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THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,
7th of December, 2006, at 10.30 a.m.:

CHAIRMAN: Good morning, Mr. O'Neill.

MR. O'NEILL: Good morning, Mr. Chairman, Members of the Tribunal.

The first witness today is Mr. Brendan Hickey.

Mr. Hickey, could you come forward to the witness box, please.

10:39:21 1

2

MR. HICKEY, HAVING BEEN SWORN, WAS QUESTIONED

3

BY MR. O'NEILL AS FOLLOWS:

4

10:39:51 5

6

CHAIRMAN: Good morning, Mr. Hickey

7

A. Good morning.

8

9

MR. O'NEILL: Good morning, Mr. Hickey. My name is Desmond O'Neill and I'll

10:45:19 10

11

be asking you questions on behalf of the Tribunal. I know that you haven't been a witness here before. And you might be familiar with what you see around you here from your attendance yesterday.

13

14

The information which will be produced before you will be on screen in the main. However, if you require a hard copy of any particular document, we should be able to produce it in hard copy for you by printing it out.

10:45:20 15

16

17

18

If at any point in time you require to have sight of any of that documentation,

19

merely let me know. Or if you can't read the documentation coming up on screen in front of you, equally if you convey that to me

10:45:21 20

21

A. Okay, thank you.

22

Q. 1 You are a managing director of a company called Davy Hickey Properties, isn't that so?

23

24

A. That's right.

10:45:22 25

26

Q. 2 And it is in that capacity that you are a witness before the Tribunal. The

27

Tribunal sought your assistance in relation to its inquiry. And most recently, you provided the Tribunal with a statement in writing on the 24th of October of this year, isn't that right?

28

29

A. That's right.

10:45:23 30

Q. 3 And I think that that was a document that you had prepared, having firstly

10:45:23 1 specific queries put to you in the letter from the Tribunal itself. And I
2 think you had the benefit of legal advice in preparing the document, isn't that
3 so?

4 A. That's right.

10:45:23 5 Q. 4 Yeah. I'll just read that statement into the record, if I may?

6 A. Yes.

7 Q. 5 Mr. Hickey, and if there's any -- at any point you want to correct anything in
8 the course of it, merely let me know. Okay?

9 So this document will appear now on screen now at page 454.

10:45:24 10
11 As I say, it is a statement of yours dated the 24th of October of 2006.

12
13 In the matter of the Tribunal of Inquiry into certain planning matters and
14 payments appointed by instrument of the Minister of the Environment and local
10:45:25 15 Government dated 4th of November 1997 as amended by instrument dated 15th of
16 July 1998, 24th of October 2002, 7th of July 2003 and 3rd of December 2004
17 statement of Brendan Hickey.

18
19 I, Brendan Hickey, Managing Director of Davy Hickey Properties Limited, 27
10:45:26 20 Dawson Street, Dublin 2 respond to the inquiries made by the member of the
21 Tribunal of the 26th of September as follows.

22
23 I set up a property company Davy Hickey Properties Limited (DHP) in July 1990
24 with the objective of looking for development/project management/investment
10:45:27 25 property opportunities. Until late 1992 my secretary and I were the only
26 employees of DPH. I combined the role of Chief Executive Officer, site finder,
27 financial officer and project Manager. I was involved in looking at quite a
28 number of projects to see which ones were suitable for DPH investments. The
29 records we have at the time are very sketchy and are particularly limited on
10:45:28 30 proposals and projects which were not pursued or which was discontinued by DPH,

10:45:28 1 including Baldoyle.

2

3 As a result, I do not have a clear memory of all the events regarding Baldoyle

4 Race Course or even the exact sequence of events back in 1991 but from the copy

10:45:29 5 documentation available and already furnished to the Tribunal, I have set out

6 below my best recollection on the matter.

7

8 I have reviewed our own limited records but in addition have also sought to

9 copies of documents from the professional advisors at the time and have read

10:45:30 10 these, including notes on the invoices from the various parties, consultants

11 that are still available in order to try and piece together what happened.

12

13 Initial project introduction by Frank Dunlop.

14

10:45:30 15 In or around January 1991, Frank Dunlop approached David Shubotham and myself,

16 as managing director of DHP, and said he could get an option over approximately

17 400 acres of land at Baldoyle at a good price for a possible future development

18 and inquired whether we would be interested in getting involved in the project.

19 The scale of the project was not really an issue because if it looked viable

10:45:32 20 but needed substantially more money, then the understanding was that DHP could

21 look for additional funds from other investors. In that regard, I believe

22 David Shubotham saw his role as looking at such projects that might interest

23 private investors and then raising the money for them, sorry, once a firm

24 commercially viable proposal could be put together.

10:45:33 25

26 The land at Baldoyle consisted of approximately 400 acres in north County

27 Dublin which had formerly been the Baldoyle Race Course. The race course had

28 closed many years earlier and I believe that the land was purchased by John

29 Byrne through his company Endcamp Limited though registered in the name of

10:45:33 30 another of his companies. While the race course lands notionally contained

10:45:34 1 open space, having walked those lands, it was obvious from the state that they
2 were in that they were of no great amenity to the adjoining residents.

3

4 Option fee and feasibility study costs.

10:45:34 5

6 To the best of my recollection, it was agreed between Frank Dunlop, David
7 Shubotham and myself that DHP and David Shubotham would undertake to pay for
8 the costs of a feasibility study/action plan to see how viable the project was
9 and that we would also pay the initial "good faith" option fee of 5,000 pounds
10 as well as the legal costs of the option agreement.

10:45:40 10

11

12 Mr. Dunlop and Pennine Holdings Limited.

13

14 I do not know how Mr. Dunlop first became involved in the Baldoyle lands. A

10:45:54 15

16 company, Pennine Holdings Limited, was set up to take the option over the
17 property but DHP did not at any stage have a shareholding or interest in that
18 company. From copy correspondence which I have received from Eugene F Collins,
19 Solicitors, it appears they formed the company Pennine Holdings Limited and in
20 August 1991 they wrote to me advising that the company had been formed and was
21 held by them to the order of DHP. On receipt of this correspondence I
22 contacted Mr. Dunlop and told him that there appears to be some confusion with
23 the solicitors about the company formation. I told him that as this was his
24 company, since it was going to be the entity with which the option agreement
25 would be signed, he needed to instruct Eugene F Collins solicitors accordingly.

10:46:50 25

26 As is apparent from the subsequent documents issued from Eugene F Collins
27 solicitors, the matter was corrected within days and I understand from
28 subsequent Companies Office records that on the 2nd of September 1991 Frank
29 Dunlop and Ciaran O'Byrne were appointed directors of Pennine Holdings Limited
30 and that the entire issued share capital in that company was transferred to
them. I also understand that the option agreement was subsequently signed by

10:47:15 30

10:47:20 1 Pennine Holdings Limited on the 13th of September 1991 and that the company
2 seal of Pennine Holdings Limited was affixed by Mr. Dunlop and Mr. O'Byrne as
3 directors.

10:47:34 5 The option agreement.

7 In the case of projects like the Baldoyle lands, the emphasis would have been
8 to secure the option agreement with the landowner before engaging in extensive
9 feasibility studies or partnership arrangements with parties like Mr. Dunlop.

10:47:51 10 As a result, the steps would have been to ensure that Mr. Dunlop secured the
11 option on the best available terms from the landowner and if assistance were
12 needed for this purpose, I would have helped Mr. Dunlop and his solicitors in
13 the negotiations for this purpose.

10:48:09 15 Mr. Dunlop initially dealt with the proposal -- sorry, with the property
16 negotiations on the option agreement. However, it became clear at an early
17 stage that he did not have the requisite technical expertise and he agreed that
18 I should get involved and ultimately lead the negotiations with John Byrne and
19 his solicitors on the option agreement. From our initial discussions with

10:48:34 20 Frank Dunlop and John Byrne, it was agreed that a token option fee of 5,000
21 pounds would be paid up front as this was merely a measure of our commitment to
22 look at the project seriously. However, the real option price was set out in
23 the second schedule to the option agreement. The second schedule set out a
24 list of pre conditions to be satisfied by the option holder at his expense
10:49:07 25 before any exercise of the option. To satisfy these pre conditions would have
26 involved a party incurring expenditure well in excess of 1 million pounds.

27 Whilst the cash payment under the option was relatively low, despite my best
28 efforts, there were nevertheless onerous conditions to the exercise of the
29 option, that is, an extremely rigid and short time frame to overcome the
10:49:29 30 substantial site difficulties and comply with the pre conditions in the second

10:49:33 1 schedule.

2

3 Preliminary partnership discussions.

4

10:49:38 5 Once Mr. Dunlop's company Pennine Holdings Limited had secured the option,
6 there were some initial discussions to the effect that once the project was
7 viable and acceptable to DHP that some form of partnership agreement might be
8 formed to pursue the venture. But to the best of my knowledge, since we were
9 not satisfied with the sewage infrastructure deficit and given the limited and
10 rigid option period, the partnership issue was never finalised or completed.
11 As a result, neither DHP nor I participated in any partnership or other
12 shareholding arrangement involving Pennine Holdings Limited or Mr. Dunlop or
13 indeed any other party in relation to the Baldoyle property. I understand that
14 initial documentation in the form of a draft partnership agreement was prepared
10:50:03 15 by Eugene F Collins solicitors, was prepared and circulated by Eugene F
16 Collins, but I do not remember the paperwork and I do not have a copy of same.
17 As part of the feasibility study/action Plan, I would have agreed on behalf of
18 DHP, to pay Pennine Holdings legal costs with Eugene F Collins in connection
19 with the drafting of the option agreement and any partnership agreement with
10:50:56 20 DHP. From DHP's records, DHP paid a total of 3,318.42 pounds directly to
21 Eugene F Collins in relation to their initial drafting of a partnership
22 agreement. However, the legal costs of 10,000 pounds approximately in
23 connection with the drafting of the option agreement were paid by the East View
24 Partnership bank account, an account set up by David Shubotham to keep a
10:51:27 25 separate record of the start up costs for this project in case it developed
26 into a proper venture.
27
28 The feasibility study/action Plan.
29
10:51:38 30 Once the option agreement had been signed, DHP started work in earnest on its

10:51:44 1 feasibility study and engaged the services of architects and town planners to
2 start preparing plans and proposals to address some of the infrastructural and
3 environmental problems connected with the site. The consultancy fees and
4 architects fees for this work were again either directly paid by DHP or by the
10:52:07 5 East View Partnership bank account.

6
7 After a couple of months of architectural and town planning studies it became
8 apparent that the sewage infrastructure deficit, that is the sewage capacity
9 problem, was unlikely to be solved in the short-term and in particular unlikely
10:52:24 10 to be solved within the rigid time frame permitted under the option agreement.
11 In addition, there was a lot of local opposition to the project. By January
12 1992 the option had about four years to run and within which Pennine Holdings
13 Limited as the option holder had to:

- 10:52:45 15 1. Complete a feasibility study and assuming the venture to be viable, raise
16 an estimated 1 million pounds to cover the design costs in applying for
17 rezoning and full planning permission for a mixed development on 400 acres.
18
19 2. Succeed in its application for rezoning, the success of which was hugely
10:53:05 20 dependent upon overcoming the sewage capacity problem not just for the site but
21 for the greater Howth Sutton and Baldoyle region because to build a sewage
22 treatment plant solely for the site, Pennine would still have to overcome
23 Government licensing problems because the sewage treatment works would have
24 required an outfall into the nearby estuary and this would have given rise to
10:53:32 25 intense local resident and planning objections.
26
27 3. Overcome objections from existing local communities and residents
28 associations who were against the proposal and from the local planners who saw
29 the rezoning/planning proposal as being premature due to the sewage capacity
10:53:51 30 difficulty for the Howth, Sutton and Baldoyle region.

10:53:54 1
2 4. An application for planning permission would have taken the best part of
3 between two and three years to obtain allowing for appeals to An Bord Pleanala,
4 assuming that the rezoning application had been successful.

10:54:08 5
6 DHP waning interest and discontinuance.

7
8 Against the background of the fact that the real option price was the cost of
9 compliance with the above substantial hurdles within the rigid time frame
10 permitted under the option agreement, my limited time available to spend on
11 such a speculative project and the potential repercussions for my newly found,
12 possibly should be formed, property development company being associated with
13 such a high profile property failure, DHP assessed the risks. In addition, in
14 the event of failure at either rezoning or planning by the option deadline, DHP
10:54:22 15 were conscious of the possibility of DHP becoming liable or having some
16 exposure to claims of Pennine Holdings Limited/Mr. Dunlop over whether DHP, as
17 project Manager, had diligently pursued the rezoning and planning objectives.

18
19 In summary, while our initial costs in the region of approximately 50,000
10:55:13 20 pounds were substantial, these costs were far less than the estimated 1 million
21 pounds design costs for rezoning/planning on a project 400 acres involving a
22 few thousand houses, hotel, golf course, a shopping centre and up to a million
23 square feet of industrial/commercial buildings that looked more and more
24 unlikely to succeed and the failure of which could have resulted in even
10:55:41 25 greater liabilities for DHP.

26
27 For all these reasons, DHP decided not to continue any meaningful dialogue on
28 partnership discussions with Mr. Dunlop or Pennine Holdings Limited but
29 completed our feasibility study/action plan commitment which DHP had earlier
10:56:03 30 agreed with Mr. Dunlop. DHP saw its position as being one where we were

10:56:09 1 pessimistic about the project's prospects of success but wanted to maintain our
2 goodwill commitment with Mr. Dunlop, who was the source and introduction of the
3 initial business opportunity.
4

10:56:20 5 Sale of option.
6

7 DHP and I never had any involvement in the lands or in Pennine Holdings Limited
8 other than assisting Mr. Dunlop in negotiating the terms of the option
9 agreement and prepared our own feasibility study on the project. I do not
10:56:38 10 recall precisely when DHP discontinued interest in the project but I recall our
11 interest waned during the course of the feasibility study, given the onerous
12 nature of the option, the seemingly insurmountable sewage issues, the lack of
13 planning and public support and the fact that DHP had since taken on other
14 projects which were consuming my time.

10:57:03 15 I understand that Mr. Dunlop or Pennine Holdings Limited later sold the option,
16 but I have no detailed knowledge of that. Neither DHP nor I in any form or
17 format obtained any refunds of our initial costs or other financial benefit
18 from this sale.
19

10:57:22 20 With regard to the specific questions in your letter dated 26th September 2006,
21 I respond as follows:
22

23
24 1. Please see the narrative statement above. Mr. Dunlop seemed to be quite
10:57:37 25 familiar with John Byrne and I took it that he had had a previous business
26 relationship with him.
27

28 2. Whilst I cannot be definitive, I have no recollection of ever meeting
29 Mr. Liam Lawlor in relation to the Baldoyle lands. I met Mr. Dunlop in the
10:57:54 30 context as detailed above. I met Mr. John Byrne a number of times in the

10:58:00 1 course of the negotiations on the option. I believe that the purpose of the
2 Pennine hold -- I believe that the purpose of Pennine Holdings was to obtain an
3 option over the lands and then benefit from the subsequent rezoning and
4 development thereof.

10:58:17 5

6 3. My belief is that Frank Dunlop was the only person who was involved in
7 seeking the rezoning the lands.

8

9 4. My understanding was that, if the lands were rezoned, Mr. Dunlop would
10 benefit as the only shareholder in Pennine Holdings, the option holder.
11 Mr. Byrne would also benefit as the option would most likely have been
12 exercised. As stated, I have no knowledge of any involvement of Liam Lawlor.
13

14 5. I believe that Pennine Holdings Limited was established as a vehicle to
10:58:56 15 take the option agreement and that Eugene F Collins solicitors were engaged in
16 that regard.
17

18 6. I have no details as to the beneficial ownership of Pennine Holdings
19 Limited from the date of its incorporation until December 1993 or indeed since
10:59:07 20 that date, except to say that I have always understood it to be a company
21 formed to take the option and Frank Dunlop was the owner of that company.
22 Neither Davy Hickey Properties nor I ever took any shareholding interest in it.
23

24 7. Once Frank Dunlop had clarified with Eugene F Collins solicitors that DHP
10:59:28 25 had no shareholding or interest in Pennine Holdings Limited, I have no details
26 of the manner in which the beneficial ownership of Pennine Holdings Limited was
27 structured, whether through nominee shareholding or otherwise.
28

29 8. I do not recall who first engaged Eugene F Collins solicitors. However, I
10:59:48 30 believe the true client of Eugene F Collins as Pennine Holdings Limited/Mr.

10:59:54 1 Dunlop.
2
3 DHP assisted and liaised with Eugene F Collins during the course of negotiating
4 the option agreement for Frank Dunlop and Pennine Holdings Limited and this may
11:00:08 5 have caused some confusion initially within the solicitors when incorporating
6 the company.
7
8 9. No partnerships or other agreements were entered into by DHP in relation to
9 the lands which were the subject of the Pennine Holdings option. I have no
11:00:27 10 knowledge of any parties to any such agreement or the terms thereof.
11
12 10. I have no knowledge of shareholdings in relation to the ultimate profits
13 from the development of the lands.
14
11:00:40 15 11. DHP drew up the feasibility study/action plan which I believe was used by
16 Mr. Dunlop in his efforts to have the lands rezoned. DHP had no other
17 involvement in the effort to rezone the lands. I am not aware of anyone, other
18 than Mr. Dunlop, having any involvement in that effort.
19
11:01:05 20 12. Davy Hickey Properties was engaging professional advisors and discharging
21 the fees in the context of assessing whether the project was viable and
22 generating an Action Plan for the lands as the option anticipated such a plan.
23
24 13. I'm not aware that there was ever any partnership involved and certainly
11:01:25 25 DHP never entered into a partnership agreement in regard to the lands. I
26 believe Mr. Dunlop or Pennine Holdings Limited subsequently sold the option. I
27 know some of the lands have since been developed but I do not know whether or
28 not the option was subsequently exercised or whether the lands were acquired
29 under that option agreement.
11:01:48 30

11:01:48 1 Signed Brendan Hickey, Managing Director, 24th of October 2006.
2
3
4 Q. 6 Mr. Hickey, are there any additions that you'd like to make to that in the
11:01:59 5 light of the further documentation and brief which was provided to you by the
6 Tribunal?
7 A. I don't think so, no, not at this time, no.
8 Q. 7 And I think that while that statement was specifically tailored to responding
9 to specific queries raised by the Tribunal in the letter referred to within
11:02:19 10 this statement as having been sent in September of 2006, there were earlier
11 communications with the Tribunal, more particularly centering on payments which
12 were made and the involvement of yourself and DHP in relation to both City West
13 and Baldoyle, isn't that right?
14 A. That's right.
11:02:41 15 Q. 8 Yes. And that earlier statement we will see now on screen.
16
17 It's a statement which was provided, the beginning of 2001. Again, in response
18 to queries from the Tribunal seeking your assistance in establishing what the
19 relationship of Mr. Dunlop and Mr. Lawlor was in connection with lands at City
11:03:06 20 West and also Baldoyle, isn't that so?
21 A. That's right.
22 Q. 9 If we have on screen, please, page 440.
23
24 This was a statement of yours. Which I will also read into the record.
11:03:20 25
26 Statement of Brendan Hickey.
27
28 I make this statement for the assistance of the Flood Tribunal in response to
29 their request for information.
11:03:28 30

11:03:28 1 Davy Hickey Properties limited.
2
3 Davy Hickey Properties Limited (DHP) was established in or about June 1990. It
4 has two shareholders, myself and Mulroy Securities. The latter company holds
11:03:45 5 shares on behalf of a number of individuals consisting of individual employees
6 in Davy Stockbrokers and a number of clients of that firm.
7
8 DHP was established to act as a vehicle for investments in property and/or
9 property projects.
11:04:05 10
11 In or about July 1990 I became managing director of DHP. I was also appointed
12 Chairman of the board of DHP.
13
14 City West.
11:04:15 15
16 In or about July 1990 a partnership, the City West partnership, determined to
17 invest in a project for the development of a high tech park situated on the
18 periphery of Dublin in an area there to for under-developed. The partners in
19 the City West partnership overlapped to a considerable extent with those
11:04:39 20 persons who had interests in DHP through Mulroy Securities.
21
22 DHP took a 12.5 percent interest in the City West project, with arrangements in
23 place to increase that interest in the event of the project proceeding to a
24 successful planning application for development of the lands and the
11:04:59 25 construction of the high tech business park to which I have referred.
26
27 At all material times the directors of DHP were myself, Clare Hickey, my wife,
28 Ciaran McLoughlin and Brendan Dowling.
29
11:05:13 30 City West Limited.

11:05:15 1
2 City West limited, CWL, which was originally known as Lochbroom Limited and
3 thereafter Newlands Industrial Park Limited, was incorporated to act as the
4 legal owner of the City West property. The directors of CWL were myself,
11:05:34 5 Ciaran McLoughlin and David Shubotham. It exists to simplify the management of
6 the project in legal terms. For example, contract documentation is simplified
7 etc. The beneficial ownership of the property is with the partners in the City
8 West Partnership.

11:05:56 10 The concept for the City West development involved the acquisition of
11 approximately 300 acres adjacent to Tallaght and the development of the site as
12 a state of the art business development campus. The concept fundamentally
13 differed from usual developments of such sites in that it proposed to create
14 exceptionally attractive environment with a fully serviced and landscaped site
11:06:23 15 into which to attract suitable businesses. The norm, previously, had been to
16 designate a site, build a small part and allow the site to grow as new
17 prospects came to hand.

18
19 A management committee was established to run the affairs of the City West
11:06:41 20 partnership. It originally consisted of David Shubotham, Ciaran McLoughlin and
21 myself. David Shubotham was Chairman. I was Chief Executive and Ciaran
22 McLoughlin took a non-executive role. Within the last twelve months, the
23 composition of the management committee has changed with Brian Davy and Brian
24 Dowling joining the committee and Ciaran McLoughlin resigning.

11:07:05 25
26 At an early stage it was recognised by those involved in the development of
27 City West that assistance would be required in identifying and communicating
28 with all those whose support would be required to sanction the development of
29 the site and connected infrastructural system, that is, the planners, locally
11:07:25 30 elected representatives and central Government. An ability to present the

11:07:30 1 development envisaged to all interest groups which included but were not
2 limited to the local authority, the elected representatives for the area in
3 question, the residents and those in other state bodies interested in general
4 planning and infrastructural issues was also seen as essential if the project
11:07:51 5 was to have any chance of success. In this regard, Mr. Frank Dunlop presented
6 proposals as to what he could bring to the project. To this end, he produced
7 an outline public relations/public affairs strategy for the proposed
8 development of the lands giving an indication of the type of Action Plan he
9 believed was required.

11:08:17 10
11 The proposal made by Mr. Dunlop was impressive and it was agreed to retain his
12 services. Given that the project was at an early stage, the success was far
13 from guaranteed and negotiations took place as to the means of remunerating Mr.
14 Dunlop. It was proposed that he would be made a once off payment and a further
11:08:39 15 payment in the event of a successful planning application being made.

16
17 In or about December 1990 the application for planning permission was submitted
18 for 1 million square feet of office/industrial use and a science park on City
19 West lands. The proposal constituted a material contravention of the then
11:09:02 20 Development Plan for the area.

21
22 In order to inform the locally elected representatives and those involved in
23 the planning application process as to the true nature of the development, the
24 representatives and an appropriate selection of planning officials were invited
11:09:20 25 to see a modern business park in Aztec West in Bristol.

26
27 On the 11th of March 1991, a meeting of the County Council, at which 52
28 councillors of the 76 elected councillors attended. Voted in favour of the
29 propose proposal by 51 votes to one. All parties supported and voted in favour
11:09:45 30 of the proposal and the material contravention that the proposal envisaged.

11:09:50 1
2 In addition to obtaining planning permission, it was essential that the site
3 would be appropriately serviced by national infrastructure. The planners who
4 were considering the planning application without prejudice to the issue of how
11:10:06 5 the elected representatives would view the material contravention of the
6 Development Plan were anxious to ensure substantial infrastructural
7 developments were paid for by the developers should the development proceed.
8
9 It was clear to those involved in the development that following the vote by
11:10:23 10 the elected representatives to permit a material contravention of the
11 Development Plan, subject to agreeing the final nuts and bolts of the
12 development, the planners would grant planning permission subject to
13 appropriate conditions and agreements on the infrastructural spend to which I
14 have referred. In or about the month of April 1991, it being clear that the
11:10:47 15 scheme was likely to proceed, Mr. Dunlop agreed to convert his entitlement to
16 be paid a fee into a shareholding in City West. Given the then economic
17 climate which included such matters as the Gulf War and high unemployment,
18 those behind the development were happy to avoid unnecessary expenditure at
19 that point of the project.
11:11:10 20
21 On the 3rd of May 1991 the decision to grant planning permission issued from
22 Dublin County Council, the decision was appealed to An Bord Pleanala. On the
23 17th of October 1991, An Bord Pleanala confirmed the full planning permission
24 referring to the project as unique and timely. In early 1993 the new
11:11:34 25 Development Plan recognised the appropriate zoning status for City West.
26
27 Material payments. As Chief Executive of DHP and City West I have had the
28 payment records researched and I believe that such payments as exist and fall
29 within the terms of the letter of request from the Tribunal are those set out
11:11:56 30 in the schedules hereto -- sorry, the schedule here to.

11:12:00 1
2 Liam Lawlor. Mr. Liam Lawlor was an elected representative at all material
3 times of the development. Commencing late in 1990 Mr. Lawlor attended a number
4 of meetings in relation to the development of City West at which general issues
11:12:16 5 as to the proposed development, the ramifications for general infrastructure in
6 the area and other matters, which would be the norm in the preparation of any
7 properly organised application for planning permission for a development of
8 this size and nature in question, were discussed. I am not aware of any
9 documents or records of the nature specified in the request for information
11:12:42 10 concerning Mr. Lawlor.

11
12 Payments to Frank Dunlop.
13
14 In respect of the payments made to Frank Dunlop identified as political
11:12:52 15 contributions, the first 20,000 pounds made in June 1991 followed upon a
16 suggestion by Mr. Dunlop that, given it was a time of Local Elections, it would
17 be appropriate to make political contributions to the various elected
18 representatives. This seemed both reasonable and unremarkable.

19
11:13:13 20 The second payment of 10,000 pounds was again made following a suggestion by
21 Mr. Dunlop at the time of the General Election at the end of 1992.

22
23 Place Property Limited - Fortunes Townland.

24
11:13:28 25 At the time when it had become clear that planning permission was likely to be
26 granted for City West, Council officials expressed concern that existing zoned
27 land between City West and the employment black spots in Tallaght might be
28 frozen out by the success of the City West project. They pointed out that this
29 could be unsatisfactory because it might create a development black spot. The
11:14:00 30 land in question was zoned residential and industrial. The risk of a

11:14:00 1 development black spot existing adjacent to City West concerned those behind
2 City West and in the circumstances the sense of having an interest in and being
3 involved in the development of the lands commended itself to me.
4

11:14:15 5 By agreement dated the 22nd of April 1991, City West agreed to become part
6 owners of the land and incorporate the development of these lands into the
7 master plan for the overall area. This involved acquiring the right to
8 purchase the lands from the existing holders of that right, one of whom became
9 involved in the continuing ownership of the land.

11:14:42 10
11 The land has since been developed in normal course, approximately 800 houses
12 have been built on it. It has become the headquarters for United Drug,
13 Associated Hardware, Findlaters and the proposed National Soccer Stadium.
14

11:14:59 15 The Baldoyle Lands.

16
17 Early in 1991, Mr. Frank Dunlop approached DHP, indicating that he could get an
18 option over lands comprising approximately 400 acres situate at Baldoyle,
19 subject to planning permission and/or zoning.

11:15:19 20
21 It was agreed that a limited amount of money and time would be invested by DHP
22 to see if the concept of the development of the lands might be taken further.
23

24 The services of consultants, engineers, town planners and a leisure park
11:15:34 25 company were retained to design a golf course. The scheme was drawn up and Mr.
26 Dunlop, in his PR capacity, was charged to go and assess the mood of the
27 residents and local councillors to the proposal.
28

29 Notwithstanding our views that the concept was a good concept, the reaction of
11:15:54 30 those approached by Mr. Dunlop was largely unfavourable. Once it became clear

11:15:59 1 that the sentiments towards a development were largely unfavourable, DHP simply
2 lost interest in the project.
3
4 Our records show payments made to Mr. Dunlop of 10,000 pounds in July 1992 and
11:16:17 5 1,530 pounds in May 1992.
6
7 I'll turn now to page 445, which was one of the schedules appended to this
8 statement.
9
11:16:30 10 And it is the one which refers to the payments which were attributed to various
11 projects here.
12
13 Firstly, we'll see at the top of the page under the heading City West payments
14 to Frank Dunlop/Shefran Limited identified as political contributions.
11:16:50 15 Reference 121, 6th of June 1991 Shefran Limited 20,000 pounds.
16
17 Next reference 1, 11th of November 1992 Shefran Limited 10,000 pounds.
18
19 And then beneath that City West other payments to Frank Dunlop/Shefran Limited
11:17:16 20 and there are a series of payments there. The majority of which are to Frank
21 Dunlop for uneven amounts and then there is one single payment to Shefran of
22 the 6th of August 1992 in the sum of 2,500 pounds.
23
24 If we turn then to the next page, 446.
11:17:41 25
26 Under the heading Baldoyle, we see Baldoyle payments made to Frank Dunlop,
27 Shefran Limited cheque no. blank. Date 6th of January 1992. Shefran Limited
28 10,000 pounds. Beneath that 6th of May 1992 Frank Dunlop & Associates 1,530
29 pounds total 11,530.
11:18:12 30

- 11:18:12 1 Those two statements and the appendix appended to that Mr. Hickey, represented
2 the information in essence provided by you in response to the requests raised
3 of you by the Tribunal, isn't that so?
- 4 A. That's right.
- 11:18:28 5 Q. 10 And if we could perhaps just take some background history of your involvement
6 in the property world prior to your involvement with this company, DHP, Davy
7 Hickey Properties Limited. You indicate in your statement that it was probably
8 in June of 1990 that you became involved in this company, isn't that right?
- 9 A. That's right.
- 11:18:51 10 Q. 11 And prior to that date, I think that you had been an employee in various
11 commercial enterprises rather than a director of companies, is that so or am I
12 incorrect in that?
- 13 A. I was a director of a number of subsidiary companies but not of the main
14 company in the Rohan group.
- 11:19:12 15 Q. 12 Right. The Rohan group was also a company involved in development of plans, is
16 that so?
- 17 A. Primarily in industrial development.
- 18 Q. 13 Yes?
- 19 A. Some commercial but primarily industrial.
- 11:19:24 20 Q. 14 Right. And while its developments were included Dublin they weren't limited to
21 Dublin, isn't that right?
- 22 A. That's right.
- 23 Q. 15 And your interest as director in these companies, was it as an owner/director
24 or was it as an employee or nominal?
- 11:19:45 25 A. No, I was always as an employee. I never had any shareholding in the company.
26 I would have been employed originally, I was, I'm a civil engineer and I was
27 employed originally as civil engineer project manager and progressed through
28 the company to look after a lot of their commercial and industrial
29 developments.
- 11:20:04 30 Q. 16 All right. And in relation to the Dublin area, can you say how long you had

11:20:09 1 been engaged in project management and development within the Dublin area prior
2 to 1990.

3 A. Ten years.

4 Q. 17 Ten years. And that period effectively would have been the period involved
11:20:23 5 towards the end of the 1993 Dublin County Development Plan. Sorry.' 73 County
6 Development Plan and into the 1983?

7 A. I was employed from 1980 until 1990 with the Rohan group.

8 Q. 18 Yes. There were two Development Plans in extant in Dublin during that
9 particular time?

11:20:44 10 A. I would have had no particular knowledge, my job would have been developing
11 buildings that had planning permission. We had a planning and architectural
12 practice within the company. They would have handled all of those issues.

13 Q. 19 Right. So you hadn't any involvement in rezoning applications?

14 A. No.

11:21:02 15 Q. 20 Prior to your involvement with Davy Hickey Properties Limited, isn't that
16 right?

17 A. None whatsoever.

18 Q. 21 Right. And you -- can you tell us whether you would have had any interface
19 with the Council planning sections yourself, whilst in the Rohan group?

11:21:19 20 A. I would have thought very little, if any. As I say, we had an architectural
21 section of the Rohan group and they would have handled most of the industrial
22 developments. And if we had architects they would have handled those
23 interfaces so ...

24 Q. 22 Right?

11:21:37 25 A. Very little, if any.

26 Q. 23 Right. Your marketable skill effectively then was project management rather
27 than planning or rezoning as such, is that a fair comment?

28 A. It would have been project management but I would have had a lot of dealings
29 with incoming foreign direct investment from American companies dealing with
11:21:59 30 financial institutions in relation to the creating of investments for them.

- 11:22:05 1 Q. 24 Yes. As regards your involvement with Davy's stockbrokers. Can you indicate
2 how that arose. Did they come to you or did you go to them?
- 3 A. Well, it would have been towards the end of 1989. And the Rohan Group at that
4 stage was beginning to fragment. It had been sold a number of times back and
11:22:29 5 forwards to various entities in the UK and I took a view that I really needed
6 to have a little bit more control over my own life. And I decided that I was
7 going to leave and I was, I wasn't quite sure what I was going to do. And I
8 think once I made myself available, a number of parties, I think it was four
9 different parties, approached me regarding setting up a property company. In
11:23:01 10 different capacities. I think I always favoured the Davy connection because
11 of, I presume I'd come from working -- I am a professional engineer and I had
12 worked in a plc and most of my dealings would have been either with
13 multinationals or financial institutions. And just I liked the people in
14 Davy's when I met them and I just thought that that would have been the right
11:23:26 15 connection.
- 16 Q. 25 Yes. Had you had any business dealing with them beforehand that you can
17 identify as such?
- 18 A. No. I had no business or social dealings with them.
- 19 Q. 26 Right. And my query was whether they approached you or you approached them.
11:23:39 20 Can you recollect what the position was?
- 21 A. Yes. There was an individual that I would have known in the property market.
22 And he told me that Davy's were considering setting up a property company for
23 quite a period of time and would I be interested in meeting Ciaran McLoughlin.
- 24 Q. 27 Yes. And who was that?
- 11:23:58 25 A. Stewart Harrington.
- 26 Q. 28 Stewart Harrington. And he suggested that you might meet with Ciaran
27 McLoughlin, isn't that right?
- 28 A. That's right.
- 29 Q. 29 And that was your first point of contact?
- 11:24:08 30 A. That's right.

- 11:24:08 1 Q. 30 And Mr. McLoughlin, as we see from your statement, was to become a director of
2 the company?
- 3 A. That's right.
- 4 Q. 31 Initially. And of subsequent companies of which you were involved. And when
11:24:17 5 did you first meet with Mr. David Shubotham?
- 6 A. I think it would have been much later in the day. The discussions and
7 negotiations went on for quite a period of time and I would have -- I think
8 most of my discussions would have taken place with Brendan Dowling. And I
9 think sometime in 1990, the early part of 1990, I would have met with all of
11:24:46 10 the directors in Davy's and I suppose one of the main partners in Davy's and
11 David Shubotham was one of those.
- 12 Q. 32 Okay. This was in anticipation of forming a relationship with them?
- 13 A. That's right.
- 14 Q. 33 Which would be reflected in some form of a corporate structure and ultimately
11:25:07 15 led to Davy Hickey Properties Limited, isn't that so?
- 16 A. That's right, yes.
- 17 Q. 34 And that was a company that was called Bedale apparently?
- 18 A. Uh-huh.
- 19 Q. 35 And beforehand it changed its name to Davy Hickey Properties Limited
11:25:20 20 thereafter. Who were you engaged with as -- who were your professional
21 advisors in that, did you have the advice of a solicitor or an accountant as to
22 the setting up of your company Davy Hickey Properties Limited?
- 23 A. Patrick Hall Solicitors would have been my solicitors. And I would have
24 engaged De Loitte & Touche also to, I suppose, explain corporate matters to me
11:25:53 25 and financial matters which I would not have been familiar with at the time.
- 26 Q. 36 All right. And you say that the company which was formed was one in which you
27 were a shareholder?
- 28 A. That's right.
- 29 Q. 37 And the other shareholder was itself a corporate entity called Mulroy
11:26:11 30 Securities Limited rather than individuals, is that right?

- 11:26:14 1 A. That's what I understand. I think it was a company to hold those interests,
2 I'm not sure whether it was a trust for them. I'm not sure of the exact
3 arrangements of Mulroy but they were the second shareholder to hold all of
4 those other people.
- 11:26:29 5 Q. 38 Yes. So the identity of those behind the ownership of this entity was
6 effectively unknown to you, save that it was a Davy's connected entity called
7 Mulroy Securities Limited?
- 8 A. Well, I think I would have known sort of unofficially. It was really none of
9 my concern who they were putting up all of the money, and who they brought in
10 to provide their money was their concern, their responsibility. But I would
11 have had a general idea who were coming in as shareholders.
- 12 Q. 39 Yes. Yes but their interest wouldn't be reflected in the records of your
13 company, Davy Hickey Properties. They merely would be shown only through
14 Mulroy Securities?
- 11:27:17 15 A. That's right, yes.
- 16 Q. 40 Yes. So you're certainly fully familiar with the concept of there being
17 nominee shareholdings in companies, which is a common way in which companies
18 are held, isn't that right?
- 19 A. Well no more than I had -- there was a shareholder and Davy's were, they were
11:27:38 20 handling it that way. That's the extent that I knew.
- 21 Q. 41 Yes. But, I mean, your reward out of this could be either as a wage, number
22 one, a salary?
- 23 A. Uh-huh.
- 24 Q. 42 Or it could be, if I might say, on the capital side of it. In other words, a
11:27:53 25 fixed shareholding whatever the company gets, whatever the company acquires,
26 isn't that right?
- 27 A. Uh-huh.
- 28 Q. 43 Is that right, firstly?
- 29 A. Sorry, could you ask the question again, please.
- 11:28:02 30 Q. 44 The reward that any person involved with a company gets?

11:28:06 1 A. Yes.

2 Q. 45 Can either be through salary as a wage from the company?

3 A. Yes.

4 Q. 46 Or as a shareholder of the company, having an equity?

11:28:14 5 A. Yes.

6 Q. 47 In the assets of the company?

7 A. That's right.

8 Q. 48 And you were coming from paid employment, you were coming into a company, which

9 was to be your livelihood?

11:28:26 10 A. That's right.

11 Q. 49 You were to benefit from the work that you put into?

12 A. It that's right.

13 Q. 50 How were you to be rewarded for that?

14 A. Obviously, I would have a salary and I had a shareholding. I think the --

11:28:40 15 there is a structure of, I think they were called, is it preference share loans

16 or something like that there. So they would have got a return on their money

17 before I would get a shareholding. So it really was a shareholding but it

18 would have been success related essentially.

19 Q. 51 Right. And is it correct to say that the first project that you became

11:29:04 20 involved in was the City West project?

21 A. That's true.

22 Q. 52 Right. And whose concept was that?

23 A. Well, I -- I mean, the land had been there for quite a while.

24 Q. 53 Yes.

11:29:19 25 A. I think they even had to try to get it rezoned years previously. But I didn't

26 identify the land for the City West land. It had -- the price had been agreed

27 prior to me setting up Davy Hickey Properties. So the purchase of that

28 specific parcel of land was not my idea. I think the City West concept was --

29 and the whole idea of creating a science park which was very new, very novel to

11:29:52 30 Ireland, was very new or novel to what was happening elsewhere in the world.

- 11:29:57 1 That would have been my idea in conjunction with David Shubotham.
- 2 Q. 54 Right. We know that the company itself was probably formed, I think it was in
- 3 August actually was it that it changed its name to Davy Hickey Properties in
- 4 August 1990? You say that you moved to it in June, isn't that right?
- 11:30:17 5 A. I think I started employment in July. It may have changed its name in August
- 6 I'm not quite sure. But it was approximately the same time.
- 7 Q. 55 Certainly by December of that year matters had progress to the extent that full
- 8 planning application could be lodged in respect of the project. Does that
- 9 indicate that there had been a considerable amount of work done in relation to
- 11:30:39 10 City West before you came on board at all or not?
- 11 A. No, there was no work done in relation before I got on board. The price had
- 12 been agreed but sale hadn't been completed.
- 13 Q. 56 Yes. And the price had been agreed by who, do you know?
- 14 A. I think it was David Shubotham had agreed the price.
- 11:30:57 15 Q. 57 Yes?
- 16 A. And I think he was -- he would have been responsible for bringing in the other
- 17 shareholders into City West.
- 18 Q. 58 Right. You do know that Mr. Liam Lawlor claims the credit for this concept and
- 19 that Mr. Dunlop in his evidence over the passed number of days and indeed in
- 11:31:16 20 the statements which he had already previously furnished to the Tribunal,
- 21 confirmed that to be the case; it obviously is totally at odds with the
- 22 evidence that you are now giving, isn't that so?
- 23 A. Well, I'm not sure it's at odds. I actually don't know who introduced or
- 24 mentioned a property to David Shubotham. But it wasn't -- it wasn't any great
- 11:31:43 25 secret that the that land was there or that it was endeavoured to try and get
- 26 it developed. But I didn't specifically look at that land. David Shubotham
- 27 mentioned it to me. But I don't know who mentioned it to him.
- 28 Q. 59 But I think from your evidence a little earlier. You were saying that the idea
- 29 of there being a high tech business park for this and the fact that this land
- 11:32:05 30 was available and suitable for that purpose was the combination of the thinking

11:32:09 1 of both yourself and Mr. Shubotham and nobody else, isn't that right?

2 A. Well, I primarily would have been involved in developing industrial estates in
3 Dublin. And I, I noticed one thing in airways which would have been
4 considered, considered prime industrial estate in the '80s. That the companies
11:32:32 5 coming in in the early '80s and in particularly say Kellogs, had an office
6 content of ten percent. And another company coming in around '89, as an
7 example Lucent, had a 60 percent office content. There was no doubt what was
8 happening was that industry was changing from blue collar to white collar. The
9 industrial estates that would be developed in the 1990s were all ones that had
11:32:58 10 been designed in the 70s in Ireland because we'd had such a recession. The
11 environment suitable for blue collar industry was not suitable for white collar
12 industry. The whole business park phenomenon in the UK had gone through four
13 generational changes in the '80s and nothing had happened in Ireland. I would
14 have been aware of those things because I had met the companies coming in in
11:33:22 15 the late '80s which were completely different from the early 80s and I knew an
16 opportunity existed, the IDA existed because they were loosing a lot of these
17 foreign direct investments because no suitable accommodation was available for
18 them.

19 Q. 60 Right. Mr. Liam Lawlor we'll see at page 509. In providing information to the
11:33:39 20 Tribunal in relation to persons with whom he had connection in a business sense
21 provided details of his contacts with yourself and Mr. David Shubotham in the
22 document we see on screen now.

23
24 It says through a mutual contact a meeting was arranged with the above
11:33:57 25 personnel, that's yourself and Mr. Shubotham. Due to a lack of an
26 International type of business park to provide jobs on the west side of Dublin
27 and as Council management were suggesting a substantial area of Corkagh Demesne
28 a regional park should be promoted as a job location. I suggested the above
29 executives should explore the possibility of setting up an International
11:34:21 30 business park on lands owned by the late Dick Killeen who had approached me

11:34:27 1 outlining difficult family circumstances. The parties went forward and
2 provided what is today City West Business Park. It is my recollection that I
3 recommended Mr. Frank Dunlop to Davy Hickey Properties. Davy Hickey Properties
4 supported some of my election campaigns as detailed in B 42. Davy Hickey
11:34:47 5 Properties sponsored a team at my annual fundraising golf classics.
6

7 Do you have any knowledge or recollection of any involvement of Mr. Liam
8 Lawlor's in bringing the, what was to be the City West business project to your
9 attention or indeed to the attention of Mr. David Shubotham

11:35:09 10 A. No, I have no knowledge of that. Because, as I say, the land was negotiated
11 before I had any involvement. Therefore -- and I was never even aware at the
12 time that that was the suggestion that he would have brought it. But I think
13 there's another point in that letter that he talked about the idea of
14 developing Corkagh Park in opposite where City West is.

11:35:33 15 Q. 61 Yes?

16 A. I don't think the sequence of that is correct. The County Council were of the
17 view at the time that there was three of the biggest unemployment black spots
18 in Dublin. And I suppose the unemployment was the biggest issue of the day.
19 Darndale, Neilstown and west Tallaght. The County Council had allocated
11:35:56 20 industrial zoning beside these economic socially deprived areas. But they had
21 no chance of being developed. The idea of putting zoned industrial beside high
22 areas of unemployment was not going to solve the problem. What was needed to
23 develop industrial and the oxygen for a business park was access to and profile
24 to a motorway. And that proposition and create the environment up front, that
11:36:25 25 was what we were trying to do rather than build buildings.

26 Q. 62 Yes?

27 A. Up to now people built buildings. So once, I think the County Council had
28 bought into the idea that what we were saying was true. You needed access to a
29 motorway. It was only after City West had got its material contravention that
11:36:44 30 the Council decided that they should look at rezoning a public park, not

- 11:36:49 1 before.
- 2 Q. 63 Yes. So you disagree with that point of detail?
- 3 A. Well it isn't just a detail. It's not unimportant because it's something that
- 4 we were very conscious of going through City West.
- 11:37:01 5 Q. 64 Yes. I think you mentioned in your statement that there were certain
- 6 infrastructural requirements which were imposed upon the developers in relation
- 7 to City West, isn't that so?
- 8 A. That's right, yes.
- 9 Q. 65 I think you were particularly perhaps addressing the access on to the motorway,
- 11:37:16 10 were you?
- 11 A. That's right.
- 12 Q. 66 Not motorway but it was then, was it a motorway at that stage or merely the
- 13 Naas dual carriageway?
- 14 A. It was the Naas dual carriageway.
- 11:37:26 15 Q. 67 There was that. And there was also the question of sewage, isn't that right?
- 16 A. There was the question of the interchange, which we called the bridge.
- 17 Q. 68 Right?
- 18 A. And there was the question of sewage. But there was a question of the N 82
- 19 linking the Tallaght bypass up to the Naas Road.
- 11:37:41 20 Q. 69 Yes?
- 21 A. And the Embankment Road. So there was lots of roads issues which had been on
- 22 the plans for perhaps 15 years and really nothing had happened to them.
- 23 Q. 70 Right in relation to the sewage issue. How was that dealt with?
- 24 A. I don't understand.
- 11:37:55 25 Q. 71 In relation to the provision of the sewage outfall from the City West project
- 26 to link into the public system. How was that provided for?
- 27 A. We had to build that sewer, fund it ourselves. It went through from City West
- 28 under the Naas Road, down through Corkagh Demesne, a public park, down to I
- 29 think the grand canal sewer outfall.
- 11:38:20 30 Q. 72 Yes?

- 11:38:20 1 A. It was approximately four kilometers long, which we had to do and build and
2 fund ourselves.
- 3 Q. 73 Right. It was a private sewer running under a motorway which remained in the
4 ownership of City West, is that right?
- 11:38:34 5 A. Yes.
- 6 Q. 74 And anybody wishing to connect into it was obliged to pay you for that service,
7 isn't that's correct?
- 8 A. That's correct, yes.
- 9 Q. 75 Was that -- who do you know was the originator of that concept of the provision
11:38:45 10 of a private sewer under the road?
- 11 A. Well, there was no concept at the time. We were providing a sewer outfall. We
12 built the sewer and we were obviously having built the sewer, I think it was
13 some years later that people were looking for access to it.
- 14 Q. 76 Yes?
- 11:39:03 15 A. So that's, it didn't develop as a concept. It developed as a solution to a
16 problem.
- 17 Q. 77 But, I mean, unless there had been an agreement with the Council permitting the
18 construction of a private sewer through the public lands of Corkagh Demesne,
19 the Citywest development would never have taken place, isn't that right?
- 11:39:24 20 A. Well, we would have been equally happy to pay levies and let the local
21 authority do it. The local authority were at all times wanting us in lieu of
22 paying levies that we would build the structure, we would build public roads,
23 linking roads and we would build the sewer outfall because we required it
24 ourselves.
- 11:39:40 25 Q. 78 Yes. As regards the proposition or the evidence that was advanced to the
26 Tribunal by Mr. Dunlop in his evidence. Namely, that the genesis of the City
27 West project originated in the mind of Mr. Liam Lawlor, who went to Davy's with
28 the project, involved them and him. And that you came into the project only
29 after that concept had been fleshed out to the point that Mr. Dunlop was
11:40:08 30 already engaged in the project. You don't accept that as being accurate, is

11:40:13 1 that so?

2 A. Well, I suppose to reiterate what I said. The land had been identified. The
3 City West concept, there was thousands of acres of zoned land. The concept is
4 completely different from the actual land. The idea of developing the land or
11:40:31 5 buying the land. That idea was there. But whether Liam Lawlor had any
6 involvement in it or not, I had no idea. Except to say that it wasn't a
7 particular secret that that land was there and it was a large track in one
8 ownership.

9 Q. 79 Yes?

11:40:45 10 A. That's all I can say and I had no other knowledge other than that.

11 Q. 80 Yes. Indeed, there is a whole rake of undeveloped and zoned land throughout
12 Dublin?

13 A. Absolutely.

14 Q. 81 Upon which this development might have been built but it wasn't built, isn't
11:40:58 15 that right?

16 A. And I think that's the very point we made at the time, that zoning of land does
17 in itself create jobs.

18 Q. 82 Yes. But the decision was obviously taken by the promoters of City West for
19 their own reasons, to locate the development on land which was unzoned and it
11:41:20 20 in turn required the involvement of Mr. Dunlop and others to achieve the
21 rezoning of that land by means of a Section 4, isn't that right?

22 A. That's true but we would have -- City West would have been the most exhaustive
23 intensively researched project and complex project that I've been involved in
24 or perhaps I know that anybody has ever been involved in. We would have
11:41:46 25 engaged International consultants to look at best practice throughout the
26 world, looking at Palowalto, Silicon Valley, Sophie & Tiplis in France, Boston
27 128, Research Triangle, North Carolina, Stockley Park, looking for common
28 denominators of what made successful business parks. And from those, looking
29 at those common denominators I knew what was necessary to make City West a
11:42:11 30 success. And City West would have -- could get sewage, main gas went through

11:42:17 1 it. It had a lot of attributes. The one thing it hadn't got. It hadn't got
2 proper planning and zoning. But I think the concept was so compelling we went
3 about persuading people, elected representatives, residents associations,
4 planners, Ministers, the IDA were very supportive. And that's how we went
11:42:37 5 about City West, persuading people.

6 Q. 83 Yes. And all of that was done as you say with the commencement sometime after
7 your involvement in the summer of 1990 and resulting in a planning application?

8 A. That's right, yes.

9 Q. 84 By December. And a successful outcome by the following March?

11:42:53 10 A. That's right.

11 Q. 85 And a very rapid progress by any standard, isn't that right?

12 A. I think the arguments we were making were very compelling and I think the
13 biggest issue of the day was unemployment. We had also commissioned a report
14 from Davy Kellar McCarthy looking at the special needs of Tallaght. It showed
11:43:10 15 that in places like Fettercairn there was up to 60 percent unemployment. So we
16 were proposing spending millions creating the right environment in the biggest
17 unemployment black spot.

18 Q. 86 Yes?

19 A. I mean, the selling of the IDA was easy. It was the delivery that was the hard
11:43:28 20 bit.

21 Q. 87 Yes. And at what point did Mr. Lawlor become involved and in what capacity in
22 relation to City West, that you remember?

23 A. Yes. I remember that he turned up at quite a number of meetings in the company
24 of Frank Dunlop.

11:43:40 25 Q. 88 Yes?

26 A. And we had quite a lot of difficulties with City West. I think particularly
27 Baldonnel. Baldonnel had been developed in the '50s. It was in the
28 countryside at the time. The flight restrictions for Baldonnel, where an
29 airport set in the countryside were not as you would expect beside the city.

11:44:11 30 Q. 89 Uh-huh?

11:44:12 1 A. They were in excess of the needs of Heathrow or any civilian or military
2 airport in Europe. And whilst there was a general acceptance that they were
3 excessive, there was a difficult thing of how we'd go about actually getting it
4 changed. I have to say that Liam Lawlor was very helpful. He had a very good
11:44:35 5 grasp of the machinery of State.

6 Q. 90 Yes?

7 A. And he knew exactly how the various entities interlinked. Who the various
8 people would be in the various Air Corps, Aer Rianta, Department of Defence.
9 I have to say that he was helpful in indicating how we would go about it, who
11:45:03 10 we should contact etc. But at a certain stage I did get concerned because he
11 would turn up unannounced at meetings.

12 Q. 91 Yes?

13 A. And I got concerned that whilst he was very helpful in the beginning that, I
14 don't want to be disparaging, but I felt he was perhaps maybe a little bit of a
11:45:20 15 magpie. Information he was getting from our meetings were going on to other
16 people and it was inappropriate. And I would have raised this issue with David
17 Shubotham. And I think David actually in turn raised that with Frank Dunlop
18 and after that I think his meetings, or him arriving very much ceased.

19 Q. 92 Right?

11:45:38 20 A. I can't say that they ceased completely but I think they fairly much came to an
21 end.

22 Q. 93 Certainly in the statement that you had initially provided in relation to
23 Mr. Lawlor's involvement. You had addressed his involvement in the context of
24 him being elected representative for the area?

11:45:56 25 A. Uh-huh.

26 Q. 94 Without any qualification as to any concern you had about his magpie perhaps
27 activities that you subsequently giving evidence of here today, isn't that
28 right?

29 A. Well you're asking me more detailed questions and I'm trying to be as fulsome
11:46:13 30 and truthful as I can. That's probably why it's more detailed than my

11:46:17 1 statement.

2 Q. 95 You were being asked what involvement Mr. Lawlor had. Certainly you didn't

3 express initially. You've explained the reason for it. I'm merely drawing your

4 attention to it and allowing you the opportunity of dealing with it.

11:46:28 5

6 When you were first asked about any involvement that Mr. Lawlor had in this.

7 You indicated in relatively brief terms, that his involvement was as an elected

8 representative, isn't that right?

9 A. Well, I think you would probably find in all the statements that I have made.

11:46:42 10 I would probably be elaborating. Presumably if you asked me the question on

11 every single thing.

12 Q. 96 Yes?

13 A. And not just Liam Lawlor. I mean, I think, I've tried to be as helpful as

14 possible at all times and be as concise as well. And that's what I've been

11:46:57 15 there. And I'll be as fulsome in whatever you require at this time, if that's

16 what you'd like.

17 Q. 97 Yes. So the concern that you had anyway about his involvement was that he

18 seemed perhaps to be trespassing somewhat from giving you information as a

19 public representative with an interest in that matter to possibly acquiring

11:47:17 20 other information that was commercially sensitive to your operation isn't that

21 right?

22 A. I mean, it was -- I mean, the whole City West concept. It was a very difficult

23 one. Nobody had done it before. I mean, essentially what I was trying to do

24 was create a world class high technology park with a very Irish landscaping and

11:47:42 25 but built around the concept of the 19th Century Victorian Garden cities.

26 Borne Ville working village. It was a highly sophisticated complex that I had

27 to worry my way through every aspect of. I didn't think it was appropriate

28 that he should be at meetings. He would literally turn up. As I say at quite

29 a number of them, he was very helpful but I didn't think it was appropriate. I

11:48:08 30 felt uncomfortable.

11:48:09 1 Q. 98 Right. When it came to the beginning of the Baldoyle project. You are
2 probably aware from the documentation that's available and circulated to you in
3 the brief, that the evidence of Mr. Dunlop and some others is that the
4 introduction of the Baldoyle matter to Davy Hickey Properties was effected
11:48:26 5 through Mr. Liam Lawlor. Are you aware of that, firstly. And do you agree
6 with it, secondly?
7 A. That's not true.
8 Q. 99 It's not true?
9 A. No.
11:48:38 10 Q. 100 Do you remember Mr. Lawlor having any involvement in January of 1991 with the
11 introduction of Mr. John Byrne, for example, to you in connection with this
12 project?
13 A. No, my recollection at the time was that Frank Dunlop came to me with the
14 project on Baldoyle. And he would have set up a meeting with John Byrne and I
11:49:02 15 don't remember any specific involvement of Liam Lawlor in Baldoyle whatsoever.
16 Q. 101 You know that Mr. Dunlop says that he did not, he was not the instrument of
17 that introduction?
18 A. Well, I'm absolutely categorical that Liam Lawlor didn't either introduce the
19 project to me or ask me to, as I think is inferred some place, to meet John
11:49:26 20 Byrne. That definitely didn't happen.
21 Q. 102 All right. I'll refer you to what Mr. Byrne has to say about it.
22
23 On page 31 of the brief of documents.
24
11:49:34 25 This is a statement provided by Mr. John Byrne.
26
27 He says at paragraph five of that statement before you there, Mr. Hickey.
28
29 "I recall that in 1991 or possibly 1990 an approach was made to me by Brendan
11:49:51 30 Hickey of Davy Hickey Properties who were interested in acquiring an option

11:49:55 1 over part of the Baldoyle lands. The company was a joint venture between
2 Brendan Hickey and Davy Stockbrokers. I believe that I attended a meeting at
3 sometime in 1991 at the offices of Davy Stockbrokers in Dawson Street which was
4 attended by Liam Lawlor and Brendan Hickey and David Shubotham of Davy's, Frank
11:50:15 5 Dunlop and Anthony Gore Grimes at which discussions took place in relation to
6 my company granting an option to Davy Hickey Properties in respect of
7 approximately 250 acres of the Baldoyle lands. It was intended that the
8 purchasers would attempt to have the rezoning of the lands changed to
9 residential/leisure/business park use and that approximately 150 acres being
11:50:39 10 part of the lands would be used for the construction of a hotel and golf
11 course".
12

13 In paragraph ten on the following page, No. 32.
14

11:50:53 15 He says that he was advised in 1993, "I was advised by my solicitor John Gore
16 Grimes that he had attended a meeting with Liam Lawlor and Frank Dunlop and had
17 been advised that Davy were now out of Pennine Holdings and that Pennine was
18 owned by Frank Dunlop. However, my solicitor and myself didn't have any means
19 of checking the correctness of that".

11:51:13 20
21 And at paragraph eight, which I think is also relevant.
22

23 "Pennine Holdings Limited was the company which actually took the option and I
24 believed that it was a company owned by Davy Hickey Properties".

11:51:25 25
26 I think those three paragraphs address some of the matters that are in issue
27 and require resolution by the Tribunal in order to reach its determinations.
28

29 And I want to deal, possibly firstly, with the first of those. And that is the
11:51:40 30 matter that I had discussed with you in my questions immediately preceding

11:51:44 1 opening this. And that was that Mr. Liam Lawlor was a person involved in the
2 meeting in January of 1991, between yourself and Mr. Byrne. You dispute
3 Mr. Byrne's account of this, is that right?

4 A. I don't. And I think I have said in my statement that I actually don't recall
11:52:04 5 when I first met Mr. Byrne. I do recall that I'd met him I think two, twice.
6 I certainly recall meeting him in his house. And I'm fairly certain I met him
7 in John Gore Grimes office. I don't recall exactly when I met him the first
8 time. Or who was at that meeting.

9 Q. 103 From what you've said about Mr. Lawlor so far. And that is in connection with
11:52:33 10 his possibly transgressing somewhat into the City West project, which was in
11 1990 initially. I take it that you would not have been particularly anxious to
12 involve him in any other project of yours, isn't that right?

13 A. Involve?

14 Q. 104 Involve Mr. Lawlor in any other project of yours. He had displayed in City
11:52:52 15 West an interest that perhaps went somewhat further than you wanted. And for
16 that reason, could I suggest that he wasn't a person you'd involve?

17 A. Mr. Lawlor was not involved in any project I've been involved in, on any
18 projects.

19 Q. 105 Yes. I know that that is what you say in your statement and that is your
11:53:09 20 evidence. And it is totally contrary to the evidence of Mr. Frank Dunlop on
21 actually the same issue. And that's why I'm exploring it with you?

22 A. Well, I understand what you're saying. All I'm here to do today is to tell the
23 truth as I know it and as I believe to be true. So that may be the case. But.

24 Q. 106 Yes?

11:53:30 25 A. Liam Lawlor was not involved in any of my business dealings and I wouldn't -- I
26 have no business dealings with politicians.

27 Q. 107 Do you believe that it may be the case that Mr. Lawlor was in fact at the
28 meeting with Mr. John Byrne and yourself in Davy Stockbrokers in January of
29 1991 or do you say that that did not happen?

11:53:53 30 A. No, I just said that I don't recall. Therefore, I really -- I'm not in a

11:53:58 1 position to deny it because I actually don't recall when I first met him.

2 Q. 108 Yes. Mr. Lawlor is another person who says that such a meeting took place?

3 A. Uh-huh. No, no, I'm aware of these statements.

4 Q. 109 Yes?

11:54:13 5 A. Mr. O'Neill, that they say that. Although I'm saying that I actually don't

6 recall the meeting. But I'm not denying that perhaps it did take place. I

7 just don't recall it.

8 Q. 110 Right. You also dispute the fact that Mr. Dunlop says that the negotiations in

9 respect of the option were conducted by you with Mr. Byrne. You say that Mr.

11:54:36 10 Dunlop conducted those negotiations initially. That you came in at a

11 subsequent stage because of his lack of technical expertise as to the detail of

12 it. And that the involvement that you had was an involvement following on from

13 the initial option negotiations with Mr. Dunlop, isn't that -- between Mr.

14 Dunlop and Mr. Byrne, isn't that so?

11:55:00 15 A. Okay. I mean, it is fifteen years ago.

16 Q. 111 Yes?

17 A. I'm trying to best remember exactly what happened. But I believe that the

18 discussions on the bones of the option agreement would have been discussed with

19 John Byrne in the company of Frank Dunlop and whether Frank Dunlop came with

11:55:18 20 the bones of the deal or whether it was discussed when he was there. That, it

21 was in that order it would have happened. I would have led the negotiations

22 and I think I've always confirmed that I've led the negotiations in relation to

23 the option.

24 Q. 112 Yes. I want to specifically deal with the point, Mr. Hickey, as to whether or

11:55:43 25 not these negotiations were, firstly, started by you, started as opposed to

26 finish. The inception of the negotiations with Mr. Byrne. Were they started

27 by you or were they started by Mr. Dunlop and continued by you?

28 A. Mr. Dunlop came to David Shubotham and I regarding the option on Baldoyle. It

29 was a case in 1991, the Gulf War had just broken out. I have a company with

11:56:22 30 money. The country is going into recession. I have lots of people come to me

11:56:26 1 with property proposals. I wasn't going to anybody looking for proposals.
2 There was no end of propositions available.

3 Q. 113 All right. You then as regards the negotiation with Mr. Byrne?
4 A. Yes.

11:56:40 5 Q. 114 Did you start those negotiations with Mr. Byrne or did Mr. Dunlop start the
6 negotiations with Mr. Byrne?
7 A. Well I think Mr.-- the negotiations either took place with Mr. Dunlop and
8 Mr. Byrne regarding the bones of the deal, as I said before. Or else they
9 would have been discussed at our first meeting. But I -- I'm -- I fully
11:57:08 10 acknowledge, Mr. O'Neill, if you're trying to ask me the direct question. How
11 much involvement did I have on the negotiation of the option. I led the
12 negotiations on the option.

13 Q. 115 Yes?
14 A. Mr. Dunlop would have been involved in the early stages of it. Because it was
11:57:22 15 him who came to us with the option.

16 Q. 116 Right. Did Mr. Liam Lawlor have anything to do with introducing you to
17 Mr. Byrne in connection with the lands?
18 A. No.

19 Q. 117 No. When Mr. Byrne says that you came to him, that would not appear to be
11:57:38 20 at -- in compliance with your recollection that it was Mr. Dunlop who came to
21 you and with the project, isn't that right?
22 A. Well I never -- I wouldn't have known where Mr. Byrne was or where he lived and
23 I wasn't particularly aware of the land.

24 Q. 118 Right?
11:57:53 25 A. So it's just not true.

26 Q. 119 Fine?
27 A. As I said before, people were coming to me with propositions.

28 Q. 120 Yes. Mr. Liam Lawlor, the Tribunal is aware, had an involvement with these
29 lands going back as far as 1986 in relation to options which were held not over
11:58:09 30 the area that was to be involved in the Pennine option?

- 11:58:13 1 A. Uh-huh.
- 2 Q. 121 But in relation to the option over the 100 acres immediately adjoining it. I
3 think you are probably familiar with the fact that the land and the southern
4 part of the take of Mr. Byrne, the 100 acres immediately close to the Grange
11:58:30 5 Road or the Willie Nolan Road and the coast road in Baldoyle was the subject of
6 another arrangement. It didn't fall within the 400 acre option for Pennine,
7 isn't that so?
- 8 A. No, it's not. I'd no knowledge of it whatsoever.
- 9 Q. 122 You'd no knowledge of that?
- 11:58:48 10 A. None what so.
- 11 Q. 123 Well, you may have gathered from the documentation that was briefed to you, in
12 relation to this particular Module, that there was an earlier option entered
13 into by the parties in November 1988 involving Mr. John Byrne's company Melvin
14 Securities and Endcamp with a company called Bauval Limited. And that that
11:59:13 15 option extended to cover 100 acres that I've just described to you as regards
16 its boundary. Have you not seen that in the brief even?
- 17 A. I saw that in the brief.
- 18 Q. 124 Fine?
- 19 A. But, I mean, I had absolutely no knowledge of it at the time.
- 11:59:27 20 Q. 125 Right. What it does establish I think from the other documentation in the
21 brief is that Mr. Lawlor had had an ongoing involvement in relation to Baldoyle
22 since 1986 in the context of options over part of the Baldoyle land. And that
23 by 1991 in January 1991 at the time when the meeting was taking place with
24 Mr. Byrne and yourself in Davy Stockbrokers, the exercise of that option in
11:59:58 25 respect of two parcels of land had taken place. It was, in other words, a
26 current matter between Mr. Byrne and the option holders over the 100 acres.
27 That that option had been exercised in respect of 24 acres in January of 1991.
28 At the same time when the discussions for an option over the 400 acres were
29 being negotiated with you. Those are the facts Mr. Hickey. And I'm just
12:00:30 30 wondering whether you are aware of the fact that Mr. Lawlor in this instance

- 12:00:36 1 and prior to there being any commitment from Pennine Holdings to take an option
2 over the 400 acres of land was already a party and involved with Mr. Byrne in
3 an option over 100 acres of land?
- 4 A. Yeah.
- 12:00:51 5 Q. 126 In that vicinity?
- 6 A. Well, I can't be any more categorical than to say that I had absolutely no
7 knowledge whatsoever of anything going on around the site other than the plain
8 simple fact of Frank Dunlop coming and saying he could get an option on lands
9 in Baldoyle. I mean, I was -- I suppose curious, perhaps even sceptical why
10 another developer was coming and offering an option at 5,000 for 5,000. I
11 mean, I'm in the business so I would have obviously given it serious concern.
12 I'm in the property business and I would have looked at it but I would have
13 been on my guard a little bit as to, it's not just a landowner but a property
14 developer would come and offer an option at 5,000. So I was naturally keen to
15 see what exactly were the details of those option.
- 16 Q. 127 Yes. Mr. Byrne was a very successful property developer?
- 17 A. Very successful.
- 18 Q. 128 In his own right?
- 19 A. That's right.
- 12:01:53 20 Q. 129 And anybody looking at this deal would say what is it that is being offered to
21 the option holder that could not be attained by Mr. Byrne himself. Because?
- 22 A. Agreed.
- 23 Q. 130 He is not a person who has a reputation of giving things away?
- 24 A. Which he wasn't.
- 12:02:09 25 Q. 131 And this was in fact a give away as far as --
- 26 A. No, it wasn't. I don't agree with that.
- 27 Q. 132 It had -- until fully examined by you, it could be believed to be a give away,
28 is that right?
- 29 A. Well it looked a little bit too good to be true, I'll agree.
- 12:02:25 30 Q. 133 We'll examine that in the context of your belief that it would cost a million

12:02:31 1 pounds to bring it to fruition. For the moment. Which I think is the essence
2 of your reasoning?
3 A. Uh-huh.
4 Q. 134 As to why you pulled out of the deal. But I want to deal with the
12:02:41 5 circumstances of what your understanding was of the participants or likely
6 participants in any project that would come out of the negotiations which took
7 place in January. Because it would appear that heads of agreement were reached
8 by the parties by the end of January of 1991 which were then implemented by the
9 bringing into being of the company called Pennine. I want to know who it was
12:03:08 10 made the agreement in January of 1991 and who was to benefit from that
11 arrangement?
12 A. Well, there was --
13
14 CHAIRMAN: Sorry,
12:03:18 15 A. Sorry.
16
17 CHAIRMAN: Could I just stop you there, Mr. Hickey. I think this might be an
18 appropriate time if you are about to start a new subject just to take a ten
19 minute break.
12:03:32 20
21 All right.
22
23
24 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**
12:03:45 25 **AND RESUMED AS FOLLOWS:**
26
27
28 MR. O'NEILL: Mr. Hickey, I was asking you about what the heads of agreement
29 were that were reached in the negotiations which took place between you as far
12:16:23 30 as the record would appear to suggest, this took place probably before the 11th

12:16:31 1 of February of 1991. I use that date because the solicitors, that is Gore &
2 Grimes, acting for Mr. Byrne, make reference to the facts that Heads of
3 Agreement have been reached by the parties and that one of the solicitors in
4 that firm was to draw up the conveyancing documents which could be used in the
12:16:55 5 option agreement.

6
7 Does it accord with your recollection --

8 A. Sorry, are you talking about the Heads of Agreement on the option between John
9 Byrne and Pennine, is that the heads?

12:17:06 10 Q. 135 Well, what are referred to as Heads of Agreement. I suppose that the option
11 agreement itself stemmed from a somewhat larger agreement. The option
12 agreement itself is signed on the 4th of November of 1991?

13 A. Uh-huh. Yeah.

14 Q. 136 The documentation in the possession of Mr. Byrne's solicitors suggested that
12:17:28 15 Heads of Agreement had been reached by the parties in February 1991. Now, I
16 can't say exactly what Heads of Agreement there were that were agreed by the
17 parties at that stage. So I presume this is --

18 A. Well, I don't have a record of those Heads of Agreements either. But I would
19 have thought it would be normal that, you know, what the amount of acreage and
12:17:56 20 what the price per acre would have been discussed. I don't have a record of
21 those Heads of Agreements.

22 Q. 137 Okay?

23 A. But John Byrne did request a payment which I think was a goodwill payment or to
24 make sure that we would be seriously addressing or engaging in the option
12:18:14 25 negotiations.

26 Q. 138 Yes. And again, from the accounting documentation, you've provided to us. The
27 cheque for that seems to have been written on the 28th of January of 1991?

28 A. Uh-huh.

29 Q. 139 I'm not sure. And it doesn't follow that it necessarily was presented at that
12:18:31 30 time or subsequently but it's an indication of the fact that a level of

12:18:37 1 commitment was being considered by yourselves as of that date. Because a
2 cheque is written through your accounts as of that date, the 28th of January
3 '91?

4 A. Well, the cheque was written by David Shubotham.

12:18:50 5 Q. 140 Yes?

6 A. And so I'm sure he'll talk to you about that. But I -- I mean, I'm in the
7 business, as I say.

8 Q. 141 Yes?

9 A. To look at property propositions. So, if somebody -- even if I am a little bit
12:19:04 10 guarded. If somebody comes and says there's 400 acres that you can get an
11 option on. Naturally, I'm sufficiently interested to examine it very closely.

12 Q. 142 Right?

13 A. And that's exactly what I did.

14 Q. 143 I'm just trying to get the chronology of events right and the timing as to when
12:19:23 15 this may have occurred. We have heard that there was a meeting which you don't
16 disagree with. Probably in January of 1991 at Davy's probably?

17 A. Well, I really don't want to speculate.

18 Q. 144 Okay?

19 A. I can only tell you what I remember.

12:19:38 20 Q. 145 Right. So you're not disagreeing with the accounts of others specifically as
21 regards there having been such a meeting. You simply can't remember it
22 yourself, is that the position?

23 A. Well, again, as I said previously, I don't want to contradict something I don't
24 know for fact.

12:19:56 25 Q. 146 Right. Well let's see what we can actually agree on then. You do agree that
26 your company or Mr. Shubotham on behalf of your company provided 5,000 pounds
27 which was going to be the earnest money or the consideration?

28 A. That is right.

29 Q. 147 For the option?

12:20:11 30 A. That's right.

- 12:20:11 1 Q. 148 You don't disagree that that took place or is recorded in your accounts as
2 having taken place on the 28th of January 1991?
- 3 A. That's right.
- 4 Q. 149 From that the Tribunal can assume that Davy Hickey Properties at that stage had
12:20:26 5 decided that they would consider involving themselves in this project as and
6 from that date forward?
- 7 A. I think that's fair to say.
- 8 Q. 150 Right. And we know that the next documentation that assists us with time as to
9 what the level of or extent of negotiation might have been between the parties
12:20:46 10 is that Mr. Byrne's solicitors record in February of 1991 that Heads of
11 Agreement had been reached by the parties. And if that is so, if that's an
12 accurate record of events it would appear to suggest that such negotiations as
13 took place between the parties had certainly taken place or commenced in
14 January and extended to a point in February where Heads of Agreement had been
12:21:13 15 reached, perhaps not the fine detail of what was to find itself in a document
16 in legal form but the parties had in principle reached an agreement. Would
17 that be a fair summary of events as far as you know?
- 18 A. Well, I don't have the Heads of Agreement so I don't know.
- 19 Q. 151 Okay?
- 12:21:30 20 A. And sometimes I've been surprised at Heads of Agreement. I'm involved with the
21 RPA at the moment and building the Luas and the Heads of Agreement went to 40
22 pages. So Heads of Agreement can sometimes be a back of an envelope and
23 sometimes can be very, very lengthy. I've no idea the extent of those Heads of
24 Agreement. But I suspect it was the acreage and I suspect it was the option
12:21:54 25 price per acre if that's what the heads were.
- 26 Q. 152 Yes. And in what capacity were you negotiating those Heads of Agreement or
27 that agreement with Mr. Byrne, were you -- you told us that Mr. Dunlop, you
28 say, comes to you. He says I have the capacity to get an option over 400 acres
29 for 5,000 pounds. You say that he commenced the negotiations with Mr. Byrne.
12:22:23 30 He in effect was a middle man between you and Mr. Byrne, isn't that right?

12:22:30 1 A. Well I.

2 Q. 153 Mr. Dunlop came to you?

3 A. Well.

4 Q. 154 Was offering you the opportunity of coming in to a situation?

12:22:36 5 A. Uh-huh.

6 Q. 155 Where he had, on your version of events, the entitlement to get the option over

7 the lands, isn't that right?

8 A. That's right.

9 Q. 156 Now, that was what he was bringing to you?

12:22:49 10 A. That's right.

11 Q. 157 Isn't that right? He had not concluded any agreement which was enforceable

12 against Mr. Byrne in those terms, isn't that right?

13 A. That's right.

14 Q. 158 So you couldn't actually make an agreement with Mr. Dunlop which would have

12:23:03 15 given you the option over the land, isn't that right?

16 A. Well I never had an option over the lands and I --

17 Q. 159 I know?

18 A. And all my -- what I have I would have concentrated on. And as I said earlier,

19 this was a very experienced developer coming, offering an option of 400 acres

12:23:21 20 of his land for 5,000 and I would have been interested in seeing exactly what

21 were the terms.

22 Q. 160 Right?

23 A. The terms are what I would have been interested in. That's probably where I

24 put my energies.

12:23:34 25 Q. 161 The hypothesis that I am developing with you Mr Hickey is this, that on your

26 account of events Mr. Byrne had not come to you offering you this option, are

27 we agreed on that?

28 A. I'm certain of that.

29 Q. 162 What had happened is that a person who had no legal ownership of these lands

12:23:49 30 whatsoever, the PR representative, Mr. Dunlop, with whom you had had dealings

12:23:54 1 with in City West came to you?

2 A. Uh-huh.

3 Q. 163 And he said to you I can get an option over this 4 hundred acres for 5,000.

4 Isn't that your account of events?

12:24:05 5 A. Well he --

6 Q. 164 Or?

7 A. I'm not sure when he mentioned the 5,000.

8 Q. 165 Okay. He said that he could get an option over the lands?

9 A. Yes.

12:24:12 10 Q. 166 You then become involved, isn't that right?

11 A. That's right.

12 Q. 167 At that point what did you understand Mr. Dunlop was going to get out of this

13 arrangement, was he going to be the middle man between yourself and the

14 property owner, Mr. Byrne?

12:24:32 15 A. Well, I would have thought if he was offered the option and he asked us would

16 we like to get involved.

17 Q. 168 Yes?

18 A. Then and if I satisfied myself on behalf of Davy Hickey, because at all times

19 I'm acting, never on my own behalf but on behalf of my company and on behalf of

12:24:50 20 David Shubotham. That if I satisfied myself that we do want to get involved

21 then we'd have to come to some sort of arrangement with Frank Dunlop what

22 exactly our respective roles are and would be.

23 Q. 169 I'm trying to establish when it was first presented to you what did you

24 understand was being presented to you and what did you understand Mr. Dunlop's

12:25:12 25 reward in that arrangement would have been?

26 A. Well, perhaps I'll say it again because maybe I'm not being clear. He came to

27 us with an option on the matter. Were we interested. I'm a property company.

28 Of course I'm interested. I'm a little bit guarded, perhaps a little bit

29 sceptical. I'm interested to see what are the details. If we had been

12:25:35 30 satisfied we wanted to get involved, then we would have come to an arrangement

12:25:39 1 with Frank Dunlop. I'm not sure exactly what his role or what the arrangement
2 would have been but we would have come, we were putting work in, so we were
3 putting work in with the hope that we might get involved.

4 Q. 170 And that is what you in fact did after you had reached the agreement. But what
12:25:56 5 I'm trying to understand from you --

6 A. Pardon.

7 Q. 171 What I'm trying to understand from you is that somebody comes to you who is not
8 a property owner, this is Mr. Dunlop?

9 A. Uh-huh.

12:26:06 10 Q. 172 You -- he can't give you an option over the lands because he doesn't have any
11 option himself over the lands. At this time he has nothing?

12 A. There is no option on the lands. There is no option until the option agreement
13 is signed as far as I'm concerned.

14 Q. 173 Exactly. But Mr. Dunlop has nothing to give you?

12:26:26 15 A. Except the introduction of it and his ability to get it.

16 Q. 174 Fine. Was he to be paid for the introduction. Is that what you understood the
17 position to be?

18 A. No, no.

19 Q. 175 Okay?

12:26:35 20 A. I think he --

21 Q. 176 He was to have an involvement then wasn't he?

22 A. Well, I'll try and say it again. He came to us with an option. We were --

23 Q. 177 Well, can I stop you just at that point. He came to you. He didn't have an
24 option. What did he come to you with?

12:26:52 25 A. Sorry. He came to us with the prospect of getting an option on the lands.

26 Q. 178 How did he express that prospect, what did he say that he could give you?

27 A. Well it's fifteen years ago and I don't remember precisely what he said.

28 Q. 179 Okay?

29 A. I'm trying to honestly tell you the circumstances where he came to us. We were
12:27:09 30 interested sufficiently to spend a significant amount of time to see was it

12:27:14 1 worthwhile getting involved. And if, if we would have got involved Frank
2 Dunlop would have had a role and he would have had an involvement in it.

3 Q. 180 Right. So he came to you. He indicated that Mr. Byrne was prepared to give an
4 option over Mr. Byrne's lands?

12:27:32 5 A. That's right.

6 Q. 181 Is that right?

7 A. That's right.

8 Q. 182 Now, you then tell us that Mr. Dunlop was in the position of trying to
9 negotiate that option from Mr. Byrne, is that right? He commenced negotiations
10 with Mr. Byrne for the option?

11 A. No, I think --

12 Q. 183 Did that happen?

13 A. No, I think what I said in my statement was that I assisted Frank Dunlop. I
14 assisted Frank Dunlop in the capacity that he was the one who was being offered
15 the option.

12:28:08 16 Q. 184 Yes?

17 A. I led negotiations but I led them on the basis that I was assisting him but
18 also looking at it from our point of view if we were going to get involved.

19 Q. 185 Yeah. But what was he doing?

12:28:19 20 A. Well he made the introductions.

21 Q. 186 Yes?

22 A. That that was the primary thing that it was doing. I'm not sure whether he
23 actually agreed the price before coming to us or we agreed the price in his
24 company with John Byrne.

12:28:33 25 Q. 187 Yes?

26 A. But it was one or the other.

27 Q. 188 Yes?

28 A. The offer was made to him, not to us.

29 Q. 189 Yes.

12:28:39 30

12:28:39 1 CHAIRMAN: But, Mr. Hickey, you were committing yourself in a sense by paying
2 the -- by writing the cheque. I know you didn't do it yourself personally.
3 But your side, as it were Mr. Shubotham I think
4 A. That's right.

12:28:54 5
6 CHAIRMAN: That was in January
7 A. Uh-huh.
8

9 CHAIRMAN: So, at that time presumably you would have had some -- you would
10 have had the bones of an agreement or an understanding between yourself -- I
11 mean, you weren't a charitable institution
12 A. No, definitely not.
13

14 CHAIRMAN: So, you must have had some idea as to how this arrangement would
15 pan out once you paid the money and got the option
12:29:14 16 A. Yeah.
17

18 CHAIRMAN: So, what we would really like to know is what was the arrangement
19 at that time, what was your understanding as what was to be the relationship
12:29:30 20 between yourself and Mr. Byrne and yourself and Mr. Dunlop
21 A. Yeah. I mean, as I say, I don't have any documents of the time. But I would
22 agree with you that more than likely at that stage the quantum of land and the
23 price per acre would have been fairly paramount issues and they would have been
24 discussed and probably agreed.

12:29:56 25 Q. 190 Uh-huh. That would be between ...
26 A. Byrne and Dunlop and ourselves as to what the option, as to what the option was
27 about. The quantum of land and the price per acre.
28

29 CHAIRMAN: But as between yourself and Mr. Dunlop, I mean, was he going to be
12:30:11 30 a shareholder or was he going to be an advisor or

- 12:30:15 1 A. Well, I would have thought. I don't recall specifically. But I would have
2 thought if he came with the option that he was, he would have been a
3 shareholder, advisor perhaps both. I don't recall specific discussions or what
4 percentage. It was a case of this sounds like an interesting, naturally very
12:30:36 5 interesting proposition. As I say, I was a little bit guarded. But
6 nevertheless sufficiently interesting that we would, that David decided to pay
7 5,000 and that I would engage in negotiations to see what exactly were the
8 terms of those, what was the fine print going to be.
- 9 Q. 191 In that circumstance, whilst described by you, Mr. Hickey, one would see that
12:31:07 10 Mr. Dunlop wouldn't have any particular role at the end of the day. He had
11 effected an introduction between you, a person who was prepared to consider
12 involving yourself in taking an option over the lands, and Mr. Byrne, the
13 person who owned the lands and was in a position to give such an option to such
14 an interested person. The role that Mr. Dunlop would have in that would be
12:31:33 15 spent really, he had effected the introduction between two principals, if I
16 might call it that, who would develop the matter further on terms of their own
17 option agreement, isn't that right? In principle there doesn't seem to be a
18 need for the introducing party to remain on board once the option agreement is
19 signed, for example?
- 12:32:02 20 A. Well, I think on the contrary. If you like at look at the City West
21 experience. Frank Dunlop's role had nothing to do with getting involved in
22 City West and everything to do with after we had got the land.
- 23 Q. 192 Well in that instance he was as a PR consultant engaged for a specific task by
24 the promoters. This is not the same situation. This is one where he comes to
12:32:19 25 you saying I'm in a position to get an option over these lands. You were a
26 property company with assets, with the capacity to produce funds through Davy
27 Stockbrokers to acquire these lands, isn't that right?
- 28 A. Well, if everything had worked out that the option was a good option.
- 29 Q. 193 Uh-huh?
- 12:32:47 30 A. If the project, if the lands could have been serviced by infrastructure and we

12:32:54 1 were reasonably satisfied that that could happen. If it looked like the --
2 there was a certain imperative as to why the lands should be rezoned.
3 Therefore, wanted and acceptable to the planners, the residents associations
4 and the local representatives. Then there was a huge body of work that Frank
12:33:14 5 Dunlop would have been involved in, as in City West, in trying to actually
6 bring that to fruition. We never got remotely to that stage. But his role was
7 not just, you know, I got a phone call and, you know, take it from here. It
8 would not have been that.

9 Q. 194 Well I just was trying to establish for the purpose of the Tribunal what you
12:33:36 10 understood Mr. Dunlop's role to be in the agreement which was reached between
11 yourself, Mr. Byrne and I assume Mr. Dunlop as to how matters were to progress
12 as and from January/February of 1991?

13 A. Well, we had found Mr. Dunlop to be a very competent, a very professional, a
14 very diligent, very powerful, well connected individual. Somebody who we
12:34:09 15 intimately trusted in City West and had been extremely important in that team.
16 And if we had got involved and if we had have wanted to get involved and then
17 got involved in Baldoyle, we would have seen him as an integral part of that
18 team also. On what terms, they weren't discussed, as far as I'm aware.

19 Q. 195 Okay. So for the next two and a half years after this, from January 1991 until
12:34:41 20 a date probably in July of 1993, your presence or connection with this project
21 is one which you do not consider to amount to involvement, is that right?

22 A. I think to try and summarise what our position was in relation to Baldoyle was.
23 I suppose I was initially sceptical. And I was never convinced. And we never
24 committed. We, at a number of stages, got very close to by looking very hard
12:35:22 25 at it over a long period of time. Principally because if Frank Dunlop wanted
26 to persist with it and he was a very valued member of our team with City West
27 and we stayed with it. But I was never convinced. And because of that I never
28 committed to the project. I never committed at the option stage. And we never
29 went through when, at a later stage, at a partnership stage.

12:35:48 30 Q. 196 Right. I'm not really trying to address what commitments you made. I'm trying

12:35:54 1 to establish what you actually did?

2 A. Legal commitment I'm talking about.

3 Q. 197 Yeah. I'm trying to identify what it is you term your participation between

4 1991 and 1993 to have been. You clearly say we had no involvement. Equally,

12:36:13 5 we can see that you are engaged in the negotiation, for example, that could

6 fall within the definition of being involved. We'll see that you paid monies.

7 That equally is involvement. But your evidence is you're not involved in the

8 project, equating -- just let me finish?

9 A. Sorry.

12:36:36 10 Q. 198 You were equating involvement with being committed to exercise the option at

11 the end of the day. But I believe that you have and will be shown to have

12 participated until July or thereabouts of 1993, isn't that right?

13 A. Well, what I can say is that we -- you're trying to summarise the whole thing

14 is a short sentence and it's a little bit more complicated. And I'm trying to

12:37:09 15 summarise it in the way that I think it was.

16 Q. 199 Sure.

17 A. I suppose it was always of the belief that you don't have, you don't have an

18 agreement unless you have a legally binding agreement. And you're not

19 committed unless you are actually legally committed. I do acknowledge that at

12:37:26 20 various stages I looked at it seriously. And at various stages I would have

21 walked from it, except that Mr. Dunlop was much keener on it than we were. I

22 tried to warm to it and we put a fair bit of time and we put money into it.

23 But I could never -- I never was mentally committed to it. Not only legally.

24 I was never mentally committed to it. And I wanted to make sure that I could

12:37:50 25 keep that distance from it.

26 Q. 200 Yes. We may take it --

27 A. I did pay funds. I know that's on the record and I acknowledge that.

28 Q. 201 Yes. We may take it, Mr. Hickey, that nobody was involved in this project to

29 the extent that they exercised the option over the lands and purchased them.

12:38:10 30 To that extent, everybody was not involved if one attributes -- if one

12:38:15 1 interprets the word "involvement" as having a commitment to purchase these
2 lands. Nobody had that level of involvement, do you understand?

3 A. Yeah, but I think there is a difference. Frank Dunlop had an option. He owned
4 a company that had an option.

12:38:31 5 Q. 202 No. The option holder equally wasn't involved to the extent of being obliged
6 to purchase?

7 A. No, no. Well I don't think an option is an option. An option is not an
8 obligation to purchase.

9 Q. 203 Exactly?

12:38:46 10 A. It's not a contract.

11 Q. 204 Exactly. I'm trying to see how it is you can say that you were not involved in
12 this project, isn't that effectively what you're saying. Davy Hickey
13 Properties had no involvement with this project. We would have become involved
14 in the event that it satisfied our criteria and passed the feasibility study.
15 That is what you're saying, isn't that so?

16 A. I think if I -- when I look at it and I would have looked at dozens of projects
17 that aborted and you would have spent money and spent time. To an extent, any
18 project that you spend money and time you're involved in, I was involved in
19 this.

12:39:29 20 Q. 205 All right. Well, then it's really a matter of semantics whether involvement
21 involves commitment, participation or what have you. You are accepting the
22 fact that to an extent between 1991 and 1993 until such time as you decided to
23 abandon the project entirely you had a role in relation to these lands in that
24 it was something you intended to involve yourself in to the extent of being
25 committed if it met certain criteria of your's, is that right?

12:40:01 26 A. Well, I think what is right is that we looked at it seriously when it came to
27 us. Because, as I say, that is my business. And I'm setting up a company and
28 I'm looking for propositions. This could be an interesting proposition. I did
29 not want to commit myself to that option. And I think if Frank Dunlop had not
12:40:26 30 been as anxious to proceed with it I'd have been very happy to walk in June.

12:40:31 1 July of '91. At that stage in January of '91 I was looking for propositions
2 and projects to get involved in by July I had two other further major projects
3 under my belt. I'd have walked at that stage if Frank Dunlop had not wanted to
4 proceed with it. We stayed with it. The project and we said we would look at
12:40:51 5 it and help him because it seemed to be an important project to him. In
6 fairness, we hadn't done our due diligence even though we were sceptical. And
7 we did further due diligence and feasibility. But by sometime in late summer
8 or late '92 the monies that I had set aside for to get involved if I was going
9 to get involved in Baldoyle I'd decided to spend it elsewhere to look for a
12:41:18 10 property in the UK. I'd appointed an agent in sometime around October '92.
11 And he had sourced that property in the January of '93. I had signed contracts
12 in April '93. So whatever prospect we have of getting involved. And I suppose
13 you could never completely dismiss that you might at some stage get involved.
14 And I mean involved in a legal way. Mentally and legally I was never committed
12:41:44 15 here.

16 Q. 206 Okay. Well perhaps we'll examine what your participation is. We'll leave the
17 word "involvement" out of it.

18
19 You participated to the extent of entering into negotiations as to the terms of
12:41:57 20 the option with Mr. Byrne

21 A. That's right.

22 Q. 207 You concluded those negotiations to a position which were satisfactory from
23 your point of view?

24 A. No.

12:42:06 25 Q. 208 No?

26 A. I brought the negotiations to a conclusion but they weren't satisfactory.

27 Q. 209 Okay. You brought the negotiations to a conclusion which were satisfactory as
28 far as the option holder was concerned, is that right?

29 A. No, I brought the negotiations as far as I could bring the negotiations to. As
12:42:26 30 far as Mr. Byrne would negotiate.

- 12:42:28 1 Q. 210 Yes?
- 2 A. That's as far as I could bring it.
- 3 Q. 211 Yes?
- 4 A. I wasn't particularly satisfied with the option.
- 12:42:33 5 Q. 212 You weren't negotiating on Mr. Byrne's behalf. You weren't negotiating on
6 Mr. Byrne's behalf?
- 7 A. Naturally.
- 8 Q. 213 No. You were negotiating on behalf of the grantee of the option ultimately on
9 the agreement, isn't that right?
- 12:42:49 10 A. Yes, if the option was going to be taken up.
- 11 Q. 214 Yes. And from the grantee's point of view, which was the role that you were
12 representing in the negotiations?
- 13 A. Uh-huh.
- 14 Q. 215 It was satisfactory from their point of view?
- 12:43:02 15 A. No.
- 16 Q. 216 Well, they wouldn't have signed it if it wasn't?
- 17 A. Well, he did sign it.
- 18 Q. 217 Yes. Because it was satisfactory to them. Otherwise they would not have
19 signed it?
- 12:43:12 20 A. Well it was satisfactory to Frank Dunlop. It wasn't satisfactory to me.
- 21 Q. 218 Right. How could that arise Mr. Hickey, that it's not satisfactory to you as
22 the negotiator and it's satisfactory to somebody else?
- 23 A. Well, I suppose, when I go into negotiations and perhaps it's from years of
24 experience of dealing with -- maybe I've learnt a little bit from dealing with
12:43:38 25 US multinationals that, you know, and I've learnt a little. Not to get
26 emotionally attached to a deal. And you don't make a decision until your
27 negotiations are complete. And that's exactly what I did here.
- 28 Q. 219 Yes. And the negotiations were completed?
- 29 A. The negotiations were complete.
- 12:43:56 30 Q. 220 Yes?

- 12:43:56 1 A. And there was an onerous option. I considered that it was something that I
2 would not have got involved in. I was a property company with significant
3 wealth. And if we did not honour our agreements or, you know, we would have
4 been quite liable that somebody or Mr. Byrne in this case could have gone after
12:44:20 5 us for not fulfilling our obligations. I think it was less likely that he
6 would go after an individual. But that would have been up for Frank Dunlop, if
7 he didn't want to do that, that was his choice.
- 8 Q. 221 All right. So you were carrying out your negotiating role as a favour to Frank
9 Dunlop. It was nothing to do with you being satisfied or otherwise with those
12:44:41 10 negotiations. You were bringing his negotiations to a conclusion, is that the
11 position, as you see it?
- 12 A. Well I think if I have -- if this had been a simple option, as is most cases,
13 that you've an option to buy land. The prices -- the option price is X and the
14 option on the land is Y.
- 12:45:02 15 Q. 222 Yes?
- 16 A. Which would expect in a normal situation. And it looked like a reasonable
17 prospect that you would be able to obtain your objectives i.e. get zoning and
18 planning permission. I would have got involved. It would have been a
19 commercial decision and I definitely would have got involved. This was neither
12:45:21 20 the case. I became aware that there was infrastructural issues in the area,
21 which concerned me. Whether they could be overcome or not I wasn't sure at
22 that stage. And the option basically was not 5,000. The option as I saw it
23 was 1 million and 5,000.
- 24 Q. 223 Yes?
- 12:45:40 25 A. And I was not inclined to spend or get involved or be committed to actually
26 spending a million on an option.
- 27 Q. 224 All right. The first stage in all of this process is to acquire the option,
28 isn't that right?
- 29 A. That's right, yes.
- 12:45:58 30 Q. 225 One can't move forward until one has an agreement with Mr. Byrne?

- 12:46:02 1 A. That's right.
- 2 Q. 226 That agreement with Mr. Byrne was one that was negotiated by you?
- 3 A. That's right.
- 4 Q. 227 It was concluded and it was concluded in the name of the entity called Pennine
- 12:46:15 5 Holdings Limited?
- 6 A. Uh-huh.
- 7 Q. 228 Isn't that so?
- 8 A. That's right.
- 9 Q. 229 And that company, Pennine Holdings Limited, was a vehicle created for the
- 12:46:22 10 purpose of giving effect to the agreement which had been reached. It was a
- 11 company which had no existence other than related to this proposed option to
- 12 take the land, isn't that right?
- 13 A. Well I can't say -- I can't agree with you that agreement was reached. The
- 14 negotiations came to a conclusion. That was as far as I could negotiate it.
- 12:46:45 15 Q. 230 Yes?
- 16 A. To the best of my ability.
- 17 Q. 231 Well, that's an agreement, Mr. Hickey, surely?
- 18 A. No, it's not. I think when you conclude negotiations it's not -- I think you
- 19 then have to decide are you going to agree to those negotiations. Somebody
- 12:47:08 20 offers you a piece of land and you negotiate back and he says I won't sell it
- 21 for anything less. You have to go away and think do I want to buy that land.
- 22 That's not an agreement.
- 23 Q. 232 The agreement is when the parties sign their name to the end of the document in
- 24 which one of them agrees to do one thing, the other to do the other. There is
- 12:47:17 25 a legal consideration passing for it. They affix their names to the end of it,
- 26 that's an agreement?
- 27 A. I agree with you when the option is signed there is an agreement.
- 28 Q. 233 Right. Fine. That was signed in 1991?
- 29 A. That's right, yes.
- 12:47:30 30 Q. 234 It was signed by the directors of the company Pennine?

- 12:47:33 1 A. That's right.
- 2 Q. 235 My questions were as to whether or not you agreed that Pennine was a company
3 set up especially for the purpose of taking the option over the lands. It
4 didn't exist beforehand, isn't that right?
- 12:47:46 5 A. It didn't, no.
- 6 Q. 236 So it was a created company put in place to take the option?
- 7 A. That's right, yes.
- 8 Q. 237 It had no assets of any sort, it owned nothing other than the right to exercise
9 the option?
- 12:47:59 10 A. That's right, yes.
- 11 Q. 238 And that was obviously set up as a result of a decision by the parties to the
12 intended acquisition of the lands, isn't that right? The parties who intended
13 the individuals, the human beings, who intended to be the parties who would
14 benefit at the end of the day if the option was exercised were the parties who
12:48:28 15 set up the agreement, the company to take that option, Pennine Holdings, isn't
16 that right?
- 17 A. Well, I suppose what I should say is that I would normally if I'm getting
18 involved in a deal look at what is the basis of the deal that I'm getting
19 involved in and look at the corporate structure or a vehicle that I would take
12:48:49 20 it afterwards. I understand that Anthony Collins was contacted and I believe
21 it was David Shubotham that actually contacted him to say to receive the
22 documents in relation to this option. I wasn't aware and I certainly wouldn't
23 have put any particular energy into what is a corporate structure until I
24 decided that I would get involved. So I do acknowledge that Pennine was set up
12:49:16 25 prior to the negotiation being completed. But, you know, that -- my energy as
26 I say was in negotiating rather than who owns or who was going to own that
27 corporate structure.
- 28 Q. 239 Well, your involvement in relation to the setting up of the company I think was
29 to go to Mr. Anthony Collins and to discuss the matter with him. Eugene F
12:49:41 30 Collins & Co, isn't that right?

- 12:49:43 1 A. I don't recall discussing setting up the property company, the company with
2 Anthony Collins.
- 3 Q. 240 Right. Do you recall going to Mr. Collins at all?
- 4 A. Oh, I met Mr. Collins quite a few times in the negotiations on the option.
- 12:49:55 5 Q. 241 Okay. Well try and think to the first of those meetings or contacts. What was
6 the basis of your contact with Mr. Collins?
- 7 A. Well.
- 8 Q. 242 At the first meeting?
- 9 A. Well I, as I say, I think it was David Shubotham who actually contacted Anthony
12:50:11 10 Collins should expect, we were thinking of getting involved in some option
11 lands in Baldoyle and I'm not sure what conversation but presumably an option
12 agreement would be set out.
- 13 Q. 243 Well, I'm really inquiring about what your participation was here not
14 Mr. Shubotham's. Can you recollect how you first came to deal or to meet with
12:50:31 15 Mr. Anthony Collins in the context of this option agreement?
- 16 A. No, I don't recall.
- 17 Q. 244 It may assist you to know that he has a memory of you wearing your other hat in
18 another development company?
- 19 A. Oh, yes.
- 12:50:42 20 Q. 245 He knew of you personally. Sorry. Knew of you personally to that extent?
- 21 A. Yeah.
- 22 Q. 246 That he knew who you were and he knew Mr. Shubotham because he had a more
23 personal?
- 24 A. Uh-huh.
- 12:50:53 25 Q. 247 Relationship with him?
- 26 A. That's right.
- 27 Q. 248 Now, I want to know from you what recollection you have of first meeting
28 Mr. Collins in connection with this?
- 29 A. As I say, Mr. Collins said, I had dealings with him in a previous deal when I
12:51:09 30 was in the Rohan group. I don't recall my first meeting with him on this

12:51:16 1 project. I suspect if he received an option agreement, he, first of all, would
2 have called me or sent out the basis and we would have had a meeting and
3 discussed the basis of it.

4 Q. 249 Okay?

12:51:29 5 A. But I don't -- it is fifteen years ago actually Mr. O'Neill, I don't actually
6 recall the specifics of it.

7 Q. 250 All right. Your recollection of it is not that your communications with him
8 were on the basis that he was Frank Dunlop's solicitor?

9 A. I don't think we got into discussion as to who was a solicitor or who wasn't.

12:51:50 10 We would have discussed the option agreement. I mean, that's what we would
11 have discussed. That's what my concern was. What were the details, what were
12 the terms of this option that we were getting for 5,000.

13 Q. 251 Yes. Those terms were going to be negotiated by you not by him, that is
14 Mr. Collins?

12:52:07 15 A. He would have been advising me so he would have been involved.

16 Q. 252 He would have been advising you?

17 A. I would have been negotiating them but he would have been advising me.

18 Q. 253 You would have come to him and said 'I have agreed these terms, please put them
19 in a legally enforceable format. Express them in a document that I will read
12:52:26 20 and approve and having done so I will apply, affix my signature to it at the
21 end of the day if it satisfies my requirement'. He was there as a legal
22 advisor and facilitator for implementing the negotiated agreement that you
23 would conclude with Mr. Byrne is that so?

24 A. That's right. He would have been the legal advisor.

12:52:53 25 Q. 254 Yeah?

26 A. To help in those negotiations and obviously protect me and receive the
27 documents and advise on legal matters. But the bones of the negotiations and
28 commercial aspects of the negotiations I would have negotiated.

29 Q. 255 Of course. He was only there to implement your decision making process. He
12:53:09 30 was not the decider of this. He was there to advise you?

- 12:53:12 1 A. I would have been negotiating the commercial aspects of the deal. He would --
2 he would have received the legal aspects from John Gore Grimes and obviously
3 would have given his, you know, advices in relation to those.
- 4 Q. 256 Yes. In that scenario as described. Is there any doubt in your mind at all
12:53:32 5 but that he was your solicitor?
- 6 A. Well, he was going to be the solicitor for the, whoever is going to be the
7 option holder.
- 8 Q. 257 Yes?
- 9 A. And I took it that the option was, was offered to Frank Dunlop. And until such
12:53:47 10 time as I decided I would get involved this was not my option. But I was
11 seriously looking at it and I obviously put quite a lot of time. I had a
12 number of meetings with Anthony Collins. I had a number of meetings with John
13 Byrne. So I obviously put a lot of energy y into trying to get a workable
14 acceptable option.
- 12:54:10 15 Q. 258 I think you wouldn't disagree with Mr. Collins' recollection that he was
16 instructed in this matter by you and by David Shubotham?
- 17 A. I think David Shubotham rang Anthony Collins to receive the option agreement.
18 And I would have engaged with Anthony Collins regarding the option agreement
19 and bring it from I suppose heads of terms into concluding those negotiations
12:54:38 20 and he would have assisted in all of those regards. I don't think the issue
21 was discussed -- because until we decided are we getting involved, who is
22 acting for, you know, but I can understand his -- I can understand that most of
23 the negotiations were with me. That he would have taken it perhaps that I was
24 the client. I can understand from his point of view.
- 12:55:00 25 Q. 259 He was not negotiating with you, isn't that right?
- 26 A. I did the -- I would have done the commercial negotiations.
- 27 Q. 260 He was doing the job of a solicitor on behalf of his client?
- 28 A. That's right.
- 29 Q. 261 And that involves taking the client's instructions as to what should be done.
12:55:18 30 The terminology that a solicitor would use is "I received the instructions from

- 12:55:23 1 my client". Now, in this instance, Mr. Collins was receiving his instructions
2 from you, isn't that so? Have you any doubt about the fact that you were the
3 person giving him the instructions as to what he should do?
- 4 A. No, I mean, I was definitely, had the discussions with Anthony Collins on the
12:55:49 5 option agreement and I was doing it on the basis of an option that had been
6 offered to Frank Dunlop that we were considering getting involved in. So, you
7 know, I'm not sure what the legal situation is there. But definitely, it was
8 Frank Dunlop had this offer of the option. We might get involved or we might
9 not get involved in it.
- 12:56:10 10 Q. 262 But you paid his fees
- 11 A. We did pay his fees, yes. Because we said to Frank Dunlop that we would, if we
12 would get involved we would pay the fees until, we would look after the costs
13 involved of this option to decide whether we would get involved.
- 14 Q. 263 But, I mean, there's all -- I mean, this word "involved". You've just said
12:56:34 15 there that you said to Frank Dunlop that you would -- that while you were
16 involved. As I understand it, while you were -- while you were involved in
17 real terms in terms of meeting the solicitor and so on. You were picking up
18 the bill for the solicitors fees. So to that extent, you were, you had that
19 involvement
- 12:56:54 20 A. That's right. I agree to that extent, yes.
- 21 Q. 264 Mr. Hickey, I think anybody can have a discussion with a solicitor
- 22 A. Uh-huh.
- 23 Q. 265 It could be the person whose interests are being represented by the solicitor
24 or it could be somebody else. But the solicitor is always specific as to from
12:57:18 25 whom he is taking his instructions because that is the person to whom he owes
26 the professional duty of care and confidentiality and otherwise. And where a
27 solicitor says that he is instructed by a particular person he is in effect
28 saying that person is my client on this issue. Would you accept that as a
29 statement of fact? Would you disagree with any aspect of that?
- 12:57:45 30 A. Well, perhaps, if you just say it again, please.

- 12:57:48 1 Q. 266 Okay. A solicitor can have any number of dealings with a variety of persons?
- 2 A. Yeah.
- 3 Q. 267 But where the solicitor expresses that he is receiving the instructions from an
4 individual?
- 12:58:01 5 A. Uh-huh.
- 6 Q. 268 That means that the solicitor is identifying that person as his client and that
7 is the person to whom he owes his duties of care as a solicitor. He has to
8 represent that person's interests rather than other persons with whom he might
9 have discussions?
- 12:58:22 10 A. Uh-huh.
- 11 Q. 269 And it is to that person that he owes, for example, his obligations of
12 solicitor client confidentiality and other duties of a solicitor. Now, is
13 there anything in that that you'd disagree with or take issue with?
- 14 A. Well, again, I suppose all I can say is that I met -- and fundamentally I don't
12:58:47 15 seem to disagree with you. But I just want to say one thing. I mean, in our
16 discussions with Frank Dunlop I'm sure I would have passed, had discussion with
17 Anthony Collins the situation that Frank Dunlop came to us. I'm not sure
18 whether I did or David. You know it would have been an open discussion that.
19 An offer of an option was offered to Frank Dunlop and that we were interested
12:59:14 20 in getting involved in this option. And I was negotiating this option and if
21 it was satisfactory we would get involved. Now, I don't know. Does that
22 constitute who was the client and was I acting on behalf of Frank Dunlop or
23 was, I don't know. I'm only trying to tell you what happened. And I presume
24 it's up to the Tribunal to determine what was the situation.
- 12:59:38 25 Q. 270 You see Mr. Hickey, what you're saying is that the solicitors in some way
26 became confused on the issue. And that was an issue which required to be
27 redressed and was redressed following upon your communication with Mr. Dunlop?
- 28 A. Uh-huh.
- 29 Q. 271 Now, I have to put it to you that there was no confusion. You were the client
13:00:01 30 of Eugene F Collins. They recognised you to be their client. They addressed

13:00:08 1 you as their client. And they were never informed by you that that was not the
2 case, isn't that so?

3 A. Well, I would have thought clinically I was acting on behalf of Frank Dunlop
4 because he was offered the option until we got involved.

13:00:25 5 Q. 272 Do you say they were confused adds to their status --

6 A. Pardon?

7 Q. 273 Do you say that the solicitors got it wrong in their belief that you were their
8 client because they did believe you were their client and they record you as
9 being their client, isn't that so?

13:00:41 10 A. Yes.

11 Q. 274 Yes?

12 A. And I think it's --

13 Q. 275 Is that -- you say that they are incorrect in so doing because you were not
14 their client you say?

13:00:50 15 A. Well we're not just talking about now fifteen years later. We're talking about
16 something that I told them fifteen years ago that I wasn't a client.

17 Q. 276 Right?

18 A. It's not something that I'm making up now.

19 Q. 277 Right?

13:01:02 20 A. And that Frank Dunlop obviously agreed with it as well.

21 Q. 278 He didn't?

22 A. That he wasn't their client.

23 Q. 279 He said that you never came to him to say that there was confusion as to who
24 the client was. You never indicated to Eugene F Collins that they were
13:01:18 25 mistaken in believing that you were the client whereas in fact it was Mr.
26 Dunlop. But that is something which you say in your statement most recently?

27 A. Uh-huh.

28 Q. 280 You say that two persons made an error in this. You say that Eugene F Collins
29 were never my solicitors. They were the solicitors for Pennine Holdings and
13:01:38 30 Pennine Holdings was Frank Dunlop. And there is confusion in the mind of the

13:01:43 1 solicitors as to who their real client was. Thank you communicated that fact
2 with Mr. Dunlop. And that it was then rectified?

3 A. And I would --

4 Q. 281 Isn't that what you say occurred?

13:02:03 5 A. Oh, yes absolutely.

6 Q. 282 At the time. Fifteen years ago?

7 A. Uh-huh.

8 Q. 283 Mr. Dunlop say that that did not happen?

9 A. Why did Mr. Dunlop then go in and sign all of the documents. I obviously
13:02:08 10 instructed Anthony Collins as well because they redrafted the documents.

11 Q. 284 They didn't redraft them.

12 A. The minutes, the draft minutes were changed to put in Frank Dunlop etc.

13 Q. 285 They -- we'll deal with that. They weren't changed. Well you might tell me
14 they were.

13:02:26 15 A. I'm only actually going on the documents that I received from Anthony Collins
16 so.

17

18 CHAIRMAN: All right. It's one o'clock. So we'll rise until two o'clock.

19

13:02:34 20

21

22

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

24

25

26

27

28

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30

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

- 13:02:54 1
- 2
- 3 MR. O'NEILL: Good afternoon, Mr. Hickey.
- 4
- 14:05:46 5 Q. 286 This morning we were talking about the role of the firm of solicitors, Eugene F
6 Collins and yourself, in the context of the lands at Baldoyle and I just want
7 to be clear as to whether or not you are disputing the fact that Eugene F
8 Collins believed that you were their client?
- 9 A. No, they obviously believed that at a certain point in time.
- 14:06:15 10 Q. 287 That that's the first step. Secondly, were you in fact their client?
- 11 A. No, I would have been acting for Frank Dunlop.
- 12 Q. 288 Okay. Second, thirdly, you say that this was a palpable error on the part of
13 the solicitors in their belief that you were in fact their client whereas in
14 fact it was Mr. Dunlop who was the client and that was the matter which was
15 corrected. Is that your recollection?
- 14:06:42 16 A. That's right, yes.
- 17 Q. 289 Right. And you'll appreciate that there is nothing in the files or the
18 evidence of Mr. Collins who gave evidence to the Tribunal to suggest that at
19 any time that firm was contacted by you and informed that they had been wrong
20 on that issue?
- 14:07:03 21 A. No, but I would have -- and I can't have any exact recall that I rang them
22 also. But more than likely that would have been the courtesy thing to do, but
23 I can't recall exactly whether I did or not.
- 24 Q. 290 Well, it would have been, I suggest, something that would have been recorded by
14:07:24 25 them and they would have remarked upon the fact that they had been wrong for a
26 period of months as to who their client was. And that would have been
27 reflected in their file if it had happened, number one?
- 28 A. Well I don't think they have full files, neither do I.
- 29 Q. 291 They don't. And despite the absence of a full file, the fact of their being
14:07:48 30 corrected on that issue would be a memorable event, I suggest to you?

14:07:52 1 A. Well, they obviously had records of that and the correction.

2 Q. 292 Right. In the statement which you provided to the Tribunal you indicated that

3 you brought the fact that the solicitors had written to you in those terms to

4 the attention of Mr. Dunlop in the context of there being some confusion on the

14:08:13 5 part of the solicitors, isn't that right?

6 A. Uh-huh, that's right.

7 Q. 293 You did not say that you contacted the solicitors themselves but rather that

8 you contacted him and that as a result of that, the matter was corrected, isn't

9 that how you expressed it?

14:08:28 10 A. Well I did obviously because I think it was cc'd on the document to Frank

11 Dunlop so I did contact Frank Dunlop.

12 Q. 294 Right?

13 A. Even though I don't exactly recall but I would have thought that I would have

14 also contacted the solicitors and Anthony Collins.

14:08:44 15 Q. 295 Yes. We see that the solicitors in giving their recollection of events, at

16 page 76 on screen. Mr. Collins provides a statement to the partner who was in

17 communication with the Tribunal on this issue as follows.

18

19 He says. "I was the solicitor who gave advice in relation to the partnership.

14:09:08 20

21 2. I have no recollection of meeting Liam Lawlor in relation to this

22 transaction and I do not believe that I did meet Frank Dunlop but I don't

23 believe that I met him in the early stages of this matter. I certainly

24 attended meetings with him and/or Brendan Hickey and David Shubotham. But my

14:09:26 25 main memory is that ultimately we transferred the shares in Pennine Holdings

26 from the solicitors in this office who held them on behalf of Brendan Hickey to

27 Frank Dunlop or his nominees.

28

29 If we move to paragraph four there.

14:09:39 30

14:09:39 1 Eugene F Collins were instructed by Brendan Hickey and/or David Shubotham.

2

3 And you will see that there is an absence there of any reference to Mr. Frank

4 Dunlop being the person instructing.

14:09:52 5

6 So this document generated in 2006 in October expressed the view that you and

7 Mr. Shubotham had been the clients of Eugene F Collins on this issue, isn't

8 that so?

9 A. Well, I see, I mean, I think David Shubotham rang Anthony Collins.

14:10:11 10 Q. 296 Yes?

11 A. I would have always, again, I would not have focused on who the company was

12 going to take the vehicle. Depending if the vehicle was something we wanted to

13 get involved in. So the corporate structure, whether it was a company shelf

14 company or otherwise, so I doubt if I had any discussions with him what the

14:10:27 15 company was or whether it was Exco or Pennine. But at all times it was Frank

16 Dunlop's option and I always took it that I was acting on his behalf. And I

17 can understand Anthony Collins had previously dealings with him and so did

18 David Shubotham. And because of the, I suppose, the extent of the dealings

19 with him that he presumed that we were the clients.

14:10:49 20 Q. 297 Right. If we look to document 1488.

21

22 This is the letter which was written to you by Mr. Collins on the 22nd of

23 August 1991. In which he says "Dear Brendan, I refer to the above company,

24 that's Pennine Holdings Limited which is presently under the control of two

14:11:07 25 solicitors in this office. The director and secretary are acting as such on

26 your instructions and the shares are being held in trust for you and your

27 nominees. I enclose herewith a first draft of the minutes of the first

28 meetings of the directors of the company at which meeting the control of the

29 company can be transferred to yourself and your nominees so that this is just

14:11:28 30 confirmatory of the fact that as of the date of this letter, it was their

14:11:32 1 belief that you were the client, the company was yours and it was going to be
2 transferred from their nominees to you, isn't that right?

3 A. And I was very surprised to receive that letter because I see the correction
4 took place within a matter of days of it.

14:11:46 5 Q. 298 And while you may have been surprised at receiving this letter. It also
6 contained a reference at paragraph three to the fact that "I note that yourself
7 and David Shubotham are both willing to act as directors of the company".
8
9 Could I suggest that Mr. Collins could only have that information from either
10 you or Mr. Shubotham. He is recording the fact that you are willing to act as
11 directors of the company. That would be inconsistent with you first learning
12 through this document of the fact that the company was being held for you,
13 isn't that right?

14 A. Well, at no stage would I have made that decision I would become a director of
15 a company that was going to take that option without first deciding whether I
16 wanted to be involved in the option.

17 Q. 299 So Mr. Collins is wrong when he notes in his letter to you that you had -- or
18 somebody had indicated to him that yourself and David Shubotham were both
19 willing to act as directors of the company. You weren't so willing because
20 this was not your company on your evidence, isn't that right?

14:12:39 21 A. It was not my company. And it wouldn't make any sense to be willing to take a
22 Directorship of a company that had an option that I wasn't interested in taking
23 the option in.

24 Q. 300 Exactly. So there would be no reason for the solicitors to note the fact that
25 you are willing to act, isn't that right? The solicitor could accurately
26 record that "I note that yourself and David Shubotham are both willing to act
27 as directors of the company".
28
29 Because as you say, that had never arisen in any communication with him nor
14:13:12 30 could it because this is Frank Dunlop's company, on your evidence

- 14:13:15 1 A. I was not willing to be a director of that company.
- 2 Q. 301 Equally, though this was not your company you had discussed the question of a
3 shareholder's agreement in relation to the shares of the company with him,
4 isn't that right?
- 14:13:30 5 A. No, I didn't discuss shareholders agreement with him.
- 6 Q. 302 Well you note at page 1490 Mr. Collins said "I have had brief discussions with
7 both you and David Shubotham about a shareholders agreement. I feel this
8 should now be dealt with within the reasonably near future."
9
- 14:13:49 10 That again is recording something which never happened by your account, isn't
11 that right
- 12 A. Well, all I can say is I don't -- is that the shareholders agreement in
13 relation to the option agreement, is it.
- 14 Q. 303 It's the letter that was sent to you in 1991 in which your solicitor was
14:14:05 15 setting out what he understood his instructions from you were. Firstly, he
16 records the fact that the company was set up for you. He records that the
17 Collins directors are holding as your nominees and he records the fact that he
18 has had discussions with you and Mr. Shubotham which encompass two areas. One,
19 recording the fact that both of you were prepared to act as directors of this
14:14:35 20 company. And secondly, recording the fact that he had had brief discussions,
21 plural, with both you and Mr. Shubotham on the subject of the shareholding in
22 this company and the benefits of having a shareholders agreement.
23
- 24 Now, none of those matters could have, the last two of those matters could not
14:14:49 25 have taken place, on your evidence, because you never believed this to be your
26 company and therefore, you could not have communicated to Mr. Collins that you
27 were willing to act as a director and you could not have had meetings with him
28 or discussions with him in connection with the shareholders agreement because
29 you never intended to be a shareholder or director of this company.
- 14:15:10 30 A. Well, all I can say is I have no recollection of any conversations regarding

14:15:14 1 shareholders or directors. And I don't think -- I don't see how it could make
2 sense to me that I would be discussing shareholders or a corporate structure on
3 an entity that I wasn't even sure that I wanted to get involved in, that's all
4 I can say. I don't have a recollection and it doesn't make any sense to me why
14:15:32 5 I would do it.

6 Q. 304 And for this letter to make any sense at all, of course, it would mean that you
7 had in fact told him that you wanted or were prepared to act as a director with
8 Mr. Shubotham and that you had in fact discussed the question of shareholders
9 agreements with him. That's the only way in which this document could make
14:15:50 10 sense, isn't that right. That's what it says on its face. I mean, you say
11 it's wrong. But if it is wrong --

12 A. Again Mr. O'Neill. All I can say honest is what I recall. I don't recall ever
13 having conversations regarding the shareholders. I would see it as putting the
14 cart before the horse. Having corporate structures, shareholders agreements,
14:16:16 15 directorships without before ever even deciding whether this is an entity that
16 I wanted to get involved in. The logic of the sequence doesn't seem to make
17 sense to me.

18 Q. 305 No. Unless you had in fact instructed him to set up this company, you had
19 indicated your willingness to act as a director and you had indicated in
14:16:36 20 discussions with him that a shareholders agreement was the appropriate way to
21 go as regards structuring the respective interests of the parties so it would
22 not appear on the registered documents of the company. That's the only way in
23 which it could make sense?

24 A. Well, all I'm saying is that to me it's the cart before the horse. I've got to
14:16:59 25 decide whether I want to get involved in this option and this development or
26 not, which I said from day one I was very sceptical whether or not I wanted to
27 get involved. So, I don't understand that I would be rushing head long into
28 setting up corporate structures and shareholders agreement. From the outset I
29 was quite sceptical about why an experienced developer would be prepared to
14:17:21 30 give an option for 5,000 over 400 acres of his land. And I would have thought,

- 14:17:28 1 what I would have done and I'm a reasonably logical person, would be to satisfy
2 myself in that order, in that sequence.
- 3 Q. 306 The shareholders agreement was never apparently entered into and the meeting of
4 the company which was envisaged as taking place in this letter took place on
14:17:48 5 the 2nd of September. And we'll see that Mr. Ciaran O'Byrne became a director
6 of the company on that occasion, as did Mr. Frank Dunlop, both of those became
7 the directors and the shareholders of the company. Did they do so as nominees
8 of your interest and that of Mr. Shubotham?
- 9 A. Absolutely not.
- 14:18:08 10 Q. 307 Right. Obviously, if this letter was received by you, the first of these
11 letters I should say, received by you from Mr. Collins and it contained
12 information where he had wrongly attributed your role as being A, a beneficial
13 owner of this company. B, a director or intending director of the company.
14 And C, a person who was intending to be a shareholder in it. You can hardly
14:18:37 15 have had faith in Mr. Collins' ability to interpret your role in this, isn't
16 that right, at a minimum? He got it wrong and spectacularly wrong if what
17 you're saying is correct?
- 18 A. No, I wouldn't say that because he is a very competent solicitor.
- 19 Q. 308 Yes?
- 14:18:55 20 A. And so -- but I think in fairness to him, I would have had previous dealings
21 with Mr. Collins and David Shubotham would have had previous dealings with him.
22 And I would have thought that since we had property companies and I had most
23 dealings with him, he presumed that he was acting on our behalf and drafted the
24 documentation accordingly. Whereas in fact, what I was doing was very
14:19:20 25 guardedly going through a very detailed protracted negotiations. Because
26 obviously the discussions started in January of, an option agreement in January
27 '91 and in September it's not even signed. So it's obviously very protracted
28 and very hesitant. If I started with initial reluctance nothing that happened
29 during it gave me sufficient comfort to get involved.
- 14:19:47 30 Q. 309 Right. Now, you've no involvement then with Mr. Collins as far as you're

- 14:19:52 1 concerned after this event apropos these lands because Mr. Collins is the
2 solicitor to Pennine Holdings, isn't that right?
- 3 A. He is a solicitor to Pennine Holdings.
- 4 Q. 310 Right. Pennine Holdings is Mr. Dunlop's company, not yours?
- 14:20:09 5 A. Uh-huh.
- 6 Q. 311 You have no connection with or involvement with, to use that word, Pennine
7 Holdings Limited as far as you're concerned, isn't that right?
- 8 A. Well, I think what happened was the option agreement is signed by Frank Dunlop
9 and he's willing to do that. As I said, I was not willing. And if it had
14:20:28 10 fallen by the wayside at that stage, I was now very busy. I had taken not only
11 had I got involved in 300 acres in City West. I'd bought and put my company
12 funds into another 230 acres of zoned land. In July of '91 I am now appointed
13 a C.E.O of a major property company with interests throughout Ireland and the
14 UK. The last -- I would not have got involved in this unless Frank Dunlop
14:20:54 15 wanted, he was convinced he could get it rezoned and convinced that perhaps we
16 should stay involved. And we agreed that we would look and we'd spend a bit
17 more time before we, you know, would do a bit more due diligence to see would
18 we get involved.
- 19 Q. 312 Right. I'm dealing with your role with Mr. Collins and Eugene F Collins
14:21:15 20 solicitors.
- 21
22 You find in August of 1991 that he has got it wrong, as regards believing
23 you're the client. You believe that you remedied that situation so that he now
24 is satisfied that his client is Frank Dunlop and Pennine, isn't that right?
- 14:21:31 25 A. That's right, yes.
- 26 Q. 313 And that should represent the end of your dealings with him, shouldn't it?
- 27 A. Well, no, except that we still were considering getting involved. I was not
28 prepared to get involved in the option agreement. But we were considering
29 getting involved in -- if I thought that the land could be rezoned. And if I
14:21:52 30 thought that the land could be serviced thereby getting planning permission. I

- 14:21:55 1 still had an interest in checking that out and in that extent, some discussions
2 obviously took place what sort of vehicle would that be, it was obviously going
3 to be some sort of a partnership agreement if we got involved and if it proved
4 viable. So there were some discussions further with Anthony Collins.
- 14:22:17 5 Q. 314 Okay. You had your own solicitor?
- 6 A. Pardon?
- 7 Q. 315 You had your own solicitor. Whatever role Mr. Collins?
- 8 A. No, no.
- 9 Q. 316 Mr. Collins played in this incident in relation to the Pennine Holdings lands,
14:22:29 10 it was for Frank Dunlop & Associates, for Shefran, for others, whoever it might
11 be. But he was never your solicitor on this issue, as far as you're concerned?
- 12 A. Well not in relation to --
- 13 Q. 317 Or did he become your solicitor after August?
- 14 A. Well not in relation to Pennine Holdings.
- 14:22:48 15 Q. 318 Right. Right.
- 16 A. But he was engaged to look at partnership agreement if we would get involved.
- 17 Q. 319 Okay?
- 18 A. In, still in the lands right.
- 19 Q. 320 So, why did you not go to your own solicitor for that advice? Mr. Collins is
14:23:03 20 the solicitor, as you tell us, to Frank Dunlop and to Pennine Holdings. He's
21 not your solicitor. Why did you not go to your own solicitor for advice in
22 relation to Pennine Holdings option.
- 23 A. Well, I didn't go to him. Again, I believe David Shubotham will say that he
24 contacted him to say that look it, if -- if we want to get involved it probably
14:23:26 25 would take the format of City West and you should have a look at the City West
26 partnership to see how that was drafted up. So I think that it was David
27 Shubotham. I mean, Davy Hickey had his own solicitor. So it was David that
28 contacted him to have a look at a partnership agreement to see if we would get
29 involved.
- 14:23:44 30 Q. 321 And the partnership agreement with be with whom? You already had a partner in

- 14:23:51 1 the sense of operating with Mr. Shubotham and Mr. Ciaran McLoughlin and the
2 partners of Davy's. Who were the partners to be in this partnership agreement?
- 3 A. Again, as in this situation, City West, as in Saggart. Davy Hickey was taking
4 a 25 percent stake in those two previous ones. Who the other shareholders
14:24:09 5 would be would never have been my concern. It would have been David's. David
6 would decide on who got what, who came in and who they were. Davy Hickey's
7 would have been to drive the project and take a minority stake. The rest would
8 not be my concern.
- 9 Q. 322 So, you don't know who the partners were going to be, is that right?
- 14:24:28 10 A. Well, I don't think you line up partners for a partnership until you know that
11 you have a viable project. So I think you've got to satisfy yourself that the
12 project looks viable before you go to with a proposition. You need to have a
13 proposition going to partners.
- 14 Q. 323 But you can't draft a partnership agreement unless there are two, more than one
14:24:46 15 person to that agreement, isn't that right? You can't draft a partnership
16 agreement with yourself with one signatory on it. There would have to be a
17 series of partners. If you going to agree on the terms of such an agreement,
18 at least you must be able to identify the parties who are coming together as
19 partners on those terms, isn't that right?
- 14:25:06 20 A. Well, I, as I say, I didn't make -- I don't believe I made that phone call to
21 Anthony Collins. And I think it was David who did that. But I think what
22 presumably he was talking about was the template of the partnership agreement
23 which would have been based on the template of the City West agreement.
- 24 Q. 324 Yes. And?
- 14:25:25 25 A. And who they would have been in and who the respective ownership would have
26 been addressed only after you had a viable project to go and talk to people.
27 You're not going to get people involved before you've got a project.
- 28 Q. 325 If you needed a template you had one from City West, isn't that right?
- 29 A. That's right.
- 14:25:44 30 Q. 326 So, as much as when you found the partners, you could use that template and see

14:25:49 1 if it suited their requirement or not?

2 A. I suppose every situation is slightly different and I think Anthony Collins

3 even said that there's no agreement that you would get that you wouldn't

4 believe that you could improve upon. And I believe that was the case here.

14:26:03 5 Q. 327 And why is it then that you have negotiations as regards the term of this

6 partnership agreement continuing from December 1991 until March 1993 and being

7 billed by the solicitors at a cost of some 3,000 to 300 pounds or so and paid

8 by your firm if there were no partners to make any agreement at that particular

9 time?

14:26:27 10 A. Well, I think there were two phases in that. I think there's a bill there up

11 to November.

12 Q. 328 Yes?

13 A. From January to November.

14 Q. 329 January of 19 ...?

14:26:37 15 A. He '91 I think it is. December '91 to November '92.

16 Q. 330 Yes. To the 24th and then?

17 A. Pardon.

18 Q. 331 There are two?

19 A. That's right and there's one after that.

14:26:46 20 Q. 332 It's continuous?

21 A. No, there's two bills.

22 Q. 333 Two bills but one is from the 24th of November?

23 A. And another bill.

24 Q. 334 Starts on the 25th?

14:26:54 25 A. Exactly. There's another bill after that. And there's no doubt some

26 discussions took place. Now, it doesn't say when exactly in that billing

27 period the discussions. But I suspect it would have taken place in the early

28 part rather than the latter. Because something would have been in the

29 summer/autumn, certainly September October of '92 that I, we would have

14:27:20 30 fundamentally changed our mind about whether we were ever going to get

14:27:24 1 involved. Or the likelihood of us getting involved diminished to practically
2 zero at that stage.

3 Q. 335 At what stage?

4 A. There was a few things happened. I would have been involved in my due
14:27:35 5 diligence. I came to the firm conclusion that this land and it was my
6 judgement. The land would neither get zoning. If it got zoning it wouldn't
7 get the planning permission. Because as an engineer, as a former consulting
8 engineer in sanitary services I didn't believe that this land could be
9 serviced. In addition to that, we had been turned down for banking in City
14:27:57 10 West by Bank of Ireland and AIB on lands we had planning permission for, that
11 we owned and we couldn't get funding. And I think David Shubotham would have
12 come to the conclusion that this was not bankable. So that brings us up to the
13 first bill.

14 Q. 336 Now, the?

14:28:11 15 A. The second bill that you're talking about. I can't fully explain, to be very
16 honest. I think even at the time I note that it was a long time getting paid,
17 which is very unusual for me. The bill wasn't paid until July, even though it
18 was billed earlier. So it is no doubt in my mind then I wasn't sure what the
19 800 pounds was for or what was it in the context of. So I don't -- I didn't
14:28:43 20 give a detailed explanation as to whether it was partnership or ancillary
21 matters. But it would be unusual for me to leave a bill outstanding for so
22 long. I'm sure there must have been some doubt in my mind even then what he
23 actually did for us after November of '82.

24 Q. 337 You didn't question it, challenge it, qualify it or ask for any discount on
14:29:04 25 what you were billed for. You paid in full the amount that had been billed
26 for, isn't that right?

27 A. Well, I think by my reluctance to pay and the length of time it took and the
28 fact that the bills seemed to be going around to a number of different parties.
29 That there was some doubt, confusion, whether it was due or by whom or what.
14:29:24 30 But I think I took the view that, you know, David Shubotham or we ultimately

14:29:31 1 brought Anthony Collins, we don't like seeing bills unpaid and I just paid the
2 bill.

3 Q. 338 You told us this morning, Mr. Hickey, that your involvement, participation,
4 whatever the word is, in relation to this project ceased in summer 1992. You'd
14:29:48 5 found an English project and others, you were engaged elsewhere, you had
6 reached your determination in summer 1992 that you were not going further with
7 the matter, isn't that right?

8 A. I would have definitely by the October of '92, we came to the conclusion that
9 this project was not bankable. I didn't believe you'd get planning permission
14:30:10 10 for it. I didn't believe you'd get zoning and I didn't believe that you'd get
11 planning. And I decided that I would actually spend the balance of my seed
12 capital in the UK.

13 Q. 339 I think you said this morning it was in the summer. It's not crucial to
14 determine whether or not it's exactly the summer or the autumn. You've no
14:30:30 15 doubt that it was linked to an event in England where you directed you said the
16 facilities that would have been available for Baldoyle were now use in the
17 another development in England, am I right in that?

18 A. Why I say October was because I believe it was October that I instructed an
19 Irish person living in the UK, an agent, to actually look for properties in the
14:30:54 20 UK so ...

21 Q. 340 Right. But that allowed you to fix in time the date upon which, whatever
22 involvement you had in Baldoyle ended, isn't that right?

23 A. I think any realistic chance that we would have any significant involvement.
24 Mentally at that stage we'd have said this is unlikely going to happen.

14:31:14 25 Q. 341 Right. And there is no reason in those circumstances why you wouldn't have
26 communicated that to Mr. Dunlop or to Mr. Byrne who were the parties who were
27 obviously of the belief that this might come to fruition, isn't that right?

28 A. Well, I don't believe I had any communications with Mr. Byrne. So I don't
29 think that would have arisen. I would have thought that when the partnership
14:31:38 30 had never progressed that Frank Dunlop would have been obviously aware that we

14:31:43 1 were losing. Our interest waned, you know, there wasn't just a series of one
2 big step. There was a series of things along the way. It just gradually
3 waned. It just dissipated so.

4 Q. 342 But you said your interest in the matter ceased in its entirety in November --
14:32:04 5 or in October 1992. That was the end of the process of considering this as a
6 possibility?

7 A. Well, ...

8 Q. 343 Isn't that so? Isn't that your evidence or am I wrong in that?

9 A. No, I'm trying to be clear here. We didn't. David Shubotham and I would have
14:32:23 10 come to the conclusion by October that things with not bankable. I didn't
11 believe that we could get planning for it. And that basically we would, we
12 didn't see any realistic prospect that we would get involved. We would
13 continue helping Frank Dunlop on this project because Frank Dunlop was doing
14 very important and critical work for us on City West at the same time that we
14:32:45 15 depended on him and he was not billing us for this work.

16 Q. 344 He has told the Tribunal that his work in relation to City West had effectively
17 ceased in 1991, that as much as he did after that date was to assist with the
18 launch of the bridge overpass for which he billed you a sum of, I think, it's
19 1500 odd pounds for involvement in that project?

14:33:13 20 A. That's not true.

21 Q. 345 City West. It's not true. I see?

22 A. There would have been at least five or six critical things that he did during
23 that period.

24 Q. 346 And what are they?

14:33:22 25 A. Well, for starters, in I think it was March or April of '92 we were trying to
26 attract a major US surgical company who were looking at Ireland, the IDA, we
27 were competing against Scotland. Talking about building a million square feet
28 in City West. And they wanted assurances that if they came to Ireland that
29 they would have the support, active support of the Government. Frank Dunlop
14:33:51 30 was able to, the IDA couldn't do it. Frank Dunlop was able to arrange a

14:33:58 1 meeting with An Taoiseach at 24 hours notice. That's one critical thing to
2 give comfort to this company. In May of '92 in City West I was asked by the
3 County Council to do a presentation to the County Council regarding Newlands
4 Industrial Park, as it was known at that stage. And he would have prepared me
14:34:20 5 for that. He would have prepared my presentation, what I should do, what I
6 should say, the speeches I should have. That was in May of '92. In June of
7 '92 we had planning permission for this sewer outfall that we'd got full
8 planning permission. It was to go through a public park, Corkagh Demense.
9 Corkagh Demense, the head of the parks Department was very well regarded, very
14:34:49 10 well represented but he was a law on to himself. We could not get a wayleave
11 through this public park. And Frank Dunlop, Frank Dunlop was a very
12 influential person in society. Frank Dunlop was able to set up that meeting
13 with the Head of Parks Department. I think it was Michael Lynch was the head
14 at the time. He was able to set that up, come to that meeting with me and get
14:35:14 15 that matter resolved. And it went on. We had the exact same difficulties with
16 the bridge over the Naas Road. This would be in September/October of '92.
17 Where we were trying to get the configuration agreed. There was a disagreement
18 between road design and road forward planning. And as it was the first bridge
19 over the Naas Road, the Department of the Environment were involved.

14:35:44 20 Q. 347 Right?

21 A. Now, there was no badness on anybody's part about stopping us, we just could
22 not get agreement. Frank Dunlop was able to make a phone call, meet civil
23 servants and set up those meetings and get the matter resolved. And that went
24 right through into the written statement of the Development Plan of City West
14:36:04 25 and we were very concerned about various aspects of the plan discussed right up
26 to March of '93. The uses to do with -- we had gone for permission for a
27 science park. And specific to a science park we wanted to build office
28 buildings. Now, it's the norm that you would have office buildings in a
29 business campus now. The Council were resisting that. They didn't feel we
14:36:30 30 should have offices, even though we had planning permission for it. We wanted

14:36:34 1 to make sure in the written statement that the user clause for industrial was
2 allowed for offices.

3 Q. 348 Were you?

4 A. Baldonnel. His involvement was very extensive.

14:36:44 5 Q. 349 Billed for any of these services?

6 A. No, to my knowledge we weren't billed. I've given you the evidence of all that
7 he billed us for. And I think that he billed us for little or nothing in all
8 that.

9 Q. 350 Now, you say in relation to the cessation of your interest in the Baldoyle that
14:37:01 10 you date it to this date possibly in autumn. And that your continued
11 involvement was really to stay sweet with Frank Dunlop, is that right?

12 A. Well, he was --

13 Q. 351 You had no personal interest in the project after October of 1992 insofar as
14 you ever had one before that, is that right?

14:37:20 15 A. Well, I think we gave up any realistic chance that we'd ever have any
16 involvement in Baldoyle. I suppose one could never say never in anything. But
17 I think being, trying to be pragmatic realistic people, I didn't think that we
18 realistically would ever have an involvement in Baldoyle.

19 Q. 352 And you're saying that your only further participation was solely to assist
14:37:43 20 Frank Dunlop because of the reasons you've explained, that he could be of use
21 to you. You didn't want to offend him, isn't that right?

22 A. Well, he was very helpful.

23 Q. 353 Yes?

24 A. And very helpful about City West.

14:37:54 25 Q. 354 Why you continued to have anything to do with Baldoyle --

26 A. Well I.

27 Q. 355 You had made a decision in October 1992?

28 A. Uh-huh.

29 Q. 356 Not to have anything further to do with it. And insofar as I've had an
14:38:07 30 explanation from you so far. It is the basis that Frank Dunlop was an

14:38:10 1 important person. It was his project. You wanted to stay in with him. Is
2 that a summary of it?
3 A. Well, it's not a bad summary.
4 Q. 357 Right?
14:38:19 5 A. I think it was that we said that we would continue. We would help him with his
6 project. And he, we honoured our side and he was helping us in City West and
7 he honoured his side.
8 Q. 358 Now if we look to --
9 A. But it was a bit --
14:38:34 10 Q. 359 We'll see what you were billed for by your solicitor in June of 1993.
11
12 This is the bill which you paid in July '93
13 A. Uh-huh.
14 Q. 360 And it's discussing the work which was done from a date in November '92 until
14:38:50 15 March 1993. If we dwell for a moment on those dates. They are dates after the
16 period when you say you had made the decision that you're simply not going to
17 be involved any further, isn't that right? Isn't that correct?
18 A. That's right, yes.
19 Q. 361 And yet your solicitor is billing you for professional services. He's already
14:39:11 20 been paid up to the date before commencement of this, that is the 24th of
21 November?
22 A. Uh-huh.
23 Q. 362 1992. He's now billing you for professional fees to cover all work done in
24 relation to the partnership agreement and any other ancillary matters between
14:39:26 25 the 25th of November 1992 and the 31st of March 1993. Including considering a
26 memo of sometime before, discussing the same with Brendan Hickey redrafting the
27 document and advising generally in relation to it.
28
29 Now, none of those matters that are specified there could have any relevance to
14:39:46 30 Frank Dunlop, isn't that right?

- 14:39:48 1 A. Well, I.
- 2 Q. 363 They're not exclusively Frank Dunlop's work?
- 3 A. Well, I don't know. It was addressed to Pennine Holdings.
- 4 Q. 364 Yes?
- 14:39:57 5 A. I said previously I have no great explanation for it. But obviously there was
6 some reluctance to pay it even at that time. And I'm not sure how much work
7 you would have done for 800 pounds, so I'm not sure what he did for that
8 period. Perhaps miscellaneous work.
- 9 Q. 365 Does it not illustrate that you had not pulled out of the project in the Summer
14:40:20 10 or the Autumn of 1992. You were continuing to seek legal advice and obtain
11 legal advice between November '92 and March '93, dates upon which you say you'd
12 long lost interest in whatever interest you had in this project because you'd
13 gone on to engage in other developments?
- 14 A. Yeah.
- 14:40:42 15 Q. 366 Would you not accept that that is inconsistent with this document which on its
16 face indicates that discussions were taking place with you on the subject of
17 partnership agreement as late as March 1993?
- 18 A. Well, I don't think it says that it was partnership agreement. It could be
19 ancillary matters. And I don't know whether discussions with Pennine Holdings
14:41:05 20 were with Frank Dunlop or whether with me or with David Shubotham.
- 21 Q. 367 You are named here. A memo of sometime before. Discussing the same with
22 Brendan Hickey?
- 23 A. It's a memo of sometime before. It's almost a repeat of the previous invoice,
24 which was up to November.
- 14:41:18 25 Q. 368 That's right. So they don't, on their face at least, charge for the same
26 service twice because you would immediately say I've already paid for this in
27 the last invoice, so this is different work than what was envisaged in the
28 earlier payment?
- 29 A. Uh-huh.
- 14:41:32 30 Q. 369 But it particularly is referring to discussions with you and could I put it to

14:41:38 1 you that if matters were being discussed with you on the subject of partnership
2 agreement between November 1992 and March 1993, that is inconsistent with you
3 having had no interest in the matter after October '92. Do you understand the
4 question?

14:41:55 5 A. Well, I do understand the question. And it actually goes on. It covers that
6 which is the same wording almost similar on the previous invoice and it goes on
7 to cover that and ancillary services. Now, I've already said to you that I
8 don't have a full explanation for it, Mr. O'Neill. Simply because it doesn't.
9 It just doesn't tally with. If I'm spending my money in the UK why I would be
10 looking at something that I believed would not get planning permission for.

11 Q. 370 Right?

12 A. And the fact that I'm not sure what work you'd get done for 800 pounds in any
13 event. And the fact that I was reluctant to pay it indicates that I was at
14 that time whether it was to do with me or not to do with me.

14:42:21 15 Q. 371 You tell the Tribunal Mr. Hickey, that the participation of yourself and indeed
16 Mr. Shubotham after the option agreement was signed by Pennine Holdings and
17 probably indeed before that, was simply to engage in a feasibility study as to
18 whether this was a project you'd become involved in at all, isn't that right?

19 A. Uh-huh, that's right.

14:43:04 20 Q. 372 Yet, you seem to be participating all the way through to July of 1993 in paying
21 bills, in respect of this project to that date some two and a half years after
22 inception, isn't that right?

23 A. No, I think by certainly October and it might have been earlier. But certainly
24 by October '92 we've given up any realistic chance for lots of very good
25 commercial reasons.

26 Q. 373 Yes?

27 A. That it's not bankable. We've just been turned down in City West on land we
28 own and land we've planning permission for. That this could be fundable. I've
29 come to the conclusion as an engineer, consulting engineer, that even if it got
14:43:51 30 zoning it wouldn't get planning. And I've gone off to spend my money some

14:43:56 1 place else. We continued to help Frank Dunlop and help him because he was
2 invaluable to us in City West up until the end of April when there was an
3 article appeared in the paper and after that I perhaps cleaned up some bills.
4 But whatever assistance I was going to give him, I was not prepared to give him
14:44:16 5 any further assistance after that.

6 Q. 374 How long does it take you to prepare a feasibility study?

7 A. Pardon?

8 Q. 375 How long does it take to you prepare a feasibility study on a project that you
9 might become involved in?

14:44:27 10 A. Well it depends, I suppose, how actively interested you are in actually
11 pursuing it. And I suppose depending how complex it was. But, I mean it
12 really depends on the level of urgency.

13 Q. 376 Could I suggest that it couldn't take anything like two and a half years for a
14 feasibility study. You'd build a project in that?

14:44:48 15 A. I'd agree with you. There were a lot of problems identified right through up
16 until it was '92. And it was only in '92 that I see. Because I'm going on the
17 record as well Mr. O'Neill.

18 Q. 377 Yes?

19 A. And I see that the bills are paid in '92. So it's obviously in '92 that I'm
14:45:06 20 talking to the engineers. There's lots of problems associated with them. And
21 I obviously meet the engineers. I want to see, I want to satisfy myself do I
22 believe this thing can be solved or not.

23 Q. 378 Right. When you speak of a feasibility study. Is there any actual feasibility
24 report or study that you can produce that was the determinant of your cessation
14:45:32 25 of interest in this project. In other words, can you produce any documentation
26 from any of the engineers or other professionals involved in the project which
27 caused you to conclude that on the basis of that feasibility report or study
28 you were going no further?

29 A. No, I mean, I don't have any of the files for this project and I would have had
14:45:57 30 very few files of any project that would have aborted. But I was doing the

14:46:02 1 feasibility.

2 Q. 379 Oh, I see?

3 A. And I tried to explain that I worked. The big problem with this site was there

4 was flood lay was an issue, traffic was an issue. But the real, real problem

14:46:14 5 with this site was that there was no sewage. And I had worked as a consulting

6 engineer in probably the biggest practice of consulting engineers designing

7 sewage treatment works and sewage systems. And I was in a position to make my

8 own judgement.

9 Q. 380 Yes?

14:46:29 10 A. And say, I can't say, it was only a judgement. But my judgement was that this

11 land was premature and would not, if it got zoning would not get planning. In

12 the short-term that is, it was premature.

13 Q. 381 I take it that the first step that you'd have ever do if looking at land

14 offered for sale for development would be to look at the planning register to

14:46:52 15 see whether or not there had been applications by others in respect of that

16 property and particularly in this instance where you knew that the owner of it

17 was himself a very successful property developer, Mr. John Byrne. Even if

18 you'd been out of Ireland for years you would have known that there was the

19 Endcamp project was advanced by him and failed, isn't that so?

14:47:13 20 A. I wasn't aware that previous planning permission had taken place. I knew that

21 there was a specific problem with this site and that's where.

22 Q. 382 Okay?

23 A. I was dealing with a specific problem. Everything else was perhaps

24 surmountable. But if you couldn't solve the sewage nothing would be solved.

14:47:28 25 Q. 383 Right. Could I suggest to you that as a project Manager you would know that

26 you could go down to the planning office, establish in the planning register

27 whether the land had been subject to any planning application, have a sight of

28 the previous planning application. And there you would have available to you

29 the reports of the previous applications and the reason for their failure. And

14:47:51 30 it would have been abundantly clear to you at that stage that there were

- 14:48:04 1 problems with drainage in previous applications which had resulted in the -- in
2 those projects not being successful?
- 3 A. Yeah.
- 4 Q. 384 As a matter of principle, isn't that really the first step that you would take
14:48:07 5 as an intending property developer of land. You'd check what the register is,
6 what the prior history is?
- 7 A. Well, I would have had my consultants who would have done an analysis of the
8 situation.
- 9 Q. 385 Yes?
- 14:48:19 10 A. And I would have presumed part of their analysis would be to look at the
11 problems that had been encountered previously and come up with what they think
12 might or might not be solutions.
- 13 Q. 386 Could I suggest to that you it would be no surprise to anybody to know that at
14 the very beginning of this project that there would be a difficulty in relation
14:48:41 15 to drainage because it had been identified at each one of the planning
16 hearings, both before An Bord Pleanala and also the planning applications to
17 the Council, which extended back some 20 years really before?
- 18 A. Uh-huh.
- 19 Q. 387 This application. Everybody knew that there would be a planning difficulty in
14:49:02 20 relation to drainage. I'm saying that it didn't require a feasibility study by
21 you or anybody else to identify that as a potential reason why you might not
22 ultimately get a suitable planning permission?
- 23 A. Well, I think -- until land is developed there are obviously good reasons for
24 them. Sometimes they're not acceptable and sometimes they're premature. But
14:49:27 25 because there were problems in the past. I wanted to satisfy myself, had time
26 changed those circumstances were there new solutions. I mean, one of the
27 reasons that City West hadn't been developed or sold was because there was no
28 obvious outlet for the sewage. I mean, I came up with a solution. I followed
29 the Kamac River went through City West. Emerged by gravity, down by the upper
14:49:54 30 regions of the Grand Canal scheme and by knowing by gravity the nearest was

14:49:59 1 about a half a mile away. But I knew there was a gravity. We'd no capacity.
2 There was a gravity fall in an opposite direction, approximately four miles
3 away. So, I was using my engineering experience to look at problems and see
4 can I solve them. Sometimes problems solve over times. Sometimes the capacity
14:50:17 5 or sometimes proposals for the Council will help solve it. I was using in my
6 capacity to assess did I think that it could be solved or not and make a
7 judgement.

8 Q. 388 Yes. I'm saying that that isn't something that would be a long drawn out
9 process. The information available to you in relation to the feasibility of
14:50:35 10 this project did not alter as a result of any information given to you by any
11 consultant, I'm suggesting.

12 A. Well, I agree with you. My conclusions as to why that the problem was there
13 and the problem, obviously had occurred. They didn't get previous planning
14 for. Was not a problem likely to be overcome in the short-term.

14:50:58 15 Q. 389 We've heard from all of the consultants engaged in this project, McCarthys?

16 A. Uh-huh.

17 Q. 390 Grainne Mallon. Neither of those have given evidence that they advised you
18 that this was not a feasible project. They weren't asked to advise on the
19 feasibility of the project. They were asked to prepare a submission for
14:51:21 20 rezoning which they did. Do you understand the difference between the two?

21 A. Well, I was doing the feasibility study for ourselves. To satisfy ourselves.
22 And I would have had meetings with McCarthys to discuss their analysis of the
23 situation. I don't recall quite but I do recall the broad thrust of there were
24 solutions being put forward which in my experience were solutions that would
14:51:47 25 not be acceptable and would not get through the system.

26 Q. 391 So we're in agreement that there were no consultants engaged specifically to
27 advise you on the feasibility of this project and you were not awaiting a
28 feasibility report before deciding to cut your involvement here?

29 A. No, I didn't say that.

14:52:08 30 Q. 392 I'm just trying to establish whether or not that is the case?

14:52:11 1 A. No. I had meetings with McCarthy & Partners. We paid them fees, discussing
2 the issues and the problems associated with these lands.

3 Q. 393 Yes. But in the context of their tailoring a submission for Dublin County
4 Council, promoting this project rather than a report to you as to the
14:52:30 5 feasibility of the project. Do you understand there's a distinction between
6 the two?

7 A. Well, I was doing the feasibility study.

8 Q. 394 Okay?

9 A. They were informing me of information relating to the site for me to arrive at
14:52:50 10 my conclusions. I don't think I was or I'm not sure I was aware that they had
11 made a submission to the Council on it. Perhaps. But they were informing me.
12 They were giving me their analysis. They were giving me their report of the
13 problems and the potential solutions.

14 Q. 395 Well, I'll ask you to look at a document here which we've called the blue book.
14:53:02 15 Which is the submission that went in to the Council. You were billed for
16 binding it, printing it and otherwise it was paid for by you. It's a document
17 headed November 1991.
18
19 And it's in the brief as pages 1552 is the first page of it.

14:53:23 20
21 You have in physical form before you there, Mr. Hickey, is a document which is
22 the submission to Dublin County Council to have the Pennine Holdings lands
23 rezoned as part of the 1993 to 199 -- Dublin County Development Plan, isn't
24 that so? That is the submission that went in on the Pennine Holdings rezoning
14:53:49 25 application, are you aware of that?

26 A. No, I'm not sure that I've ever seen this document before.

27 Q. 396 I see?

28 A. I don't recall ever seeing this document before. It's quite possible that I
29 read it. I don't ever recall. I was surprised when you were talking a blue
14:54:06 30 document.

- 14:54:06 1 Q. 397 It's called blue because it was bound in blue folder there?
- 2 A. I see that.
- 3 Q. 398 Mr. Dunlop say that it was compiled by Mr. Liam Lawlor on the basis of the
- 4 reports from Grainne Mallon and Mr. Kevin O'Donnell, then of McCarthy's. That
- 14:54:22 5 it was prepared in Mr. Lawlor's office. There were 100 odd copies printed and
- 6 bound, sent to the local councillors and also retained by Mr. Dunlop. You're
- 7 unaware of the existence of this document, is that right?
- 8 A. Well, I don't recall seeing it, Mr. O'Neill. I saw mention of a blue document.
- 9 I didn't even know what they were talking about.
- 14:54:51 10 Q. 399 Well, you certainly insofar as you had any knowledge of --
- 11 A. It's not to see that I haven't seen a synopsis of the sewage and
- 12 infrastructural aspects of it.
- 13 Q. 400 What it is doing in the body of it, Mr. Hickey is that it is offering a
- 14 solution which would allow for the development of these lands including their
- 14:55:12 15 drainage and sewage. And it is the product of Mr. Kevin O'Donnell then of
- 16 McCarthy & Co. and formerly the chief engineer of Dublin, both county and city?
- 17 A. Uh-huh.
- 18 Q. 401 And it was his proposal?
- 19 A. Uh-huh.
- 14:55:28 20 Q. 402 Obviously, one which other engineers in and particularly those in the Council
- 21 who had worked with him would give due weight to. And it was offering a
- 22 solution, isn't that so?
- 23 A. There's always proposals, whether they're acceptable or not is another matter.
- 24 Q. 403 Right. Now, it's dated November 1991. And could I suggest that it is highly
- 14:55:52 25 improbable that you would not have been aware of its content as and from the
- 26 time it was prepared?
- 27 A. Well, I -- I don't ever recall seeing that document, Mr. O'Neill. That's all I
- 28 can say.
- 29 Q. 404 But if you were to be involved ultimately in this project, the last thing that
- 14:56:10 30 you would not have been provided with was the basis upon which the promoters of

14:56:15 1 the scheme hoped to get their rezoning. And that was on the basis of that
2 document there. That was the only document that was put in to Dublin County
3 Council to cause them to prepare a report for the councillors on the viability
4 of the proposed alteration to the zoning plan. Therefore, it was a carefully
14:56:37 5 considered document by those who submitted it. And it was intended to achieve
6 the result of rezoning these lands. Would you accept that?

7 A. Well I accept what you say; that it was submitted. I think what you have to
8 put in context, Baldoyle would have -- it was at best on the peripheral of my
9 vision as an important project. I mean, my time is engaged in where we've
14:57:04 10 expended 10 million pounds purchasing land and we're now in the middle of '92
11 spending five million on building bridges, roads, sewers, lakes, water falls,
12 weirs, streams, that I'm solely responsible for. I'm running, a C.E.O of major
13 property company that is jointly owned by seven pension funds with properties
14 throughout the whole of Ireland and I'm looking at lots of other projects. One
14:57:33 15 of them happens to be Baldoyle. It would not be on my radar screen if I would
16 have spent two percent of my time on this, it would have been the extent of it.
17 I would not be fully familiar with everything that was going on. I never had
18 any great faith that it would lead to anything. I stayed with it. But it was
19 definitely in the peripheral of my vision.

14:57:55 20 Q. 405 The very minimum documentation that you would have considered if you were
21 considering Baldoyle at all would be the submission that went in to the
22 Council, isn't that right? You couldn't form any view one way or the other on
23 the viability of this project without knowing what Pennine has put in as their
24 submission, isn't that so?

14:58:14 25 A. Well, I don't dispute that that document could have been given to me. What I'm
26 saying is it is not in my recollection because it was a project that was so
27 peripheral to my interest. Where I'm actually running three companies at this
28 time and looking at other projects. Perhaps I saw it and perhaps I didn't.
29 Whether they make a submission. The fundamental problem comes back to Baldoyle
14:58:40 30 and always did, was whether the sewage issue could be resolved or not. And

14:58:45 1 there was details in that. Perhaps I got extracts of it perhaps I got all of
2 it. But I never ...

3 Q. 406 Could I suggest to you that if you had it and you looked at it, at the time it
4 was produced, which was in November 1991 or towards December 1991, that
14:59:05 5 whatever feasibility exercise was being carried out would have been concluded
6 by the time you'd read that document and said look, this is what they're
7 advancing. I have my serious doubts about that proposal, we are going no
8 further, end of story. And that would have been at the beginning of 1992?

9 A. Well, I will always see my role as a developer and where I can bring value to
14:59:31 10 things is where I look at problems that seem insurmountable and see can I solve
11 them in my way. That will always be, as I can see, what I can bring to the
12 table. As my experience I've worked in the every single aspect of the
13 construction industry, from design to construction and I would bring my own
14 judgement, which is not always right by the way. At least I will make my own
14:59:54 15 judgement of whether I can solve things or not.

16 Q. 407 Right?

17 A. So I would never take a consultants report and say that is or isn't the end of
18 the matter. I would certainly give a lot of weight to those considerations.
19 But I'd arrive at my own conclusions.

15:00:07 20 Q. 408 What I'm trying to understand from you, Mr. Hickey. Is why it is that you
21 remained engaged in this project for two and a half years, if its feasibility
22 or otherwise as a project was capable of being determined at a much earlier
23 stage than that it would have been determined, the opportunities for
24 determining the feasibility of a project could arise within the first week of
15:00:30 25 your consulting the files of Dublin County Council which would have shown you
26 the reasons for previous failures. But at a minimum by the end of 1991 you had
27 the proposal which was going to be the basis of the Council's consideration and
28 from that, you should have been able to determine whether it was or was not a
29 feasible proposition. And on that basis, I'm wondering why it is that you
15:00:55 30 still involved or participating in the project as late as 1993 and in those

- 15:01:01 1 circumstances. It's in that context I'm asking you the position?
- 2 A. Sorry, I thought I answered you and I'll try and answer you again if it will
- 3 help.
- 4 Q. 409 Yes?
- 15:01:10 5 A. We would have spent the best part of '91 considering whether I would get
- 6 involved in this option agreement. Knowing that there are problems associated
- 7 with it or not. The option was only signed, I think, it was September.
- 8 September, November was it?
- 9 Q. 410 November?
- 15:01:24 10 A. November, okay. Sorry, it was November. At that stage we would not have got
- 11 involved. I would have gladly walked away from it because I had so many
- 12 different proposals coming at me that I had lots of different opportunities. A
- 13 trusted colleague and somebody that we trusted implicitly to the extent that we
- 14 allowed him to become a partner in City West, was involved in this project.
- 15:01:47 15 And he wanted to continue with it. And I decided that I would give it further
- 16 consideration when I had time. We were, by October of '91 I had got my
- 17 planning permission from An Bord Pleanala regarding City West. It was finally
- 18 confirmed in December. And I now had made serious promises and David
- 19 Shubotham. We had made serious promises to the residents, planners, elected
- 15:02:11 20 representatives we would spend five million on putting in infrastructure. That
- 21 was engaging my mind. Obviously by January of '92 I decided I would give
- 22 another look at this. We obviously gave a look for a period of time. Now, I
- 23 can't say for certain whether we concluded our negotiations, whether it was
- 24 that six-month period from January to May or was it October. All I can say is
- 15:02:34 25 I know I took steps in October that to all intents and purposes turned our back
- 26 on any realistic prospects that we would get involved. And that's the time
- 27 frame. That's breaking it down. It's not two and a half years where we had
- 28 the same level of interest or the same level of involvement. It varied
- 29 throughout that. And it generally waned.
- 15:02:54 30 Q. 411 So by the end of 1992 no further involvement. And if Mr. Dunlop had tried to

15:03:01 1 involve you in any new expense or aspect of it you would have simply have told
2 him out of politeness we're going no further on this?

3 A. Well, I think I've already explained that I think Frank Dunlop was still
4 convinced he would get there. He would get his planning. He was anxious to
15:03:18 5 keep going. I think I've mentioned probably about six critical things and
6 there were other critical things here depended on him.

7 Q. 412 Yes?

8 A. We said we would help him. We honoured it. In fairness to him. He said that
9 he would continue in City West. He honoured that without billing us anything
15:03:33 10 on it.

11 Q. 413 Yes?

12 A. So what we did up to October '92 was quite different from after October of '92.

13 Q. 414 I see. Well do you remember 1993 becoming involved with Mr. Byrne again in
14 relation to the property?

15:03:50 15 A. I stand to be corrected but I'm not so sure I ever spoke to Mr. Byrne after
16 '91.

17 Q. 415 Yes?

18 A. No, now, I understand there was CPO issues etc.

19 Q. 416 Yes?

15:04:01 20 A. And again, in that regard Frank Dunlop would have come to me, as I said, I
21 would help him. As a lot of people in the property business would, who are not
22 in the property come looking for my assistance. Came to me and said there is a
23 CPO issue here, what do you think I should do about it. And I put in motion
24 what I would do, as I would do to many people who have no business involvement
15:04:24 25 with me but I would know. I'd say I would suggest you do this, that and that
26 and I believe that was the extent of my involvement on the CPO.

27 Q. 417 Right. What happened in January 1993, page 1808.

28

29 Was that Mr. Dunlop got in touch with you to inform you that a CPO had been
15:04:41 30 served over part of the lands which were going to be the subject of the Pennine

- 15:04:46 1 option, isn't that so?
- 2 A. That's right.
- 3 Q. 418 And that was an ideal option for you to say 'sorry Frank, we have decided
- 4 eventually after a very long period of deliberation not to go ahead and involve
- 15:04:58 5 ourselves in this project'. But you didn't do so, isn't that right?
- 6 A. I continued to help him, as he continued unstintingly helping us.
- 7 Q. 419 I asked you whether or not you said -- you availed of the opportunity which was
- 8 presented to you by Mr. Dunlop contacting you so as to tell him, sorry, Frank,
- 9 we are no longer interested in this project. It's now your baby, we're going
- 15:05:25 10 no further?
- 11 A. I don't recall that conversation or as having a blunt a conversation with him
- 12 as that. I'm not sure that I would have that blunt a conversation with
- 13 somebody who was a partner in City West. Somebody who we had a very strong
- 14 working relationship with and that we were dependent on. I'm not so sure that
- 15:05:42 15 would be either businesslike or appropriate. I decided to help him.
- 16 Q. 420 Yes. But you certainly at no point in the documentation here indicate that
- 17 your involvement at this point in time in opposing the CPO over the land is
- 18 purely to facilitate him, isn't that right?
- 19 A. Well, I don't think it would necessarily come up by the way Frank I'm only
- 15:06:04 20 helping you here. I don't think you can be as literal as that if you're
- 21 helping somebody. Because you're not really going to get any, I wouldn't say
- 22 kudos, but it would be done in very bad grace to say I'm helping you out of the
- 23 good of my heart. There was good commercial reasons as well by the way.
- 24 Q. 421 Let's see what happened anyway.
- 15:06:25 25
- 26 Firstly, this was a fax to you suggesting "that the attached was handed to me
- 27 this morning by John Byrne, perhaps we can discuss it in the morning when we
- 28 meet". You had already arranged a meeting with him. Presumably you will say
- 29 that was in relation to City West, not East View, is that right
- 15:06:41 30 A. Absolutely.

- 15:06:42 1 Q. 422 Yeah. You engaged then with Fenton Simmons, who are a firm of planning and
2 development consultants, isn't that right?
- 3 A. Uh-huh, that's right, yes.
- 4 Q. 423 Is there any reason why you simply didn't ask Mr. Dunlop to engage that firm,
15:07:10 5 give them the name of Fenton Simmons and say Frank these are people who will
6 help you?
- 7 A. I had a lot of dealings with Fenton Simon. Fenton Simmons were involved in
8 City West. I had a long-standing business relationship with Fenton Simmons and
9 I would have been meeting them regularly. And I would have thought if I said
15:07:22 10 to Frank Dunlop look at I'll try and help you I'd have tried to help him.
- 11 Q. 424 So there's be no need for you to involved because they should be helping him
12 not you. You don't have an interest here, isn't that right?
- 13 A. I don't have any specific interest.
- 14 Q. 425 No, we'll see at page 1829 Fenton Simmons writing to you that Davy Hickey
15:07:43 15 Properties on the 28th of January 1993 in relation to Endcamp and setting out
16 how they see one should approach the CPO from the point of view of challenging
17 the Council's legitimate entitlement to take these lands and they're writing to
18 you, isn't that right?
- 19 A. That's right.
- 15:08:04 20 Q. 426 Not to Frank Dunlop but to you?
- 21 A. Well, I suspect if they'd written to Frank Dunlop, Frank Dunlop would have
22 come back with a letter to me saying 'Brendan what do you think we should do
23 here?' So they wrote to me and I did what I can to keep it moving on his
24 behalf.
- 15:08:18 25 Q. 427 So you stayed with this project, the CPO project, liaising with the consulting
26 engineers, receiving their advices, advising Mr. Dunlop on the validity or
27 otherwise of the approach to be taken. And that continued throughout 1993
28 until April when the public hearing took place, isn't that right?
- 29 A. I would say I had very little involvement in that, other than have a meeting,
15:08:45 30 push a letter along, I don't think that I was engaged in, there was no way I

15:08:49 1 could have been mentally engaged because I was so active on the projects that I
2 had invested my own money in. I'd obviously have been reasonably diligent if I
3 said to somebody that I would help them. That I would be presumably diligent
4 that I did it in a reasonably diligent way but no more than that.

15:09:07 5 Q. 428 Fenton Simmons find themselves appearing at the public hearing of the CPO on
6 5th April 1993 representing the interests of Pennine Holdings at the hearing,
7 isn't that right?

8 A. I ... if that's the case.

9 Q. 429 The diary records as being the date of it?

15:09:25 10 A. If you say so, yeah.

11 Q. 430 And all of that you're involved in?

12 A. Well I'm not at the hearing and I'm not so sure I even was aware of what's
13 taking place at the hearing. I'm trying to help somebody. And there is always
14 a big difference between helping somebody and being mentally engaged in
15 something that you are primarily responsible for. So it certainly I would have
16 helped him I wouldn't have been mentally engaged in how to crack this nut.

17 Q. 431 Yes?

18 A. But I think, as would have been my way, I would have been reasonably diligent,
19 if I said I'd do it, I would have done it in a reasonably diligent way.

15:10:01 20 Q. 432 And throughout this period of 1993 starting from the 12th of March of 1993.
21 The opportunity for bringing the rezoning application of Pennine Holdings is
22 progressing its way through the public process in the Council, isn't that
23 right?

24 A. I'm not so sure I was even aware of that.

15:10:29 25 Q. 433 Though this is a particular project which if it came to fruition was going to
26 have a very serious financial implication for those involved, isn't that right?

27 A. Well, I suppose what I'm saying to you back in, sometime in '92. I had no
28 great belief that this would either get zoned and if it got zoned what would
29 you do. You still hadn't got an option without actually, you couldn't exercise
15:11:00 30 the option without going for planning and I didn't believe that going for

15:11:04 1 planning you would get planning. Not only could you not go for planning. You
2 couldn't go for planning without the written consent of Mr. Byrne. So I don't
3 think I had very little interest in Baldoyle at that stage.

4 Q. 434 Right. You were meeting with Mr. Dunlop consistently through 1993 and
15:11:23 5 telephoning him on a regular basis through that period of time and having
6 meetings with him during that period of time. And are you saying that in those
7 periods he did not bring to your attention the fact that he was progressing
8 matters through the Council and he was having motions brought by particular
9 councillors. That the tactics were to endeavour in the first instance to seek
15:11:56 10 industrial in one area, residential in the other. You're saying that none of
11 those matters were ever discussed with you?

12 A. While I was meeting and very concerned in February, in March of '93. Is that I
13 had written a series of letters, four, five letters to the County Council
14 trying to get compliance on my planning permission for City West. There was a
15:12:18 15 number of issues that were going to be addressed in the written statement of
16 the Development Plan which would be discussed at the end of March '93.

17 Q. 435 Yes?

18 A. The big issues were use. Could we get the use of office. Even though we'd
19 planning permission. Could we get that use in industrial zoning or not. And
15:12:38 20 this was fundamental to the millions we were spending in City West. There was
21 a second issue on the written statement. And that was to do with the
22 Baldonnel. The flight cones. The height restrictions which if we didn't
23 get -- which we had got permission for but could easily have been eroded in the
24 Development Plan and Frank Dunlop's role was to make sure that the gains we had
15:13:03 25 received in the planning permission were not eroded at the Development Plan.

26 And I could go on. There was a number of other issues that we were concerned.

27 Q. 436 What I think you're agreeing with me on, Mr. Hickey, to this point. Is that
28 the opportunity existed for there to be discussion in relation to Baldoyle?

29 A. Absolutely.

15:13:21 30 Q. 437 Because you were having extensive communications with Mr. Dunlop throughout the

15:13:28 1 period when he also happened to be dealing with Baldoyle. But you say that he
2 did not raise those issues with you, is that?

3 A. No I'm not saying that at all. And it's quite possible that at the end of our
4 discussions on City West, which were of great concern to me. Because we are
15:13:46 5 now spending millions that could be undermined unless the matter was watched
6 closely. That at the end of it he didn't ask for me for advice on what was
7 important to him. That's possible.

8 Q. 438 Yes?

9 A. But I'm sure you've also observed, Mr. O'Neill, that is I didn't have a single
15:14:02 10 phone call or a single meeting in all of April with Mr. Dunlop until the 27th.

11 Q. 439 Yes. And the --

12 A. Which would be impossible if I was involved in Baldoyle that I didn't.

13 Q. 440 The possibility, you say, of a discussion taking place about Baldoyle existed
14 because you were discussing matters in relation to City West?

15:14:23 15 A. Oh, I agree --

16 Q. 441 Does it go further than possibility and are you in agreement that you did in
17 fact discuss Baldoyle with him on occasion during the period when the motions
18 were before the Council?

19 A. Well, I --

15:14:39 20 Q. 442 Do you have a memory of it?

21 A. No, no, I don't have a specific memory. At various stages Frank Dunlop came to
22 me and said, well, one, I wasn't involved in the strategy of who's doing what
23 or what's doing what. Frank Dunlop came to me at various stages looking for
24 assistance. Look it I'm having difficulties with my Baldoyle project but I
15:15:01 25 need to flesh it out. Do you know an architect who can actually do a sketch
26 plan of an hotel and I said I do. So he came to me at various stages where he
27 had problems. And as I went to him with various stages on City West, for which
28 he didn't bill me for. So I was -- I wasn't particularly concerned but I would
29 have been attentive.

15:15:22 30

15:15:22 1 JUDGE FAHERTY: Just on that issue. At this point in 1993. Did I learn
2 correctly from Mr. Dunlop that as of October '91, was he -- he'd an interest in
3 the City West project, a capital -- the fee was capitalised.
4

15:15:40 5 MR. O'NEILL: He acquired his interest in the City West project of the 25th of
6 October 1991.
7

8 JUDGE FAHERTY: Yes?
9

15:15:46 10 MR. O'NEILL: And he revisited the question of his ownership in the context of
11 endeavouring to borrow further monies from his bank to increase his investment
12 in July of 1992.
13

14 JUDGE FAHERTY: Yes, we had that.

15:16:00 15

16 MR. O'NEILL: And that he indicated represented his involvement in City West
17 subject to the fact that he was asked to become engaged in the bridge opening
18 exercise for which he engaged and billed for that service.
19

15:16:18 20 JUDGE FAHERTY: I just want to clarify in my own head. He had an interest as
21 of October '91.
22

23 MR. O'NEILL: Yes.
24

15:16:25 25 JUDGE FAHERTY: Sorry to have interrupted.
26

27 MR. O'NEILL: His 75,000 pounds interest translated -- sorry. 75,000 pounds
28 interest in fees.
29

15:16:34 30 JUDGE FAHERTY: Yes.

- 15:16:35 1
- 2 MR. O'NEILL: Was supposedly subplanted with another 55,000
- 3
- 4 JUDGE FAHERTY: Yes.
- 15:16:40 5
- 6 MR. O'NEILL: To form his investment if one relies on the AIB documentation
- 7 which was put to him.
- 8
- 9 JUDGE FAHERTY: Yes.
- 15:16:55 10
- 11 MR. O'NEILL: As regards the chronology --
- 12
- 13 JUDGE FAHERTY: I just wanted to fix in my mind when he had the capital
- 14 interest. Sorry
- 15:16:58 15
- 16 MR. O'NEILL: So, there could well have been these discussions you say. But
- 17 insofar as you discussed Baldoyle with him. It was merely to give him some
- 18 friendly advice and not because you had any interest in the project yourself.
- 19 Is that a synopsis of your involvement insofar as there was any
- 15:17:16 20 A. I suppose you can never say never about anything. But I think I'd given up any
- 21 realistic prospect that we would get involved in Baldoyle. And I said that we
- 22 would help him. And we would help him in whatever way we can. But mentally
- 23 and financially I had diverted my energies and monies to go elsewhere. But I
- 24 think it would be hard to be definitive and say there's never under any
- 15:17:43 25 circumstance that is you would not get involved in something. I don't think
- 26 I'd any realistic possibility that I would get involved in Baldoyle.
- 27 Q. 443 Do you know that Mr. Dunlop was publicly circulating to residents and to
- 28 councillors in the area in April 1993 that you were to be the project
- 29 manager/director of this development?
- 15:18:12 30 A. I only became aware of that when I saw the documents circulated. I wasn't

- 15:18:16 1 aware of it until then.
- 2 Q. 444 Do you mean circulated by the Tribunal here?
- 3 A. By the Tribunal.
- 4 Q. 445 And that he didn't discuss that with you at any stage?
- 15:18:23 5 A. No no,.
- 6 Q. 446 And that he published this without your knowledge or authority?
- 7 A. That's right.
- 8 Q. 447 Right. On the 27th we know that there was an article in which the interests of
- 9 Davy Hickey Properties and of Mr. Shubotham and yourself came into focus in the
- 15:18:45 10 newspapers, isn't that right?
- 11 A. That's right.
- 12 Q. 448 And that was a matter I take it, which was of concern to you, in the sense
- 13 that?
- 14 A. That's right.
- 15:18:54 15 Q. 449 That you had been identified with this project in that article, isn't that
- 16 right?
- 17 A. That's right.
- 18 Q. 450 At a time when it was a controversial issue in the newspapers and particularly
- 19 in relation to the involvement of councillors and their vote and the manner in
- 15:19:11 20 which they were voting, isn't that right?
- 21 A. It was a controversial article.
- 22 Q. 451 Yes?
- 23 A. That upset quite a few people.
- 24 Q. 452 Yes. And you, no doubt, followed that up with Mr. Dunlop?
- 15:19:23 25 A. I did.
- 26 Q. 453 And an apology was printed by the newspapers, I take it, that was as a result
- 27 of the Davy Stockbrokers and Davy Hickey Properties Limited establishing
- 28 precisely what their role was in relation to this, so that it could be
- 29 accurately reported in the newspapers, isn't that right?
- 15:19:45 30 A. Well, I would have rung Clíodhna O'Donoghue because there was a number of

15:19:50 1 people who were mentioned who would have no knowledge of anything to do with
2 Baldoyle. They had no involvement whatsoever. They were being associated with
3 a rezoning process.

4 Q. 454 Yes?

15:20:01 5 A. And I would have rung her up to say that we, these people know nothing about
6 it, they have nothing to do with it. And that we have no legal involvement
7 whatsoever in Baldoyle. That we looked at it, we looked at it seriously a few
8 times. And that there was a prospect that we might get involved if it got
9 zoning or planning if we thought it could be -- but my primary concern in
10 ringing her was that these people were associated with something that they
11 knew nothing about. Now, I didn't -- I wasn't aware. I mean, they were
12 looking for it to be retracted. In my conversation with Clíodhna O'Donoghue
13 she never said it would be retracted or withdrawn or an apology made until I
14 saw it in the paper.

15:20:48 15 Q. 455 I see. What the apology doesn't say is that Davy Hickey Properties have no
16 longer any interest and have long since abandoned any interest in becoming
17 involved in this project, isn't that right?

18 A. I presume -- well the primary thing I wanted to get across to the reporter was
19 that these people who were named and these were the people who were upset, had
15:21:13 20 no knowledge, had no -- were not associated and had no knowledge of this
21 project.

22 Q. 456 But the --

23 A. I mean Davy Hickey did continue to help with Frank Dunlop. I can't say under
24 absolutely no circumstances we could have got it, we would have got involved.
15:21:30 25 Perhaps but I'm not sure under what circumstances, even if it got rezoned
26 perhaps. But I'm not even sure we would have got involved. We'd have sat down
27 and discussed it perhaps, but it was not a given that we'd get involved.

28 Q. 457 You had clearly decided over a year before this retraction that you were not
29 going to become involved in this project. And I'm wondering why it is that
15:21:59 30 this was not something immediately stated in response to an article, the thrust

15:22:00 1 of which was that Davy Hickey Properties through Davy's or Davy's through Davy
2 Hickey Properties was going to be involved in this project. You knew at that
3 date you weren't going to be involved in the project. You had so decided in
4 your evidence here at least a year beforehand. Is there any reason why you
15:22:15 5 would not have said Davy Hickey Properties have no interest in this property.
6 Because that was the truth of the matter at that time, isn't that right?
7 A. And what I said emphatically was that Davy Hickey Properties have absolutely no
8 legal interest in this project.
9 Q. 458 But that is irrelevant to the thrust of the article which was that you were
15:22:35 10 going to be involved in the development of this particular land. The answer to
11 that surely was to say we're not involved and we're not going to be involved?
12 A. Well I -- it wasn't a long conversation. The main thrust of what I was trying
13 to do was to retract the point that these other named people were involved and
14 had no involvement. I didn't want to say that Davy Hickey had no interested.
15:23:04 15 I didn't want a complicated story of when we went in or out or what our level
16 of interest was. We did have an interest in establishing whether or not we'd
17 get involved. We continued to help Frank Dunlop. If I thought that it could
18 get planning and zoning we would have been, by fair means, if it could get
19 planning and zoning we would have had an interest. But -- so -- the main
15:23:27 20 thrust of the conversation and I didn't see that apology before it was written,
21 was that these people were not involved.
22 Q. 459 Are you now saying Mr. Hickey, that you would have considered even at this
23 stage becoming involved in the project if it had got rezoned?
24 A. No. No.
15:23:43 25 Q. 460 Is that not what you mean to say, that is what you did say?
26 A. Well, let me ...
27 Q. 461 Of course?
28 A. Please. What I'm saying is that I don't understand or I don't know under what
29 circumstances I would have got involved. Because I believe that even if it got
15:24:00 30 rezoned, I didn't believe it would get rezoned. I'd lost faith that it would

15:24:04 1 get rezoned. But even if it got rezoned. Then I didn't believe that you'd get
2 planning permission. And you'd have had the dilemma of the land is rezoned,
3 it's got. You'd still have this cost of before you can exercise your option.
4 And I didn't believe it would get planning permission. And you'd still have to
15:24:25 5 go through that whole process. So I hate to be as definitive as say under no
6 circumstances. But I just can't see what circumstances I would have got
7 involved.

8
9 CHAIRMAN: Mr. Hickey, why did you -- you, as I understand your evidence, you
15:24:41 10 decided to intervene on behalf of Mr. Naughton, Mr. Quinn and Mr. Coulson with
11 the newspaper?

12 A. That's right.

13
14 CHAIRMAN: Why would you have taken that on yourself?

15:24:51 15 A. Well, Ciaran McLoughlin called me down and said that these people were very
16 upset that they were being associated with this. And are we involved and
17 what's the story in Baldoyle. And I said we had looked at it. We were
18 interested at various stages in getting involved. But we have no legal
19 involvement whatsoever in the scheme. And he said 'well these people are very
15:25:13 20 upset to be associated with it. We're going to have to do something about it',
21 and I said 'look it, I'll ring up the reporter who wrote the article and tell
22 her that what she's after writing about these people is not true.'

23
24 CHAIRMAN: Even though you felt that you had no involvement either?

15:25:32 25 A. Well the involvement, we did look at it, we did seriously look at it at
26 various stages. I had been helping up to then. Whether we'd ever get a legal
27 involvement I think had diminished to practically nothing.

28 Q. 462 When it comes to expenditure in relation to this project Mr. Hickey. The
29 expenditure in the main was incurred prior to the date upon which the Council
15:25:58 30 was considering the rezoning application, isn't that right? I know you paid

- 15:26:02 1 the bills thereafter?
- 2 A. Yes.
- 3 Q. 463 But they were bills for services which had been incurred?
- 4 A. That's right.
- 15:26:07 5 Q. 464 Before that date, isn't that right?
- 6 A. That's right, yes.
- 7 Q. 465 And we can quantify that sum in its totality as I think 48,000 or thereabouts,
- 8 isn't that right?
- 9 A. That's right, yes, yes.
- 15:26:19 10 Q. 466 And of that 10,000 was the payment which was made to Shefran and the balance
- 11 was monies paid to?
- 12 A. That's right.
- 13 Q. 467 To the lawyers for the various aspects, the architects, the quantity surveyors
- 14 etc.?
- 15:26:33 15 A. That's right.
- 16 Q. 468 Well, all of that expenditure had been incurred prior to the date upon which
- 17 the matter was going to be considered from the rezoning point of view by the
- 18 local authority, isn't that right?
- 19 A. That's right, that's right.
- 15:26:49 20 Q. 469 So had the rezoning authority, the councillors voted to rezone these lands for
- 21 residential and business park and retail use as was proposed in the blue book
- 22 proposal, the cost of achieving that was under 50,000 pounds, isn't that right?
- 23 A. If it for the rezoning if that was, yeah, if it had have got rezoning that
- 24 would have been the case, yes.
- 15:27:12 25 Q. 470 From your experience over the years in development and development lands, would
- 26 you agree with me that the immediate consequence of altering lands from green
- 27 belt to development land for retail, for in business park and residential.
- 28 Would be a three fold increase in the value of that land?
- 29 A. No, no.
- 15:27:36 30 Q. 471 It wouldn't?

- 15:27:36 1 A. From unzoned to zoned? Is that what you say?
- 2 Q. 472 Yes.
- 3 A. Well, I'm not sure if you could make that generalisation. There would always
- 4 be very substantial increase in value going from unzoned to zoned.
- 15:27:49 5 Q. 473 Yes. And?
- 6 A. But the option price here didn't reflect buying land without zoning it. It
- 7 obviously reflected it somewhere half way between. Which normally option price
- 8 is much higher than the actual what you pay for the land because you're
- 9 actually not physically paying for the land.
- 15:28:08 10 Q. 474 Well, let's take it in stages. The first step in the development of any land
- 11 is to achieve a zoning status which permits of development, isn't that right?
- 12 A. That's right, yes.
- 13 Q. 475 Yes. Now, in and around the time that this particular project was being
- 14 envisaged, land which was immediately adjacent to it and which formed part of
- 15:28:36 15 an earlier option agreement?
- 16 A. Uh-huh.
- 17 Q. 476 Which was entered into again by Mr. Byrne with a company called Bauval?
- 18 A. Uh-huh.
- 19 Q. 477 Was one in which Mr. Byrne had agreed to sell his land for 20,000 pounds an
- 15:28:53 20 acre to the option holder in the event that the option holder exercised it.
- 21 And the exercise of that option resulted in the option holder selling it on to
- 22 a third party who was going to be the builder. And the difference in price
- 23 between that, between the price for which the money would, the land would be
- 24 bought from Mr. Byrne and would be sold on to the option, to the ultimate
- 15:29:25 25 builder was 60,000 pounds per acre as opposed to 20,000 pounds per acre. Now,
- 26 there's nothing extraordinary in those figurings?
- 27 A. No.
- 28 Q. 478 As far as you know, isn't that right?
- 29 A. Yeah.
- 15:29:39 30 Q. 479 And could I suggest to you that there was no great change in that between those

15:29:47 1 prices and the prices here. In other words, there's likely to be a three fold
2 increase in the value of the land from the option price to the actual buildable
3 per acre price, isn't that right?

4 A. Well, I think there's two things. I think its one thing getting zoning. I
15:30:08 5 said previously there's hundreds of acres of land zoned in Dublin then
6 particularly that you couldn't development and to try to raise 10 million even
7 if it got zoned, to try and raise ten million to buy zoned land, an exercise of
8 the option, with little prospect of getting planning permission, would not have
9 been bankable. I'm not saying that somebody wouldn't have done it. I'm not
15:30:36 10 saying that at all ...

11 Q. 480 Somebody did?

12 A. But did somebody pay the 40,000 an acre that was in the option price.

13 Q. 481 I'm sure they did?

14 A. Well, did they?

15:30:44 15 Q. 482 I'm sure they did?

16 A. Well, I don't know. I don't know.

17 Q. 483 The first step is the rezoning of these lands and the cost of achieving lands
18 could I suggest --
19

15:30:56 20 MR. GORDON: I don't mean to interrupt my friend. Obviously an important issue
21 arises ...
22

23 CHAIRMAN: Sorry. We can't quite hear you.
24

15:31:04 25 MR. GORDON: Mr. Hickey has raised what is perhaps quite an important issue
26 when he asked the question did somebody pay 40,000 for this land. And all
27 Mr. O'Neill is saying is I'm sure they did.
28

29 If he does have some information, it's very important that it's put to
15:31:22 30 Mr. Hickey. Because this will become quite a significant matter next week in

- 15:31:26 1 particular with Mr. Dunlop.
- 2
- 3 MR. O'NEILL: Mr. Hickey might well be aware of the fact that from the
- 4 newspaper articles in 1998 I think it was this land was sold for 13.8 million
- 15:31:40 5 pounds by Mr. Byrne to develop.
- 6 A. Was it. Okay so you're right. I was asking. I wasn't aware of the actual
- 7 figures.
- 8 Q. 484 I'm not breaching any confidence I have to say of Mr. Byrne's or anybody
- 9 else's. I'm quoting what is in the public domain and for completeness it went
- 15:31:58 10 on to be sold for considerably greater sums thereafter and is in the course of
- 11 being developed at this point in time?
- 12 A. Uh-huh.
- 13 Q. 485 In total. But what I'm suggesting to you Mr. Hickey is that the fact of
- 14 achieving the rezoning of these lands is not a matter which involved an
- 15:32:19 15 investment of a million pounds or anything close to it. We know exactly what
- 16 the expenditure was by your company which might have, in fact didn't but might
- 17 have resulted in the matter being rezoned and that is 48,000 pounds of which
- 18 10,000 is an unaccounted for sum paid to Mr. Frank Dunlop, isn't that so?
- 19 A. That's right, yes.
- 15:32:41 20 Q. 486 Yeah. In the event that the lands had been rezoned. There then is an
- 21 obligation on the local authority to provide the services to allow for the
- 22 development of rezoned lands. That's a principle, isn't that right?
- 23 A. It's a principle.
- 24 Q. 487 Yes?
- 15:33:00 25 A. But it's not always observed.
- 26 Q. 488 I appreciate that. The payments of the monies then involved in this particular
- 27 transaction was that you agree that all of the outlay that was going to be
- 28 incurred in the course of the acquisition of the rezoning of these lands was to
- 29 be met by Davy Hickey Properties Limited, isn't that so?
- 15:33:26 30 A. Well, we had agreed to set aside a certain sum of money to satisfy ourselves

- 15:33:31 1 whether we would get involved or not. And that's what we did.
- 2 Q. 489 Well, what I'm asking you is whether or not there was an agreement between
- 3 yourself and Mr. Dunlop that all of the monies which were going to be incurred
- 4 in achieving the rezoning of these lands would be paid by Davy Hickey
- 15:33:49 5 Properties. Do you understand the question?
- 6 A. No, no, we didn't say we would pay all of the monies up to rezoning. We put a
- 7 cap on the amount of monies we would have spent and that was it.
- 8 Q. 490 And what was the cap?
- 9 A. Well, I have my accounts as 30,000 and that's the extent of what Davy Hickey
- 15:34:09 10 spent.
- 11 Q. 491 Sorry, I missed the last one?
- 12 A. I have my accounts for Davy Hickey. The figure was 30,000 and we did not
- 13 exceed 30,000.
- 14 Q. 492 Well, we'll look at the figures that you actually expended. I think you agreed
- 15:34:23 15 with me a moment ago. On one tot it's 44,000. Sorry. It's at page 2879.
- 16
- 17 This is the expenditure. 2879.
- 18
- 19 Expenditure recorded in a ledger prepared on the 18th of August 1993. You see
- 15:34:45 20 the Shefran payment. The legal fees to Mr. Collins. McCarthys. Frank Dunlop.
- 21 Grainne Mallon and then Anthony Gore Grimes. David Crowley. Colour Corner.
- 22 Eugene F Collins and the very last and rather indistinct payment here is again
- 23 one to Mr. Crowley, the architect. You see that
- 24 A. I do.
- 15:35:06 25 Q. 493 Now, the sum total of those figures before one adds the last figure of 4,840.
- 26 That's an addendum to this. Was 44,946. That is the expenditure which was
- 27 paid in relation to the Baldoyle option. And could I suggest that all of that
- 28 money was paid by Davy Hickey Properties/the East View Partnership?
- 29 A. No, Davy Hickey paid approximately 30,000. There was a sum of money I think
- 15:35:42 30 David Shubotham paid the 5,000 on the option fee. And there was a balance

- 15:35:50 1 outstanding which ran for seven or eight years and it was eventually cleared by
2 City West. So Davy Hickey didn't exceed the 30,000.
- 3 Q. 494 Well, the Anthony Gore Grimes figure here, do you see it in front of you there?
4 A. Yeah.
- 15:36:05 5 Q. 495 That is attributed -- this is intended to be expenditure in relation to
6 Baldoyle, isn't that right?
7 A. That he was the total expenditure in relation to Baldoyle from all sources.
- 8 Q. 496 Are you distinguishing between personal payments by Mr. David Shubotham or
9 payments by the corporate entities that were involved here?
15:36:25 10 A. No, I'm just for accuracy, while I had my accounts. That's all I'm doing. I
11 mean, I don't dispute that those sums or monies were paid.
- 12 Q. 497 But all of these monies were paid effectively by you with the exception of the
13 Anthony Gore Grimes figure here, which apparently was paid by Mr. Shubotham as
14 part of the East View Partnership payments, is that right?
15:36:51 15 A. Well it was 30,000. It was 12,000 I think or 13 paid which was rolled up by
16 interest. But that was paid by City West.
- 17 Q. 498 Well, we have the document in front of us here?
18 A. Yeah, yeah.
- 19 Q. 499 Please tell me which of these payments is not a payment made by Davy Hickey
15:37:07 20 Properties or City West or Newlands Industrial Estates or whatever corporate --
21 A. No, no. No, I'm not trying to mislead you here. What I'm saying that all of
22 those payments were either made by David Shubotham or ultimately by City West
23 or Davy Hickey. Just saying of the figure 30,000 was for which 30,000 was paid
24 by Davy Hickey. That's all I'm saying.
- 15:37:34 25 Q. 500 Which is the 30,000 paid by Davy Hickey Properties Limited?
26 A. It would have been the latter payments.
- 27 Q. 501 Well if you just show me where they are now?
28 A. Eugene F Collins and the David Crowley.
- 29 Q. 502 Right. If we --
15:37:47 30 A. We put money into the East View Partnership as well. That's why our monies

- 15:37:52 1 came from.
- 2 Q. 503 Well, David Crowley is 3,600 and 4,800 at the bottom of it there. Were you
3 including that as part of the 30,000?
- 4 A. That's right, yes.
- 15:38:07 5 Q. 504 Okay. So those figures are about 8,500 or so. 4,000 of the printing fee
6 colour corner. That is also attributed is it to Davy Hickey?
- 7 A. I think chronologically it's through all of the top payments came from East
8 View.
- 9 Q. 505 From East View?
- 15:38:24 10 A. Yeah.
- 11 Q. 506 Yeah. And you say is there some exercise whereby Davy Hickey Properties is
12 refunded or adjusts its East View relationship?
- 13 A. It put money into East View Partnership account. It put 15,500 in.
- 14 Q. 507 15,500 in?
- 15:38:48 15 A. That's right, yeah.
- 16 Q. 508 There are fixed assets here, profit and loss figures. These can be accounted
17 for in different ways, isn't that right?
- 18 A. Well, I think you have full back up on that. But I can certainly provide them
19 further.
- 15:39:20 20 Q. 509 Can we deal, firstly, independently of whatever entity paid the amount. If we
21 look to the first item on that expenditure list there. You'll see it has
22 Shefran?
- 23 A. That's right.
- 24 Q. 510 Isn't that right?
- 15:39:35 25 A. That's right.
- 26 Q. 511 Shefran is a non-trading company, you know that?
- 27 A. No, I wasn't aware of that. It was a company that Frank Dunlop used but I'm
28 not aware that it's non-trading now or then to be honest.
- 29 Q. 512 Shefran did not have a bank account, did you not know that?
- 15:39:54 30 A. No, I didn't know that.

- 15:39:56 1 Q. 513 Shefran was not registered for VAT did you know that?
- 2 A. Why would I know any of this?
- 3 Q. 514 Because you received Shefran invoices over a number of years from 1991 until
- 4 1993 and you paid out 62,500 pounds to Shefran on foot of those invoices and
- 15:40:15 5 therefore I expect you would know something the company to whom you were paying
- 6 the money and in respect of which payments you had an obligation to account.
- 7 That's why?
- 8 A. Well, if I paid monies to Shefran at any stage it was because Frank Dunlop
- 9 suggested that I either, I was making a political, legitimate political
- 15:40:38 10 donation or he was getting paid and he -- and I would -- in all cases please
- 11 send me in an invoice and I'll send you out a cheque and there was no more than
- 12 that.
- 13 Q. 515 Yes. And if we deal with the Shefran Limited payment here, which is recorded
- 14 in your accounts as being an expenditure I think on the 6th of January of 1992.
- 15:41:05 15 Can you tell me the circumstances in which that money attributed to Baldoyle
- 16 payments came to be paid to Mr. Dunlop?
- 17 A. Well, for starters, I don't -- I know Mr. Dunlop said that he had a
- 18 conversation with me and asked me for the money. I don't specifically recall
- 19 that conversation. The cheque was not written by me. It was written by David
- 15:41:31 20 Shubotham. But I have no doubt that David would have discussed the matter with
- 21 me. And I don't think other than that I don't think that it registered with me
- 22 that there was anything particularly untoward about a request for payment or
- 23 the payment.
- 24 Q. 516 Well, why are you paying money? You've told us that you're not involved in
- 15:41:49 25 Pennine. You're not involved in their application for re zoning. You pay
- 26 monies through Davy Hickey Properties only in 1993 to an agreed limit of 30,000
- 27 you say. Why are you paying 10,000 either yourself or Mr. Shubotham in the
- 28 context of Baldoyle? Why are you paying 2,000 in January. Sorry, 10,000 in
- 29 January 1992 to Mr. Dunlop?
- 15:42:23 30 A. Because I think in 1992 we are still looking at the prospect that we might get

15:42:30 1 involved. We are going to do due diligence to satisfy ourselves, is it viable,
2 is it a project that we want to get involved. Is it bankable. As far as I'm
3 concerned. I believe in any rezoning there are two fundamental aspects. There
4 is the -- is it possible, is the infrastructure there, can you develop it.

15:42:49 5 Secondly, is it acceptable. Is it acceptable to the planners, is it acceptable
6 to the residents, is it acceptable to the local representatives. And Frank
7 Dunlop would have been, my job was to try and find out is it possible. And
8 Frank Dunlop's job would have been to find out would it be acceptable. And it
9 was at a stage when we were still seriously considering whether we would get
10 involved or not.

11 Q. 517 Yes. As you say, it was his project, is that right?

12 A. That's right.

13 Q. 518 He was the person who was to try to bring it to the stage where it was rezoned
14 isn't that right?

15:43:25 15 A. That's right, yeah.

16 Q. 519 That was his obligation?

17 A. That's right.

18 Q. 520 There's no reason for you to pay him to do that, that's his obligation?

19 A. No --

15:43:34 20 Q. 521 Now, why did you pay him 10,000 pounds?

21 A. Well we are in discussions about getting involved but we wanted to be satisfied
22 that this could be a project that could go live, that would be viable. And we
23 wanted it to be satisfied before we committed ourselves. Satisfied on
24 infrastructure as possible. And satisfied that it is going to be -- the people
15:43:56 25 will be receptive to it. The important people, the planners, the residents and
26 that's what Frank Dunlop's job was, to check the acceptability.

27 Q. 522 And how was that in any way connected with the payment of money to him?

28 A. Well, he obviously requested money for payment to carry out that task as we
29 were still considering getting involved and the money was paid to him. I
15:44:21 30 didn't pay him the cheque and I don't specifically recall the conversation with

- 15:44:25 1 him.
- 2 Q. 523 All right. But you had no -- but you would know why you would spend money of
3 the company's, isn't that right?
- 4 A. Well it was part of trying to find out was it acceptable. Frank Dunlop was to
15:44:38 5 find out was it acceptable. I was trying to find out was it possible.
- 6 Q. 524 Are you suggesting that this was a fee to him? Was it intended to be
7 remuneration to him for a fee for work?
- 8 A. No, I don't recall the conversation, Mr. O'Neill is what I'm saying. And I
9 don't know whether he had the conversation with me. I know he said he had a
15:45:01 10 conversation with me. He got paid by David Shubotham. I have no doubt that I
11 would have been aware. David would not have paid it without discussing it with
12 me. He is to find out whether that is categorised as expenses or what. It was
13 just that was his, the cost for him to find that out.
- 14 Q. 525 But you know that the expenses were to be met by Davy Hickey Properties, not by
15:45:26 15 him?
- 16 A. Well, I don't know if he incurred expenses during that period or not.
- 17 Q. 526 If he had done he would have sent them to you and they would have been paid.
18 And we see that the expenses of the printing were paid 4,872 pounds. We see
19 that the printing that was done in May of 1992 was billed through him and was
15:45:50 20 paid. All of the expenses that were incurred were paid by Davy Hickey
21 Properties or David Shubotham. There's no question of putting him in funds to
22 meet outlay. Because all he had to do was to produce the invoice to you and
23 you would pay it. So there was no question of paying him money in advance of
24 expenses, I suggest.
- 15:46:15 25 A. Well, there was no expenses invoiced from him in '92 when we were carrying out
26 this task. I think you have to put it in context that we implicitly trusted
27 Mr. Dunlop. And we would not do business with him if we didn't trust him. We
28 wouldn't have him as a partner unless we trusted him. As somebody that we
29 implicitly trust, who is high standing in society at that time says to us I'm
15:46:41 30 going to incur expenses. If I was sufficiently concerned to query it, I would

- 15:46:47 1 have been even more concerned why am I doing business with somebody like this.
- 2 Q. 527 Did you read any of the invoices which you received from Shefran. And if so,
3 how did you interpret the charge being made of your company for refresher fees
4 vis-a-vis strategic management and education? What did all of that mean to
15:47:10 5 you?
- 6 A. Well, for starters, I will come back and say that Mr. Dunlop, if he was sending
7 an invoice to us and I normally wouldn't read the details of. I would know if
8 I owe somebody money or I don't owe them. And I wouldn't necessarily pay
9 particular attention to the company or what's actually the verbiage. And I
15:47:34 10 would write hundreds and hundreds of cheques every year. And I would know if
11 they were owed money in which case I would write it but I wouldn't pay
12 particular attention to the company or what is actually written on it.
- 13 Q. 528 Are you saying you didn't read any of the invoices or are you saying that the
14 verbiage on the invoices was irrelevant from your point of view?
- 15:47:56 15 A. Generally it would be irrelevant. I mean, I wouldn't read it. But I know in
16 relation to the first payment where I think it arises which I think is in
17 August where he has down for whatever. He definitely did help me in preparing
18 myself for a speech with the County Council and tutoring what I should say and
19 how I should go about it and how I should present myself. So definitely he was
15:48:19 20 helping me in that regard. I mean, I wouldn't have been used to speaking in
21 public and his assistance was definitely much required. But as a generality,
22 as a generality I don't read. I know if somebody's owed money but I don't read
23 what's appended to the statement.
- 24 Q. 529 You don't know why it is that 10,000 pounds was paid to Mr. Dunlop via Shefran
15:48:50 25 in relation to the Baldoyle lands, is that the position?
- 26 A. He asked for 10,000. It was paid. I would have paid no significance to
27 whether it was Shefran or Frank Dunlop.
- 28 Q. 530 But why was it paid? You had no relationship with him in relation to Baldoyle
29 on your evidence. You did not become involved ever in relation to the East
15:49:17 30 View project or you were never involved in Pennine. In those circumstances why

- 15:49:23 1 did you pay money of 10,000 pounds to somebody in respect of this project with
2 which you had no involvement?
- 3 A. Will I thought I've answered you. I'll answer you again.
- 4 Q. 531 I've yet to understand why it is --
- 15:49:38 5 A. I'll try and answer you.
- 6 Q. 532 Okay?
- 7 A. In '92 we are still considering getting involved. There, to me, there are two
8 aspects to whether we would get involved. Is it possible to service these
9 lands, which is essentially an engineering thing. And two, even if it's
10 possible, would it be acceptable. Would it be acceptable to the residents,
11 would it be acceptable to the planners, would it be acceptable to the local
12 representatives. Frank Dunlop, I believe, asked for the money on the basis
13 that he needed. He was going to incur certain costs or expenses in
14 ascertaining the side that he was doing, which was the acceptability side.
- 15:50:18 15 Q. 533 Okay?
- 16 A. I don't specifically recall a conversation. And I don't specifically remember
17 this standing out in my mind as something that was untoward or unusual.
- 18 Q. 534 Okay?
- 19 A. At the time. It's as simple as that.
- 15:50:30 20 Q. 535 Right.
- 21 A. But at the end of that exercise. Whether it's his exercise. It became obvious
22 to us that it wasn't going to be acceptable to the planners. The residents
23 weren't particularly enamoured by it. And I certainly had no confidence that I
24 was going to solve these engineers problems.
- 15:50:51 25 Q. 536 Yes. The payment then is made. It is not accounted for to you in any way,
26 isn't that right? You don't receive an acknowledgement or a breakdown of where
27 the 10,000 has been spent?
- 28 A. No, no, we all trusted Frank Dunlop. Frank Dunlop at the time was retained by
29 a number of Government departments.
- 15:51:13 30 Q. 537 Yes?

- 15:51:14 1 A. He was retained by a number of plcs, he was acting for a number of Government
2 Ministers. He was a person of impeccable reputation. He was an ex senior
3 civil servant. We'd have no reason to question him or to doubt him.
- 4 Q. 538 Except that he was providing you with invoices for fictional expenditure.
- 15:51:37 5 A. I find that after the event that some of the things he was doing he was not
6 doing it in my name and he was certainly not doing it in the name of my
7 shareholders. I agree things were going on we were not aware of. If we were
8 aware of at the time that we would have had no further dealings with him.
- 9 Q. 539 Isn't it clear from the financial documentation that the payments that you were
10 making to him supposedly under the guise of political donations were being
11 treated in your own books as PR expenses?
- 12 A. No, I think I would take exception to the word "supposedly". I've never said
13 anything other than we made legitimate political donations at a time of
14 elections in, at two different occasions. They were grouped under Frank Dunlop
15 in our books for the sake of that's where the money was being grouped. All
16 monies to Frank Dunlop just for the sake of an audit trail were all grouped
17 under the one heading. It wasn't meant to mean anything other than that,
18 that's the grouping.
- 19 Q. 540 Public relations?
- 15:52:39 20 A. I'm sorry. I just say it to you again. I didn't. I don't do the books. I'm
21 not an accountant. But when all monies would go to Frank Dunlop or his
22 companies. The accountant's obviously just grouped them under his name. I
23 don't attach any particular significance to that.
- 24 Q. 541 You are a company director. You know what matters are entitled to be claimed
15:53:08 25 as the business expenses of the company, which items aren't don't you?
- 26 A. I actually don't really know. I have my accountant doing that. I run my
27 affairs and business. And the accountants run the affairs of what is and what
28 isn't allowable.
- 29 Q. 542 If you pay 10,000 pounds to a politician you can't treat that as a business
15:53:19 30 expense, can you?

- 15:53:20 1 A. I don't know if you can or not, being very honest.
- 2 Q. 543 You don't. Well you can't. It's not a business expense?
- 3 A. There you go. I don't know if that has changed or was always the case, to be
- 4 honest, Mr. O'Neill.
- 15:53:33 5 Q. 544 And you did in fact prepare and record as political donations certain donations
- 6 which you made to political parties and to individuals for political purposes.
- 7 You record you recorded them in your schedules as such, isn't that right?
- 8 A. That's right, yes.
- 9 Q. 545 But you didn't record these payments, the 20,000 or the 30,000 more accurately
- 15:53:54 10 that you say was a political donation. You didn't record that as a political
- 11 donation?
- 12 A. Well I've never made any bones or I've never disputed that we have made
- 13 political donations regarding City West. The fact that they were grouped under
- 14 Frank Dunlop. I didn't group them because I didn't do the books. But that was
- 15:54:14 15 a heading that all payments to Frank Dunlop -- obviously, it was put there. I
- 16 wouldn't have been -- if it had been put under political donations, I'm
- 17 actually not sure that I ever saw those books to be very, very honest
- 18 Mr. O'Neill.
- 19 Q. 546 This is a company in its early days, early 1992 you say there was only one
- 15:54:31 20 employee, yourself and the secretary?
- 21 A. Uh-huh.
- 22 Q. 547 Nobody else to make the decisions on this issue other than you. Your secretary
- 23 wasn't going to make the decisions as to whether it should be attributed as a
- 24 payment for politics or any other form of expenditure in the books of account,
- 15:54:47 25 isn't that right? Every decision as to how these matters were to be attributed
- 26 was your decision?
- 27 A. Well I was certainly responsible for everything. I wouldn't say every decision
- 28 was mine. We wouldn't leave. At no time did we ever deny that we were making
- 29 legitimate political donations. We left an audit trail the length of your arm.
- 15:55:10 30 We were not trying to hide anything, Mr. O'Neill.

15:55:10 1 Q. 548 The audit trail Doesn't record that these are political donations at all.
2 There is nothing in the audit trail to suggest that this is a payment to a
3 politician. There is no receipt from a politician. There is no
4 acknowledgement from anybody that they were paid for political purposes. Where
15:55:26 5 do you say that there is an audit trail that clearly shows these to be
6 political donations?
7 A. Because we would have memos from Mr. Dunlop regarding monies for that there.
8 Q. 549 Yes. And what would they say, would they say that these were payments to
9 politicians or would they say that they were refresher fees vis-a-vis strategic
15:55:48 10 advice and education?
11 A. Well, we've only one.
12 Q. 550 Yes?
13 A. I think invoice from him.
14 Q. 551 Does it say that it's a political donation?
15:56:00 15 A. No, it doesn't say.
16 Q. 552 Well, then why do you say that there is an audit trail clearly showing this to
17 be a political donation, when the only invoice that relates to these payments
18 in one in respect of one payment which attributes it to being a refresher fee
19 vis-a-vis strategic planning and education which is verbiage and makes no
15:56:21 20 reference to it being a political donation?
21 A. Well, if anybody who knew or asked at the time, I would have made it very
22 clear. And did we make -- and if any political party had come to me at the
23 time looking for money I'd have said we've already made payments to the
24 political parties through Frank Dunlop. If Frank Dunlop came and said there
15:56:42 25 are 75 councillors and write 75 cheques for 250 we'd have done that also.
26 Q. 553 I think when you speak of an audit trail --
27 A. Well perhaps I should -- I'm not an auditor. When I talk about an audit trail
28 is that there is documentation as to what we've done. I'm not an auditor and
29 I'm not an accountant. And perhaps the use of the term "audit trail" is
15:57:03 30 perhaps a layman's term rather than financial. We have never tried to disguise

- 15:57:09 1 it really is what I'm saying.
- 2 Q. 554 Even to use it in its layman's terms. It has the connotation that the
- 3 documentation if looked at will clearly show a chain of events that lead to a
- 4 conclusion being capable of being drawn as to the reason for the expenditure,
- 15:57:25 5 isn't that right? That's even in layman's terms what an audit trail is?
- 6 A. Mr. O'Neill, why at the first request if we were trying to disguise something
- 7 did we come out and tell publicly to the Tribunal that we had made public
- 8 donation if we're trying to hide that. We've never tried to height hide that.
- 9 I've never denied it. We made political donations. Legitimate ones.
- 15:57:48 10 Q. 555 Well that is the issue, isn't it, Mr. Hickey, as to whether they were
- 11 legitimate.
- 12
- 13 Firstly, if you were asked to produce an invoice for that expenditure you could
- 14 not do so relating it to political donation at all, isn't that right?
- 15:58:04 15 A. We believe we were making political donations.
- 16 Q. 556 Right. I'm asking you in the context of you saying that we brought this to
- 17 your attention, we told you that this is a political donation. I'm putting
- 18 back to you that if those payments were looked into, you could produce no
- 19 invoice to show that they had been paid for anything at all, isn't that right?
- 15:58:25 20 A. I would have expected that if having made the payment to Frank Dunlop, somebody
- 21 we trusted for specific purpose of making a political donation. He would have
- 22 had the records to show how he distributed, whether he did it to individual
- 23 members of the County Council or whether to the party leaders or how he
- 24 actually did it. I would have presumed that he would have done that rather
- 15:58:45 25 than us. If we paid it in a way that he asked us to pay it, it's as simple as
- 26 that.
- 27 Q. 557 We'll start with the first of these names June of 1991. A payment of 20,000
- 28 pounds that was paid to Shefran. Shefran, as I have indicated to you, and you
- 29 claim that you're not aware of it. Was never trading company. It was not VAT
- 15:59:13 30 registered. It had no VAT number on any of the invoices that it raised with

15:59:18 1 you. But that company is paid the sum of 20,000 pounds by you.
2
3 You say that this is a legitimate political donation. Isn't that right
4 A. That's right.
15:59:27 5 Q. 558 Right. What, if anything, was there to prevent you or City West or any of the
6 directors either personally or through any of their corporate entities from
7 writing a cheque directly to any one of the named politicians you wished to be
8 the beneficiaries of these legitimate political donations or to any one of the
9 party secretaries or local Cumann accountants or otherwise in relation to these
15:59:54 10 payments, why did you involve Mr. Dunlop in this?
11 A. Well, I don't believe for starters that I had ever previously made a donation
12 to a political party or an individual. I stand to be corrected. There might
13 be one. But I don't believe that I ever made -- and I wouldn't. I'm not sure
14 how I'd have known to even go about it if asked but --
16:00:21 15 Q. 559 Why did you start then in 1991?
16 A. Sorry --
17 Q. 560 Making your first payment of 20,000 pounds?
18 A. I'm trying to answer you.
19 Q. 561 Okay?
16:00:29 20 A. Frank Dunlop came to us and said that it is a Local Election. There are 75 or
21 77 local councillors and that I think it would be appropriate that you would
22 make a political donation to all of the various members. Now, every single --
23 it was a practically unanimous vote that voted for City West. Every single
24 party, workers party, Labour Party, PDs, Fianna Fail, Fine Gael voted for the
16:01:01 25 proposal. And I would have presumed that he was going to spread out the money,
26 equally to all of those. If Frank Dunlop had equally come to me and said how
27 do we this. This is how it's done. Because I didn't know how it was done. If
28 he came to me and said I would like you to write out 75 cheques for 250 pounds
29 I'd have done that. Or if he'd have broken it into different. He asked me to
16:01:25 30 do it this way and that's why I did it that way. It's as simple as that.

- 16:01:29 1 Q. 562 Did you ever inquire from him as to who he paid in fact and how much he paid?
- 2 A. No.
- 3 Q. 563 Were you surprised at the fact that none of the people who would have received
- 4 these funds acknowledged payment of them to you?
- 16:01:44 5 A. No, I wasn't surprised.
- 6 Q. 564 Did you specifically tell Mr. Dunlop that in making these payments he should
- 7 not make any connection between you and the payments which were being made to
- 8 the politicians?
- 9 A. Absolutely not. I mean, it would have been in lieu of these people coming to
- 16:02:04 10 us directly and some of them asking and some of them not asking. And perhaps
- 11 you wouldn't. In fair distribution, that he would distribute it. We'd no
- 12 difficulty. I mean, I'm only running my company for a year. I had never been
- 13 involved in paying legitimate political donations. This is a man who as I said
- 14 previously that we trusted. He told me that this is the appropriate way to do
- 16:02:31 15 it. I took it at face value.
- 16 Q. 565 What did you think that he was going to do in relation to the payment, did he
- 17 tell you that he was going to give it in cash or that he was going to pay it by
- 18 way of cheque or how was it to be done?
- 19 A. Well.
- 16:02:46 20 Q. 566 Or did you inquire?
- 21 A. No, no. But I would have presumed. If I'm getting an invoice for it he would
- 22 have to account for it. And nothing that he would do or in the manner he would
- 23 do it would seem inappropriate.
- 24 Q. 567 Do you mean that he would account in his own accounts rather than account to
- 16:03:02 25 you?
- 26 A. Well he was now a partner in City West.
- 27 Q. 568 So?
- 28 A. And I would have thought that he would respect the fact and therefore act in an
- 29 appropriate way. And therefore, how he would handle himself would be
- 16:03:15 30 appropriate. I didn't inquire or look for receipts or how did he do it or who

16:03:20 1 got what.
2 Q. 569 Yes. I'm afraid that I'll be some more time with Mr. Hickey. And we will have
3 to adjourn until tomorrow.
4

16:03:26 5 CHAIRMAN: All right. Until tomorrow.
6

7 MR. O'NEILL: 10.30.
8

9 CHAIRMAN: All right. Mr. Gordon, we are going to ask Mr. Hickey to come
16:03:40 10 back. Did you say tomorrow?
11

12 MR. O'NEILL: Yes.
13

14 CHAIRMAN: At half ten.
15

16:03:43 15 MR. GORDON: Yes, of course. Thank you.
16
17

18 CHAIRMAN: Thank you, Mr. Hickey.
19

16:03:47 20

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22 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**

23 **FRIDAY, 8TH DECEMBER, 2006, AT 10.30 A.M.**
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