

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,
30TH NOVEMBER 2006, AT 10.30 A.M.:

10:01:28 1

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10:34:53 5

CHAIRMAN: Good morning, Mr. O'Neill.

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MR. MURPHY: Chairman, sorry to interrupt before you continue with this witness.

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9

10:35:00 10

Could I make an application for limited legal representation on behalf of Ms. Grainne Mallon. And she is the fourth witness scheduled for today.

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CHAIRMAN: All right. Certainly. Granted.

14

10:35:12 15

MR. MURPHY: Obligated.

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MR. O'NEILL: Good morning, Mr. Gore Grimes.

10:35:16 20

21

At the conclusion of yesterday's evidence we were dealing with the events of

22

the 11th of May of 1993, which was a date which is recorded in an attendance

23

which you took that day, dealing with the meeting which you had with counsel

24

followed by a meeting which you had with Mr. Liam Lawlor and Mr. Frank Dunlop

10:35:37 25

at which draft documents were considered by you, and we saw that one of them

26

was a letter which was sent by two councillors to the Chairman, Therese Ridge,

27

of the County Council, isn't that right?

28

A. Yes.

29

Q. 1 And it was one of a number of documents, that is two in all, which were

10:35:59 30

considered. Sorry. It was one of three documents I believe which were being

10:36:05 1 considered at that time. Firstly, it was the letter from the councillors.
2 Secondly, there was an enclosure with it which was a letter to the Manager.
3 And thirdly, there was the draft response from the Chairperson, isn't that so?
4 A. Yes.

10:36:22 5 Q. 2 And we identified one of those documents yesterday, that was the letter to the
6 Chairman. It's at page 2853.
7
8 You might recall that we considered this document yesterday. And you indicated
9 that the queries that were raised in this letter of the Chairman essentially
10:36:46 10 centred on the matters raised in the opinion of counsel, Mr. Birmingham, which
11 had been received and considered over the previous week, isn't that so
12 A. Yes.

13 Q. 3 Yes. And you'll see at page 2854, reference to the second letter that I
14 mentioned a moment ago. And that was the letter to the Manager. You'll see in
10:37:10 15 the second line it says "we attach a copy of this letter for your information"
16 that being a letter that was being written to the Manager, you see that?
17 A. Yes.

18 Q. 4 Yes?
19 A. Do you have that letter?

10:37:23 20 Q. 5 Yes. And I would now like you to look at page 222 on screen.
21
22 Which is a letter. Sorry. 2222, I beg your pardon. And that letter you'll
23 see is addressed to Mr. D Byrne, Manager, Fingal County Council, Dublin County
24 Council, Upper O'Connell Street. It bears the date 12th of May 1993, which is
10:37:52 25 the same date as the letter the councillors were sending to Councillor Ridge
26 which we considered a little earlier
27 A. Is that signed?
28 Q. 6 It's not signed. This is a draft. And again, it is not on Council headed
29 paper, it is merely in this format here. As we saw yesterday, the earlier
10:38:17 30 letter, that is the letter from the councillors themselves, similarly was not

- 10:38:21 1 headed Dublin County Council when considered by you, isn't that right?
- 2 A. Well I'm sure -- yes, I'm sure that's right.
- 3 Q. 7 And what you saw was a plain copy of what was to be a letter to be sent by
- 4 those councillors, isn't that so?
- 10:38:40 5 A. Yes.
- 6 Q. 8 And this similarly is an unheaded or untitled page and it is unsigned?
- 7 A. Could I see the bottom of that?
- 8 Q. 9 You may indeed. It's at page 2224.
- 9 A. Yes.
- 10:39:01 10 Q. 10 Now, in the -- in this letter you'll see that while the first letter was
- 11 dealing with the possible legal implications of the decision of the 27th of
- 12 April 1993, this letter to the Manager is focused on the technical side of the
- 13 sewage development and infrastructure that was current at the time. If we look
- 14 to page 2222.
- 10:39:31 15 A. I don't remember this letter. I wouldn't mind just reading the whole thing.
- 16 Q. 11 Of course, yes.
- 17 A. I've seen the middle and the end or the top and the end.
- 18 Q. 12 Of course. There is a reference to it in your attendance, I should say. This
- 19 might be of assistance to you. Do you want to see your attendance first?
- 10:39:52 20 A. Well, could I see just paragraph C here?
- 21 Q. 13 Yes.
- 22 A. Thank you very much. We've gone to another letter, have we?
- 23 Q. 14 No. This is the first page of the letter. It's addressed to the Manager and
- 24 it's dealing with the Baldoyle Flood release scheme?
- 10:40:20 25 A. Yes, all of those matters would be familiar, yes.
- 26 Q. 15 They were all the technical non-legal matters?
- 27 A. That's right.
- 28 Q. 16 But they were dealing with the infrastructure which is there, right?
- 29 A. Yeah.
- 10:40:36 30 Q. 17 And if we can revert back now to your attendance, which is at page 2218.

10:40:38 1 You'll see the letters that are referred there. Firstly, there is the letter
2 to be written by Michael Joseph Cosgrave to the Chairperson. We saw that
3 yesterday. And by the Chairperson back to him. You'll see that later. And
4 also the request for information to be submitted regarding the deferral of the
10:40:59 5 motion. In attendance for 20 minutes in Bar library etc. And then going to on
6 to say these letters were approved and we added the matter dealing with the CPO
7 for the itinerants site. You see that reference?
8 A. Yes.
9 Q. 18 Now, if we look to page 2224. Under item seven. You'll see the last matter
10:41:23 10 which is put on that is?
11 A. Yeah.
12 Q. 19 Finally could you provide me with an update regarding the compulsory purchase
13 on the Baldoyle site lands for a halting site. You see that?
14 A. Yes.
10:41:34 15 Q. 20 That in fact is the addition that was discussed or referred to in your earlier
16 attendance.
17 A. There was another letter, which you referred to yesterday, which I remember but
18 I can't remember seeing it, I don't have a copy of it.
19 Q. 21 Yes?
10:41:50 20 A. And that was the one which you showed me to more or less indicate that the
21 letter signed by Mr. Cosgrave and Mr. Creaven had been dispatched because it
22 seemed to acknowledge receipt.
23 Q. 22 Yes?
24 A. Could I see that letter.
10:42:03 25 Q. 23 Yes, that's a letter of the 3rd of June. Sorry. The 2nd of June. It's at
26 page 2301. Again, it is a letter on the headed notepaper of the Fingal area
27 committee. And it's addressed to the Chairperson. And it says "we wrote to
28 you on the 12th of May last, copy attached".
29 A. Would that indicate that the reply that had been drafted was not adopted by
10:42:38 30 Councillor Therese Ridge?

- 10:42:39 1 Q. 24 Well, it doesn't necessarily follow. There's a reference to the reply of the
2 Chairperson a little further down in that paragraph. You replied on the 25th.
3 You see that? Saying that you had referred the -- you had forwarded our letter
4 to the Manager for response from the law agent. You see that?
- 10:43:02 5 A. I'm lost there, sorry.
- 6 Q. 25 Sorry. It's in the same paragraph?
- 7 A. Oh, your acknowledgement and reply to us.
- 8 Q. 26 I don't think that you actually have to go that far down the paragraph to deal
9 with the query that you raised. You were questioning whether or not, firstly,
10:43:23 10 the letters of the 12th. That is the draft letters which you had approved.
11 Whether they had been sent. Now, apparently, they were sent because the
12 senders acknowledge in this letter of the 2nd of June that they had sent the
13 letters on the 12th. You see that? We wrote to you on the 12th last, copy
14 attached. And the fact that they were received and acknowledged is recorded
10:43:50 15 further down the paragraph where the authors say that you, that is Therese
16 Ridge, replied on the 25th of May?
- 17 A. That's saying that she had forwarded.
- 18 Q. 27 Yes?
- 19 A. The letter. But it didn't say anything else.
- 10:44:04 20 Q. 28 No. That is as much as is said here; that it had been forwarded?
- 21 A. But do you have a copy of -- I haven't seen a copy of the letter that was
22 drafted. I don't remember that letter.
- 23 Q. 29 Yes. I will be moving to that in a moment, Mr. Gore Grimes. I just want to
24 deal firstly?
- 10:44:21 25 A. I am concerned in view of the questions asked by the Chairman. I mean, I want
26 to be absolutely certain before I go much further that that letter does exist,
27 was sent and it was that letter was sent.
- 28 Q. 30 Well, the letter?
- 29 A. It seems important.
- 10:44:36 30 Q. 31 Of course it's important. And it's for that reason that this letter was

10:44:40 1 included in the brief of documents that was sent to you by the Tribunal quite
2 some time ago.
3
4 And it's at page 2205

10:44:48 5 A. There's something strange about this. I mean, there was a letter that went
6 astray and we heard no more about it. Do you know that? I'm just wondering is
7 that --

8 Q. 32 No, this is a letter within the brief, I should say. The brief of documents
9 furnished to you is paginated from 1 to about 3,000 I think.

10:45:08 10 A. Oh, Lord.

11 Q. 33 And in that documentation, at page 2205. And I can put it on screen for you
12 now?

13 A. Yeah.

14 Q. 34 Is a document which is headed draft letter Michael Joe Cosgrave cc Councillor
10:45:25 15 Liam Creaven "Dear Councillor", and you'll see that this is really a letter to
16 the Chairman rather than to another Councillor as such. "Following your
17 queries regarding the Council's decision on the 27th of April regarding motion
18 5G I've already sought clarification from the secretariat regarding the
19 interpretation of Standing Orders and have been informed that motion 5 G should
10:45:48 20 have been taken first. And as 51 was taken and carried by majority in the
21 Council Chamber the lands associated with the submission, the subject of the
22 deferral" and then there's a typo here, "effectively excluded from the taking
23 of motion 5G. I am consulting with the managers as to how motion 5.1 deferred
24 could be re entered on the order paper for decision after the information" and
10:46:19 25 again there's another typo here "it was sought on a separate letter to the
26 Manager and has been established.
27
28 As you are now doubt aware the Council's meeting on X date decided to carry out
29 a site visit to the Baldoyle Portmarnock area. After this site visit has been
10:46:36 30 undertaken any information you have sought clarification presumably on, the

10:46:42 1 matter can be put before the Council for a full discussion and decision. I
2 trust the above clarifies your queries.
3
4 I and I think that should be if you require any further information do not
10:46:55 5 hesitate to contact my office or the secretariat" now
6 A. Who is that from?
7 Q. 35 It is unsigned, as you see. It is a letter which if you compare it to the
8 letter of the 12th, which we've already seen on screen, is a response to the
9 matters raised in that letter. Now?
10:47:15 10 A. It's a different typewriter.
11 Q. 36 It is?
12 A. Extraordinary if we approved that with those errors, between Mr. Birmingham and
13 myself.
14 Q. 37 It's in very poor English I have to say, yes. But what you did approve and
10:47:31 15 it's clear from the attendance is that you did approve a reply. I'm not saying
16 that this necessarily is the final draft of the reply which issued. This is
17 the only document which is available to the Tribunal. It comes from the same
18 source as the two drafts that we have already considered on screen. That is
19 from the files of Mr. Frank Dunlop who was one of the participants at the
10:47:54 20 meeting. Your own file apparently of documents doesn't contain any copies of
21 this correspondence, isn't that right?
22 A. In view of the seriousness of this letter and the comments made yesterday, I
23 think there must be an obligation on the Tribunal to prove that this is the
24 letter that we approved, this is the letter that was sent to Theresa, what's
10:48:14 25 her name?
26 Q. 38 Ridge
27 A. Ridge. And that she signed the letter that we approved. Because my point was
28 that if she saw a letter that she didn't like, she wouldn't sign it.
29 Q. 39 Yes?
10:48:29 30 A. And I have to say, when I see this different typing and I see these spelling

10:48:34 1 mistakes, which if the letters were drafted by Mr. Dunlop or Mr.-- well
2 certainly Mr. Dunlop, he seemed to be a pretty good speller. I haven't seen
3 any spelling mistakes in his correspondence.

4 Q. 40 Yes?

10:48:50 5 A. But this looks to me as if it was generated somewhere else and that's why I'm
6 raising this query. And I think there is an obligation to satisfy me at least,
7 before I go much further, on the letters to the Chairman.

8 Q. 41 Mr. Gore Grimes, of course it is a matter ultimately for the Tribunal to
9 determine what documentation was generated at this time. We would have loved
10:49:13 10 to have had available to us the originals of this documentation. And in
11 particular, copies from your file of the documents which you had approved
12 before they were sent out. Now, as much as the Tribunal can do is to make
13 orders for production to require parties to discover the documentation which
14 exists. And in that discovery process, regrettably, we have not been able to
10:49:42 15 obtain from you, or indeed from Mr. Frank Dunlop, well directly, the actual
16 documents which were approved?

17 A. Well I don't know if that's a criticism but I mean.

18 Q. 42 No, no, it's not intended to be.

19 A. You will know in a solicitor's practice ten years usually. And really they are
10:50:00 20 destroyed without being looked at or anything else. And I think your request
21 would have come well outside that period.

22 Q. 43 I'm not intending to be critical of you, Mr. Gore Grimes?

23 A. No.

24 Q. 44 I'm trying to explain to you, firstly, that this is an inquiry rather than a
10:50:18 25 court of law. And therefore, when one talks of matters such as the proof of
26 documentation and their origin, it's not something which is the same
27 application here as it would have in in a court of law. That is not to say
28 that I am diminishing in any way the evidential value of this documentation.
29 But as you'll appreciate, you were at this meeting. You saw the documentation.
10:50:40 30 You approved it. The Tribunal members are looking at this some 14 years later.

10:50:46 1 And they are endeavouring to understand what exactly took place at this
2 meeting. Relying upon the accuracy of your attendance and such documentation
3 as is available to you?

4 A. Well what I'm suggesting now is what I approved were apparently three letters.
10:51:05 5 And I acknowledged that in my attendance.

6 Q. 45 Yes?

7 A. And those three letters were a letter that Mr. Creaven and Mr. Cosgrave were to
8 sign.

9 Q. 46 Yes?

10:51:15 10 A. The letter then to the Manager.

11 Q. 47 Yes?

12 A. Or officer, whichever it was. And then a letter that was drafted for the
13 Chairman to reply.

14 Q. 48 Yes?

10:51:27 15 A. The reply. And I haven't seen that letter. I'm sorry, I haven't seen the
16 letter that I approved as far as I can see. I mean, is this it? Or is there
17 another one?

18 Q. 49 I don't know. The only documentation that the Tribunal has is this sequence of
19 correspondence?

10:51:46 20 A. Yeah.

21 Q. 50 When we go through the detail of it, I will be suggesting to you, and you may
22 well agree, that the matters which are covered in this, albeit a very rough
23 draft, which has misspellings and pretty poor English throughout it. The
24 subject matter of this draft is a direct response to the matters which are
10:52:07 25 raised in the earlier and properly drafted request to which this is purportedly
26 a response. Do you understand what I'm putting to you?
27

28 CHAIRMAN: Mr. O'Neill, just to -- could I just clarify one thing. I think we
29 saw two draft letters yesterday.

10:52:25 30

10:52:25 1 MR. O'NEILL: Yes, Mr. Chairman.
2
3 CHAIRMAN: Which Mr. Gore Grimes accepts that you settled.
4 A. That was the one for Cosgrave and Creaven and the one to the Manager?
10:52:41 5
6 CHAIRMAN: Yes.
7 A. Yes.
8
9 MR. O'NEILL: Well the only one that was shown yesterday, just for accuracy
10:52:46 10 A. That's right, was the Creaven one. But I've seen.
11
12 JUDGE FAHERTY: There was two versions of the Creaven one.
13
14 MR. O'NEILL: It's at page 2853 that. Is the first document.
10:52:59 15
16 CHAIRMAN: All right.
17
18 JUDGE FAHERTY: I think we saw that again, Mr. O'Neill, transposed on to
19 Council paper.
10:53:06 20
21 MR. O'NEILL: You did. I'm going to give you that document also.
22
23 This document Mr. Gore Grimes, is the first document you were shown. And it
24 doesn't carry with it the Council logo or heading, isn't that right ?
10:53:18 25 A. It's carefully typed and very well laid out.
26 Q. 51 Absolutely. Just as regards the copies of documents you were shown yesterday.
27 For accuracy, I just want to go through them?
28 A. Yes.
29 Q. 52 This is a version of a letter which does not have a Council heading on it,
10:53:34 30 isn't that right? Now, I'm just going to find the version of it which does

- 10:53:39 1 have the Council heading which is identical in its terms.
2
3 JUDGE FAHERTY: 2227 I think, Mr. O'Neill.
4
- 10:53:46 5 MR. O'NEILL: That's correct, yes. 2227, yes. Thank you.
6
- 7 Q. 53 Here we see the same letter transposed on to the letter heading of Fingal area
8 committee. You see that?
9 A. The layout and the type would appear to be the same.
- 10:54:04 10 Q. 54 Oh, identical, yes. Now, you when you saw the first letter that you settled.
11 I take it that it didn't have the Fingal committee heading on it?
12 A. Well I obviously couldn't remember. I accept that it probably didn't.
- 13 Q. 55 Right.
14 A. Anyway, it's the same wording.
- 10:54:24 15 Q. 56 It's exactly the same wording. So that what you saw was a draft?
16 A. I'm sure that's correct.
- 17 Q. 57 And you approved the draft?
18 A. Mr. Birmingham and myself approved the draft, yes.
- 19 Q. 58 And having approved the draft at your side of the house, that is Mr. Byrne's,
10:54:42 20 you also agreed with Mr. Lawlor and Mr. Dunlop who were present at your later
21 meeting, that this was a letter which as far as you are concerned or Mr. Byrne
22 is concerned, could issue. Isn't that right?
23 A. Yes.
- 24 Q. 59 Now, in the body of that letter it refers to the Manager's letter. And that is
10:55:05 25 the second letter that we saw, you saw it this morning. And it's at page 2222.
26 It is the enclosure to the first letter?
27 A. I'm going to see that now?
- 28 Q. 60 Yes.
29 A. And this is the draft.
- 10:55:24 30 Q. 61 This is the draft of it. And this draft was also approved, albeit that it was

- 10:55:30 1 changed at the very end to reflect that there should be a reference to the
2 itinerant's site?
- 3 A. Well a query as to what was happening, yes.
- 4 Q. 62 Yes. I showed you I think at page 2224 that additional query as item seven?
- 10:55:46 5 A. And could you go to the top of that letter.
- 6 Q. 63 Page 2222.
- 7 A. 2223.
- 8 Q. 64 2222 is the top of the letter. The next page then, 2223?
- 9 A. Yes.
- 10:56:02 10 Q. 65 And the final page 2224?
- 11 A. So that was added on to a letter with no heading, is that correct?
- 12 Q. 66 Yes. That was again another letter without a heading. And we can assume that
13 it went to the Council with the heading on it?
- 14 A. Do we have the headed letter?
- 10:56:24 15 Q. 67 No.
- 16 A. Is there a letter acknowledging that letter? I mean how can we assume .
- 17 Q. 68 How can?
- 18 A. How can we assume that that letter?
- 19 Q. 69 We can, firstly, look I suppose to the letter of the 2nd of June which we've
10:56:47 20 referred to earlier which acknowledges the fact that a letter was written on
21 the 12th to the Chairman. A copy of that is enclosed. One of the enclosures
22 with that letter originally was the Manager's letter. One can assume that if
23 the letter was received its enclosure was also received. The letter of the 3rd
24 at page 2310 refers to the fact that a response has not been received in the
10:57:21 25 interim from the Manager in relation to the Manager's letter.
- 26 A. Yes.
- 27 Q. 70 So all of that would clearly indicate that as far as the senders of the letter
28 were concerned?
- 29 A. Yes.
- 10:57:34 30 Q. 71 They had sent both?

- 10:57:36 1 A. Yes.
- 2 Q. 72 Now, right, there are no absolutes here Mr. Gore Grimes, but as a matter of
3 probability this is the body of correspondence which you approved?
- 4 A. Yes.
- 10:57:47 5 Q. 73 Now, just in relation to the document at page 2222, that's the letter to the
6 Manager. As I indicated to you earlier, this letter as opposed to the letter
7 to the Chairman of the Council, Therese Ridge, was a letter which concerned
8 itself with the technical side, the Baldoyle Flood release scheme, the north
9 fringe treatment works, the north fringe trunk main and matters of detail
10:58:25 10 including the northern cross extension.
11
12 They were matters which would be known not necessarily to Mr. Dunlop but more
13 likely to be matters known to Mr. Lawlor, isn't that so?
- 14 A. I can't comment on that.
- 10:58:40 15 Q. 74 You can't say. In any event, this letter is written as a combined letter
16 apparently by both councillors, it uses the reference we and us throughout.
17 Can you furnish us with a copy of the report" etc. The one change, that is the
18 change that yourself, Mr Lawlor and Mr Dunlop agreed at your meeting was item
19 seven and that is the only query which is addressed in the singular, all of the
10:59:12 20 others being in the plural. It says "finally, could you provide me with an
21 update regarding the compulsory purchase order on the halting site".
22
23 I think it just reinforces the fact that it is an addition. It's an addendum
24 to what was an original draft in which it wasn't included. But at the same
10:59:33 25 time, it equally confirms that the three of you; that is Mr. Lawlor, Mr. Dunlop
26 and yourself, felt entitled to amend that draft by inserting something which
27 had occurred to the three of you and not necessarily to the original parties
28 named, isn't that so
- 29 A. I think it probably occurred to myself and Mr. Birmingham in a way.
- 10:59:56 30 Q. 75 Well?

10:59:57 1 A. Because I think that the letter had been drafted by the other side, as it were.

2 Q. 76 Yes. But after Mr. Birmingham had agreed the draft with you, you then had a
3 meeting with Mr. Lawlor and Mr. Dunlop at which the letters were approved
4 finally?

11:00:12 5 A. I would think that it was at the meeting with Mr. Birmingham that that
6 suggestion came about don't forget to ask how we're doing on the CPO.

7 Q. 77 Sure. But just as you weren't prepared to allow Mr. Dunlop and Mr. Lawlor's
8 version to go out with without your approval. They approved this addition?

9 A. They did.

11:00:31 10 Q. 78 And what is significant I suggest about that Mr. Gore Grimes, is that that
11 alteration of the letter was made by the three of you. Neither of the
12 councillors were present when this addition was made, isn't that right?

13 A. They weren't.

14 Q. 79 No. Nor as far as you can say were they at the time that the letters were

11:00:59 15 drafted. Because they were to be drafted over the weekend by Mr. Lawlor and
16 Mr. Dunlop or a combination of both?

17 A. But they did require the approval the councillors.

18 Q. 80 Certainly. They required their signature and you assumed that they approved
19 their content?

11:01:07 20 A. I think more than assumed. I think that was their prerequisite to signing.

21 Q. 81 Yes. These letters then, I'll just deal with the letter which is the only
22 evidence of there having been a reply. And that is the letter of 2205, which
23 is the draft expressed to be a draft, as you say, it's on a different

24 typewriter than the other document. But as we look at it, you'll see in the

11:01:41 25 first sentence that it is A, a response. Because it says "following your query
26 regarding the Council's decision of the 27th regarding the motions". Right?

27 So it's not an originating letter this. It is a letter in response, isn't that
28 right?

29 A. Yes, but I just want to say that, you know, on the balance of probabilities,
11:02:07 30 which is all we can say.

- 11:02:08 1 Q. 82 Yes?
- 2 A. This letter was not the letter that was with this brief of letters. It was not
- 3 the letter that was with the letter addressed to the Manager or the letter
- 4 addressed to a Chairperson from Mr. Cosgrave and Mr. Creaven. Because it is
- 11:02:28 5 generated in a completely different way. And I mean, all three were supposed
- 6 to be generated by the same person for approval and signature of the people
- 7 writing them.
- 8 Q. 83 Yes?
- 9 A. But this letter has come out on a very old typewriter.
- 11:02:44 10 Q. 84 Yes?
- 11 A. Not like any, it's laid out in a very different way with a lot of misspellings.
- 12 Now, I would just suggest that I didn't see that letter.
- 13 Q. 85 No. But equally, I mean, it's clear, Mr. Gore Grimes, that the last two
- 14 letters that we've looked at?
- 11:03:01 15 A. Yes.
- 16 Q. 86 Were the final approved copies of the letters, as they went to the Chairman and
- 17 the Manager respectively. They weren't drafts?
- 18 A. No, I mean, they came in in this form to myself and Mr. Birmingham.
- 19 Q. 87 No. That clearly isn't the case. Because we can see from page 2224. That the
- 11:03:23 20 variation that you agreed on the 11th at the last of the meetings there appears
- 21 on the face of this document. This document had to be created after all the
- 22 meetings between yourself and Mr. Birmingham, Mr. Dunlop and Mr. Lawlor, had
- 23 taken place. Because they incorporate the amendment which was made on the
- 24 11th. Do you understand? And therefore, they could not have been the
- 11:03:50 25 documents which you brought to Mr. Birmingham in the first instance.
- 26 Because --
- 27 A. That could be.
- 28 Q. 88 Sorry?
- 29 A. I can see that that addition was made.
- 11:03:58 30 Q. 89 Yes?

- 11:03:58 1 A. But what I'm saying that this is the typing that was used by Mr. Dunlop and
2 Mr. .
- 3 Q. 90 Yes?
- 4 A. Mr. Creaven.
- 11:04:06 5 Q. 91 But we don't know what the typing was on the unamended copy of these two
6 letters which was considered by you and Mr. Birmingham. Because what you
7 considered was a draft. It was not these documents that we see on screen. And
8 that's proven by the fact that the amendments which took place at those
9 meetings are shown on the face of this document, clearly indicating that they
11:04:30 10 were prepared after the event?
- 11 A. Well is it your suggestion that the rough or crudely typed ...
- 12 Q. 92 Yes?
- 13 A. Letter, that they were all produced in that form to start with?
- 14 Q. 93 I can't say that. What I can say too you is that the two documents that we
11:04:45 15 looked at earlier are the final drafts of the letters which were actually sent.
16 And before those, there were obviously earlier drafts which are not available?
- 17 A. I have great difficulty with that crude letter. I mean, I can't say if I
18 approved that because I doubt very much, I mean, certainly whatever about my
19 spelling ability Mr. Birmingham is a very particular man.
- 11:05:10 20 Q. 94 Yes?
- 21 A. And I don't think he would have approved that letter.
- 22 Q. 95 Yes. I'm not suggesting for a moment, Mr. Gore Grimes, that it left in this
23 format or that this represented the final draft which issued. But what is
24 clear is that at the meeting it was agreed that a form which was acceptable to
11:05:27 25 you would be sent, isn't that so?
- 26 A. Sent to the?
- 27 Q. 96 Sent to?
- 28 A. To the people for signing, yes, yes.
- 29 Q. 97 And one of those drafts that you approved of as being appropriate, was one
11:05:42 30 which would be sent by the Chairman Therese Ridge to Councillors Cosgrave and

- 11:05:48 1 Creaven on the subject which had been raised in the earlier letter, that is
2 their query, isn't that right?
- 3 A. I still make the point that I can't see that the third letter, which is the
4 letter that the Chairperson was to write.
- 11:06:03 5 Q. 98 Yes?
- 6 A. Is with the papers that are produced here. The one that I approved that is.
- 7 Q. 99 Yes. The final draft obviously is not. Because nobody would have sent a
8 letter in the form that we see at page 2205. It is a rough draft. It is a
9 number of manuscript corrections to it. It is silent as regards who the
11:06:24 10 signatory to it is. And all of those matters. So if we leave that aside and
11 we look at what you've recorded in your attendance. Would you agree that from
12 your attendance it is clear that whatever letter it was that was intended to be
13 the reply from Councillor Ridge was approved by you?
- 14 A. I approved three letters?
- 11:06:47 15 Q. 100 Yes?
- 16 A. I can't see any sign of the third letter.
- 17 Q. 101 Fine?
- 18 A. That I'd be satisfied with. I think the point was made, you know, was it
19 bizarre, which I agreed that it was that we should be writing a letter on
11:06:59 20 behalf of the Chairman.
- 21 Q. 102 Yes?
- 22 A. The other letter was that the Chairperson would not sign unless she approved of
23 what she was signing. Now, what I'm saying here is that I doubt very much if
24 she would have approved this. So can you show me or show any indication as to
11:07:15 25 what she did sign and send as the reply.
- 26 Q. 103 No is the simple answer to that. And that is I'm afraid, Mr. Gore Grimes, just
27 one of the many imponderables that faces a Tribunal as it goes through
28 documentation which is incomplete. But as much as you can say obviously from
29 your recall based upon the attendances which you took at the time is that what
11:07:44 30 is stated in your attendance is accurate, isn't that right?

11:07:47 1 A. Oh, what's stated in my attendance is accurate. That's as much as I can say.
2 Also in view of the questions raised by the Chairman, very properly raised.

3 Q. 104 Yes?

4 A. Is that I'm not satisfied that if the, because my point has been that nobody is
11:08:02 5 going to sign a letter they don't like. Whereas, I am satisfied, pretty
6 satisfied, on the balance of probabilities, that Creaven and Cosgrave signed
7 those letters. I'll be very happy about that. I think I would be very happy
8 about the Manager's letter. But I'm not happy at all about the Chairman's
9 letter. I think what I have been arguing over time is that unless she was
11:08:25 10 happy she wasn't going to sign it. Because of this form of wording of typing
11 and everything else, I see something very different here. And I think that
12 that must leave the whole situation very open.
13
14 CHAIRMAN: Well is it your evidence then, Mr. Gore Grimes, that the third
11:08:40 15 letter that you approved with Mr. Birmingham is, was likely to have been a
16 letter to be signed by Councillor Ridge in the event that she agreed with the
17 submissions being made by the two councillors in the other
18 A. Yes, that's absolutely correct.
19

11:09:01 20 CHAIRMAN: So that if she -- and can we assume that she was provided with this
21 reply on that basis and that because her decision ultimately was not in accord
22 with your submission
23 A. Exactly.
24

11:09:21 25 CHAIRMAN: That would be an obvious explanation why the letter was never
26 actually taken up and signed by her
27 A. Yes.
28
29 CHAIRMAN: But it was provided.
11:09:31 30 A. It was.

11:09:32 1

2 CHAIRMAN: A letter approved by you was provided to her on the -- in the event
3 that she agreed with the submission

4 A. Yes.

11:09:45 5

6 CHAIRMAN: Yes

7 A. I think that the circumstantial evidence would seem to suggest that she didn't
8 like that letter.

9

11:09:52 10

CHAIRMAN: All right.

11

12 MR. O'NEILL: Well how do you say that Mr. Gore Grimes? Because in what way
13 is the subsequent actions of the Council any way different from what was
14 proposed in the queries raised by councillors Creaven and Cosgrave to the draft

11:10:09 15

response which I accept you say is not the one you approved. But there's
16 nothing in that which is inconsistent with the subsequent behaviour of the
17 Council. What it says, if we look at it at page 2205. Following your query
18 regarding the Council's decision of the 27th of April regarding motions 5 G.

19 Firstly, there was a query in relation to that motion. And we see it in the

11:10:38 20

draft letter of the 12th, isn't that right? There's no dispute about that

21 A. No.

22 Q. 105 "I have already sought clarification from the secretariat regarding the
23 interpretation of the Standing Orders". Now, you don't know whether that in
24 fact took place or not, isn't that right?

11:10:53 25

A. I wouldn't know.

26 Q. 106 And "and have been informed that motion 5G should have been taken first. And
27 as 5.1 was taken and carried by a majority in the Council Chamber the lands
28 associated with the submission, the subject of the deferral, effectively
29 excluded from motion 5G".

11:11:11 30

- 11:11:11 1 That is the conclusion of Mr. Birmingham, isn't that right?
- 2 A. Of Mr Birmingham.
- 3 Q. 107 Yes, that because --
- 4 A. Sorry, in his opinion, I beg your pardon, yes.
- 11:11:20 5 Q. 108 So that is referring to the opinion. Which is a matter which was the subject
6 of the query of the councillors on the 12th. So far this seems to be a
7 response to the matters raised in the letter of the 12th, isn't that right?
- 8 A. Correct.
- 9 Q. 109 Yes. Now, I know you say that you didn't, you've no recollection of seeing
11:11:40 10 this document and you don't believe that what was sought in the initial letter
11 was responded to in the manner that is suggested here. I'm going through that
12 at the moment to see?
- 13 A. Yes.
- 14 Q. 110 At what point we actually say that what was asked was not complied with. So
11:11:59 15 far this is all in accordance with the letter written and a draft which might
16 have come in response to it. "I am consulting with the Manager as to how
17 motion 5.1 deferred could be re-entered on the order paper for decision after
18 the information it was sought on a separate letter to the Manager has been
19 established". That's very badly worded. But it seems to be a reference to the
11:12:23 20 fact that A, there was a separate letter written to the Manager in addition to
21 the letter raising the query which was being responded to in this letter, isn't
22 that right?
- 23 A. Yeah, but do we know whose writing this letter.
- 24 Q. 111 Nobody has written it yet because it's a draft?
- 11:12:39 25 A. Do we know who it's supposed to be for.
- 26 Q. 112 Yes. It's obviously a response from the Chairperson. Because the letter
27 raising the queries to which this apparently is a response is a letter which is
28 directed to the Chairperson. Named as Therese Ridge?
- 29 A. Yes, I don't accept that that's necessarily so whilst I do not see that.
- 11:13:02 30 Q. 113 Whilst you may not accept it. Can you offer any basis for saying that this

- 11:13:06 1 letter is not a response, I'm not necessarily saying that it ultimately was the
2 response adopted by Councillor Ridge. But on its face it seems to address each
3 of the queries which is raised in the letter which you acknowledge was sent?
- 4 A. Yes, it does.
- 11:13:22 5 Q. 114 It does. But more than that?
- 6 A. Was it sent to Mr. Cosgrave with a copy to Liam Creaven?
- 7 Q. 115 Well we can only reply upon the earlier mention or the later letter rather of
8 the 3rd of June where councillors Creaven and Cosgrave acknowledge that they
9 received a response from the Chairman on the 25th of May to the queries that
11:13:45 10 had been raised.
- 11 A. Right.
- 12 Q. 116 You understand. So they acknowledge that there was a response. They don't
13 quote the entire content of this letter as being the response. But I'm
14 suggesting to you that there is nothing on the face of this letter here which
11:14:02 15 is inconsistent with it having been the actual response of the Council. What
16 it concludes is that the intended course of action, if I might call it that, as
17 to what was to happen was that after the site visit had taken place, any
18 information you had sought clarification on the matter can be put before the
19 Council for a full discussion and decision. What was intended here, I think
11:14:41 20 you'd agree, Mr. Gore Grimes with this. Sorry. I'm not going to ask you what
21 was intended here. But what did in fact take place was that there was a
22 meeting on-site on the 19th of May?
- 23 A. 19th of May.
- 24 Q. 117 And at that meeting. Sorry. I think it was the 19th of June rather than the
11:15:01 25 19th of May?
- 26 A. Oh,.
- 27 Q. 118 Well I'll just check that for you. No. Sorry. It was the 19th of May.
- 28 A. So before this letter was allegedly written.
- 29 Q. 119 The first letter was written on the 12th of May?
- 11:15:16 30 A. This letter would have been written on the 25th of May.

- 11:15:19 1 Q. 120 Yes. The response was on the -- the actual response received was on the 25th
2 of May, according to Mr. Cosgrave and Mr. Creaven's letter of the 3rd of June?
3 A. It does say here "after site visit has been undertaken", it would indicate that
4 it hadn't been undertaken on the 25th of May. That is the letter of the 25th
11:15:42 5 of May.
6 Q. 121 Yes. It was intended obviously when a letter was drafted if this was to be the
7 response. That the response would be received earlier than the meeting which
8 was to take place on the 19th of May.
9 A. You're saying --
- 11:16:02 10 Q. 122 Apparently it didn't?
11 A. You are saying that it was sent out on the 25th of May.
12 Q. 123 No, I'm not saying that this letter was sent out?
13 A. Well, the acknowledgement refers to a letter of the 25th of May. Is that
14 correct.
- 11:16:09 15 Q. 124 Yes?
16 A. So it's not this letter.
17 Q. 125 It's not this letter, no?
18 A. That's fine. That's what I would have thought.
19 Q. 126 There was a letter but what took place or what was intended if this draft is
11:16:21 20 correct, to take place, was that after the site visit, that is after the 9th --
21 19th of May a particular course was to be followed. In other words, that
22 councillors could raise the query which they had put in writing on the 12th at
23 a meeting to take place after the 19th?
24 A. This letter clearly refers to a meeting which is to take place, isn't that
11:16:44 25 right.
26 Q. 127 Yes?
27 A. So we don't know if that letter was sent or signed.
28 Q. 128 No. I mean, it is unlikely that a letter in identical terms to this was
29 actually sent to the Councillor, by the Chairman, I should say. Because the
11:16:58 30 letter in response, which is referred to, came on the 25th. The meeting having

- 11:17:04 1 taken place on the 19th?
- 2 A. Yeah, well then I'm satisfied, yeah.
- 3 Q. 129 And in the interim we'll see that the opinion of counsel had been sought by the
- 4 law agent and had been received on the 28th of May by the law agent. And that
- 11:17:25 5 opinion was conveyed to the two councillors involved. And they took issue with
- 6 the fact that it had not been referred to in the response to them of the 25th.
- 7 We'll see this if we look to page 2301. Events in effect had overtaken the
- 8 parties who were?
- 9 A. I wonder could I have a printed copy of that letter.
- 11:17:54 10 Q. 130 You may.
- 11 A. Just to help me. On the 12th of June.
- 12 Q. 131 It says "we wrote to you on the 12th of May last, copy attached" and I think we
- 13 can probably assume that that is the original letter we've referred to earlier"
- 14 to confirm our interpretation of Standing Orders in respect of the sequence of
- 11:18:24 15 motions at the meeting of the Draft Development Plan review held on the 27th of
- 16 April 1993. You replied on the 25th of May saying that you had forwarded our
- 17 letter to the Manager for a response from the law agent. To date we have not
- 18 received this response. In the interim however a copy of the opinion of
- 19 Mr. John Gallagher, Senior Counsel, with regard to questions he had been asked
- 11:18:48 20 by the Manager to advise upon has been made available to us. We note that
- 21 although the date of this opinion is the 22nd of May it was not made available
- 22 to the elected members until the 28th of May. It would appear also that this
- 23 opinion was available at the time of your acknowledgement and reply to us of
- 24 the 25th of May."
- 11:19:07 25
- 26 We'll see that that is explained subsequently as being an opinion dated by
- 27 counsel on a particular date but not physically received by the law agent until
- 28 some days later, which explains the disparity between dates here.
- 29
- 11:19:28 30 But what is of significance is that the course of action which would have

11:19:33 1 allowed for the raising of Mr. Cosgrave and Mr. Creaven's letter in the context
2 of reopening the motion decision on the 27th of April was lost following upon
3 the content of Mr. Gallagher's opinion being made known to the Council, isn't
4 that so?

11:19:57 5 A. Yeah, I have to say that this letter does make it fairly clear that that's not
6 the draft. Doesn't it? That's not the draft really that would have been ...

7 Q. 132 Absolutely?

8 A. Yeah.

9 Q. 133 It is not exactly that draft.

11:20:11 10 A. All right. Thank you.

11 Q. 134 The question of there being an alteration in the capacity for the councillors
12 to raise the issue which they had raised in their letter of the 12th was
13 dependent upon the advice of Mr. Gallagher being to the effect that
14 Mr. Birmingham's opinion was correct in effect?

11:20:44 15 A. Yes.

16 Q. 135 And that unfortunately counsel differ and the view that was adopted by the
17 Council was that of Mr. Gallagher, isn't that right?

18 A. And it must be said that Mr. Byrne when he came across this.

19 Q. 136 Yes?

11:21:02 20 A. Relied on Mr. Gallagher.

21 Q. 137 Yes. We'll see that he agreed with it. So that this body of correspondence
22 had been written with your approval in association with Mr. Lawlor and Mr.
23 Dunlop. And it is your belief that they had secured the full and free
24 co-operation and agreement of the authors of whatever letters there were
11:21:34 25 written to those matters, isn't that right?

26 A. Yes, and we would have establish two of those letters. But there's a question
27 mark over the third.

28 Q. 138 Right. Even allowing for that scenario, can you see any instance, Mr. Gore
29 Grimes, in which it was appropriate for the councillors views on these issues
11:21:57 30 to be views which required you to be satisfied as to the content of the

- 11:22:02 1 letters?
- 2 A. Only this. That they contained legal arguments which were well expressed in
- 3 Mr. Birmingham's opinion.
- 4 Q. 139 Yes?
- 11:22:12 5 A. And that is what we wanted to get across. Because we were, if you like,
- 6 setting up a potential judicial review.
- 7 Q. 140 Yes?
- 8 A. And therefore, we did put words into the councillors mouths but with their
- 9 agreement. I mean, it was part of a process of moving towards judicial review.
- 11:22:30 10 And that's why. I mean, it wouldn't be within the disciplines of either Mr.
- 11 Dunlop or Mr
- 12 Q. 141 Lawlor?
- 13 A. Lawlor. To write those letters without having the opinion in front of them.
- 14 And it certainly wouldn't be been the within the disciplines of Mr. Cosgrave or
- 11:22:50 15 Mr. Creaven to draft that letter.
- 16 Q. 142 Whilst that may apply to the legal side of things. The Manager's letter was an
- 17 entirely technical matter, dealing with the north ...
- 18 A. It was a fair enquiry to the manager, wasn't it, to the Manager, that's what I
- 19 think.
- 11:23:02 20 Q. 143 Of course it was a fair inquiry to make of him. But it was not a matter upon
- 21 which your approval in the normal course would be required, particularly --
- 22 it's difficult to see how a property developer's interests are going to be the
- 23 subject matter of a letter written by councillors which requires to be approved
- 24 by the developer?
- 11:23:25 25 A. Well, again, its part of the judicial review process. I mean, we were using
- 26 every possible angle to try and say look, this is a justifiable application, it
- 27 should go ahead. Rezoning should be there and here are the planning reasons
- 28 and here are the, of course, then we of course attacked the Council motion in
- 29 the way that Mr. Birmingham advised.
- 11:23:49 30 Q. 144 I accept that on the face of these documents it appears that both of these

11:23:53 1 councillors are breast high with the arguments that you yourself were going to
2 make, isn't that correct?

3 A. That's correct.

4 Q. 145 But no contact was made between yourself and these councillors in relation to
11:24:04 5 these matters. Your contact was through Mr. Dunlop and Mr. Liam Lawlor, isn't
6 that right?

7 A. Yes.

8 Q. 146 And what was the explanation for that? I mean, if you were going to go to
9 court, for example it would be grounded on some form of affidavit no doubt,
11:24:19 10 where the deponent would be swearing to the content of these documents as being
11 the views of the individual councillors. But you couldn't say that?

12 A. The views as advised.

13 Q. 147 Yes. But you couldn't say that if you were getting this channelled through the
14 source of Mr. Lawlor or Mr. Dunlop, isn't that right?

11:24:36 15 A. Well, we didn't say it. Because there was no affidavit is so ...

16 Q. 148 Absolutely. I'm just illustrating to you that perhaps that is the reason why
17 the preparation of documents for a judicial review could not be the explanation
18 for the creation of these documents. Because they weren't created directly
19 between yourself and these individuals. They were created through Mr. Lawlor
11:24:59 20 and Mr. Dunlop, who apparently drafted them?

21 A. What I was saying yesterday was that Mr. Byrne stood back from the rezoning
22 business, for the reasons I have stated. However, when the interests
23 coincided, as they did on two occasions, and perhaps more, but two that we've
24 been talking about here in the last few days. One, the CPO. Both parties had
11:25:25 25 an interest to fight that. And two, more importantly, the Healy motion. And
26 the Healy motion was devastating and if it succeeded it was the end of what had
27 been a very long road. And a very lengthy postponement of seven or perhaps
28 eight years. And therefore, any effort at all that we could use to try and
29 defeat that motion, whether it be attacking the process used by the Council or
11:26:00 30 making suggestions to the Manager that perhaps the rezoning was a good idea for

11:26:04 1 the planning reasons set out in the second letter, were motions which were
2 common both to Mr. Byrne and to Pennine.

3 Q. 149 Yes. I mean, I can appreciate that, Mr. Gore Grimes. And it seems perfectly
4 clear that if the motion of Mr. Healy stood, it was going to have a very
11:26:23 5 negative effect on Mr. Byrne's plans for these lands. And therefore, it's
6 perfectly understandable that he should set about doing whatever he could to
7 effectively reverse, if he could, the decision of the Council which took place
8 on the 27th. What the Tribunal is inquiring into however, is the methodology
9 through which this is done. And in particular the circumstances in which it
11:26:44 10 would appear that part of Mr. Byrne's armoury included having his lawyers
11 settle letters which were going to be written as between the Councillor and the
12 Chairman and the Chairman and the Council?

13 A. They weren't settled, Mr. O'Neill. They weren't settled by his lawyers. They
14 were settled by Mr. Dunlop and Mr. Lawlor, as we know. They were approved. We
11:27:07 15 had a look at them to make sure that our interests were also protected. In one
16 respect we amended it because we felt that our interests weren't fully
17 protected in relation to the mention of a CPO.

18 Q. 150 I think we can, unless you want to add anything further to that, Mr. Gore
19 Grimes, we can probably move on through the chronology of events?

11:27:29 20 A. Thank you.

21 Q. 151 On the 2nd June 1993, we will see on page 2303. That you were communicating
22 with Mr. Frank Dunlop in relation to the opinion which had been received. And
23 firstly, the opinion we referred to earlier was that of Mr. John Gallagher.
24 That had been forwarded on. It's the 2nd of June. That had been forwarded on
11:27:59 25 to your own counsel Mr. Birmingham. And he then wrote his own opinion. But
26 effectively from our point of view, the salient part is that you have read
27 Mr. Birmingham's opinion together with the opinion of Mr. Gallagher, as you
28 will see. George does not disagree with any of the conclusions drawn by John
29 Gallagher but he does not find that Mr. Gallagher's opinion answers or even
11:28:25 30 addresses the raised by Mr. Birmingham in his earlier advises. If you would

11:28:32 1 like to discuss the matter, not to hesitate to contact you.

2

3 By this stage in June it appeared to you, I take it, that matters in effect had

4 been lost

11:28:42 5 A. Yes.

6 Q. 152 And it would have to await whatever other opportunities within the planning

7 system that would allow for development to take place. That it wasn't going to

8 take place as part of the review of the 1983 plan, isn't that right?

9 A. It was not. And the defeat was comprehensive.

11:29:01 10 Q. 153 Yes. And I think that one of the reasons for that really is because the time

11 scale was such that for an alternative motion or a second motion to be brought

12 within the Council's Standing Orders, there would have to be a six month

13 waiting period?

14 A. Yes, it would have gone outside the date.

11:29:23 15 Q. 154 It would have gone outside the date. And therefore, it couldn't be done. So

16 effectively as of that date in June a number of significant matters had

17 occurred. And I want to establish the extent to which they were related.

18

19 The planning side was -- or the rezoning side was lost. But also Davy Hickey

11:29:45 20 Properties were no longer involved in the project, isn't that right

21 A. Since the 11th of May, yes.

22 Q. 155 Since the 11th of May. And as far as you know, they had effectively pulled out

23 as of that date?

24 A. As far as we know.

11:29:59 25 Q. 156 That was the first that you were told about it?

26 A. That we were told about it, yes.

27 Q. 157 And we saw in your attendance that there really was a directive that Frank

28 Dunlop was to remove both of the persons who were associated with Davy Hickey

29 Properties, that is Mr. Shubotham and Mr. Brendan Hickey, from the Pennine

11:30:19 30 board. You saw that reference yesterday?

- 11:30:20 1 A. Oh, that was Frank Dunlop's statement, not ours of course.
- 2 Q. 158 Yes. But it was recorded in your attendance that that was something that he
3 was to do?
- 4 A. That was something that he wished to do. We didn't ask him to do it, in fact
11:30:37 5 we were very sorry to loose Davy Hickey.
- 6 Q. 159 Yes. It proceeds on the assumption that you believed or you were assured at
7 that time that they were in fact members of the board of Pennine, isn't that
8 so?
- 9 A. Frank Dunlop stated that he intended to remove Brendan Hickey and
11:30:55 10 Mr. Shubotham. And quite honestly, we were quite incredulous because we didn't
11 think that Mr. Davy or sorry Mr. Hickey or Mr. Shubotham were people that would
12 be removed that easily by Mr. Dunlop unless they wanted to go.
- 13 Q. 160 Yes. You may or perhaps may not be aware of the fact that Mr. Davy and
14 Mr. Shubotham say that they had no role whatsoever in relation to Pennine at
11:31:24 15 any time. That it was always Mr. Dunlop's company. If that is so it is
16 apparently inconsistent with the content of your attendance which is why I am
17 putting it to you. I want to establish your understanding, as of the date of
18 this attendance in May of 1993, was that they were in fact serving members of
19 the board of Pennine, be it right or wrong. Was it your understanding that
11:31:51 20 they were?
- 21 A. I expect we could have made a search in the Companies Office. We simply
22 accepted that they were from the very first negotiation.
- 23 Q. 161 Yes?
- 24 A. And I think there was one letter and there probably were more, I don't
11:31:57 25 remember. There certainly was one letter written by Mr. Hickey on Davy Hickey
26 notepaper which certainly seemed to confirm that we were right. On the 11th of
27 May we were told that that arrangement was finishing and that Mr. Dunlop was
28 taking over sole control and would remove those two gentlemen from the board.
- 29 Q. 162 Yes. Of course, as you know, from December of 1992 until the middle of April
11:32:25 30 of 1993 you and Davy Hickey were jointly engaged in endeavouring to challenge

- 11:32:32 1 the compulsory purchase order which was?
- 2 A. Yes.
- 3 Q. 163 Involved at that time, isn't that right?
- 4 A. Yes, there was that interest too.
- 11:32:43 5 Q. 164 There was the interest that you mentioned yesterday, the joint interest of
- 6 attending the public hearing in relation to it and all of those matters?
- 7 A. Yes.
- 8 Q. 165 So do you have any doubt now as to the fact that in May it was your belief that
- 9 Davy Hickey Properties were involved to that date and that a change was going
- 11:33:01 10 to take place as of that date?
- 11 A. Both Mr. Byrne and myself and I think anyone on that team would certainly
- 12 believe that, yes.
- 13 Q. 166 Now, once they were out, it appears that Mr. Byrne was nonetheless still
- 14 prepared to stay in the relationship with Mr. Dunlop, isn't that so?
- 11:33:26 15 A. Yes, it wouldn't have been on the same, with the same enthusiasm as the
- 16 previous relationship.
- 17 Q. 167 Yes. Well we'll see at page 2342. And an attendance of yours addressed to
- 18 your brother dated the 29th of June?
- 19 A. Yes.
- 11:33:40 20 Q. 168 Of 1993. I think you were going to go away for a period immediately after this
- 21 and you were updating him on the situation, isn't that right?
- 22 A. That's right.
- 23 Q. 169 And you say on this file "we have all the matters to do with Dublin County
- 24 Council and Pennine Holdings. Pennine Holdings (Frank Dunlop) now wants to
- 11:34:01 25 renegotiate the option agreement by getting a longer term and by reducing
- 26 money". Firstly, the term was one that extended until the 25th of January
- 27 1995, which is about 18 months on from this date. The option term was an
- 28 option which was?
- 29 A. Oh, yeah. I think the 26th of January.
- 11:34:22 30 Q. 170 Sorry?

11:34:24 1 A. A mistake here.

2 Q. 171 Certainly it's 18 months on?

3 A. That's right, yes.

4 Q. 172 And obviously, what Mr. Dunlop here was proposing was an arrangement free of

11:34:36 5 Davy Hickey involvement, for a start. And it would involve both altering the

6 terms of the duration of the option and also the cost of the lands. You say to

7 Anthony Gore Grimes" I'm fairly certain that John Byrne will not be interested

8 in reducing the money. Whether or not he will be prepared to extend the option

9 date from the 21st of January 1995 onward is a matter for him. Frank Dunlop is

11:35:03 10 to submit proposals and no doubt if I get these before I go away -- sorry. I

11 doubt if I will get these before I go away but if I do I will deal with them.

12 I feel that John will not be anxious to expend the proposals. The problem here

13 is that Frank Dunlop feels that he is the key to the whole development of the

14 site. You should know by October when the final plan comes out as to whether

11:35:26 15 or not he is right. Basically, if the zoning is confirmed as amenity we are

16 scuppered for a further five years. Frank remains reasonably confident however

17 that he can turn this around. But the problem is that much of the land that

18 was available for the golf course will now be required by Dublin County Council

19 for A, sewage treatment plant C, Flood pools. This has become a new political

11:35:53 20 issue as a result of the flooding and tragic death in Baldoyle recently. This

21 is going to take up to about 125 acres which would leave about 85 acres only

22 for the golf course. As you will know, this is not sufficient. Not exactly

23 sure what Frank Dunlop is playing at. But it seems to me that he is trying to

24 increase the housing". This is at page 2343. "He is trying to increase the

11:36:15 25 housing at Portmarnock and significantly from 100 to say 200 houses and to wipe

26 out any further development of the Baldoyle lands other than the shopping

27 centre and housing that Kennedy is carrying out. So there would be sufficient

28 land for a golf course at that end for the County Council's requirements. I'm

29 not sure if this will work or what John Byrne thinks about it. And Frank

11:36:45 30 Dunlop and Liam Lawlor were in with me on the 28th of June. They both seem to

11:36:45 1 me to be speaking in riddles and only telling me half the story only. I think
2 in reality, the reason why half the story only was being told to me was that
3 Frank Dunlop does not particularly trust Liam Lawlor and is very careful about
4 what he says. You will have to deal with this in my absence".

11:37:04 5
6 Does that jog your memory in any way of what was taking place here

7 A. Oh, it sure does, yeah.

8 Q. 173 It had moved on from a situation where Davy Hickey were involved but Mr. Dunlop
9 still seemed to be of the opinion that he was the key to this development. Did
11:37:22 10 he elaborate on that to you as to how it was, notwithstanding that the fact
11 that the motion had failed on the 27th. The attempts to reopen the matters
12 through correspondence had failed and he was still optimistic insofar as he was
13 expressing a view that he was the key to the project. How did he intend to do
14 it?

11:37:40 15 A. He certainly didn't explain that to me. Unless he was aiming for a Section 4
16 after the plan had been removed. It wasn't very realistic. I had no idea
17 except he was extremely confident.

18 Q. 174 And he was present throughout this with Mr. Lawlor apparently. Between the two
19 of them you thought that they were speaking in riddles. You couldn't quite
11:38:02 20 work-out what they were at?

21 A. Yeah, I think that both seemed to me to be holding back something that they
22 didn't want the other to know. That's just an opinion I formed.

23 Q. 175 Yes.

24 A. It wasn't a very satisfactory consultation, from our point of view.

11:38:19 25 Q. 176 But certainly whatever about hope being realistic. There was some hope that
26 matters could change, isn't that right? Expressed albeit by Mr. Dunlop, I'm
27 not saying by you?

28 A. You see, I think that we had that little period and Mr. Dunlop was talking
29 about a change. But I don't think it was a change that was going to occur
11:38:43 30 before the zoning was confirmed.

- 11:38:44 1 Q. 177 I see.
- 2 A. Because he was looking for an extension of time .
- 3 Q. 178 Yes?
- 4 A. And obviously, this extension would have been five or seven years. Now,
- 11:38:54 5 Mr. Byrne hadn't thought about that. But he had thought about the price. And
- 6 he said there's only one way that this price can go, and that's upwards.
- 7 Because if you think that that price had been negotiated five years or four and
- 8 a half years previously. And we knew that the land values had increased during
- 9 that period. So to negotiate downwards would have been completely
- 11:39:16 10 unacceptable. And obviously, as values had increase in that time, the only way
- 11 was upwards.
- 12 Q. 179 Yes. I think you might have been away then from June. Certainly, you return
- 13 in September, isn't that?
- 14 A. So, well. I hope I wasn't away from June to September.
- 11:39:33 15 Q. 180 Well it's the 28th of June maybe?
- 16 A. Yes, I think I was away July and a good deal of August, yes.
- 17 Q. 181 Certainly we'll see that telephone communication resumes between yourself and
- 18 Mr. Dunlop, certainly by the 1st of September we see at page 2004. This again
- 19 is the message diary of Mr. Dunlop. 9:45 on the 1st of September you
- 11:39:59 20 telephoned or certainly John Byrne, John Gore Grimes and there's a number there
- 21 is, I'm not sure if that's yours or Mr. Byrne's?
- 22 A. I think that's our own number.
- 23 Q. 182 I think further down at 4:15 there is a second phone call. Same number.
- 24 Please call him?
- 11:40:16 25 A. Yes.
- 26 Q. 183 And on the following day, commencement of business at 2401, 9:15 in the morning
- 27 you're telephoning. And at 10.15 again you are telephoning saying it's urgent
- 28 that he speaks with you.
- 29 A. Yes.
- 11:40:36 30 Q. 184 And we'll see that there is a record then of a meeting taking place on the 6th

11:40:43 1 of September at page 2409. At two o'clock in the afternoon Mr. Dunlop's diary
2 records "J G Grimes, J Byrne?"
3 A. Yes.
4 Q. 185 Does that perhaps remind you of the fact that there was a renewed interchange
11:41:04 5 between yourself and Mr. Dunlop, presumably, in relation to Baldoyle. That it
6 was the only matter of common interest between you, isn't that right?
7 A. That's right. I don't seem to have any attendances on that, or do I.
8 Q. 186 No?
9 A. Certainly after I came back, yes, we would have had further meetings with Mr.
11:41:24 10 Dunlop.
11 Q. 187 Yes.
12 A. And I think he would have been pressing for amendments and we were resisting
13 that.
14 Q. 188 Yes. Is this amendments to the option rather?
11:41:33 15 A. Yes.
16 Q. 189 You don't believe that you were engaged in any part of the attempts to effect
17 the rezoning within the Development Plan?
18 A. No.
19 Q. 190 No?
11:41:46 20 A. It was mainly to do with -- do you see -- as I said, my impression is that Mr.
21 Dunlop felt that given time he could bring this around.
22 Q. 191 Yes?
23 A. But what wasn't acceptable I think to Mr. Byrne was that he wanted to reduce
24 the price and he wanted to extend the time as well. And that was not
11:42:06 25 acceptable and the other thing was, as I think as I said yesterday, Mr. Byrne
26 would have had the utmost confidence in Davy Hickey, as experienced developers,
27 who were well financed. Whereas Mr. Dunlop was not a developer and would not
28 have been well financed.
29 Q. 192 Yes. Just on a point of detail on that Mr. Gore Grimes. The company Davy
11:42:26 30 Hickey Properties came into existence really in the middle of 1990?

- 11:42:31 1 A. Yeah.
- 2 Q. 193 I mean, it had a very limited history and its only development, as far as we
3 know, to that point had been the rather large City West successful development
4 but they didn't really have a track history?
- 11:42:44 5 A. I accept first of all Davy's are good financial managers and Mr. Shubotham is a
6 very astute man with that reputation I don't know him but I believe so.
7 Mr. Hickey had experience in I can't remember was it Rohans or one of these
8 development companies for a long number of years and he was an experienced
9 developer.
- 11:43:04 10 Q. 194 Yes. There were a number of telephone exchanges between yourself and Mr.
11 Dunlop in the month of September which happened to be the month upon which the
12 Council was going to make its final wrap up decisions in relation to what was
13 to be the 1993 Development Plan, isn't that right?
- 14 A. I can't recall but I'm sure that's right.
- 11:43:25 15 Q. 195 Just to get the chronology and sequence. On the 29th of September 1993 the
16 councillors had their last meeting in relation to the Council. They formally
17 adopted it then in September?
- 18 A. Yeah.
- 19 Q. 196 Effectively everything had been decided?
- 11:43:39 20 A. B and G.
- 21 Q. 197 By the 29th of September and indeed once Mr. Gallagher's opinion had been
22 offered in May that brought an end effectively to Pennine Holdings, isn't that
23 right?
- 24 A. Yes.
- 11:43:52 25 Q. 198 And so after that date, I think what you're indicating is that such
26 communications as took place between Mr. Dunlop and Mr. Lawlor and Mr. Byrne
27 were directed towards a review or possibly a new option agreement or a new
28 business relationship rather than the one with Davy's, which had fallen, as and
29 from May, isn't that right?
- 11:44:15 30 A. Yes.

- 11:44:17 1 Q. 199 Mr. Dunlop in his statement to the Tribunal, his most recent statement to the
2 Tribunal, appears to indicate that he understood that Mr. Byrne had entered
3 into a new arrangement with Mr. Lawlor. But he, Mr. Dunlop, was not aware of
4 its terms. I'll just quote you what you he says in relation to it. "He says
11:44:43 5 that" I do recall one meeting at my office with Mr. Byrne and Mr. Lawlor
6 subsequent to the failure of the rezoning at which on the instigation of
7 Mr. Lawlor Mr. Byrne agreed to enter into a new arrangement to attempt to have
8 the matter of rezoning resurrected. I cannot recall if anything came of this
9 but I had no involvement with any subsequent attempted rezoning of the lands".
11:45:07 10 Does that?
11 A. I didn't know that but I'm sure.
12 Q. 200 Would that accord with your?
13 A. It doesn't because I really have no information on it.
14 Q. 201 So you don't know whether Mr. Byrne was prepared to and did reach yet another
11:45:21 15 agreement with Mr. Lawlor?
16 A. Well I didn't know but.
17 Q. 202 You didn't know?
18 A. No.
19 Q. 203 But you do know that within the next number of years, of course, Mr. Byrne
11:45:33 20 disposed of his interest to a third party and no longer held any remaining
21 interest in the land, isn't that right?
22 A. That's right.
23 Q. 204 And it wasn't rezoned within the period of his ownership at any time,?
24 A. No.
11:45:47 25 Q. 205 Other than the rezoning in respect of the?
26 A. Mr. Kennedy's.
27 Q. 206 Mr. Kennedy's at an earlier stage?
28 A. Yes.
29 Q. 207 Which had existed, isn't that right?
11:45:56 30 A. There was a final meeting I think and I can't remember the date of it. But it

11:45:59 1 was after the zoning had taken place and, I mean, the discussion was would we
2 extend the time limit on the option and would we come to an agreement on price.

3 Q. 208 Yes.

4 A. And it was a fairly, it was a very heated meeting because we were not acceding
11:46:18 5 to Mr. Dunlop's requests. And that really was as far as I know. I can't
6 remember the exact date. But that was the end of the matter. Because we.

7 Q. 209 Yes?

8 A. I think everybody sort of walked out and that sort of thing.

9 Q. 210 Yes. Mr. Dunlop apparently was able to sell on the benefit of his option
11:46:38 10 arrangement to another property developer within the period prior to the expiry
11 date, isn't that so?

12 A. I didn't know that. I mean, I've forgotten that.

13 Q. 211 Yes?

14 A. Maybe I did know it but.

11:46:54 15 Q. 212 There was a continuum of Mr. Dunlop's involvement right through to the end and
16 possibly slightly thereafter albeit that there was a different backer?

17 A. Up to September '95.

18 Q. 213 Yes, yes.

19 A. And do we know who the backer was.

11:47:06 20 Q. 214 Well we do but it's not material just at the moment?

21 A. It might ring a bell just if I knew it.

22 Q. 215 It was a limited company but connected with Mr. Mulryan?

23 A. Oh, yes, I see. Yeah.

24 Q. 216 Thank you, Mr. Gore Grimes. Well there may be questions from either the bench
11:47:24 25 or others?

26 A. Yes.

27

28 CHAIRMAN: All right. Does anybody wish to cross-examine? No. Do you wish
29 to cross-examine? No. Thank you very much, Mr. Gore Grimes

11:47:37 30 A. Thank you.

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11:47:48 10
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THE WITNESS THEN WITHDREW.

MR. O'NEILL: The next witness is Ms. Joan Clarke. I'm not sure.

CHAIRMAN: It might be a useful time to break for ten minutes.

MR. O'NEILL: Thank you.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK
AND RESUMED AS FOLLOWS:

MR. O'NEILL: The next witness is Ms. Joan Clarke.

Ms. Clarke, please, could you come forward to the witness box, employer.

MS CLARKE, HAVING BEEN SWORN, WAS QUESTIONED

BY MR. O'NEILL AS FOLLOWS:

12:07:28 1

2

3

4

12:07:58 5

CHAIRMAN: Good afternoon, Ms. Clarke

6

A. Good afternoon.

7

8

MR. O'NEILL: Good afternoon, Ms. Clarke.

9

12:08:06 10

Q. 217 You, in the period in the mid to late '80s perhaps were employed by the Late

11

Mr. Liam Lawlor, isn't that so?

12

A. That's right.

13

Q. 218 And I think you were employed in the capacity as office Manager and secretary.

14

And in the course of that occupation you had occasion to type various forms of

12:08:24 15

correspondence and documentation for Mr. Lawlor, isn't that so?

16

A. That's right.

17

Q. 219 And I think that at the request of the Tribunal you've been asked to assist in

18

the identification of certain documents which were sent to you for

19

identification, isn't that the so?

12:08:39 20

A. That's right.

21

Q. 220 And the documents will appear on the screen in front of you there, Ms. Clarke.

22

But if you want to see hard copies of them, we can provide those to you as you

23

wish?

24

A. Okay.

12:08:52 25

Q. 221 Now, I think that from examining these documents you can recognise certain

26

aspects of your own style of presentation and of spacing, font, etc, which

27

allow you to reach certain conclusions as a matter of probability in relation

28

to these documents, isn't that so?

29

A. Yes.

12:09:14 30

Q. 222 Yes. If we perhaps could look, first, at the document on screen now. No. 977.

12:09:22 1 And this is a document which is from Dail Eireann Baile Atha Cliath, Dublin 2
2 The response to be to the constituency office, Somerton, Lucan, County Dublin.
3 It's addressed to senior engineer in the drainage section of Dublin
4 Corporation. And it's dated the 20th of May 1987.

12:09:43 5
6 Looking at that document, Ms. Clarke, are you in a position to say whether or
7 not it contains the characteristics which are, as far as you are concerned,
8 possibly unique to your form of presentation of documents?

9 A. Yes.

12:09:58 10 Q. 223 I think in particular one of the traits of your presentation is that the
11 subject matter of the correspondence often appears beneath the name or the
12 address, initial address to the party?

13 A. The salutation.

14 Q. 224 The salutation as you rightly say. The second thing is that you tend to
15 underline for emphasis the subject matter, isn't that right?

16 A. Yes.

17 Q. 225 And there is a colon at the end of each completed section of heading, isn't
18 that right?

19 A. Yes, yeah.

12:10:31 20 Q. 226 And in this particular instance, we see that Mr. Liam Lawlor, TD, MCC was the
21 author of the document. And is that his signature on the bottom of it or not?

22 A. Yes, it is.

23 Q. 227 It is. I'd like you now to look at another document which is somewhat similar
24 in type. It's at page 946. We see that this is from Simmonscourt Lodge,
12:11:05 25 Simmonscourt avenue, Ballsbridge, Dublin. The sender of the letter is said to
26 be John Byrne. There is a signature at the bottom where it has been pp'd. And
27 that document deals with a certain meeting which took place between a Mr. Bill
28 Riordan and Dublin County Council. The subject matter of it is foul drainage
29 and surface water which we see in the centre part of the letter there, both of
12:11:40 30 which are underlined. Both of which have a colon immediately after them.

12:11:45 1

2 Have you -- are you in a position to say whether or not this is a letter which
3 is drafted by you

4 A. Well I certainly typed it.

12:12:00 5 Q. 228 You typed it I should say?

6 A. Yes.

7 Q. 229 And did you type it in Simmonscourt Lodge, Simmonscourt avenue, Ballsbridge?

8 A. No, I typed it in Somerton.

9 Q. 230 And at whose request did you type it?

12:12:04 10 A. Liam Lawlor's.

11 Q. 231 Yes. Do you know why or how Mr. Lawlor came to be writing letters supposedly
12 from Mr. John Byrne?

13 A. No.

14 Q. 232 The fact that you were able to write this letter in Mr. Lawlor's office

12:12:23 15 suggests that either Mr. Lawlor had correspondence, plain correspondence, blank
16 correspondence with the letter head of Simmonscourt lodge, in Serpentine
17 Avenue, Ballsbridge, which he could use. Or alternatively that he fabricated
18 this documentation with the heading through the existing typing or printing
19 system?

12:12:48 20 A. I can't see the heading. I can't see this here.

21 Q. 233 I'm sorry. I'll give you physical copies here. It might be easier.

22 A. Thanks. It's possible but I vaguely remember being handed the, a blank letter
23 head with the address already on it.

24 Q. 234 Right. Now, the subject matter of this letter was a meeting which apparently

12:13:25 25 had taken place with a Mr. Bill Riordan and Mr. Tom Leahy, who was a senior

26 executive engineer. And in the body of the letter it refers to the

27 understanding of Mr. Byrne that Mr. Riordan had been accompanied by a Mr. David

28 Galbraithy consulting engineer. At a meeting which had taken place.

29

12:13:48 30 Now, I think one of those individuals is known to you, is that right? Mr. Bill

12:13:54 1 Riordan.

2 A. Both of them are.

3 Q. 235 Both are?

4 A. Well it should be Galbraith.

12:13:59 5 Q. 236 It should be Galbraith?

6 A. I think, yes.

7 Q. 237 Now, Mr. Byrne has indicated to the Tribunal that he doesn't know Mr. Riordan,

8 he's never met Mr. Riordan. And as far as he's concerned, Mr. Riordan was

9 never his representative. Although this letter on its face clearly states that

12:14:17 10 he was.

11

12 Now, do you know who Mr. Bill Riordan was or is, I should say

13 A. Yes, yes.

14 Q. 238 And who is Mr. Riordan?

12:14:26 15 A. He was an accountant, an associate of Liam's.

16 Q. 239 Yes?

17 A. Who came to work with Liam.

18 Q. 240 Sorry, could you keep your voice up slightly?

19 A. Sorry. He was an associate of Liam Lawlor's. He was an accountant and he left

12:14:39 20 his practice and came to work with Liam.

21 Q. 241 Yes?

22 A. For a short period before he moved to the UK.

23 Q. 242 Yes. And in and around this period, in October 1986, did he have an

24 association at that time with Mr. Lawlor?

12:14:53 25 A. Yes, he did, yeah.

26 Q. 243 Is this the period, in other words, we're talking about. Because you haven't

27 indicated when it was that he went to the UK?

28 A. It was around the time of this, yes, yes.

29 Q. 244 And you know also Mr. David Galbraith?

12:15:10 30 A. No, I just recognise his name. I remember his name, yes.

- 12:15:14 1 Q. 245 Do you believe him to be a consulting engineer, as stated in this letter?
- 2 A. Yes.
- 3 Q. 246 And did he have an association also with projects in which Mr. Lawlor was
- 4 interested?
- 12:15:29 5 A. I don't know. All I can tell you is that his name came up in correspondence.
- 6 Q. 247 Yes. And we'll see that correspondence a little later. If we turn to page 980
- 7 on screen. And it might be the second document in the bundle that you have
- 8 there. I'm not sure. It's a letter dated 31st of July 1987. It bears the
- 9 title, Simmonscourt lodge, Simmonscourt Avenue, Ballsbridge and telephone
- 12:15:55 10 number. It's addressed to An Bord Pleanala in this instance. Again, it refers
- 11 to Edington Limited, 110 houses, Baldoyle reference number PL6/5, 71575 and
- 12 6A562T.
- 13
- 14 It's coming from Edington Limited. And they are advising An Bord Pleanala "we
- 12:16:24 15 wish to report progress on an earlier request to defer decision on the above
- 16 appeal until the planning authority of Dublin County Council Sanitary Services
- 17 Department could carry out detailed tests on the surface and foul drainage
- 18 systems in the Baldoyle area".
- 19
- 12:16:41 20 Now, is that a letter which was typed by you
- 21 A. Yes.
- 22 Q. 248 Was it typed at the request of Mr. Lawlor?
- 23 A. Yes.
- 24 Q. 249 Had you any dealings with this company Edington Limited?
- 12:16:50 25 A. No.
- 26 Q. 250 No. The next letter I'd ask you to look at is at page 981. It's a letter
- 27 which bears the same date as the last letter. On this occasion it's being
- 28 written to a Mr. John McDaid, who is an engineer in Dublin County Council
- 29 Sanitary Services Department. Again, it's on the heading of Simmonscourt
- 12:17:21 30 Lodge. And it's signed I think it's decipherable as Edington, I'm not quite

12:17:21 1 sure if it's typed beneath it.

2

3 Again, the subject matter of it is underlined, there is a colon at the end of

4 it. Both in relation to the reference to Baldoyle, to surface water and to

12:17:34 5 foul drainage. Is that also a letter which you believe was typed by you

6 A. Yes.

7 Q. 251 Was that also typed at the request of Mr. Lawlor?

8 A. Yes.

9 Q. 252 Are you aware whether the signature, it's not really a signature. I think it's

12:17:50 10 meant to be Edington written over the company itself. Do you know whether

11 Mr. Lawlor applied that or not?

12 A. Actually, it looks more like Bill Riordan's writing.

13 Q. 253 I see. Do you have a recollection of Mr. Bill Riordan having a connection with

14 Edington?

12:18:12 15 A. No.

16 Q. 254 No. The next letter I ask you to look at is at page 1,000 on screen. It's a

17 letter of the 6th of November of 1987. It's addressed to Mr. Al Smyth, who is

18 the principal officer in the Planning Department in the Irish Life centre.

19 There is no letter heading on this. But it's a draft apparently. It's

12:18:41 20 unsigned. It's supposedly emanating from David Galbraith & Co. limited. And

21 again, it is in connection with housing at Baldoyle. And I think it contains

22 your signature colons at the end of each of the reference points, isn't that

23 right?

24 A. Yes.

12:18:58 25 Q. 255 Is that also a letter which you believe to be to have been drafted by you?

26 A. Typed by me.

27 Q. 256 I beg your pardon. Typed by you. You say that you are aware of the existence

28 of Mr. Galbraith. But were you ever engaged by Mr. Galbraith to type letters

29 on his behalf?

12:19:14 30 A. No, it was typed at Somerton.

- 12:19:17 1 Q. 257 Yes. And at whose request?
- 2 A. Liam ...
- 3 Q. 258 Would that typing be carried out?
- 4 A. Liam Lawlor's.
- 12:19:23 5 Q. 259 We'll see in the next document. Page 1001. A letter written to An Bord
6 Pleanala. Again, it's a draft and it's unsigned. It runs to two pages. 101
7 and 102. Is that also a letter which was drafted by you -- sorry. Typed by
8 you?
- 9 A. Typed by me, yes.
- 12:19:45 10 Q. 260 And there's also a further letter. At page 1003. Again, to Mr. McDaid. Of
11 the 6th of November 1987. That is also a letter apparently emanating or to
12 emanate from David Galbraith & Co. limited. Is that also typed by you?
- 13 A. Yes.
- 14 Q. 261 That correspondence, as far as you know, issued out of Mr. Lawlor's offices, is
12:20:17 15 that so?
- 16 A. That's right, yes.
- 17 Q. 262 And that was between 1986 and 1987?
- 18 A. Yes.
- 19 Q. 263 I'd now like to turn to 1988. And to ask you to look at the document at page
12:20:32 20 1014. It's headed as an agreement between Jim Kennedy and John Byrne. It
21 refers to an agreement reached at Simmonscourt on Wednesday 3rd of February
22 1988 regarding the boundary line of 100 acre holding.
23
24 This document evidence has been given in relation to this yesterday, Ms Clarke,
12:20:58 25 that it is part of the correspondence generated in relation to an option over
26 100 acres at Baldoyle, which was taken by a company called Bauval Limited from
27 Mr. John Byrne.
28
29 Did you type this letter?
- 12:21:14 30 A. Yes.

12:21:15 1 Q. 264 Sorry, this attendance, I should say, or perhaps record of a meeting.

2 A. Yes.

3 Q. 265 And the next document I'd ask you to look at is at page 1048. If we could put

4 that in to landscape format, please. This document is a planning sequence

12:21:38 5 proposal. And it formed one of the schedules or parts of an option agreement

6 which was entered into by Bauval and by Mr. Byrne's company Endcamp in 1988.

7 Under which an option was given over 100 acres of Mr. Byrne's land. And this

8 document is referred to in the body of the agreement as being a schedule of the

9 intended planning sequence which would be followed by the parties to the

12:22:09 10 agreement. Did you type this document?

11 A. Yes.

12 Q. 266 The Tribunal has seen very many similar types of documents in relation to plots

13 of lands which are being inquired into by the Tribunal. Were you the

14 originator of the formatting of this in addition to having typed it?

12:22:34 15 A. Yes.

16 Q. 267 You'll see that it's in a landscaped format. And why did you adopt that

17 course, why was it appropriate to do that?

18 A. It was the way Liam wanted it. He wanted it laid out.

19 Q. 268 I see. And so this is one of others, is that right?

12:22:49 20 A. Yes.

21 Q. 269 Right. I see. Thank you very much.

22

23 CHAIRMAN: Thank you very much

24 A. Thank you.

12:22:59 25

26 MR. O'NEILL: There wouldn't appear to be any questions. Thank you.

27

28 CHAIRMAN: Thank you.

29

12:23:06 30 **THE WITNESS THEN WITHDREW.**

12:23:06 1

2

MR. O'NEILL: The next witness is Mr. Kevin O'Donnell.

3

4

Mr. O'Donnell, please.

12:23:12 5

6

MR. O'DONNELL, HAVING BEEN SWORN,

7

WAS QUESTIONED BY MR. O'NEILL AS FOLLOWS:

8

9

12:23:41 10

CHAIRMAN: Good afternoon Mr. O'Donnell

11

12

A. Good afternoon.

13

MR. O'NEILL: Good afternoon, Mr. O'Donnell.

14

12:23:47 15

Q. 270 Mr. O'Donnell, you are now a retired gentleman, isn't that right

16

A. Yes.

17

Q. 271 And in your career and your professional career you were an engineer, isn't

18

that so?

19

A. Yes.

12:23:57 20

Q. 272 And you spent the majority of your working life in the employment of local

21

authorities ultimately with Dublin City as Dublin City and County Engineer,

22

though I think your title was Dublin Chief Engineer, is that correct?

23

A. That is quite correct.

24

Q. 273 Your professional duties I think extended to both the county and the city?

12:24:19 25

A. Yes.

26

Q. 274 Although the engineers beneath you were two separate structures, isn't that

27

right?

28

A. Correct.

29

Q. 275 And you I think were in the employment of those two local authorities until the

12:24:33 30

date of your retirement on the 11th of January of 1991, is that so?

- 12:24:39 1 A. About that, yes.
- 2 Q. 276 Is that your birthday or?
- 3 A. No, no, it was actually I think the 5th of January.
- 4 Q. 277 The 5th of January?
- 12:24:47 5 A. If I remember rightly. It was just a particular date that I had chosen to go.
- 6 Q. 278 I see. How long in advance of your 65th birthday was it that you took
- 7 retirement?
- 8 A. About four years.
- 9 Q. 279 About four years. And at that time your experience had extended back to
- 12:25:11 10 dealing with the whole county and in particular for the purposes of this
- 11 current inquiry, the Baldoyle area was under your charge, isn't that right?
- 12 A. Yes.
- 13 Q. 280 From the point of view of the engineering side of things?
- 14 A. Yes.
- 12:25:25 15 Q. 281 And obviously, if persons were intending to make planning applications,
- 16 particularly major ones, which would effect or could be effected by either the
- 17 existing or future infrastructure in that area, you and your Department would
- 18 be consulted, isn't that right?
- 19 A. Quite correct.
- 12:25:45 20 Q. 282 And I think you have a memory of being consulted initially in relation to a
- 21 plan to develop the Baldoyle area in the early 1970s, it might have been called
- 22 Sea City by the promoters, isn't that correct?
- 23 A. That's correct.
- 24 Q. 283 And as a matter of course, because of the size of that project it would come to
- 12:26:07 25 you and you would have a personal involvement in it, isn't that right?
- 26 A. Yes.
- 27 Q. 284 This Sea City project was one in which Mr. John Byrne could be identified as
- 28 having an ownership interest in the lands, isn't that right?
- 29 A. That's correct.
- 12:26:26 30 Q. 285 And is it more or less the entire of the Baldoyle Race Course area and the

- 12:26:33 1 surrounding lands beside it that was to be the subject of the Sea City project?
- 2 A. Well, I can't accurately recall the precise limits of the land. But it was
- 3 basically the Baldoyle Race Course from the Willie Nolan Road northwards.
- 4 Q. 286 Right. And can you remember there being a meeting or a presentation made to
- 12:26:54 5 you which was your first introduction to the individuals who were to be
- 6 involved in this?
- 7 A. Yes, I can recall that pretty clearly.
- 8 Q. 287 And where did this happen?
- 9 A. It happened in No. 4 Parnell Square, which would be my office.
- 12:27:06 10 Q. 288 Yes. And was that a meeting that was prearranged?
- 11 A. Yes, presumably, yes, because there were quite a large deputation came to see
- 12 me.
- 13 Q. 289 Right. And who was in that deputation?
- 14 A. Mr. Byrne and his professional advisors. There was Mr. Paddy Delaney, of
- 12:27:27 15 Delaney, McVeigh & Pike, a very well known firm of architects. There was
- 16 Dr. McCarthy and I think another person as well from McCarthy and Partners as
- 17 well who were engineers.
- 18 Q. 290 Yes?
- 19 A. And Mr. Charles Haughey was there as well.
- 12:27:41 20 Q. 291 Yes. And whilst the persons who were present with the exception of Mr. Haughey
- 21 were there in professional capacities, in what capacity did you understand
- 22 Mr. Haughey to be there?
- 23 A. I presumed that he was there simply as support for Mr. Byrne. He didn't, as
- 24 far as I recall, contribute very much to the meeting. He was, you know, the
- 12:28:05 25 most of the discussion took place between myself and the professionals who were
- 26 there.
- 27 Q. 292 Yes. Was there -- in your recall was there ever another meeting at which
- 28 Mr. Haughey had attended throughout your period of tenure as the Dublin chief
- 29 engineer?
- 12:28:27 30 A. Well, there was another occasion when I had an occasion to visit Kinsealy to

12:28:32 1 talk to Mr. Haughey.

2 Q. 293 Yes?

3 A. About another matter.

4 Q. 294 I see?

12:28:36 5 A. And we went to lunch and as we returned from lunch the -- Mr. Haughey was
6 driving. He paused the car at the Baldoyle Race Course and he asked me a few
7 questions about it. It was quite perfunctory.

8 Q. 295 Yes?

9 A. It was a very short discussion and we drove on then.

12:28:53 10 Q. 296 I see. At the time that he had that discussion with you, was there an ongoing
11 planning application or appeal before An Bord Pleanala in relation to the
12 development of those lands?

13 A. I think not. I think not. I think that he had -- the initial application had
14 been refused. This would have been in the mid' 70s.

12:29:14 15 Q. 297 Yes?

16 A. And I think the -- there was nothing current on it at the time .

17 Q. 298 Now, I think that obviously you examined the proposal that was made to you.
18 You identified a number of serious deficiencies in it. And it did not receive
19 your approval, isn't that right?

12:29:35 20 A. Well the initial proposal certainly didn't because the three main services that
21 are required for development are water supply. And the nearest water supply
22 was Swords, in Swords at that time, which was quite a long way away.

23 Q. 299 Yes?

24 A. And certainly in those days there was no great availability of capital money to
12:29:55 25 carry out works so that the possibility of providing water was almost
26 non-existent. As far as surface water was concerned. We knew that the land
27 was subject to serious flooding and we had, in fact, I think I was able to show
28 a photograph in one of the papers from the 1950s of the land almost entirely
29 covered in water. And the third service is foul drainage. And that was not
12:30:24 30 available because it didn't fall within the area which Dublin Corporation

- 12:30:30 1 permitted to drain into the city system.
- 2 Q. 300 Right. I think just in relation to the last point there. There was an
- 3 identifiable deficit in the capacity of the Dublin city sewage system to take
- 4 additional drainage from the county, isn't that right?
- 12:30:45 5 A. Yes, that was so.
- 6 Q. 301 And as a result of that, agreements were made between the two counties --
- 7 sorry, the two local authorities which regulated the entitlement of the county
- 8 to add to the Dublin load, isn't that correct?
- 9 A. Well, at that time for, you know, many years earlier, there was an agreement in
- 12:31:05 10 place which permitted drainage to come from the Baldoyle Portmarnock area. The
- 11 agreement, delineated an area from which the drainage might come. But it also
- 12 specified a maximum quantity which might come as well in terms of ...
- 13 Q. 302 So by each one of this criteria the application which was being made by
- 14 Mr. Byrne failed, isn't that right?
- 12:31:31 15 A. Yes.
- 16 Q. 303 And it was suggested yesterday that Mr. Byrne felt that there was some
- 17 prejudice against his particular proposals because of a possible identification
- 18 with Mr. Haughey. But you were aware of Mr. Haughey's presence at this
- 19 meeting. It didn't effect your decision making process, isn't that the so?
- 12:31:53 20 A. That is so.
- 21 Q. 304 And notwithstanding his presence, it was not a matter which could be permitted,
- 22 isn't that right?
- 23 A. True.
- 24 Q. 305 On engineering grounds?
- 12:32:01 25 A. Yeah.
- 26 Q. 306 And the initial proposals in the '70s I think all failed and they culminated
- 27 ultimately with a decision of An Bord Pleanala in December 1984, which was
- 28 refusing an Endcamp project, which had involved putting a large pipe out to sea
- 29 to dispose of the sewage effluent, isn't that right?
- 12:32:24 30 A. That was correct. Although I'm -- I'm still -- I haven't been able to go back

12:32:32 1 on the documentation here. But I thought that the thing ended much earlier,
2 actually in the '70s rather than the mid '80s. I thought that the whole thing
3 was dormant.

4 Q. 307 We can show you the last decision of An Bord Pleanala which I think was the
12:32:50 5 17th of December 1984. Albeit that I think the appeal had taken a little over
6 two and a half years to come to fruition so?

7 A. I'm sure you're right. But you see there were I think a number of planning
8 applications if I recall correctly. And one of the earlier ones failed because
9 the planning application was made for the entire area of land that Mr. Byrne
12:33:10 10 owned.

11 Q. 308 Yes?

12 A. That happened to lie in two different local authorities. And because of that
13 the planning application was deemed invalid.

14 Q. 309 Right?

12:33:24 15 A. And that it, it simply fell. And then later a second application was made.
16 But it must have taken a long time to process it, but it ended up in '85.
17 That's all I can say.

18 Q. 310 Yes. Just for completeness I'll put that on screen for you, Mr. O'Donnell.

19 It's at page 893. And 894 has the date on it.

12:33:45 20

21 It is an appeal by Endcamp care of McCabe Delaney and Associates against the
22 decision made on the 29th of October 1982 by the Council of the County of
23 Dublin to refuse permission for residential and ancillary redevelopment of 467
24 acres of land at Portmarnock, Maynestown, Stapolin, County Dublin. It sets out
12:34:08 25 the reasons here. The major portion of the site of the proposed development is
26 located in an area where A, the zoning objectives in the Development Plan are
27 to protect and provide for the development of agriculture and to protect and
28 improve high amenity areas. And B, it is the policy of the planning authority
29 as set out in its plan to preserve the identify of Portmarnock by securing its
12:34:29 30 physical separation from Baldoyle by a green belt area. The provisions of the

12:34:35 1 Development Plan are considered reasonable. The proposed development would
 2 conflict with these provisions. And then it goes on to deal with other matters
 3 of a more technical nature, including the inadequacy of the public roads.
 4 Danger to public safety. Aircraft, noise, it doesn't specifically deal with
 12:34:59 5 drainage deficit here, does it?

6 A. No.

7 Q. 311 If we look to the next page then, 894, it could seriously preempt decisions
 8 arising out of the planning study currently in the course of preparation by the
 9 Eastern Regional Development Organisation and the consequential study to be
 12:35:19 10 prepared by Dublin County Council for the north fringe area in which the site
 11 is located.
 12
 13 In any event, it was a refusal and effectively we have heard that that was
 14 Mr. Byrne's last personal effort to have the lands rezoned. And thereafter, he
 12:35:38 15 entered into agreements where others, option holders, took on the running. If
 16 I can put it that way. But to the end of these planning processes. They all
 17 would have come as a matter of course to yourself because of the size of the
 18 developments, isn't that right? They're not ...

19 A. Generally it's true.

12:35:57 20 Q. 312 They're not really something that would have been dealt with at desk level, it
 21 would have gone all the way, isn't that so?

22 A. That's so. I have no recollection of having any dealings with it, you know, in
 23 the '80s.

24 Q. 313 Yes. Fine. In any event, the professionals involved from the start included
 12:36:17 25 Dr. McCarthy's team, isn't that right?

26 A. Well, Dr. McCarthy's team -- Dr. McCarthy and his team were involved in the
 27 initial approach that was made when Sea City was muted.

28 Q. 314 Yes?

29 A. After that meeting McCarthy and Partners seemed to drop out, as did Delaney,
 12:36:39 30 McVeigh & Pike.

12:36:39 1 Q. 315 Yes?

2 A. And when the thing was revived again there were different architectural and

3 engineering advisors involved.

4 Q. 316 Yes?

12:36:47 5 A. The architects being Shesgreve Heeney and Partners, if I remember rightly and

6 Peter McCabe of McCabe & Delaney.

7 Q. 317 I think the next recorded development or involvement I should say of you in

8 this project or with these lands occurs in 1986. And apparently in 1986 a

9 meeting took place in relation to the Baldoyle lands which involved Mr. Byrne

12:37:16 10 and yourself. Have you a recollection of that?

11 A. No, I can't say that I've any recollection.

12 Q. 318 All right. We'll see a reference to it in a document which is at page 942 on

13 screen. And this document, it's signed ultimately by the assistant senior

14 engineer at the time, Mr. Tom Leahy. His signature is at page 944. And it is

12:37:47 15 concerned with representations. It's concerned with representations which were

16 being made of Mr. J Byrne, owner of Baldoyle Race Course.

17

18 Mr. Leahy says "on my return from annual leave on Monday 11th of August Mr. F

19 Coffey, Deputy Chief Engineer, requested that I meet with representatives of

12:38:13 20 Mr. John Byrne to discuss the flooding problem at Baldoyle. This request for a

21 meeting arose as a result of a previous meeting between Mr. John Byrne, Mr. G

22 Redmond, ACM and Mr. K O'Donnell Dublin chief engineer. The meeting was fixed

23 for the 13th of August subsequently changed to the 14th of August. The meeting

24 took place at 11 a.m. on 14th of August. Mr. Jim Kennedy and Mr. Bill Riordan

12:38:36 25 met with myself and Mr. D MacEntee of the design section. At the outset of the

26 meeting Mr. Kennedy and Mr. Riordan confirmed that they represented Mr. John

27 Byrne. At the meeting I indicated that the Council intended on the 1st of

28 September to enter on to the race course lands in order to clean out

29 accumulated silt and debris which had lodged there due to lack of maintenance.

12:38:57 30 You will recall that arising from the report of design section you agreed that

12:39:01 1 such cleaning work, while being the responsibility of the repairing and owner,
2 should be undertaken and paid for by Dublin County Council in order that the
3 work would proceed expeditiously. Both Mr. Riordan and Mr. Kennedy wished to
4 discuss the recent refusal by Dublin County Council for a 110 house development
12:39:19 5 on part of the race course lands".

6
7 We've heard that that was made by a company called Edington Limited

8 A. Uh-huh.

9 Q. 319 "I indicated that as far as Dublin County Council was concerned the two items
12:39:29 10 namely the Council's proposal to clear out the clean out, rather the race
11 course stream and the Council's refusal to grant a planning permission for the
12 area were not interlinked nor was any suggestion to be entertained that
13 concessions could be given or even discussed which would have the effect of
14 linking the two elements. I asked Mr. Riordan to convey the fact to Mr. Byrne
12:39:50 15 that the Council intended to enter on to his lands for the purpose of cleaning
16 the race course stream.

17
18 Mr Riordan made the request that the Council's proposals as with regard to
19 cleaning would be set out on the map. This seemed rather reasonable and the
12:40:02 20 map was prepared and passed across to both to Mr. Riordan and to Mr. Byrne.
21 Subsequent to that a letter was written from Mr. Byrne indicating that he
22 objected to the Council entering on to his lands until such time as a
23 subsequent meeting took place with his representatives.

24
12:40:17 25 This meeting, this subsequent meeting took place on the date 10th of September.
26 Present at the meeting were Mr. Bill Riordan, David Galbraith consulting
27 engineer, myself and Mr T Moyne of the design section. At the meeting
28 Mr. Riordan passed across a report and maps which had been prepared by
29 Mr. David Galbraith and purported to be a report on the foul and surface water
12:40:39 30 drainage system in the Baldoyle area. Mr. Galbraith confirmed that he was the

12:40:45 1 author of the report. Any information contained therein was obtained from his
2 own surveying and on-site measurements and whatever drainage records are
3 available at the public counter. He confirmed that no other additional
4 information had been obtained from any other member of the staff at Dublin
12:41:00 5 County Council. I asked Mr. O'Riordan if he was now in a position to give
6 permission to Dublin Council to embark on the stream cleaning outlined in the
7 Council's drawing which had been submitted to him earlier on. After discussion
8 in the report, which I will come to later, he indicated that he was in not in a
9 position to give such approval. He indicated that he would be flying to London
12:41:19 10 to discuss the matter with Mr. John Byrne. He undertook that he would be able
11 to give an answer to Dublin County Council on whether permission would be
12 forthcoming before Monday evening of next week.

13
14 I indicated to him that unless a positive response was received before next
12:41:32 15 Monday evening, the date which was agreed by Mr. Riordan as being reasonable,
16 that the Council would have to review its position in the matter. And it may
17 be necessary to approach the courts and make applications to the courts in
18 order to obtain the necessary sanctions to undertake the work.

19
12:41:48 20 In relation to the work the following points were agreed and not refuted by
21 either Mr. Riordan or Mr. Galbraith. 1. Work proposed by Dublin County
22 Council would marginally improve the drainage situation in Baldoyle and
23 particularly along Grange Road.

24
12:42:03 25 2. There was and is a surface problem in Baldoyle
26
27 3. The work proposed by the County Council was termed to be a short-term
28 remedial work.

29
12:42:11 30 The report and drawings which have been posted in, although not received by

12:42:14 1 Council until the time of the meeting were explained by Mr. Galbraith
2
3 Mr Riordan indicated that the purpose, in his opinion, of the report and
4 drawings was so that the Council would re assess its position in relation to
12:42:27 5 the previous refusal recommended for the 110 house development. I indicated to
6 him that the refusal was recommended on the development because of deficiencies
7 on the surface water and foul sewer drainage in the area. Both Mr. Riordan and
8 Mr. Galbraith agreed that there were deficiencies in the drainage system in
9 Baldoyle. Since the deficiencies presently existed I indicated that the
12:42:50 10 council could not alter the recommendation previously given. On reading the
11 report and looking at the drawing you will see some factual inaccuracies. Both
12 in relation to the drainage system and the conclusions in the report which
13 would indicate that the analysis undertaken would not be sufficient on which to
14 base a detailed design.

12:43:09 15
16 It is worth noting that the proposals advanced by Mr. Riordan for the drainage
17 solution for the area incorporate the following elements.

- 18
19 1. A new pipe from Grange Road to the middle of the Race Course.
- 12:43:18 20
21 2. That all old culverts along the line of the race course stream should be
22 removed.
23
24 3. That a flood plain would be located on the race course.
- 12:43:27 25
26 4 That a flood gate would be located in the extremities of the flood plane.

27
28 The foregoing is a true and accurate record of any contact that has taken place
29 between this Department and representatives of Mr. John Byrne. All of the
12:43:41 30 meeting originated as a result of the previous meeting between Mr. John Byrne,

12:43:45 1 Mr G Redmond and Mr K O'Donnell. The present position on the design of the
2 necessary flood relief works in Baldoyle has been previously outlined to you.
3 Mr D McEntee is engaged for the next three weeks on essential structural design
4 work. He will recommend work on the Baldoyle Flood relief scheme in mid
12:44:03 5 October.

6
7 It will be necessary before that to arrange a special meeting with yourself in
8 order to agree the general outline for the flood relief scheme which has been
9 detailed as a result of a computer run and information contained in relation to
12:44:16 10 levels and tides in the area.

11
12 Yours respectfully, Tom Leahy."

13
14 And that was addressed to Mr Paddy Henigan, the Deputy Chief Engineer. And I
12:44:25 15 think in effect just one rank below you?

16 A. That's right.

17 Q. 320 But the head of the Council side as opposed to the city side, isn't that right?

18 A. Yes, that's correct.

19 Q. 321 And certainly from this letter, Mr. Leahy seemed engaged upon recording exactly
12:44:41 20 what he saw the position to be as of that date, isn't that so?

21 A. Yeah.

22 Q. 322 And he makes reference on two occasions to there having been this meeting
23 which predated his letter. And he indicated that was a meeting which took
24 place between yourself, Mr. Redmond, and Mr. Byrne. Does that assist you in
12:44:57 25 any way in recollection?

26 A. No, I have no recollection of that meeting whatever.

27 Q. 323 All right. We'll see also -- there is a letter which I just draw your
28 attention to. Which is at page 916, please. This is a letter from
29 Simmonscourt Lodge, Simmonscourt Avenue, Ballsbridge, Dublin. It's dated 12th
12:45:39 30 of June 1986. It's addressed to Mr. George Redmond, Assistant City and County

12:45:44 1 Manager. "Dear Mr. Redmond, thank you for seeing me regarding the planning
2 application reference No. 41486 Edington Limited for 110 houses. I appreciate
3 the information outlined at your meeting and I have requested the consulting
4 engineers to liase with the County Council/corporation engineers with a view to
12:46:05 5 providing the necessary engineering improvements to allow the proposed
6 developments to proceed.

7
8 I would further point out that any co-operation required regarding surface
9 water, height network needed for the area will be facilitated. This is
12:46:18 10 subject to receipt of the necessary drawings showing the line of the pipe work
11 and after consultations with our consulting engineers.

12
13 I trust a satisfactory engineering solution can be arranged to allow the grant
14 of by-law. I will be in further touch with you. Yours sincerely John Byrne",
12:46:34 15 though not signed and it's cc'd to you.

16 A. Yeah

17 Q. 324 There is a date stamp on that having been received at the office of the chief
18 engineer on 16th of June 1986. And I think you'll accept that the
19 probabilities are that it came to you?

12:46:48 20 A. Oh, yes I'm sure it did.

21 Q. 325 Thereafter. So this would appear to confirm, Mr. O'Donnell, that a meeting did
22 in fact take place, though I appreciate of course you can't recollect it at
23 this point in time?

24 A. No.

12:47:00 25 Q. 326 And that letter is about three months before the letter we've already seen on
26 screen. That's Mr. Leahy's?

27 A. Right.

28 Q. 327 So it would appear that the origin of the later involvement of the persons who
29 were said to be the representatives of Mr. Byrne stemmed from this meeting
12:47:21 30 which had taken place in June, between yourself, Mr. Byrne and Mr. Redmond,

- 12:47:31 1 isn't that so?
- 2 A. Yeah, apparently.
- 3 Q. 328 We've heard that the two gentlemen who are referred to here. Firstly, one,
- 4 Mr. Jim Kennedy and the second Mr. Bill Riordan. That neither of those were in
- 12:47:36 5 fact representatives of Mr. Byrne's. Mr. Kennedy apparently representing his
- 6 own interest. And Mr. Riordan possibly involved with Mr. Liam Lawlor in
- 7 relation to this. But that was not a matter of which you were aware, is that
- 8 right?
- 9 A. No, no.
- 12:47:51 10 Q. 329 The matter progresses I think to December of the same year, 1986. We'll see at
- 11 page 954. This is an attendance which was taken by Mr. Byrne's solicitor,
- 12 Mr. Gore Grimes, in which he was recording an exchange which had taken place
- 13 between himself and his client, Mr Byrne and he says "attending consultation
- 14 with John Byrne. When he said he was awaiting information regarding possible
- 12:48:25 15 goods", and I think that was intended to be mean good news for Endcamp. "He
- 16 said that Kevin O'Donnell wanted to insert a lake somewhere around the river on
- 17 the Moyne road to cater for drainage. But once this was done there was a
- 18 possibility of some sort of permission being forthcoming. He was having a
- 19 meeting with some people during this week. And he would be in a better
- 12:48:45 20 position to know what the situation was after those meetings. In the meantime,
- 21 he wanted me to stall a little bit".
- 22
- 23 Do you have a recollection of discussing the matter with Mr. Byrne in December
- 24 of 1986 and in particular expressing the view that if a lake was put in on this
- 12:49:03 25 land it might assist with the planning situation?
- 26 A. None at all.
- 27 Q. 330 No. Reference was made in the earlier letters to the fact that the Council had
- 28 refused to sanction the development of the 110 house planning application which
- 29 was being brought by Edington. We've heard that that was in a small area of
- 12:49:32 30 about 12 acres adjacent to the Willie Nolan Road?

- 12:49:35 1 A. Yes.
- 2 Q. 331 And it progressed its way through the planning system, Dublin County Council
- 3 having refused it. It went to An Bord Pleanala. And whilst it was in Bord
- 4 Pleanala submissions were made to the board that Dublin County Council was
- 12:49:51 5 itself engaged in a process of evaluation of the drainage requirement in the
- 6 area. And that any decision on the planning of the land should be deferred
- 7 pending the result of that, of that survey of the Council.
- 8
- 9 Now, I think initially the Council had indicated that it didn't have any plans
- 12:50:12 10 to conduct a survey in this area other than in the context of addressing the
- 11 flooding problem, isn't that right
- 12 A. I think so, yes.
- 13 Q. 332 I think we'll see subsequently that view altered so that by 1990 it was being
- 14 indicated that additional capacity for sewage could be generated by altering
- 12:50:35 15 the timing of the pumping in the local pump station so as to increase the flow.
- 16 And as a result of that submission, it seems An Bord Pleanala was prepared to
- 17 grant permission for this development of the 110 houses. Do you have any
- 18 recollection of that?
- 19 A. Not the slightest, no.
- 12:50:54 20 Q. 333 No. Apparently, Mr. Lawlor was in communication with the Council in relation
- 21 to this proposal. He wrote to Mr. McDaid I think and to Mr. Moyne thanking
- 22 them for having entered him at a discussion on this.
- 23
- 24 I take it that because of the relative size of this development, it wouldn't
- 12:51:26 25 necessarily involve you as chief engineer?
- 26 A. I would have thought I would have been made aware of it.
- 27 Q. 334 You'd have been made aware of it?
- 28 A. Yeah.
- 29 Q. 335 But in addition that, and I should firstly perhaps put that letter on screen.
- 12:51:43 30

12:51:43 1 It's 977 in 1987. And this is a letter to Mr. Henigan, your deputy. In
2 relation to Baldoyle. "I'd like to thank you for the courtesy extended when I
3 recently visit I had your office. I noted your comments regarding progress
4 being made on the various engineering aspects of the surface and foul drainage
12:52:06 5 network for the Baldoyle area. I have recommended to the Applicant that your
6 proposal to carry out a detailed analysis of the foul drainage system should
7 allow for a deferral of a decision of the present appeal. This would be
8 pending the outcome of your engineering personnel's completion of the
9 appropriate assessment. I also acknowledge the progress of your Department has
12:52:28 10 made on the design of a suitable surface water system which obviously has to go
11 through an assessment and final approval stage in the Department of the
12 Environment. Your guidance and assistance is appreciated."

13
14 That was signed by Liam Lawlor. He copied it to two of the engineers, you will
12:52:46 15 recognise their names there and also to Mr. John Byrne, who he I think was
16 writing to as the Applicant for this particular project.

17
18 I think you were present in the Tribunal a little earlier when Ms. Clarke
19 identified a number of documents which were contemporary to this particular
12:53:05 20 letter. From which it would appear that not only was Mr. Lawlor attending at
21 the Sanitary Services Department and making submissions himself to Mr. Henigan
22 but he was also writing letters to An Bord Pleanala and to the individual
23 engineers

24 A. Uh-huh.

12:53:20 25 Q. 336 Purportedly in the name of Mr. Byrne to advance the proposal, isn't that so?

26 A. That's so.

27 Q. 337 Now, it seems that ultimately those efforts were successful. Because planning
28 permission was granted on appeal by An Bord Pleanala for the development to
29 progress. And that took place in 1990.

12:53:41 30

12:53:41 1 You indicated a little earlier that you had taken early retirement in January
2 of 1991 from your position as Dublin Chief Engineer. And I think immediately
3 following upon that you took a well earned rest for some months. And
4 thereafter, you went back into the employment market, isn't that right?

12:54:04 5 A. Yes.

6 Q. 338 And having done so, you became an employee of Dr. McCarthy's firm, McCarthy and
7 Partners, isn't that right?

8 A. Yes, I became a director of the firm.

9 Q. 339 A director of the firm, yes. And that firm had I think a Mr. Robert Hayes or
10 Bob Hayes, I think, had the effective title of the managing director, is that
11 right?

12 A. Yes.

13 Q. 340 And one of probably the first matters with which you became involved in your
14 new employment was in relation to the proposal which was being advanced by
15 Pennine Holdings to have the Baldoyle Race Course area developed, isn't that
16 so?

17 A. My recollection was that it was quite a long time after I joined it. The fact
18 might be otherwise. That was my recollection. In fact I'd have dated it as
19 1993 but apparently it was earlier.

12:55:02 20 Q. 341 It was, I think, or certainly if the records are accurate it would appear to be
21 earlier?

22 A. Yeah.

23 Q. 342 Having retired in January, were you away five months, six months, less?

24 A. Something like that.

12:55:12 25 Q. 343 Something of that order. Well we'll see just looking to the references which
26 we can date of the involvement of McCarthy and Partners. That there is a
27 recorded involvement in June of 1991. That is an involvement of Mr. Bob Hayes.
28 And we'll see that at page 144 on screen. Which is the diary entries of
29 Mr. Frank Dunlop where he records at 1448. That at 11:30 on that day there's a
12:55:51 30 meeting with Bob Hayes, McCarthy and Partners.

12:55:55 1 A. All right.

2 Q. 344 You see it's in the immediate left of the screen there?

3 A. Yes.

4 Q. 345 Now, Mr. Dunlop's evidence to the Tribunal will be that McCarthy and Partners

12:56:07 5 were chosen as the engineers for this project by Mr. Liam Lawlor. Had you any

6 knowledge of that?

7 A. No.

8 Q. 346 No. Certainly this appears to record a meeting of Mr. Hayes with Mr. Dunlop in

9 June. Mr. Dunlop will say that that was the project that he was involved in at

12:56:29 10 the time was Pennine Holdings. Can you recollect whether it's the case that

11 Mr. Case was involved somewhat ahead of you in the Pennine Holdings project?

12 A. I think that he may have been. I think if I recollect correctly, Mr. Dunlop

13 had some other business with McCarthy and Partners. What I was, I've no idea.

14 But he may have been advised in relation to some other matters, some other

12:56:57 15 project.

16 Q. 347 Yes?

17 A. And this followed on from that.

18 Q. 348 Yes. I think there was an involvement in City West?

19 A. Yes, that is true, yeah.

12:57:06 20 Q. 349 Brown's barn?

21 A. Brown's barn.

22 Q. 350 Was also?

23 A. Although I think that was somewhat later I think.

24 Q. 351 It was, yes. We'll see that again in July of 1991 Mr. Bob Hayes met with Mr.

12:57:18 25 Dunlop. At 1453, please. And I think Mr. McCarthy of the firm is Paddy

26 McCarthy, is that right?

27 A. Yes.

28 Q. 352 That sounds correct?

29 A. He's now dead.

12:57:40 30 Q. 353 We'll see a reference to Mr. Paddy McCarthy's involvement at page 1546. Where

- 12:57:46 1 a telephone message is received by Mr. Dunlop. Paddy McCarthy. Can you ring
2 him at 460000 at 3 p.m. As you are aware the residents are objecting and he'd
3 like to do something for you about it. Is that your Mr. McCarthy's phone
4 number, do you know?
- 12:58:03 5 A. Yes, that was the phone number of the firm at the time .
- 6 Q. 354 Yes. Now, the involvement of McCarthy and Partners was in the context of the
7 preparation of a submission which was going to be made as part of the review
8 process of the 1983 Dublin development, County Dublin Development Plan, isn't
9 that right?
- 12:58:26 10 A. Yes.
- 11 Q. 355 And that process as we know commenced in 1987. But the first application which
12 was brought by Pennine Holdings Limited was brought in November 1991. And I
13 think that your work was part and parcel of that submission?
- 14 A. Yes, my recollection was that it was in connection with the planning
12:58:47 15 application. But that it's incorrect, it was in fact in connection with the
16 submission, the submission to have the land rezoned.
- 17 Q. 356 Yes. That was, as I say, dated November 1991. And if we look to the diaries
18 of and telephone records in 1991 in November we'll see at page 1601. What I
19 believe is the first reference to you in connection with the project. And that
12:59:17 20 is at 10:50 called Bob Hayes. Kevin O'Donnell and Paddy McCarthy will meet
21 with you, that's Mr. Dunlop, at 10 a.m. tomorrow in McCarthy and partners.
22
23 The date is corrected from the 7th of October to the 7th of November there.
24 That appears to indicate that a meeting was to take place the following day,
12:59:42 25 that is the 8th of November. And we will see at page 1603 that for Friday,
26 November the 8th there is a diary entry in Mr. Dunlop's diary for 10 a.m. P
27 McCarthy and K O'Donnell.
28 A. Yes.
29 Q. 357 Although I think that meeting may have been deferred to later in the day
13:00:06 30 because we'll see at page 1604. In the messages for the 8th of November 1991

13:00:13 1 called Dr. McCarthy. 2 p.m. today is fine.
2
3 So it seem that there may have been a meeting arranged for 10 a.m. It wasn't
4 possible to have it then. It was put back. Do you have a recollection of
13:00:31 5 there meeting in McCarthy's in November or early November to discuss the detail
6 of the submission that was going to go in to the Council in relation to the
7 Draft Development Plan?
8 A. There certainly was a discussion with Mr. Dunlop as to what the nature of the
9 submission would be.
13:00:48 10 Q. 358 Yes?
11 A. When it took place or where it took place, whether in McCarthy's office or Mr.
12 Dunlop's office, I couldn't recall.
13 Q. 359 Right. Mr. Dunlop believes that there were a number of such meetings, would
14 that seem to you to be correct given the complexity?
13:01:07 15 A. Yes, possibly one or two. An initial meeting to discuss what could be done and
16 a later one.
17 Q. 360 Yes?
18 A. In more detail.
19 Q. 361 We see on the 12th of November. At page 1607. That a message was left on that
13:01:20 20 date called Mr. McCarthy's secretary. Neither McCarthy nor O'Donnell are in
21 the office. She will confirm with me later.
22
23 And then on the following day there was a further contact at 1609. Kevin
24 O'Donnell and Bob Hayes will be here tomorrow. Dr. McCarthy cannot make the
13:01:43 25 meeting due to previous engagements.
26
27 And you will see further down in that attendance at 1 p.m. called Suzanne in
28 Brendan Hickey's office and told her re the meeting tomorrow and re Brendan
29 speaking to Frank Simons.

13:02:00 30

13:02:00 1 Now, on the following day you will see -- sorry. It's week later. But in
2 relation to that. That exchange there. This identifies Mr. Brendan Hickey.
3 And have you a recollection of meeting with Mr. Hickey whom you may have known
4 from Rohan Construction before he became involved in this project I'm not sure.

13:02:24 5 Do you remember meeting

6 A. I remember meeting Mr. Hickey but my recollection was that it was in connection
7 with City West.

8 Q. 362 I see. You may well have met him in relation to that also?

9 A. I certainly didn't know him earlier.

13:02:36 10 Q. 363 You didn't know him until he was involved with?

11 A. City West.

12 Q. 364 City West?

13 A. Yeah.

14 Q. 365 That was Davy Hickey Properties?

13:02:44 15 A. It was Davy Hickey, yeah.

16

17 CHAIRMAN: It's one o'clock knew.

18

19 MR. O'NEILL: It's one o'clock, I'm afraid Mr. O'Donnell, we'll have to come

13:02:52 20 back at two o'clock

21 A. All right.

22

23 CHAIRMAN: Two o'clock.

24

13:03:06 25

26 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

27

28

29

30

13:03:26 1

2

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 P.M.:

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13:03:26 5

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7

MR. O'NEILL: Mr. O'Donnell, please.

8

9

Q. 366 Mr. O'Donnell, I think before the lunch break we were talking about your

14:09:21 10

involvement in the Pennine Holdings rezoning application. That project was

11

called the East View project and I'm not sure if that rings any bells with you?

12

A. It does, I remember the name.

13

Q. 367 Yeah. And we I think were looking at some documents which I think were

14

generated in November 1991, which would indicate that the managing director,

14:09:42 15

Mr. Hayes, certainly had perhaps become involved in June and July. And by

16

September October there was a greater involvement. And you are recorded as

17

being involved in November, isn't that right? I want to show you a document

18

now. I'm going to hand you the hard copy of it. It's the submission which

19

was made by way of representation for proposed use of land at Maynestown,

14:10:10 20

Stapolin, Baldoyle. Its Tribunal reference is 707 on screen.

21

22

And the complete document is in the brief. But that's it in its bound format

23

there.

24

A. Yes.

14:10:24 25

Q. 368 And the first thing, if we look to the first page of it. We'll see that whilst

26

it's dated November 1991. It's not attributed to any particular professional

27

organisation or individuals. It doesn't express itself to be either McCarthy's

28

report or anybody else's report, isn't that so? In the body of that report

29

there are specific proposals which are made in relation to the aspects of any

14:10:56 30

development here which would involve your technical expertise. The engineering

- 14:11:02 1 side, the drainage, sewage and all of that. Can you recollect whether or not
2 that documentation is your generation, did you produce that?
- 3 A. Yes, I wrote that in its entirety.
- 4 Q. 369 Oh, I see. Did it leave your hands in the bound form that we see it there?
- 14:11:20 5 A. Yes, I would have thought to so.
- 6 Q. 370 I would have thought it more usual to have McCarthy and Partners or somebody
7 else's logo on it?
- 8 A. I don't know if this was exactly it as it left us. I agree with you.
- 9 Q. 371 In any event, the fact that it is dated November 1991 and that it was lodged
14:11:42 10 within the period of the review between September and December 1991 would be
11 confirmatory of the fact that this was a representation which was being made in
12 the course of the 1993 plan, isn't that what was to be the 1993 plan?
- 13 A. I agree.
- 14 Q. 372 And I suppose like many professional reports really it's putting the client's
14:12:09 15 best foot forward, isn't that right?
- 16 A. Precisely.
- 17 Q. 373 Yeah. But it did indicate that the land in question was capable of being
18 developed, isn't that right?
- 19 A. Yeah.
- 14:12:24 20 Q. 374 I know that you have your own views as to exactly where somebody challenging
21 this report would focus their main attention. But to the recipient of this
22 report, without other qualification, it would seem to be a report which allowed
23 for an acceptable form of development on these lands, isn't that right?
- 24 A. Yes, provided a scenario. Yes, could be acceptable but probably wouldn't be.
- 14:12:52 25 Q. 375 It wouldn't be in the sense, I suppose, because firstly, this was a relatively
26 public process which had involved, I think, an amount of local opposition going
27 back some twenty years or so?
- 28 A. Yes.
- 29 Q. 376 It was against that background that it might be judged. And an increasing
14:13:08 30 awareness of environmental issues?

- 14:13:10 1 A. Yes.
- 2 Q. 377 Which perhaps mightn't have had the emphasis initially that they were going to
- 3 have from the 90's onwards, isn't that right?
- 4 A. Uh-huh.
- 14:13:21 5 Q. 378 This report then was the culmination really of your own researches and a number
- 6 of meetings which had taken place with the clients and other qualified persons,
- 7 isn't that right?
- 8 A. Yeah.
- 9 Q. 379 It was a combined approach, as far as you know. Was all of it drafted by you
- 14:13:39 10 or were there, the more general planning aspects of it, were they the?
- 11 A. No, all of it would have been drafted by me .
- 12 Q. 380 I see. And would you have received then the report of Grainne Mallon for
- 13 incorporation in this or?
- 14 A. I don't think so.
- 14:13:53 15 Q. 381 No?
- 16 A. No.
- 17 Q. 382 Right. Were you aware that Ms. Mallon was engaged as a planning consultant, as
- 18 opposed to an engineer?
- 19 A. I may have been. I think I probably was because I think I do recall meeting
- 14:14:05 20 Mrs. Mallon.
- 21 Q. 383 Yes?
- 22 A. Around that time .
- 23 Q. 384 Right.
- 24 A. And probably in connection with this .
- 14:14:11 25 Q. 385 Okay. After this had gone in, you may be aware that the opportunity for
- 26 discussion of this document or this submission was not going to arise until the
- 27 Council came to review map No. 8 of the Dublin plan and that didn't occur until
- 28 April of 1993?
- 29 A. Yeah.
- 14:14:36 30 Q. 386 Yeah. So that there was a considerable intervening period here in which I take

14:14:41 1 it that there was no particular call made on McCarthy's. Although I do know
2 that there was a fax sent to you in 1992 asking you to illustrate where on a
3 particular plan the sewage treatment work should be placed. You'll see that at
4 page 197 -- sorry. 1749.

14:15:02 5 A. Uh-huh.

6 Q. 387 That was on the 10th of June 1992. Some seven months after the submission had
7 been lodged. If we look to page 1750. There's a map which accompanied this
8 document?

9 A. Yeah.

14:15:19 10 Q. 388 And it shows the area there which was the subject of the proposal. Within the
11 area, I think it's somewhat north of the Mayne River there, is a residential
12 area?

13 A. Yeah.

14 Q. 389 And then equally just south of the Mayne River perhaps there are two
15 residential areas. The green areas, may be green belts between them, is that
16 right?

17 A. Yeah, the dark line that bisects the area has two areas to the north, both
18 marked residential.

19 Q. 390 Yes?

14:16:00 20 A. The treatment works would have been on the right hand one, that's the one
21 nearest to the estuary.

22 Q. 391 Right?

23 A. That line is the line that transects the site as the route of the river.

24 Q. 392 Yes. Now, have you ever -- or have you any recollection at all of ever being
14:16:18 25 asked to provide a feasibility study independent of this document here which
26 was a representation or submission which was going to the Council to advance
27 the proposal?

28 A. No.

29 Q. 393 No. Do you ever remember being asked by Davy Hickey Properties limited to
14:16:37 30 advise them as to whether or not this project, which we see on screen, was one

- 14:16:43 1 which was capable of being brought to fruition?
- 2 A. I have no memory of Davy Hickey being involved in this at all.
- 3 Q. 394 Right. I think that in the course of your career you would have had occasion
- 4 to meet with Mr. Liam Lawlor in various circumstances. One of which I think
- 14:17:03 5 included the fact that you were sitting on a committee with him called the
- 6 Eastern Regional Development organisation or ERDO?
- 7 A. ERDO, yes.
- 8 Q. 395 Which had extended for some years. And he was Chairman of that committee?
- 9 A. That's right.
- 14:17:18 10 Q. 396 And you were one of a number?
- 11 A. I was part of a steering group.
- 12 Q. 397 You were part of a steering group in relation to that. Had you ever met him
- 13 prior to 1991 as a person who was the promoter of or the agent for any
- 14 development as opposed to his public role?
- 14:17:38 15 A. I can't recall anything in particular. But there was one occasion I remember
- 16 when he attended at my office by arrangement and that may have been in
- 17 connection with some particular proposal. I've no recollection at this stage
- 18 what it was or what the subject of the discussion was.
- 19 Q. 398 All right. In relation to this particular proposal, that is the East View one,
- 14:18:00 20 Mr. Frank Dunlop in his statement to the Tribunal will say that, firstly, that
- 21 McCarthys were selected for this project by him. That is by Mr. Lawlor?
- 22 A. Yeah.
- 23 Q. 399 And that at the meetings which were convened with the technical people, such as
- 24 yourself, that he, Mr. Lawlor, was in attendance at those meetings. Have you
- 14:18:19 25 any recollection of meeting Mr. Lawlor at a meeting either in Frank Dunlop's
- 26 office or in McCarthy's office in connection with the East View project?
- 27 A. No.
- 28 Q. 400 No. We know, Mr. O'Donnell, that whilst your proposal, or I should more
- 29 accurately say the proposal of Pennine Holdings which was represented by this
- 14:18:52 30 submission here, was one which was intended to be considered by a meeting of

14:18:55 1 the Council on the 20th of April of 1993. For various technical reasons, it
2 was never heard. It was deferred intending to be heard on a date before the
3 15th of May but because it breached Standing Orders of the Council, the merits
4 or otherwise of this project were never debated, isn't that -- are you aware of
14:19:17 5 that?

6 A. I believe that to be the case, yeah.

7 Q. 401 So, we don't know exactly what the technical response of the Council would have
8 been to the submissions which were encompassed in your project, isn't that so?

9 A. Not at all.

14:19:31 10 Q. 402 Thank you, Mr. O'Donnell?

11 A. Okay.

12

13 CHAIRMAN: Thank you very much. Thank you, Mr. O'Donnell

14 A. Thank you.

14:19:41 15

16

17

18 **THE WITNESS THEN WITHDREW.**

19

14:19:43 20

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23 MR. O'NEILL: The next witness is Grainne Mallon, please.

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14:19:47 1

2

MS MALLON, HAVING BEEN SWORN, WAS QUESTIONED

3

BY MR. O'NEILL AS FOLLOWS:

4

14:19:47 5

CHAIRMAN: Good afternoon, Ms. Mallon

6

A. Good afternoon.

7

MR. O'NEILL: Good afternoon, Mrs. Mallon.

8

9

Q. 403 I think you are a planning consultant by profession, is that correct

14:20:28 10

A. I am, yes.

11

Q. 404 And I think that you have a history prior to going into private practice of

12

being an employee of a local authority, isn't that so?

13

A. That's correct, yes, Dublin County Council.

14

Q. 405 I think that from 1974 until 1978 you were in a position of being an assistant

14:20:40 15

planner with Dublin County Council, is that correct?

16

A. That's correct, yes.

17

Q. 406 And I think that you progress through the hierarchy of the Planning Department

18

so that between 1978 and 1991 you were a Chief Planning Assistant, otherwise

19

called Senior Executive Planner, is that right?

14:20:57 20

A. That is correct, yes.

21

Q. 407 And in April 1991 I think you were considering leaving the public service,

22

going into the private sector, isn't that so?

23

A. That is correct, yes.

24

Q. 408 And you did so by initially taking leave of absence from your position in

14:21:13 25

Dublin County Council, is that correct?

26

A. That's correct.

27

Q. 409 And I think you are permitted to extend that period of absence. And you did so

28

for a number of years until I think finally in 1996 you formally retired from

29

the Council?

14:21:29 30

A. That's correct, yes.

- 14:21:30 1 Q. 410 Well I think from a date probably a little after April of 1991 you had
2 commenced your private practice and you're still in private practice, isn't
3 that correct?
- 4 A. That's correct, yes.
- 14:21:45 5 Q. 411 Initially I think whilst in the course of the employ of the local authority,
6 you would have had some dealings with the Baldoyle lands which were
7 subsequently to become the subject matter of rezoning applications in the 1983
8 to 1993 period, isn't that right?
- 9 A. Yes. In the late 1970's I had dealings. I dealt, I was in development control
14:22:12 10 in Dublin County Council.
- 11 Q. 412 Yes?
- 12 A. And I dealt with an application on the Endcamp lands, which Dublin County
13 Council refused and it went to an oral hearing and I had dealings with it
14 there.
- 14:22:22 15 Q. 413 Yes?
- 16 A. That was in the late 70s.
- 17 Q. 414 You might remember perhaps having dealings with a Mr. David Galbraith who was a
18 consultant engineer in 1989?
- 19 A. I don't, no.
- 14:22:33 20 Q. 415 You don't?
- 21 A. No.
- 22 Q. 416 I can show you on page 1053 the minutes of a meeting which was held on the 26th
23 of January 1989. This is in relation to housing at what's called Seapark in
24 Baldoyle. And I think Seapark was a name which Mr. Galbraith gave to the
14:22:56 25 project at Admiral's Park, which is off the Willie Nolan Road. In respect of
26 which we have heard some evidence about contacts between Mr. Byrne and
27 Mr. O'Donnell and Mr. Lawlor, through correspondence with the local authority,
28 An Bord Pleanala and others in a period immediately before this.
29
- 14:23:20 30 You don't have any particular memory of this. But this was an area which was

- 14:23:29 1 certainly within the remit of the Council at this time
- 2 A. Yes.
- 3 Q. 417 And it was something that apparently you'd had a meeting with. But it's
- 4 independent of the Pennine Holdings involvement in any event?
- 14:23:41 5 A. Yes.
- 6 Q. 418 Yes. And we know that Pennine Holdings made a submission in November of 1991.
- 7 A copy of that I think was sent to you?
- 8 A. Yes.
- 9 Q. 419 Is it before you there?
- 14:24:02 10 A. Oh, sorry.
- 11 Q. 420 This is the document to which Mr. O'Donnell referred a little earlier. You see
- 12 that document?
- 13 A. Uh-huh.
- 14 Q. 421 This representation, if you just want to familiarise yourself with the
- 14:24:26 15 documentation, if you wish. I think it was sent to you. Certainly it's
- 16 contained within the brief and you may well have commented on it in your
- 17 statement to the Tribunal as being a statement, as being a document which was
- 18 the submission you referred to in your statement?
- 19 A. Yeah, the first part of it would be my document. I'm just surprised at the
- 14:24:51 20 date of November '91.
- 21 Q. 422 Yes?
- 22 A. Because my recollection of my involvement was that it was early '92 before the
- 23 submissions that were required by March '92.
- 24 Q. 423 Yes?
- 14:25:04 25 A. But that would have been my recollection. But it could be wrong, you know.
- 26 I'm just surprised at the date at the bottom of it.
- 27 Q. 424 I think we will see that certainly in November of 1992 there are recorded
- 28 meetings between yourself and Mr. Dunlop?
- 29 A. That's November 1991.
- 14:25:29 30 Q. 425 Sorry. I beg your pardon. In November 1991, yeah. We'll look at them. Page

14:25:37 1 1606. Is a diary entry of Frank Dunlop's for Monday the 11th of November 1991.
2 And that at 2:30 on that day you'll see Grainne Mallon. It may be 8 Merrion
3 Square, was that your offices at the time?
4 A. My offices then were at 8 Merrion Square, yes.

14:26:06 5 Q. 426 As we know you'd gone into private practice some seven months before this?
6 A. Yes, I actually left the Council to go back into architecture. But I was more
7 known as a planner. So planning work sort of followed me but ...

8 Q. 427 Well the role that I think you were to play in relation to Pennine Holdings
9 application was that of planning rather than an architect, isn't that right?

14:26:19 10 A. Yes, uh-huh, it was.

11 Q. 428 So would this have been one of the very first of your planning briefs, if I
12 could call it that, in November 1991?
13 A. Probably. Well the Development Plan was under review. I dealt with five or
14 six pieces of land.

14:26:39 15 Q. 429 Yes?
16 A. Where people came to me. And that was, the Baldoyle lands was one of those.

17 Q. 430 Yes. Well this seems to be, as far as the Tribunal can ascertain, the first
18 reference that may be possibly related to Baldoyle. And I just wondered
19 whether or not this might trigger your memory as to whether or not you can
14:26:58 20 accept that it was in 1991 that you were involved rather than 1992. I know
21 that you are involved in 1992?
22 A. '92, yeah, the beginning of the year in January and February.

23 Q. 431 Yeah?
24 A. But ...

14:27:11 25 Q. 432 We'll see that --
26 A. I don't dispute that, I just don't remember it as being that time, yeah.

27 Q. 433 I appreciate that this doesn't identify East View as being the subject matter
28 of this meeting?
29 A. Well, the only meetings I ever had with Mr. Dunlop were in relation to the
14:27:28 30 Baldoyle lands.

- 14:27:29 1 Q. 434 I see. Right. We'll see then at page 1617. Again, in November at the end of
2 the month there is I think perhaps a clear reference to your being involved at
3 this point. Where it says at 12:45 Grainne Mallon to circularise documentation
4 for tomorrow's East View meeting." You see that reference?
- 14:27:55 5 A. Yeah, I see that.
- 6 Q. 435 That would appear to indicate that you had been briefed, that you had prepared
7 the documentation, that it was in a position to be circularised as of November?
- 8 A. Right, yeah.
- 9 Q. 436 Isn't that so. And we have before you what's called the blue book I think in
14:28:12 10 some later correspondence?
- 11 A. Uh-huh.
- 12 Q. 437 But insofar as there is a planner's input in that, is that yours?
- 13 A. Yes.
- 14 Q. 438 Right. And I think that the technical side, the engineering aspects of it and
14:28:25 15 the maps which are drawn illustrating how these lands will be drained and how
16 water will be provided for the lands, is all the work of McCarthy's, is that
17 right?
- 18 A. That's right, yeah, uh-huh.
- 19 Q. 439 Now, you've identified --
- 14:28:38 20 A. My portion of it would only be up as far as page 10.
- 21 Q. 440 The first ten pages?
- 22 A. Yeah.
- 23 Q. 441 Now, obviously, then your report was encapsulated into this document, this
24 combined document, isn't that right?
- 14:28:54 25 A. Yes.
- 26 Q. 442 Though you are not attributed here as being the author of it. You are in fact
27 the author of that aspect of it?
- 28 A. Uh-huh.
- 29 Q. 443 Do you know who engaged you in this instance to do this work?
- 14:29:08 30 A. Frank Dunlop as far as I know and I always understood that it was John Byrne's

- 14:29:14 1 land.
- 2 Q. 444 Yes?
- 3 A. Yes. And it wasn't until very much later when it came to presenting the bill
- 4 that I was told to present it to Pennine Holdings, that was the very first time
- 14:29:24 5 I heard of them.
- 6 Q. 445 Yes. And Mr. Dunlop says that the persons who were selected to provide the
- 7 technical services and expertise for this application were all chosen by
- 8 Mr. Liam Lawlor. Were you aware of that?
- 9 A. No.
- 14:29:40 10 Q. 446 While you worked on this project in, to the point of producing this document
- 11 here, have you any recollection of preparing any other form of report or
- 12 document in relation to it, in particular, were you asked for an opinion as to
- 13 the feasibility of any given project or in particular the feasibility of the
- 14 project that you see contained within that document?
- 14:30:04 15 A. Not that I recollect, no.
- 16 Q. 447 No. Were you ever asked by Davy Hickey Properties, for example, to provide
- 17 them with your expert opinion as to the feasibility of a development along the
- 18 lines of the East View project?
- 19 A. I don't know who Davy Hickey developers are.
- 14:30:26 20 Q. 448 Davy Hickey developments are the parties who were to be involved in this land
- 21 on their own admission in the event that it was rezoned?
- 22 A. All right, yeah. No, I have no recollection of the name or of ever having met
- 23 them.
- 24 Q. 449 Right?
- 14:30:46 25 A. But ...
- 26 Q. 450 And Rohan construction was apparently the employer of Mr. David -- sorry.
- 27 Mr. Brendan Hickey who was the person with the building expertise in the Davy
- 28 Hickey enterprise. He had been engaged apparently with that firm for some
- 29 years. You have no recollection of meeting with or dealings with Mr. Brendan
- 14:31:08 30 Hickey, either as Davy Hickey Properties limited or as Rohan Construction?

- 14:31:14 1 A. I don't, no, no, I don't.
- 2 Q. 451 When it came to being paid for this work you were paid in 1992 I think?
- 3 A. Yes.
- 4 Q. 452 I think in September, isn't that right?
- 14:31:27 5 A. Uh-huh, that's right.
- 6 Q. 453 And you record the payment in your payments books as a payment from Pennine
- 7 Holdings, isn't that correct?
- 8 A. That's right, yes.
- 9 Q. 454 So at some point somebody had given you the name Pennine Holdings, isn't that
- 14:31:45 10 right?
- 11 A. Yeah.
- 12 Q. 455 And as we know and you may not know, pennine Holdings Limited didn't have a
- 13 checking account itself. It was not an entity that could write a cheque on its
- 14 account?
- 14:31:57 15 A. I don't know anything about Pennine Holdings. I know that's who I was asked to
- 16 send my invoice to and that's, as I understand it, that's what's recorded in my
- 17 book is who paid it but.
- 18 Q. 456 Yes. You don't know who actually paid?
- 19 A. No, I don't.
- 14:32:11 20 Q. 457 Davy Hickey Properties believed that the payment was made to you by that firm
- 21 but -- by Davy Hickey Properties Limited?
- 22 A. Right. As I say, it's report recorded in our cash in and cash out book as
- 23 Pennine Holdings.
- 24 Q. 458 I noted that in your cash book there's a little asterisk beside Pennine
- 14:32:36 25 Holdings. Does that have any significance, would it indicate perhaps that the
- 26 cheque was in some other name or?
- 27 A. I wouldn't think so. I don't know really.
- 28 Q. 459 Yes?
- 29 A. But I always, like, until you've said it this moment I've always assumed that I
- 14:32:52 30 was paid by Pennine Holdings.

- 14:32:53 1 Q. 460 And there was only one bill, 943 pounds odd?
- 2 A. Yeah.
- 3 Q. 461 Is that indicative of any way of the extent or the amount of work that you were
- 4 required to perform?
- 14:33:04 5 A. Yes, it was the bill was based on an hourly rate.
- 6 Q. 462 Yes?
- 7 A. Plus expenses and VAT.
- 8 Q. 463 So you didn't spend?
- 9 A. There wasn't any great, you know, long involvement in it, no.
- 14:33:17 10 Q. 464 You may well have attended up to two meetings with Mr. Dunlop?
- 11 A. Uh-huh.
- 12 Q. 465 But you don't have a recollection of meeting anybody other than Mr. Dunlop at
- 13 these meetings?
- 14 A. No. Any meetings I was at were in offices in Mount Street.
- 14:33:32 15 Q. 466 Yes?
- 16 A. Our office in Mount Street.
- 17 Q. 467 Yes. What did you understand Mr. Dunlop's role to be, you knew him to be a PR
- 18 person obviously but?
- 19 A. Well, I assumed he was representing John Byrne.
- 14:33:47 20 Q. 468 Right?
- 21 A. And that he was acting as his agent.
- 22 Q. 469 Yes.
- 23 A. In it.
- 24 Q. 470 Thank you, Ms. Mallon.

14:33:58 25

26 MR. MURPHY: Sir, briefly just to clarify one matter.

27

28

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14:34:05 30

THE WITNESS WAS QUESTIONED BY MR. MURPHY AS FOLLOWS:

- 14:34:05 1 Q. 471 Ms. Mallon in a letter of the 9th of June you wrote to Marcella Gribbins of the
2 Tribunal. And at that stage you said "I do not recall who retained my
3 services"
- 4 A. Uh-huh.
- 14:34:18 5 Q. 472 And today in response to Mr. O'Neill, he asked you who was it that gave you
6 your initial instructions and you said Frank Dunlop as far as you know?
- 7 A. Yeah.
- 8 Q. 473 Could you just explain that to us when the Tribunal wrote to you back in June
9 and you wrote and you said that you couldn't recall who it was?
- 14:34:36 10 A. Yeah.
- 11 Q. 474 Now, today, you're saying that it was Frank Dunlop as far as I know. When did
12 you first hear anything about?
- 13 A. Well, it would have been Frank Dunlop organised and Chaired any meeting I was
14 at. Looking at his diary there he came to my office in November which I didn't
15 have any recollection of at all. But other than Mr. Dunlop I had no contact
16 that I can remember with anybody else who would have been acting for John Byrne
17 whom I thought owned the land.
- 18 Q. 475 All right. But two days ago Mr. O'Neill in his opening submission suggested
19 that among the various beneficial owners of Pennine Holdings, the question
14:35:31 20 arose as to whether Mr. Dunlop was a beneficial owner of Pennine holdings. Had
21 you ever heard that?
- 22 A. Well, I heard it in gossip sometime afterwards, well it was sort of, it was
23 suggested to me that part of the reason the rezoning didn't go through in '93
24 was because Mr. Dunlop was a beneficial owner and hadn't disclosed that to the
14:35:55 25 councillors. But that was only gossip and it was after the event.
- 26 Q. 476 That was the reason it was turned down in '93?
- 27 A. Yeah.
- 28 Q. 477 Because he wasn't up front about his own personal interest in it?
- 29 A. Yeah. But I don't know that as a fact, as I say, it was just a ...
- 14:36:16 30 Q. 478 Who told you that?

- 14:36:16 1 A. I think it was one of the councillors said it to me .
- 2 Q. 479 Can you recall which Councillor?
- 3 A. My recollection was that it was Joan Maher but I wouldn't like to swear to
- 4 that.
- 14:36:19 5 Q. 480 All right.
- 6 A. You know, it was ...
- 7 Q. 481 Arising from that, and from the gossip that you heard back then. Is that what
- 8 leads you to the conclusion that Mr. Dunlop may have been the person who gave
- 9 you your initial instructions?
- 14:36:46 10 A. Well, he's the only person that I have a recollection of dealing with. And he
- 11 chaired all of the meetings and they were in his office in Mount Street. But
- 12 as I say, at the time I thought he was the agent acting for John Byrne. Sorry.
- 13 Excuse me. And it was after the event. Like, it was after the Development
- 14 Plan was adopted in '93 that I heard the gossip you made reference to there,
- 14:37:14 15 you know.
- 16 Q. 482 All right. But just in terms of cooperating with the Tribunal and telling them
- 17 everything you know?
- 18 A. Uh-huh.
- 19 Q. 483 I just want you to explain to them why today in response to Mr. O'Neill you
- 14:37:30 20 were able to say that you think it was Frank Dunlop as far as you know who gave
- 21 you your initial instructions. But in your letter to the Tribunal of the 9th
- 22 of June you said you didn't recall who gave you your initial instructions?
- 23 A. Yeah. Well the diaries that were up there showing an appointment with me in 8
- 24 Merrion Square in November, obviously, took place. I had no recollection of
- 14:37:56 25 that. I had no diaries to show me that it took place. And as I've said
- 26 earlier on, I thought my involvement was in February of '92. But obviously it
- 27 was back November '91.
- 28 Q. 484 Uh-huh.
- 29 A. But ...
- 14:38:13 30

14:38:13 1 Q. 485 All right. But in terms that of that letter of the 9th of June 2006. Why
2 didn't you, is there any reason why you didn't say in that letter what you had
3 heard soon after the rezoning application is rejected?

4 A. Oh, well what I had heard was purely gossip. And I reckoned that the
14:38:31 5 Tribunal's dealing with fact, you know.

6 Q. 486 So that explains that letter?

7 A. Oh, yeah.

8 Q. 487 And I think you're emphasising the same today?

9 A. Yes, it's only gossip.

14:38:41 10 Q. 488 Thank you.

11

12 CHAIRMAN: All right. Thank you very much, Ms. Mallon

13 A. Thank you.

14

14:38:44 15 MR. O'NEILL: That concludes the evidence for today.

16

17 CHAIRMAN: All right. Half ten tomorrow. Thank you.

18

19

14:38:51 20

21 **THE WITNESS THEN WITHDREW.**

22

23

24

14:39:08 25

26 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY.**

27 **FRIDAY, FRIDAY, 1ST DECEMBER, 2006, AT 10.30 A.M.**

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