP restricts development that would impact negatively upon features within the public realm, such as stone setts, cobbles or other historic paving, railings, street furniture, stone kerbing etc. However, the works in this case are outside the public realm, within the boundary of the long-established EIR exchange site, and have no impact on any historic street furniture or paving etc.

The designation of an ACA is not intended to sterilise particular parts of the City from economic growth or access to utility and telecommunication services expected in a modern city centre.

In response to the applicants' contention, please find attached a report by Deaton Lysaght Architects, which in summary notes that the replacement will not materially affect the character of the Wellington Road / St. Lukes Architectural Conservation Area, as it involves the replacement of an existing, similar structure within an urban context that already accommodates such infrastructure. The limitation provisions of exempted development detailed by section 82 (1) therefore do not apply.

5 Requirement for an EIA

The Section 5 application argues that, as a result of the publication of the 'Interpretation of definitions of project categories of Annex I and II of the EIA Directive' guidance in October 2024, the works require EIA due to significant effects on cultural heritage and the landscape. The applicants refer to page 59 of the guidance, 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 communications deployment, could also be included in this category.

The reference to telecommunications / wireless communications is subject to a footnote (81), which states that:

Commission Recommendations (EU) 2020/1307 of 18 September 2020 on a common Union toolbox for reducing the cost of deploying very high-capacity networks and ensuring timely and investment-friendly access to 5G radiot spectrum, to foster connectivity in support of economic recovery from the COVID-19 crisis in the Union points out to the application of the EIA Directive to this type of infrastructure.

There are important points to make in respect of the applicants' arguments that EIA is applicable to the work:

- i. The proposed works and development (as outlined and described above) is not an Annex I or Annex II Project within the meaning of the EIA Directive.
- ii. Guidance issued by the European Commission is not legally binding on Ireland or any other member state. Indeed, recently in *Ryan v. An Bord Pleanála* [2025] IEHC 111, when commenting on the 2024 guidance, Mr. Justice David Holland stated that "[s]uch guidance is not binding or even formally authoritative and this guidance appears to be more descriptive than prescriptive of Member States' approaches" [§173 of the judgment). The Guidelines and relevant provisions need to be considered as a coherent whole and reference to the wording telecommunications alone does not bring all works to masts (and renewal/repair works) within the meaning of the EIA Directive.

- iii. The guidance refers to a Commission Recommendation, and not to any judgement of the Court of Justice. The Commission Recommendation was drafted in respect of ensuring the timely and cost-effective deployment of telecoms infrastructure, which it identified as essential for people and businesses in the Union.
- iv. The guidance has not been transposed into any Irish legislation and cannot be considered to be legally definitive in terms of requirement for telecommunications to be subject to an EIA.
- v. Even if (which is disputed) telecommunications development was to be subject to EIA requirements, the works in question would be subject to a screening process. At a high level we contend that the works would be screened out of EIA requirements, as the magnitude of the impact is not significant and as detailed in the report by Deaton Lysaght Architects the proposed works will not materially affect the character of the Wellington Road / St. Lukes Architectural Conservation Area. The benefit of an exemption in section 4(1) of the Act or in the Regulations is only lost where an environmental impact assessment is required, not where an EIA screening is required: section 4(4) of the Act.

6 Unauthorised Works

The Section 5 application argues that the original structure is unauthorised and therefore it is not possible to rely on Class 31(j) due to the provisions of Article 9 (viii) which do not permit renewal of an unauthorised structure. This contention is incorrect.

For a point of clarity, the title of the Towercom 'Non-compliance' Report refers to a technical or engineering non-compliance and, in this instance, refers to the fact that the existing pole is structurally unsound. This report is incorrectly referred to in the planning report on behalf of Peter Thomson Planning Solutions as the "Vodafone "Non-compliance" Report". It has no bearing on and is not intended to relate to the planning authorisation or planning status of the structure.

The original structure was constructed around 1999, at which time the provisions of SI no 86/1994 – Local Government (Planning and Development) Regulations 1994 were in force. Class 29, of Exempted Development – General (Part 1) provided an exemption for:

The carrying out, by Bord Telecom Éireann — The Irish Telecommunications Board, or by any person to whom a licence under section 111 of the Postal and Telecommunications Services Act, 1983 has been granted, of development consisting of the provision of—

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<i>(f) antenna support structures</i>	<i>The height of any such structure shall not – (a) If constructed or erected on the ground exceed 15 metres.</i>

The existing structure is therefore authorised.

As set out above, the works involve the removal of the existing structure and replacement with a new steel pole and antennae, to renew essential infrastructure. We submit that the provisions of section 4(1)(g) are applicable because the works are for the renewal of existing telecommunications apparatus, as the pole, although not under immediate danger of failure, is at a higher risk of failure. However, should ACP consider that the provisions of 4(1)(g) are not applicable, the provisions of Class 31(j) of the Planning and Development Regulations 2001 (as amended) will apply, because:

- The antenna support structure is in place of an existing antenna support structure.

None of the conditions or limitations on the exempted development are applicable. In summary:

- (1) The replaced structure shall be removed no later than 4 weeks following its decommissioning.
- (2) The replacement structure is located approximately 3.2m to the north-east of the existing structure. This is well within the limit of 20m provided in the regulations.
- (3.a.) The height of the replacement structure at 15m does not exceed the height of the replaced structure.
- (3.b.ii) The original structure is less than 2m in width. Therefore, the replacement structure may not be more than twice the width of the replaced structure (all measurements to be taken at the widest point). The existing pole is 320mm, therefore the maximum replacement width permitted under exempted development provisions would be 640mm. The replacement pole is 508mm wide, well within the exempted development provisions.
- (4) The antenna to be attached to the replacement structure does not exceed the number of antennae on the replaced structure.
- (5) The conditions and limitations provided in subsection (5) are not applicable, as no additional antenna are proposed.
- (6) The replacement of the antenna support structure, together with replaced antenna do not result in the field strength of the non-ionising radiation emissions from the radio installations on site exceeding the limits specified by the Communications Regulations, (see accompanying letter of ICNIRP compliance from Vodafone Ireland Ltd).

None of Article 9 Restrictions are applicable to the proposed development, as summarised in table 1, attached to this submission.

7 Compliance with Planning Policy

Notwithstanding the above sections which demonstrate that the replacement structure and associated telecommunication infrastructure is exempted development, Policy 11.253 of current CDP 2022 outlines the relevant best practice criteria that new telecom antennae and support structures would be assessed against:

1. Telecommunications Antennae and Support Structures, Guidelines for Planning Authorities, DECLG, 1996 and Circular Letter PI 07/12 published by the DECLG in 2012.
2. The co-location of existing structures is encouraged and the construction of any new antennae or structure will only be considered when co-location is not a feasible option. Any proposal for a new structure or antennae should detail the requirements for the infrastructure and if so, why co-location is not feasible.
3. In identifying a suitable location for telecommunications structures consideration shall be given to the potential visual impact of the development and any sensitivities in the area in which the structure is proposed to be located. A Visual Impact Assessment of the development, including photomontages, may be required, depending on the nature of the development proposed.

4. Telecommunications Structures on visually sensitive elevated lands will only be considered where technical or coverage requirements mean the infrastructure is essential.

Points 2-4 above are based generally on the content of the guidance document and associated circular in point 1. These documents set out the basic parameters that should be considered when locating telecommunications antennae and support structures, where it is generally accepted that:

- The design and location of such structures will be dictated by radio and engineering parameters.
- Co-location, in the guidelines, means the use / addition to existing telecom support structures, but where co-location is not a feasible option, the guidelines also state that applicants are *"encouraged to share a site or to site adjacently so that masts and antennae may be clustered."* In urban settings, sites already developed for utilities should be considered.
- Planning Authorities should indicate in their development plans any locations where telecommunications infrastructure would not be favoured or where special conditions would apply – suggested locations might include lands whose high amenity value is already recognised, protected structures, architectural conservation areas etc.
- Visual impact and impacts on designated structures / sites under planning and other legislation are an important consideration but in the majority of cases there is limited flexibility as regards location, given the constraints arising from radio planning parameters. Design and scale of the structure is the primary mitigatory principle where support structures should be kept to the minimum height for effective operation and should be monopole in design as opposed to tripod / square structures.

The new, replacement antennae structure is in complete accordance with the relevant planning policy and best practice guidance relating to such infrastructure at national and local level, summarised as follows:

- The removal of the existing wooden antennae structure and the replacement with a steel antennae structure, will give rise to a renewal of the infrastructure in the optimal location to adequately service the surrounding area.
- Co-location (i.e. utilisation of the existing structure) is not possible given the structural deficiency of the existing support structure to be replaced and the location of the new antennae structure within the same site is in accordance with best practice principles.
- The subject site or surrounding area has not been indicated as being inappropriate for this type of infrastructure within the current CDP 2022.
- Notwithstanding surrounding sensitivities, all efforts have been made to reduce the visual impact of the structure, which is required at this location for engineering reasons. A monopole design has been adopted, similar to the structure to be replaced, and the size of the structure is designed to meet minimum operational requirements. There is an absence of protected views of the site and as previously confirmed, there no impact on the ACA or setting of the adjacent protected structure.

Summary

Thank you for consideration of this submission on behalf of Towercom Limited. In summary we ask that the Board consider the section 5 Declaration application in the following context:

- That the existing structure is an authorised telecommunications structure, which has been in place for well over 20 years, set within an urban environment, providing essential

telecommunication services for the area and 5G speed data service to the central Cork City area. The provision of such services is consistent with the Cork City Development Plan 2022 which recognises the importance of efficient telecommunications to the economy.

- Towercom Limited are acting under contract on behalf of Vodafone Ireland Limited, who are statutory undertakers. The exempted development provisions applicable to statutory undertakers extend to contractors working on their behalf.
- That the assessment of the impact of the development on the Cultural Heritage issues must be based on the replacement works, and not the principle of a new structure in the location. The replacement works are minor and do not have a significant impact on either the protected structure of Trinity Presbyterian Church, or Wellington Road / St Lukes ACA. Therefore, the restrictions / limitations to exempted development in section 57 and section 82(1) of the Planning and Development Act 2000 (as amended), or Article 9 of the Planning and Development Regulations 2001 (as amended), do not apply.
- That there is no requirement in Irish legislation for the proposed works to be subject to EIA. Even if this were hypothetically the case (which is disputed), the works would be screened out from EIA at a high level due to their minor nature.
- That the provisions of section 4(1)(g) are applicable, as the works are for the removal and replacement of structurally unsound telecommunications apparatus, resulting in the renewal of the infrastructure.
- Should the Board consider that section 4(1)(g) is not applicable, the works fall within the exempted development provisions of Schedule 2, Part 1, Class 31 (j) of the Planning and Development Regulations 2001 (as amended). None of the conditions or limitations of this exempted development class are applicable and none of Article 9 restrictions are applicable.
- The new, replacement, antennae structure is in complete accordance with the relevant planning policy and guidance at national and local level.

In support of this submission, please find attached a separate report in letter form by Deaton Lysaght Architects addressing the impact of the proposed work on Cultural Heritage, separate letter by William Fry solicitors addressing the Statutory Undertaker point, letter from VIL to Towercom dated 15th November 2024, and letter of ICNIRP compliance from VIL.

Yours sincerely,



Orla O'Sullivan
McCutcheon Halley

Encls.

- Copy of the Submission on the initial Section 5 Application by William Fry Solicitors (on behalf of Towercom Limited) to Cork City Council
- Table 1: Assessment of Article 9 Restrictions.

- Letter by Deaton Lysaght Architects on Cultural Heritage Impact.
- Letter from William Fry Solicitors on Statutory Undertaker definition.
- Letter from VIL to Towercom, dated 15 November 2024
- Letter of ICNIRP compliance from Vodafone Ireland Ltd



Our Ref 022490.0050.GHJ/KABE/AGAR

16 April 2025

By Hand and By Email: planning@corkcity.ie

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

Re – Eir Exchange Site, Wellington Road, Cork City, T23 E302 (the "Site")

Dear Colleagues

We act on behalf of Towercom Limited. We refer to the Site and the Section 5 Application (the "**Application**") dated 18 March 2025 submitted by Peter Thomson as agent for Eugene and Sylvia Glendon, John Hegarty, and Gemma Desmond (the "**Applicants**"). This Application was made against the backdrop of High Court proceedings (the "**Proceedings**") between our client and the Applicants which have been adjourned generally, with the consent of the parties, to facilitate the Application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) ("**the Section 5 Referral**"). A copy of the Application was furnished to us by the Solicitors for the Applicants on 18 March 2025. Copies of the pleadings in the Proceedings were provided to the City Council in the Application.

While our client has not yet been invited to submit information in relation to the Section 5 Referral given the serious and comprehensive issues raised in the Application, any steps to make a decision (within 4 weeks) without hearing from our client, as the relevant respondent in respect of allegations the subject matter of the Section 5 Referral as well as the Respondent in the Proceedings, would be highly prejudicial and contrary to fair procedures. We understand that no third party has yet been invited to provide input/information as part of the Section 5 Referral.

We also refer to a letter from our client to the Enforcement Section of the Planning Department dated 6 March 2025, written in response to a Warning Letter from the City Council to Eircom Limited dated 3 December 2024. In this letter, our client indicated that it expected a Section 5 application to be submitted imminently and asked that that the City Council request our input in the process.

Please see enclosed our client's submission in relation to the Application. We would urgently request the City Council to consider this submission when making the decision relating to the Application. Our client is agreeable to providing any further information that may be required.

CHAIRMAN L. McCabe	PARTNERS M. Garrett E. Scahill D. O'Leary	CLIENTS L. McCarthy B. O'Callaghan S. K. Bheri	ADVISORS C. Waterson I. O'Shea D. Maguire M. Quailly	SOLICITORS J. O'Donnell M. Ward S. Dukmanovic R. Kissella	OTHER C. Healey B. Bubnick I. Murray G. J. J. J.	CLIENTS R. Shanahan I. Harrison L. McNamee M. Conroy J. J. J. J.	CLIENTS D. O'Sullivan N. O'Sullivan H. Hayes A. O'Sullivan E. O'Sullivan T. O'Sullivan C. O'Sullivan	CLIENTS S. Kelly R. O'Sullivan C. O'Sullivan C. O'Sullivan A. O'Sullivan N. O'Sullivan L. O'Sullivan E. O'Sullivan F. O'Sullivan G. O'Sullivan	CLIENTS O. O'Sullivan A. O'Sullivan N. O'Sullivan L. O'Sullivan E. O'Sullivan F. O'Sullivan G. O'Sullivan
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WILLIAM FRY

Should you have any queries in relation to the above, please contact Aoife Garvey of this office at aoife.garvey@williamfry.com or 01 489 6616, or Gerard James at gerard.james@williamfry.com or 01 489 6460.

Yours faithfully

William Fry LLP

William Fry LLP

Our Ref 022490.0050.GHJ/KABE/AGAR

16 April 2025

By hand and email: planning@corkcity.ie
Community, Culture & Placemaking Directorate
Cork City Council
City Hall
Anglesea Street
Cork

Re - Towercom Limited as servant or agent carrying on works on behalf of Vodafone - Section 5 Submission in response to Section 5 Declaration dated 18 March 2025 sought by Peter Thomason Planning Solutions

We are instructed on behalf of Towercom Limited ("Our client"). Our client has instructed us in relation to a referral made to the planning authority under section 5 of the Planning and Development Act 2000 ("the 2000 Act") on lands at the Eir Exchange on Wellington Road in Cork City, in connection with the replacement of a wooden telecommunications pole with a new steel pole.

As is clear from the section 5 referral, the applicants, who live in the vicinity of the works, contend that the works are development which requires planning permission.

It is our client's position that the works in question are exempted development, having regard to section 4(1)(g) of the 2000 Act and Class 31(j) in Schedule 2, Part 1 of the Planning and Development Regulations 2001 ("the 2001 Regulations").

Section 4(1)(g) provides the following category of exempted development:

"(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;"

Class 31 provides, *inter alia*, for the following category of exempted development:

"The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of-

...

(j) An antenna support structure in place of an existing antenna support structure."

It is our client's position that it is entitled to the exemptions in question because it is a statutory undertaker. Section 2(1) of the 2000 Act contains the following definition of "statutory undertaker":

CHAIRMAN I. MacLellan	PARTNERS M. Garrett E. Spill D. Cullen B. Kenny E. Cullen F. Davison S. Marston H. Barry P. Callaghan	C. Little J. McCarthy D. O'Callaghan S. Kelleher J. Heinegan F. Dougan I. Runan A. McElroy G. Brennan L. Moore	R. Green C. Whitherson L. Scott D. Moughan M. O'Reilly B. Ryan M. Talbot V. Coyne J. Heffernan P. Conway	S. Torney I. O'Connell M. Ward S. Dolan P. Kinsella R. Ryan J. Flynn J. Alcorn L. Brennan	C. Edger C. Tacey B. Buttensick I. Vane C. B. O'Leary N. Clayton C. Hartigan L. Egan L. Mardock C. O'Sullivan	M. O'Neill R. Sheehan L. Hamison I. Mulholland M. Conner D. L. James M. Nardi C. O'Leary D. B. O'Leary B. Galvin	M. Joyce D. O'Donovan E. Scannell R. Hayes A. O'Gorman E. O'Brien T. Durrant C. Reardon	CONSULTANTS J. Larkin S. Kelly R. Shendon C. Rajan C. Manning N. Campbell N. Crossley N. Dwan P. Taylor S. Walsh	S. Murray O. O'Sullivan A. Cession
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Not a member of the Law Society of Ireland

WILLIAM FRY

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

(a) [...]

(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or

(c) [...].”

We are instructed the wooden antenna support structure was originally erected by Eir as part of the Eircell mobile telephone network in or around 1999 and that Eir occupies the site at Wellington Road under lease from Trinity Presbyterian Church. Subsequently, Eir separated its Eircell mobile phone business from its main operations and sold that business to Vodafone Ireland Limited (“Vodafone”). As part of that transaction, title in the pole (and the equipment on the pole) passed to Vodafone and a licence agreement was put in place whereby Vodafone were granted the rights necessary to retain and operate the mobile telephone infrastructure including the wooden pole on the land leased by Eir at the site. We are instructed that this was a common mechanism used in the transaction for transfer of network related assets from Eir to Vodafone.

We are instructed that the wooden pole at the Eir Exchange on Wellington Road is owned by Vodafone and is used exclusively by Vodafone to accommodate network equipment essential to the operation of its mobile telephone network in Cork.

Vodafone is listed on the public register maintained by the Commission for Communications Regulation, ComReg, at <https://serviceregister.comreg.ie/> as a person, for the time being, authorised by or under any enactment or instrument under an enactment to provide, or carry out works for the provision of, gas, electricity or telecommunications services.

Towercom is contractually responsible to Vodafone for the maintenance of certain Vodafone-owned mast structures, one of which is the wooden pole at Wellington Road. In circumstances where it is necessary to repair or replace such a structure, Towercom is required to perform the works. In this regard, our client is an agent of Vodafone with maintenance rights to Vodafone’s structures, including the wooden pole on the Eir site.

Vodafone provided a letter to our client dated 15 November 2024 confirming this position (**copy attached**). This letter makes clear that Vodafone is authorised by or under Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, to provide, or carry out works for the provision of telecommunications services. Vodafone is therefore a statutory undertaker, as defined in section 2(1) of the 2000 Act.

As appears from the Vodafone letter, the works at issue involve the carrying out of works for the provision of telecommunications services in circumstances where Towercom is contractually obliged to Vodafone to repair and maintain (including, where appropriate, to replace) the pole and is, accordingly, acting as Vodafone’s servant or agent in carrying out the works.

In carrying out repairs of Vodafone’s mast under contract with Vodafone, Towercom acts as Vodafone’s servant or agent and is, therefore, a “statutory undertaker” in section 2(1) of the 2000 Act.

The position with regard to this referral is analogous to that which gave rise to the decision of An Bord Pleanála under its reference ABP-302441-18, concerning whether the erection of a telecommunications mast on Monkstown Road, Co. Dun Laoghaire Rathdown was development which was exempted development. In that case, the Board’s Inspector was satisfied, *inter alia*, that because the occupants of the structure were both licensed operators in the state – namely Vodafone and eir Mobile, they were statutory undertakers and the works in question were accordingly being undertaken by a statutory undertaker. The same premise applies in the present case and, accordingly, our client is a statutory undertaker on the basis that it is carrying out the works on behalf of Vodafone.

WILLIAM FRY

In all the circumstances, our client is a statutory undertaker for the purposes of the works the subject matter of the section 5 referral and, accordingly, is entitled to avail of the exemptions in section 4(1)(g) of the 2000 Act and Class 31(j) of the 2001 Regulations.

Yours faithfully

William Fry LLP

William Fry LLP

15th April 2025



Vodafone Ireland Ltd
Mountainview
Leopardstown
Dublin 18

Confidential

Our ref: CK103

Declaration of Conformity with ICNIRP Public Exposure Guidelines ("ICNIRP Declaration")

Vodafone Ireland Radio Engineering

Declares that the replacement equipment for;

TCK5225
Wellington Road Exchange
Co. Cork

is designed to be in full compliance with the requirements of the radio frequency (RF) public exposure guidelines of the International Commission on Non-Ionizing Radiation (ICNIRP), as expressed in the EU Council recommendation of 12 July 1999 "on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)".

Yours sincerely

A handwritten signature in black ink that reads "Michael Brolly".

Michael Brolly
Network Engineering
Vodafone Radio Networks

Vodafone Ireland Limited

T - +353 (0)1 203 7777 W - www.vodafone.ie

Vodafone Ireland Limited is a Private Company Limited by Shares, registered in Ireland with registered office at MountainView, Leopardstown, Dublin. D18 XN97. Company Reg No.: 326967. Directors: Amanda Nelson (GB), Liam O'Brien and Brice Evin (FR).



15 November 2024

Private and confidential

By email: mpollock@towercom.ie

Towercom Limited
Usher House,
Main St,
Dundrum, Dublin 14
D14 N7Y8

John Hegarty & Ors -v- Towercom Limited
High Court Record No. 2024/ 562 MCA

Dear Ms. Pollock

We refer to the above proceedings which we are advised and understand relate to works to replace an existing wooden Vodafone antenna support structure (the "**Structure**") at Eir Exchange, Wellington Road, Cork with a new steel antenna support structure. These essential replacement works are required to mitigate health and safety hazards to the surrounding property associated with the deteriorating condition of the Structure and to ensure the longevity and structural integrity of the antenna support system into the future.

Vodafone Ireland Limited ("**VIL**") confirms that it is the owner of the Structure which is used exclusively by VIL, and has been in place since 1999, to accommodate equipment that is essential to its telecommunications network in Cork.

Towercom is contractually responsible to VIL, on an exclusive basis, for the upkeep and maintenance of certain VIL-owned mast structures, including the Structure, for and on behalf of VIL. This contractual obligation extends, where appropriate, to the replacement of a structure covered by the contract. Once replaced, VIL will be the owner of the replacement structure, to which the antennae equipment will be transferred.

VIL obtained a report from a third party on the condition of the Structure in January 2024. These replacement works, which were identified as being required by that report, commenced on 6 November 2024 and were expected to be completed in or around December 2024, with minimal disruption to third parties. However, we understand as a result of an injunction granted by the High Court on 8 November 2024, no further replacement works will occur until such order is varied or discharged.

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin, D18 XN97, Ireland
T - +353 (0)1 203 7777 W - www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin, D18 XN97. Registered in Ireland No. 326967.
Directors: Amanda Nelson (CEO), Brice Evin (FR) and Liam O'Brien



We further confirm that VIL is a "statutory undertaker" for the purposes of section 2(1) and section 4(1)(g) of the Planning and Development Act 2000 (as amended) and Regulation 6 and Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001 (as amended), being a person, for the time being, authorised by or under any enactment or instrument under an enactment, namely, Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, to provide, or carry out works for the provision of telecommunications services.

Yours sincerely

Fiona Sheridan

DocuSigned by:

fiona sheridan

A51C14728D4745A...

For and on behalf of Vodafone Ireland Limited

Vodafone Ireland Limited

MountainView, Leopardstown, Dublin, D18 XN97, Ireland

T - +353 (0)1 203 7777 W - www.vodafone.ie

Registered Office: MountainView, Leopardstown, Dublin, D18 XN97. Registered in Ireland No. 326967.
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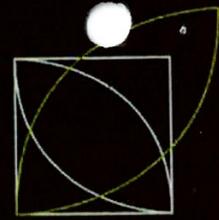
Table 1: Assessment of Article 9 Restrictions

Exception (summarised)	Assessment
(a) If the carrying out of such development would:	
(i) contravene a condition attached to a permission;	There is no known condition which would be contravened by the development.
(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road	The development will not impact any access to a public road.
(iii) endanger public safety by reason of traffic hazard or obstruction of road users;	There development will not result in a traffic hazard.
(iv) (except in specified cases) to bring forward the building, or any part of the building, beyond a line determined as the building line.	The development does not involve any works to a building.
(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Par 1 of Schedule 2 applies.	The development does not involve any works to a public road.
(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or of archaeological, geological, historical, scientific or ecological interest. the preservation, conservation or protection of which is an objective of a development plan or local area plan.	There are no protected views from or to the site. The site is located within an architectural conservation area (ACA). The development involves the replacement of an existing structure and does not interfere with the character of the area. There are no other special amenity or protection designations of the site detailed within the CDP.
(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, the preservation, conservation or protection of which is an objective of a development plan or local area plan.	The development does not comprise the excavation, alteration or demolition of any place which is protected in a development or local area plan.
(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.	The development does not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.
(viiB) comprise development which would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,	The development has no known source / pathway or route to a protected European site.
(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area	The development has no known source / pathway or route to a designated natural heritage area.
(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,	There is no indication that the structure is unauthorised. The Applicant alleges that the

Exception (summarised)	Assessment
	additional 3 metre antenna is unauthorised but their understanding is incorrect.
(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use ...where it is an objective of the planning authority to ensure that the building or other structure would in use...	The development does not involve any works to a building.
(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years	The development does not consist of any fencing or enclosure of land habitually open to the public.
(xi) obstruct any public right of way,	The development does not obstruct any public right of way.
(xii) consist of or comprise the carrying out of works to the exterior of a structure located within an architectural conservation area ... which would materially affect the character of the area.	The development does not materially affect h the character of the ACA, as it is minor in nature and is replacing an existing long-established structure.
(b) in an area to which a special amenity area order relates, if such development would be development: — ...	The site is not located within any special amenity area as designated under section 202 of the Planning and Development Act.
(c) If it is a development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directives	The development does not fall within a class to which Part 10 applies and / or can be screened out from the provisions of Part 10.
(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.	The development will not have any repercussions on major accident hazards.

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Deaton Lysaght
Architects

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

15th April 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.

Introduction:

This document is a response addressing points raised in the submission prepared by Peter Thomson Planning Solutions regarding whether the proposed works constitute development and, if so, whether they are exempted development. I have prepared this submission to address three key items raised in the Section 5 submission:

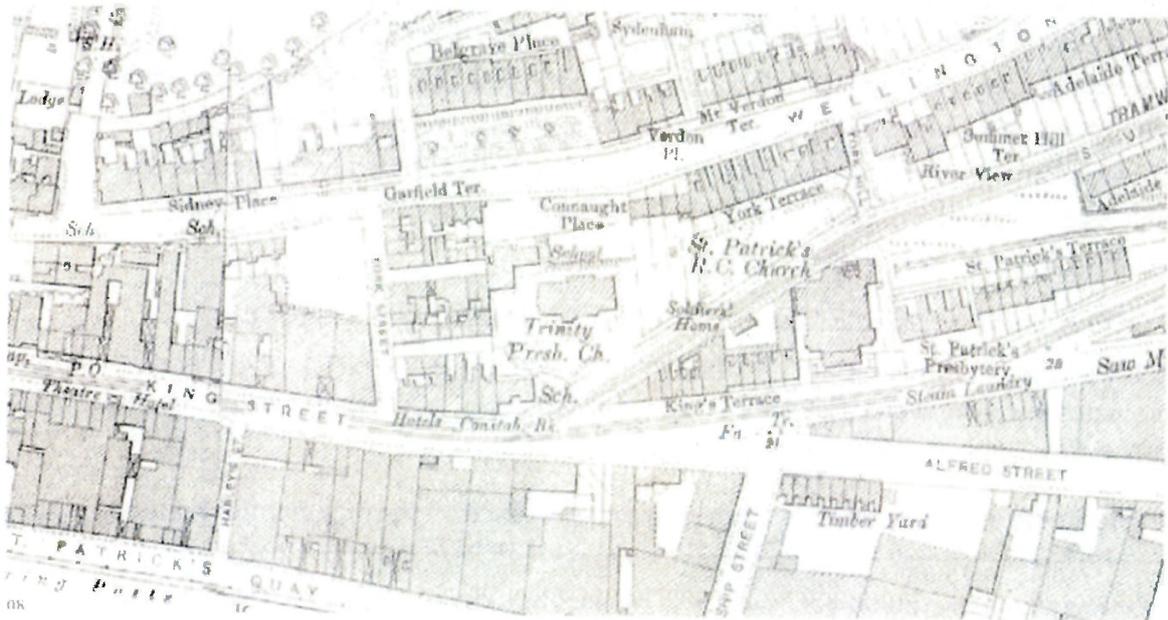
- 1. Protected Structure (Curtilage):** The opinion has been proffered by the applicant that the proposed mast is within the curtilage of Trinity Presbyterian Church. This is disputed.
- 2. Protected Structure (Impact):** The argument that whether or not it is within the curtilage (which is disputed), the replacement would materially affect the Protected Structure's character.
- 3. Architectural Conservation Area (ACA):** That the replacement antenna support structure and antennae will materially affect the character of the ACA.



Item 1: Regarding the Assertion that the Proposed Mast is Within the Curtilage of Trinity Presbyterian Church (Protected Structure):

I must reaffirm my professional opinion, as detailed in my Conservation Report dated November 2024, that the site of the proposed telecommunications mast replacement at the Eir Exchange, Wellington Road, is **not** located within the curtilage of the Trinity Presbyterian Church (Protected Structure, Ref: No. PS425). This conclusion is based on a careful assessment of the historical context and the established planning principles for determining curtilage.

My analysis, as presented in the aforementioned report, gives significant weight to objective historical evidence, specifically the Ordnance Survey mapping from the period of 1897-1913 (below).



This historical mapping clearly delineates a distinct property boundary between the lands associated with Trinity Presbyterian Church and the site upon which the Eir Exchange was subsequently constructed. This separation predates the construction of the existing telecommunications mast and the later designation of the Church as a Protected Structure (circa 2003).

Furthermore, my assessment aligns with the principles outlined in the Architectural Heritage Protection Guidelines for Planning Authorities (DAHG, 2001), which, while acknowledging the lack of a statutory definition, describe curtilage as "the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure."

The Eir Exchange site has a distinct history and function, serving as a telecommunications exchange since its construction in the latter half of the 20th century. Its use has been consistently related to telecommunications infrastructure, entirely separate from the religious, educational, and pastoral purposes of the Trinity Presbyterian Church and its associated former school buildings.

While acknowledging the proximity of the Eir Exchange site to the Protected Structure, mere adjacency does not automatically equate to inclusion within the curtilage. As highlighted in the guidelines, functional and historical connections are key determinants. The historical mapping and the subsequent independent development and use of the Eir Exchange site demonstrate a lack of the direct functional or historical relationship necessary to consider it part of the Church's curtilage.

The fact that the Eir Exchange site is currently held under a leasehold from Trinity Presbyterian Church does not, in my professional opinion as a Conservation Architect assessing historical and functional relationships, retroactively alter the historical separation and distinct usage of the land that existed at the time the Church was designated a Protected Structure. The establishment of the RPS system, as noted in the applicant's submission, occurred in 1999, after the Eir Exchange building was constructed and the function of the site was already clearly established.

Therefore, based on historical mapping, the distinct development and use of the Eir Exchange site, and the principles for determining curtilage as outlined in planning guidelines, it remains my professional opinion that the proposed mast replacement is not situated within the curtilage of the Trinity Presbyterian Church.

I acknowledge in the applicant's submission their reliance on the judgment of Humphreys J. in *North Great Georges Street Preservation Society v An Bord Pleanála* [2023] IEHC 241 regarding the interpretation of "curtilage." While this judgment provides valuable guidance, I respectfully disagree with the applicant's application of its principles to the specific circumstances of the Eir Exchange site and its relationship to the Trinity Presbyterian Church.

To address the applicant's interpretation, I will consider each of the nine points outlined by Humphreys J. in paragraph 87 et seq. of the judgment in relation to the historical layout, use, and ownership of the Eir Exchange site:

(i) Legally Relevant Time: The applicant correctly identifies the legally relevant time for determining the curtilage in the context of the RPS as the date the structure on Property A (Trinity Presbyterian Church) was first listed. While the exact date may require verification, it is likely to be around the establishment of the RPS system post-1999. My assessment considers the historical situation *prior* to and at this legally relevant time.

(ii) Common Unit: The applicant argues that the Freehold title remaining with the Church and the eventual reversion of the lease indicates a common unit. However, the crucial

aspect here is the *use, function, and layout* at the legally relevant time. As evidenced by the historical mapping (1897-1913), the Eir Exchange site was already physically distinct and, upon its development in the latter 20th century, acquired a completely separate and distinct function as a telecommunications exchange. This separation in use and function at the legally relevant time undermines the argument for a common unit.

(iii) Use, Function, or Layout: The applicant contends that the land surrounding the Eir Exchange Building retained the "open space" use of the original garden. I disagree with this characterisation. While the area may currently include parking, its primary function since the construction of the Eir Exchange has been ancillary to the telecommunications facility, providing access and operational space, a function entirely distinct from a garden serving the Church. The alteration of the ground to facilitate access from Wellington Road further supports this distinct functional change.

(iv) Enclosure: The applicant notes the historical enclosure of the entire plot. While this demonstrates a former unity of ownership, Humphreys J. explicitly states that enclosure alone is not decisive. The subsequent division and separate development of the Eir Exchange site are more pertinent to the question of a common unit at the legally relevant time.

(v) Ownership: The applicant emphasizes the continued Freehold ownership by the Church. However, Humphreys J. clearly states that a change or diversity of ownership is not *in and of itself* relevant, although diversity *may be evidence* of a lack of unity. Conversely, continued unified ownership does not automatically equate to a common unit if the use, function, and layout have diverged significantly, as is the case here with the development of a distinct telecommunications facility.

(vi) Character, Context, and Aesthetic: The applicant suggests these are relevant if they form part of use, function, and layout. My assessment of the distinct historical mapping and the separate functional development of the Eir Exchange site demonstrates a divergence in use and layout, rendering these aspects relevant to concluding a lack of a common unit.

(vii) Size: The applicant notes the size equates to the former garden. While size can be relevant to distinguishing curtilage from attendant lands, the fundamental shift in *use and function* from a garden serving the Church to land serving a telecommunications exchange is the more critical factor here.

(viii) Part and Parcel vs. Attendant Grounds: The applicant argues the lands were "part and parcel" of the Church lands. I contend that the development of the Eir Exchange as a distinct and substantial building with its own operational requirements, separate from the religious and pastoral functions of the Church, transformed the nature of this portion of land from being integral to the Church to being attendant to a separate undertaking. The telecommunications mast is further ancillary to this separate function.

(ix) Change in Use, Function, or Layout After Legally Relevant Time: The applicant argues there has been no change in the relevant lands since the RPS. I disagree. The construction of the Eir Exchange building in the late 1960s and its subsequent use for telecommunications represent a significant change in use and layout from that of a garden serving the Church. This change predates the establishment of the RPS system.

In conclusion, while acknowledging the guidance provided by Humphreys J., my professional assessment of the historical layout, distinct development, and separate functional use of the Eir Exchange site, particularly at and before the legally relevant time for RPS designation, leads me to the firm opinion that this site does **not** fall within the curtilage of the Trinity Presbyterian Church.

The applicant's interpretation, in my view, overemphasizes continued ownership and downplays the significant divergence in use, function, and physical layout that has occurred over time. Therefore, the assessment of the proposed works should proceed under Section 82 of the Act, concerning structures within an ACA, rather than Section 57 relating to Protected Structures and their curtilage.

Item 2: Regarding the Potential Impact on the Character of Trinity Presbyterian Church (Protected Structure), *Hypothetically Assuming Curtilage:*

While I maintain my professional opinion, as previously stated, that the proposed mast replacement is *not* located within the curtilage of the Trinity Presbyterian Church, I will now address the potential impact on the Protected Structure's character *solely for the sake of argument*. Even if the planning authority were to determine, contrary to my assessment, that the Eir Exchange site falls within the curtilage, it is my professional conservation opinion that the proposed replacement mast would **not materially affect the character** of the Trinity Presbyterian Church or any element contributing to its special architectural, historical, or cultural interest.

My original Conservation Report of November 2024 details the architectural character of the Wellington Road/St. Lukes ACA and provides context for the existing telecommunications infrastructure within it. The Trinity Presbyterian Church, while a significant Protected Structure, exists within an urban environment that has inevitably absorbed modern infrastructure, including the existing telecommunications mast which has been present since the 1990s, predating the Protected Structure designation.

The proposed development involves the replacement of an existing telecommunications mast with a new mast of similar height (15m) and a design that, while slightly wider, remains recognisably a piece of functional telecommunications infrastructure. As highlighted in the photomontages prepared by RME Digital Solutions and referenced in my report, the visual difference between the existing and proposed masts is minimal. Both are vertical structures