

10:24:16 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,**

2 **12TH DECEMBER 2006 AT 10.30 A.M.**

10:36:44 5
6 CHAIRMAN: Good morning, Mr. O'Neill.

7
8 MR. O'NEILL: Good morning, Mr. Chairman, Members of the Tribunal. The first
9 witness this morning is Mr. Brendan Hickey, Mr. Hickey, could you return to the
10:36:53 10 witness-box please.

11
12 **CONTINUATION OF EXAMINATION OF BRENDAN HICKEY**

13 **BY MR. O'NEILL (ALREADY SWORN)**

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16
17 MR. O'NEILL: Good morning, Mr. Hickey, since you have given your
18 evidence-in-chief, another matter arose why the Tribunal requires your
19 assistance in respect of and it stems from a payment which was apparently made
10:37:02 20 by your firm to Frank Dunlop & Associates in January of 1994, I think you have
21 been circulated with a small bundle of documents in relation to that and it's
22 possible you may have done some research on it in the interim

23 A I did, yes.

24 Q 1 If we look to the document firstly, it's at page 2497 and it's an invoice for
10:37:24 25 services from Frank Dunlop & Associates. It's dated the 4th January of 1994
26 and it's an invoice to media training costs regarding Citywest developments,
27 it's in the sum of 1,200 pounds, there's an indication at the bottom of it in
28 manuscript that it was paid by cheque number 121. Does that conform with your
29 records as far as you know?

10:38:18 30 A It does, yes.

- 10:38:20 1 Q 2 And what do you understand this payment to have been in respect of?
- 2 A Well we were, towards the end of '93, '94, preparing a major marketing campaign
3 and Citywest was nearing completion, it's landscaping, etc, we were proposing a
4 presentation, a significant presentation to a major US company, Xylex in the
10:38:47 5 first week of February and we were doing brochures and multi media and Frank
6 Dunlop would have assisted us in that regard and he sent us in an invoice for
7 his services and we paid that invoice.
- 8 Q 3 Do you understand that this was in other words a payment for services rendered
9 by Mr. Dunlop and that it is fairly and accurately described here?
- 10:39:10 10 A I think so, well that's -- I am going on the record here, I am describing what
11 work was going on in Citywest, and we would have used Mr. Dunlop in that regard
12 so it was an invoice for work done which we paid.
- 13 Q 4 Sure. And have you any recollection of how this then was treated in the costs,
14 in your own books of account?
- 10:39:30 15 A Only as a payment to Mr. Dunlop.
- 16 Q 5 Right. Now, the Tribunal in the course of its work, had occasion to seek from
17 Mr. Liam Lawlor details of every payment that was made to him over a sum of
18 1,000 pounds and to seek from him an account as to what that payment was made
19 in respect of and as a result of that, the Tribunal received documentation from
10:39:59 20 the late Mr. Lawlor and the first document I'd ask you to look at is at page
21 3064 on screen now. And that is the form of response which the Tribunal
22 received from Mr. Lawlor in respect of payments, it's headed Liam Lawlor, 1994,
23 response to queried lodgments over 1,000 pounds. And then there is a table
24 setting out number, tab, amount, source, and narrative. And you see that under
10:40:32 25 the column headed amount, he has 1,200 pounds into AIB and under the column
26 source, he has Brendan Hickey and narrative copy of written notes on lodgments
27 arising from fundraiser on disc B 142. And the next document we will see is
28 the extract the written notes on lodgments referred to as disc B 142 and that's
29 at page 3065, which is a record of lodgments made by Mr. Lawlor in the period
10:41:18 30 in question. If you look to the left-hand margin, you will see dates for

10:41:22 1 individual items and the very last item on that list is dated the 12th January
2 of 1994, it says Brendan Hickey, via FD, it is a sum of 1,2000 pounds and the
3 note to the right says lodged AIB. You see that document?

4 A I do, yes.

10:41:45 5 Q 6 I think the reference above the 12 might also be lodged but I can't quite
6 decipher that and the next document then I will ask you to look at is an
7 account at AIB which is an AIB account which Mr. Lawlor, he identified with it
8 but this is the account of Mrs. Hazel Lawlor, page 3063. This is a bank
9 statement generated on the account of Mrs. Hazel Lawlor. It was dated the 17th
10 of January of 1994 and if we look to the lodgments for the 12th of January
11 1994, we will see that there was a lodgment of 1,200 pounds on that day and it
12 would appear from this documentation therefore provided by Mr. Lawlor that he
13 attributes the 1,200 pounds paid, sorry, lodged to AIB on the 12th of January
14 1994 to a payment by you via Frank Dunlop in the sum of 1,200 pounds. Have you
15 any knowledge or can you assist the Tribunal in any way as to how it could
16 happen that monies which you were paying ostensibly to Mr. Frank Dunlop were
17 finding themselves in the account of Mrs. Hazel Lawlor?

10:43:04 18 A I have no idea whatsoever. We paid a cheque on an invoice for services
19 rendered to Frank Dunlop and the first I ever saw or heard of it was on Friday
10:43:30 20 when you gave me these documents and I have no knowledge whatsoever how that
21 happened.

22 Q 7 You don't know of any connection existing between Mr. Lawlor and Mr. Dunlop
23 which resulted in monies being exchanged between them, is that right?

24 A Absolutely not.

10:43:46 25 Q 8 And certainly you don't know of any such relationship in any property dealings
26 in respect of which David Hickey Properties or yourself was involved?

27 A Definitely not.

28 Q 9 Thank you, Mr. Hickey.

29

10:43:59 30 CHAIRMAN: Do you wish to ask Mr. Hickey?

10:44:02 1
2 MR. GORDON: Yes, chairman, if I could just a few questions arising out of
3 that.

10:44:07 5 **THE WITNESS WAS CROSS-EXAMINED BY**

6 **MR. GORDON AS FOLLOWS:**

7
8
9 Q 10 Mr Hickey, first of all I think Mr. O'Neill observed this morning something
10:44:15 10 else arose after you had given your evidence. I think it is the case that all
11 of the material that Mr. O'Neill has addressed in questioning you this morning
12 has in fact been in the possession of the Tribunal for some years now. All of
13 these documents, isn't that so? Can you hear me?

14 A Sorry, I didn't realise you were addressing me.

10:44:41 15 Q 11 Yes. I want to bring to your attention what seems to be the case, that all of
16 the documents Mr. O'Neill is referring to this morning have been with the
17 Tribunal for years?

18 A Well, the payment to Frank Dunlop & Associates has been with the Tribunal for
19 years. I mean I don't know about the other documents, I have no idea about the
10:44:59 20 other documents.

21 Q 12 Yes. We see from the first document which is the invoice that that was
22 actually received by the Tribunal in the year 2000.

23 A That's right, yes.

24 Q 13 From David Hickey?

10:45:11 25 A From Citywest.

26 Q 14 From Citywest, I beg your pardon, yes and it appears from the other documents
27 that Mr. O'Neill has put to you this morning that that again is all material
28 which was furnished to the Tribunal apparently by Mr. Lawlor some years ago?

29 A Well I have no knowledge of that, the first I saw this was on Friday.

10:45:30 30 Q 15 Yes, but in any event, there was nothing new, there was nothing that came up by

- 10:45:34 1 way of new information to the Tribunal after you gave your evidence?
- 2 A No.
- 3 Q 16 And I think you have said that you have said already that the other material is
- 4 material which was presented to you for the first time on Friday.
- 10:45:50 5 A That's right, yes.
- 6 Q 17 Yes. If I can go back to the invoice briefly. That's an invoice addressed to
- 7 Citywest Limited?
- 8 A That's right, yes.
- 9 Q 18 For work done for Citywest Limited.
- 10:46:04 10 A That's right, yes.
- 11 Q 19 And in that context, it was paid by you in the form of a cheque addressed to
- 12 Frank Dunlop & Associates?
- 13 A That's right, yes.
- 14 Q 20 It seems from what Mr. O'Neill has said to you that Mr. Dunlop endorsed the
- 10:46:26 15 cheque which you had sent to him, addressed to Frank Dunlop & Associates
- 16 Limited, endorsed the cheque to facilitate its negotiation by Mr. Lawlor, isn't
- 17 that right?
- 18 A Well, I really don't know what happened to it. I mean it's -- I am only
- 19 speculating. I mean I wrote a cheque to Frank Dunlop for services rendered and
- 10:46:46 20 I have really no knowledge of what happened to it after that. The first I
- 21 heard was on Friday when I saw these documents what he did with it.
- 22 Q 21 The presentation to Xylex that you referred to as being scheduled to take place
- 23 in the early part of 1994 --
- 24 A That's right.
- 10:47:09 25 Q 22 I think that led to then becoming one of the anchor tenants in Citywest?
- 26 A The IDA were very supportive of Xylex coming in, they eventually came in and
- 27 became the anchor tenant in Citywest and probably the biggest R and D facility
- 28 in Ireland or one of the biggest.
- 29 Q 23 Thank you, Mr. Hickey.
- 10:47:29 30

10:47:29 1 CHAIRMAN: All right. Could I just ask you before you go, Mr. Hickey, in
2 relation to our, a couple of questions in relation to the sums of 20,000 and
3 10,000 which were paid to Mr. Dunlop and which you say were paid to him to
4 allow him make political donations.

10:47:54 5 A Yes.

6
7 CHAIRMAN: And that was the agreed purpose of the payment as between you.

8 A That's right.

9
10 CHAIRMAN: Before -- first of all, who suggested that such payments or any
11 political donations should be made?

12 A Frank Dunlop.

13
14 CHAIRMAN: And did he indicate to you that they were to be made solely to
15 councillors or was it more -- wider than that?

16 A It was the June of 1991, it was a local election and I took it to mean that it
17 was all, that was for local councillors. Local as in the 77 of them, it was a
18 full chamber at that stage.

19
20 CHAIRMAN: Did he indicate to you how this money would be distributed, who was
21 to get what or was it to be evenly distributed or did you have any such
22 discussion?

23 A To be honest, I don't think I had such a discussion. I mean he was somebody of
24 very high standing, this is what he suggested we would do and this is what he
25 thought was best way to do it. I would have thought nearly everybody in the
26 chamber would have got it or perhaps he would give it to leaders of the
27 respective parties and they decided how they would -- I really don't know how
28 he was intending to do it but the very clear intention was it was for the local
29 elections.

10:49:11 30

10:49:11 1 CHAIRMAN: After he had distributed the money or you would assume he had
2 distributed the money, did you ask him or did he offer to tell you or did you
3 ask him who got the money?

4 A No, I didn't ask him.

10:49:22 5
6 CHAIRMAN: Can you say --

7 A I don't -- I don't recall asking him what he did with the money. I presumed he
8 had distributed it.

9
10:49:30 10 CHAIRMAN: Would it not have been of interest to you to know who got what?

11 A Well I actually, I think I presume that he was going to give it to every
12 councillor but I didn't enquire how he spent the money.

13
14 CHAIRMAN: And then also I think you said in evidence that you didn't receive
15 any acknowledgements.

10:49:51 16 A I think in all of the monies that I have sent to various politicians, I am not
17 sure I have ever got an acknowledgment from any of them, all the ones I have
18 disclosed to the Tribunal as legitimate ones, I don't believe I have ever got
19 an acknowledgment from any of them.

10:50:07 20
21 CHAIRMAN: That was going to be my next question, did it not surprise you that
22 not a single councillor wrote a note or sent a slip saying --

23 A I don't believe I have ever got an acknowledgment from any councillor or
24 politician that I sent out monies to.

10:50:25 25
26 CHAIRMAN: All right.

27
28 JUDGE FAHERTY: Just on that theme also, Mr. Hickey, who made the decision,
29 you were approached by Mr. Dunlop

10:50:34 30 A That's right.

10:50:35 1
2 JUDGE FAHERTY: For the contribution. Who made the decision on the sum?
3 A Frank Dunlop would have mentioned the sum.
4
10:50:41 5 JUDGE FAHERTY: Right. And to whom then, he mentioned it to you directly, did
6 he?
7 A We would have had a meeting with David Shubotham, myself and Frank Dunlop would
8 have been there and Frank Dunlop would have mentioned that.
9
10:50:53 10 JUDGE FAHERTY: Yes, this is a sum I think that was paid by Newlands Limited
11 or Citywest limited
12 A Which ultimately became Citywest.
13
14 JUDGE FAHERTY: I think it was a Newlands cheque if I recall
10:51:03 15 A That's right.
16
17 JUDGE FAHERTY: Who was on the -- well who within Newlands could make that
18 decision, Newlands Limited, to pay that amount of money?
19 A I would have been the Chief Executive and David Shubotham would have been the
10:51:17 20 chairman so we would have been effectively responsibility for running Citywest.
21
22 JUDGE FAHERTY: Was there a board meeting convened to discuss this?
23 A There wasn't a board meeting but we would have been, we effectively have run
24 Citywest all along, David Shubotham and I, I think all decisions would have
10:51:38 25 been made collectively.
26
27 JUDGE FAHERTY: The 20,000, it was a considerable sum.
28 A It was a considerable sum.
29
10:51:44 30 JUDGE FAHERTY: Back in 1991. Just, you have given evidence here the other

10:51:48 1 day, Mr. Hickey, about Mr, you being glad or happy that Mr. Dunlop converted
2 his fee into a shareholding because your company was short of money.

3 A Yes.

4
10:52:03 5 JUDGE FAHERTY: And I am just saying did it not then necessitate a full board
6 meeting for you to pay out 20,000 where effectively you didn't have any control
7 over it once it left your hands

8 A That's true, Citywest is a partnership and essentially there was, I am not sure
9 if we had a management committee at that stage but the effective control of
10:52:26 10 Citywest was David Shubotham and I and I am not sure when the management
11 committee was put in place but the other, was it Ciaran McLoughlin perhaps he
12 would have been non-executive, the decisions would have been made by David
13 Shubotham and myself and I think when Frank Dunlop came, it was a significant
14 sum of money but as I say, there were 77 councillors and you know, I thought
10:52:50 15 look it, if that's what I said be doing, what's what I did.

16
17 JUDGE FAHERTY: And did you anticipate that the 78 councillors would get
18 something from this money?

19 A Well, to be honest I am not sure whether he was going to give it to each
10:53:04 20 individual one or whether he was going to give it to ones who voted for it or
21 whether he was going to give it to the heads of the parties. I mean every
22 single party voted for it but we basically, there was an awful lot of decisions
23 being made. He asked us, said this was the appropriate amount, election
24 campaigns are very expensive, these people have been very supportive of you and
10:53:28 25 you know I think it's something that you should do and we discussed it and said
26 well look if it's something we should do, we better go and do it.

27
28 JUDGE FAHERTY: Thank you.

29
10:53:38 30 CHAIRMAN: All right. Thank you very much, Mr. Hickey.

10:53:41 1 A Thank you very much.

2

3

THE WITNESS THEN WITHDREW.

4

10:53:44 5 MR. O'NEILL: The next witness is Mr. David Shubotham.

6

7

MR. DAVID SHUBOTHAM ALREADY SWORN, EXAMINED BY MR. O'NEILL.

8

9 CHAIRMAN: Good morning.

10:54:09 10 A Good morning, Mr. O'Neill.

11

12 MR. O'NEILL: Good morning, Mr. Shubotham, at the conclusion of our inquiry on

13 Friday afternoon last, we were dealing with a payment which you made to

14 Mr. Frank Dunlop in the sum of 20,000 pounds in the month of March of 1993,

10:54:26 15 isn't that so?

16 A That's right, yes.

17 Q 24 And just to recap on that briefly, the source of those funds was your own

18 personal account with private banking, isn't that right?

19 A That's correct, yes.

10:54:38 20 Q 25 And the account from which this money was drawn was an account into which J&E

21 Davy had paid you a cheque of some 51 odd thousand which was lodged on the same

22 day as you paid out the 20,000 to Mr. Dunlop's company, Shefran, isn't that

23 right?

24 A That's not necessarily correct.

10:54:59 25 Q 26 Not necessarily, okay?

26 A Because I would have an account in Davy's with my own capital in it, it could

27 be my own account as opposed to a Davy account, it was an unusual sum of money

28 so I am not sure.

29 Q 27 You are not sure of what the composition of the lodgment figure is, is that

10:55:14 30 right?

- 10:55:14 1 A What I am not sure of is which account I took it out of in Davy's. I was a
2 partner so I would have a number of accounts in Davy's.
- 3 Q 28 Sure. But just to look at the account perhaps it's simpler if we look on the
4 screen at 2619, we will see there are two entries here, just turn that please.
- 10:55:40 5 There are two entries here. The first in time a cheque deposited, 51,458.33
6 and the other is a cheque debited and that's the Shefran cheque?
- 7 A Correct.
- 8 Q 29 I am not sure if they give you value for the cheque lodged on the day or
9 otherwise?
- 10:56:02 10 A I think they do but I am not certain.
- 11 Q 30 Okay. But in any event, this is a payment which is a personal payment by you
12 and as is evident from the account here, it put you effectively further into
13 debt to have paid this amount to Mr. Dunlop by means of this Shefran cheque,
14 isn't that so?
- 10:56:27 15 A Well, I think Mr. O'Neill's debt implies that you are owing money. I mean this
16 is only one of my accounts and indeed I have assets, be they bonds, be they
17 securities and I noticed actually I was taken by the overdraft figure being
18 left as though it were to imply something because on the bottom of the page,
19 total debits and total credits and you may have the unmarked version and I am
10:56:56 20 happy to put that up on the screen but I certainly have a recollection that the
21 debits are for that period about 147,000 and the credits maybe 80 or 90,000 so
22 it was, you know, it was a fairly, say, active account in terms of turn over.
23 But like I had plenty of money, it was well known in I think about 19 was it
24 '89 or '90, we sold Davy's for many tens of millions, I was one of the joint
10:57:29 25 largest shareholders in Davy's so I would have been well known as being a
26 reasonably wealthy person.
- 27 Q 31 I am not is suggesting of course for a moment --
- 28 A It was just the word debt.
- 29 Q 32 I am just saying that it wasn't a matter of merely moving money which happened
10:57:44 30 to be on deposit and earning whatever rate of interest was there, it involved

- 10:57:50 1 putting that account further into a liability position for the period in
2 question, you don't --
- 3 A Sure, fine, absolutely.
- 4 Q 33 I am not saying it significantly affected your interests but it is one of the
10:58:04 5 matters that the Tribunal may consider relevant when determining the basis upon
6 which this money was paid out, that it did involve you in borrowing on this
7 basis the amount that went to Mr. Dunlop?
- 8 A Absolutely but I assume that the Tribunal has the benefit of the full statement
9 as opposed to the blacked out version because as I said there's a lot of
10:58:34 10 turnover on that account.
- 11 Q 34 The explanation for the payment is one where you indicate that it was monies
12 which were requested of you by Mr. Dunlop and that you acceded to his request
13 and determined that it would be appropriate that you paid him the money. Now,
14 I was trying in the first instance to establish when it was that it was likely
10:58:55 15 that this cheque was cashed because as we see here from this account, this is
16 the date upon which the cheque is debited to your account and I think we know
17 that that does not necessarily mean it's the date that the cheque was written.
18 In other words, it could be if Mr. Dunlop had gone to this particular branch of
19 the bank with the cheque in question and had it cashed as of that date, one
10:59:26 20 could say that the cheque might well have been dated the 16th and the payment
21 made on the 16th but we know from Mr. Dunlop that he made a number of lodgments
22 to his accounts to which he attributes your cheque as being the source of the
23 funds that were used to make those lodgments. He says that on the 15th, the
24 day before this is debited to your account, that he lodged to his building
10:59:56 25 society account a sum of 12,000 pounds which was a cash sum. On the same day
26 he lodged 1,000 to his AIB account in cash and on the previous Friday, he had
27 lodged another 1,000 in cash to that bank account?
- 28 A As a general rule in Private Banking in Bank of Ireland you are on same day
29 value but that is the norm but I am not saying it couldn't be otherwise.
- 11:00:26 30 Q 35 Yes. He, Mr. Dunlop, believes that the 14,000 pounds that he realised out of

- 11:00:32 1 the, that he realised on those dates, that is on the afternoon of the 12th and
2 on Monday, the 15th totalling 14,000 were sums which he realised as a result of
3 presenting your cheque for encashment, that is your cheque to Shefran; he
4 cashed that cheque, got the money, lodged 14 of it and kept six.
- 11:00:56 5 A Okay.
- 6 Q 36 Now, you, I think, indicated that whilst you are not clear as to what day it
7 was that you actually paid him this money, it had no connection whatsoever with
8 the events that were progressing in relation to the Pennine Holdings rezoning
9 motion?
- 11:01:22 10 A Absolutely.
- 11 Q 37 And you may know and the Tribunal has examined this in some detail, the
12 sequence of events at this time was that was the motion papers had to be lodged
13 with Dublin County Council before five o'clock on Friday, the 12th of March
14 1993 and the evidence of Mr. Dunlop has been that he typed up the motions
11:01:47 15 himself, he acquired the appropriate map, he went to the councillors whose
16 signature was required to put the matter before the Council because it's not a
17 matter of any individual being able to do this, it has to be from the body of
18 the council itself that such motions come; that he acquired the signatures of
19 four councillors for the motion and that he lodged those papers with the
11:02:17 20 Council. Now, as of that time, do you believe that you no longer were a person
21 who had any interest in becoming involved in the Pennine Holdings Baldoyle
22 project, if I could call it that?
- 23 A I do.
- 24 Q 38 And you date that to a period sometime in the end of the previous summer 1992?
- 11:02:46 25 A Correct.
- 26 Q 39 It follows from that that you say you had no interest, good bad or indifferent,
27 in whether his plans for Pennine were advancing or not because you weren't
28 going to be involved?
- 29 A Sure.
- 11:02:56 30 Q 40 Isn't that right?

- 11:02:57 1 A Correct.
- 2 Q 41 I want to deal now with the coincidence of dates that occur in relation to the
3 contacts which Mr. Dunlop had with you and your contacts with him around this
4 period. And if we deal firstly with the 12th itself, the 12th as I have just
11:03:16 5 explained, was a date which was crucial in so far if there was not a motion on
6 the table as at five o'clock that day, the matter was simply never going to get
7 done so it was crucial from Mr. Dunlop's point of view, he had it noted in his
8 diary as being one of the dates upon which certain acts had to take place. And
9 we will see that on the eve of that day, that is on the 11th of March of 1993,
11:03:45 10 it appears -- and this is at page 1883 -- Mr. Dunlop made contact with you
11 unsuccessfully and you made contact with him again unsuccessfully at 9.15 on
12 the morning, his office records you as having returned a call to him, do you
13 see that.
14
- 11:04:09 15 And again, obviously, it was a matter that you wanted to talk to him about or
16 you wanted to clear the position with him because at 11.10 on the same day you
17 are trying to get in touch with him and as I say, this is the eve for the
18 crucial date for the lodgment of the motion. Do you have any recollection what
19 it was specifically that you were discussing with him if you made contact with
11:04:33 20 him on that day.
- 21 A No, I do not.
- 22 Q 42 You were trying to and you didn't succeed but you can't recollect?
- 23 A No, I can't and --
- 24 Q 43 And then if we move then to the following day, which was the day of the motion
11:04:47 25 itself, now we look at page 1885, you will see that at 12.50 on that day, there
26 is a record in his telephone diary that you were to call him, that is
27 Mr. Dunlop. Now we know that the cheque was written, the cheque was a cheque
28 for 20,000 and it follows that that cheque must have been given to Mr. Dunlop
29 in an around the time we are talking about if it finds itself presented in the
11:05:21 30 bank for encashment or payment on the 16th, which is Tuesday, so you did meet

- 11:05:29 1 him at that time?
- 2 A I am sure I met him, if I gave him a cheque at some stage, I obviously met him.
- 3 I wouldn't have sent it in the post:
- 4 Q 44 No. If you had a meeting, it was in and around this time and whereas it might
- 11:05:46 5 not have been of particular concern to you, can I suggest it definitely was a
- 6 concern to Mr. Dunlop who was still promoting this project and hopeful of
- 7 success. It was something, could I suggest, that it would have been likely
- 8 that he and you would have discussed either by him raising it and I am saying I
- 9 am now about to progress the Pennine matter, I have the motion and I am ready
- 11:06:10 10 to go, you should have stayed in, however it might be?
- 11 A I obviously don't know Mr. O'Neill what he would have said, I can't help you
- 12 there.
- 13 Q 45 But there was such a meeting and at that meeting you say he indicated to you
- 14 that he wanted to be paid in relation to services he had provided for Citywest.
- 11:06:27 15 A Correct.
- 16 Q 46 And this obviously was over and above any discussion as to fees which had taken
- 17 place to that day because he had been satisfied or certainly his requirement
- 18 for payment had been transmuted from cash into shareholding in November of
- 19 1991, isn't that so?
- 11:06:51 20 A Yes, that's right.
- 21 Q 47 And that was some 14 or 15 months beforehand?
- 22 A Sure.
- 23 Q 48 There had been no demand made of you for any further payment from that time to
- 24 the date you wrote this cheque, isn't that so?
- 11:07:05 25 A Not that I can recall.
- 26 Q 49 No so to that extent it was an out of the blue request for fees, it wasn't
- 27 pre-arranged, for example, that he should call to you to discuss further fees.
- 28 A No, that's correct.
- 29 Q 50 And Mr. Dunlop has indicated that he did not, was not suffering from any
- 11:07:23 30 particular financial hardship at that time, that he had a significant turnover

- 11:07:27 1 of cash, that he didn't have an immediate need for the payment of monies at
2 this time although he does says as you do that he approached you looking for
3 money and it was in connection with Citywest?
- 4 A And I obviously can't recall unfortunately whether or not he said he was short
11:07:51 5 or money or otherwise, I just can't recall.
- 6 Q 51 But even if he had, Mr Shubotham I am quite sure there are any number of people
7 in business who value their services considerably more than they are actually
8 worth and they may persist in seeking more money from you for services and I
9 suggest that the general answer to that is we had an agreement, we satisfied
11:08:15 10 that agreement by paying you 18 months ago or 16 months ago, simply not
11 interested in hearing any further demands for payment made of us, establish
12 what the legal or contractual basis for those payments are and we can discuss
13 the matter.
- 14 A Except obviously in this case, Frank had done a considerable amount of
11:08:35 15 additional work since 1991 so I mean there was certainly considerable time and
16 effort put into Citywest by Frank in that period so in that regard, I can't say
17 I thought it unreasonable.
- 18 Q 52 But insofar as he may have provided any services in that time, they were of
19 course services provided to Citywest of which he was a partner, isn't that
11:08:57 20 right?
- 21 A A very small partner.
- 22 Q 53 You were also a partner?
- 23 A I was --
- 24 Q 54 And were you charging also for your services to the partnership? Or were
11:09:09 25 you --
- 26 A Well -- yes we had a charge to our partnership for a minor amount of money, I
27 think a management fee might have been 25,000.
- 28 Q 55 Yes. And that fee was a fee which was levied on the partnership itself, is
29 that right?
- 11:09:30 30 A Mmm -- hmm.

- 11:09:31 1 Q 56 The body of partners and I think you have indicated by this date in 1993, the
2 expenditure on the project was probably touching 10 million or in excess of 10
3 million, is that right?
- 4 A Correct.
- 11:09:45 5 Q 57 The majority of which had been advanced by the financial backers other than
6 yourselves, isn't that right?
- 7 A Oh no, no, not other than ourselves, I would have been a significant
8 shareholder and so would David Hickey and many others, I have supplied details
9 of shareholders to the Tribunal but --
- 11:10:03 10 Q 58 And in other words, you were not merely charging an introduction fee in this,
11 you were a significant equity holder of the project yourself?
- 12 A Correct.
- 13 Q 59 In addition to being effectively the steering committee for the partnership as
14 regards expenses?
- 11:10:20 15 A Yes, that's right.
- 16 Q 60 You indicate that the reason why the money was paid by you personally is
17 because you believe that a request for payment of this sum made to Citywest
18 would not have been favourably received at the time because of a perception
19 that perhaps the project was in its infancy and its financial outlook was not
20 guaranteed, is that so?
- 11:10:52 21 A Well, that's not completely correct because we had, as I think Brendan pointed
22 out to you in the past couple of days, we had an arrangement, a very unusual
23 banking arrangement with ICC whereby the only invoices that we were allowed
24 levy on the project were specific invoices to improvement of the infrastructure
25 which we, I guess, quite unusual but again, as Brendan has pointed out to you,
26 we had got turned down by two banks, it was certainly a surprise to us, we were
27 fully equity funded, we had no borrowing, we believed we had a very good
28 project but there you are. 1993, as you know, was a very difficult time.
- 29 Q 61 Well, who are you saying would have required you to justify or set up or
30 establish that this was a capital infrastructure payment?
- 11:11:47

- 11:11:50 1 A The bank.
- 2 Q 62 The bank. You would have had to go with this 20,000 invoice produced by Frank
3 Dunlop & Associates if there was one?
- 4 A That's right.
- 11:11:58 5 Q 63 Or Shefran if there was one to the banks to say here is expenditure that we
6 have incurred and we want to pay this out of Citywest, is that so?
- 7 A Yes, that that would be correct.
- 8 Q 64 And are you suggesting for a moment that this would not have been met by the
9 bank given the situation that you have explained already that there were no
10 borrowings, that the matter was fully funded and --
- 11 A No, no, there were borrowings, sorry, there were significant borrowings. The
12 point was that the bank wasn't permitting us to do anything. They wanted to --
13 and I can understand the bank's position, the bank wanted to make sure that
14 every dime and nickel that was spent on the project was actually going to
11:12:40 15 enhance the infrastructure so if at the end of the day, which of course it was
16 possible, the bank were left to foreclose on its loan, the monies we would have
17 spent would actually be attributable to the project itself and therefore
18 hopefully they would realise the bulk of that benefit and I think we are
19 talking about the bridge and sewer and things like that at the time and the
11:13:00 20 landscaping.
- 21 Q 65 Right. But the money which was paid to Mr. Dunlop in respect of services for
22 the bridge were met by Citywest?
- 23 A Sorry?
- 24 Q 66 The monies which Mr. Dunlop billed for his services in relation to the bridge
11:13:20 25 work were met by Citywest.
- 26 A I am not sure what those payments were?
- 27 Q 67 About 1578, I will find the invoice for you.
- 28 A ...
- 29 Q 68 I should say it's page 2394 on screen. You will see firstly it's to Citywest
11:13:58 30 Limited care of Davy Hickey properties, the break down then of photography ...

- 11:14:07 1 A This is in August of 1993, is it?
- 2 Q 69 It's August 1993, yes. Six months after the --
- 3 A After the ratification of our zoning and so on and so forth.
- 4 Q 70 Well, the zoning wasn't ratified really?
- 11:14:24 5 A I am sorry, chairman, I am not on technical terms, whatever it was, apologies.
- 6 Q 71 The dates, if they help you, are that in March of 1991, the Section 4 was
- 7 successful. That is the application of zoned other than what was provided in
- 8 the then zoning plan. It then acquired planning permission and defeated an An
- 9 Bord Pleanala objection to it, all of which was complete by --
- 11:14:55 10 A Sorry to stop you there, defeated An Bord Pleanala objection.
- 11 Q 72 There was an appeal to An Bord Pleanala which was rejected?
- 12 A So, An Bord Pleanala confirmed it, yes.
- 13 Q 73 So they rejected an appeal, it only comes to An Bord Pleanala as an appeal?
- 14 A It was An Taisce appeal, isn't that right.
- 11:15:14 15 Q 74 They don't have the capacity to institute their own appeals, there has to be a
- 16 third party. That was all done successfully by mid 1991 so the rezoning from
- 17 the point of view of it appearing on a zoning map was not something that was
- 18 completed until such time as Dublin County Council adopted the new zoning which
- 19 took place on the 10th of December 1993 which followed upon a wrap up meeting,
- 11:15:45 20 the 29th September, 1993. So matters had not changed formally from the zoning
- 21 point of view prior to the payment of this particular invoice.
- 22 A Okay.
- 23 Q 75 So I just -- I am asking you, Mr. Shubotham, whether or not it is the case that
- 24 Mr. Dunlop's fees in relation to this project were met on this day in August
- 11:16:11 25 1993 in respect of something which was of a PR nature, if I put it that way,
- 26 hardly capital, and no different, I suggest, than any of the other work which
- 27 he may have been seeking to be paid for in March.
- 28 A Well I wouldn't agree with you.
- 29 Q 76 Okay.
- 11:16:32 30 A It's paid to third parties, I guess, and it's also is part of broadly speaking

- 11:16:38 1 the bridge project which was something the bank were funding.
- 2 Q 77 But you have explained, I think, on Friday --
- 3 A It is --
- 4 Q 78 Sorry, I didn't mean to cut you off. You explained on Friday the considerable
- 11:16:55 5 work which Mr. Dunlop did for Citywest during the period which would have
- 6 merited an additional payment over and above the 75,000 pounds equity if I can
- 7 could call it that or capital share that he was allocated to, is that right,
- 8 you indicated a number of things which he had done in relation to providing --
- 9 A During the period post 1991?
- 11:17:21 10 Q 79 Yes, which would have been the basis of a legitimate claim by him for future
- 11 services?
- 12 A I think he was entitled to extra payment, correct, which is why I made the
- 13 payment to him.
- 14 Q 80 But no invoice was generated in respect of those sums which were to be paid by
- 11:17:42 15 you, by means of this 20,000 payment, isn't that right? You seem to have paid
- 16 it to Shefran without ever being invoiced for those services?
- 17 A Absolutely.
- 18 Q 81 Isn't that right?
- 19 A Well, you can't get invoiced personally for something, that would be
- 11:17:58 20 illegitimate and I made no effort to hide this payment, it was a legitimate
- 21 payment, there was no invoice and there shouldn't be an invoice to somebody
- 22 personally.
- 23 Q 82 But that is because you have taken on board the responsibility, which is not
- 24 yours in the first instance and that is you assumed a responsibility, if there
- 11:18:16 25 was one, which was that of Citywest.
- 26 A Yes, absolutely.
- 27 Q 83 If Mr. Dunlop had a legitimate claim against anybody, it was against Citywest
- 28 and not you?
- 29 A Sure, that's correct.
- 11:18:27 30 Q 84 And when he looked for money from you, that was unusual itself, isn't that

- 11:18:33 1 right?
- 2 A It is.
- 3 Q 85 Now I mentioned a few questions ago that the explanation that you have given to
- 4 Tribunal for the fact that this was dealt with by you and not Citywest was
- 11:18:49 5 because you had a fear or reluctance or a belief that if such a payment was
- 6 requested from Citywest, that Citywest, the partnership, would not have been
- 7 happy to pay it because of the fact that there was no guarantee that this
- 8 project was going to be a success, that money was tight effectively, and that
- 9 therefore you decided to pay it personally, is that so, is that a synopsis?
- 11:19:22 10 A It's your synopsis of it. I paid it because I believed we didn't have the
- 11 money and I believed that the reputation of the whole project was largely down
- 12 to me and I needed to make sure that Frank was kept in focus and kept happy.
- 13 Q 86 All right. Well I suppose rather than paraphrasing what you have said about
- 14 it, it might be more accurate if I put to you what you told us in relation to
- 11:19:48 15 it?
- 16 A Sure.
- 17 Q 87 And that's at page 657. Which is a letter received by the Tribunal on the 17th
- 18 of January 2001 from your solicitors in which you say "The payment arose in
- 19 circumstances where Mr. Dunlop had raised the issue of a payment for work
- 11:20:11 20 carried out in respect of Citywest. At that point in time, he had agreed to a
- 21 return through a shareholding he had received in Citywest. It is
- 22 Mr. Shubotham's recollection that in early 1993, the question of whether or not
- 23 Citywest might be a success was far from assured and the value of Mr. Dunlop's
- 24 shareholding was questionable. Mr. Shubotham on his own account formed the
- 11:20:36 25 view that Mr. Dunlop had done good work in respect of the project but given the
- 26 pressures on financing, he did not believe that any request made to Citywest
- 27 for additional payments would be well received. In the circumstances, he made
- 28 a decision to make a personal payment to Mr. Dunlop as a gesture of good will."
- 29
- 11:20:54 30 Again, this is expressed in the third party by somebody who wrote it on your

- 11:21:02 1 behalf but obviously they wrote this letter to the Tribunal on the basis of
2 what you had said to them
- 3 A Correct.
- 4 Q 88 You adopt this as being the explanation?
- 11:21:12 5 A Sure I do, yes.
- 6 Q 89 In this firstly there's no indication that one of the reasons why the matter
7 was not submitted to anybody was that there was a constraint on generating
8 further, expenditure other than in respect of immediately identifiable capital
9 costs, isn't that right?
- 11:21:31 10 A That's correct, yes.
- 11 Q 90 And equally, there's no reference here to the fact that this payment was made
12 for additional work over and above that work for which he had already been paid
13 by means of the shareholding, isn't that so?
- 14 A Correct.
- 11:21:47 15 Q 91 And if one read this without knowing that Mr. Dunlop had in fact done
16 additional work, one would take the view that the payment of the 20,000 pounds
17 was meant to be over and above the 75,000 but in respect of the work done that
18 had merited the payment of the 75,000 in the first instance?
- 19 A That's right.
- 11:22:12 20 Q 92 There was nothing here to say that this was an additional payment made in
21 respect of additional works carried out, isn't that so?
- 22 A Yes, that's quite true but that's only because I didn't elaborate to that
23 extent. I mean it is March of 1993, the brief payment is 1991, so he had done
24 a considerable amount of work for us in that period.
- 11:22:34 25 Q 93 I appreciate that's your evidence Mr. Shubotham but I am putting to you that
26 when you seek to explain the payment, you are doing so in the context of
27 putting a cash payment on the one side as against a shareholding on the other
28 and saying, if I interpret this statement right, that there was no guarantee
29 that the 75,000 shareholding that Mr. Dunlop had been given would in fact
11:23:00 30 translate into being worth 75,000 pounds and in those circumstances, you felt,

- 11:23:05 1 given the possibility that that shareholding would not translate into something
2 of value, perhaps not to the value of 75,000 pounds, you felt it was only
3 proper that he get a cash sum albeit 20,000?
- 4 A That's very fair and I think what he was suggesting was exactly the point that
11:23:27 5 you make, that you hadn't got any cash out of it and that was after a lot of
6 work that he had put in and indeed a lot of additional work he had put in since
7 1991.
- 8 Q 94 Yes. I mean the inter position of the word additional is something I suggest
9 which puts a new dimension on the payment over and above what's contained in
11:23:52 10 your statement because I think you have fairly indicated that there is no
11 reference in your initial statement to the Tribunal to this being in any way a
12 payment for additional work, though I know that that is your evidence at the
13 moment?
- 14 A And I would have taken it that people -- you see again it's easy for me knowing
11:24:08 15 the work that he had done and without referring to it here and it is two years
16 later so I am taking the timeframe as being the indication of that but I agree
17 it could have been clearer that he did a lot of work for us in the meantime is
18 without doubt.
- 19 Q 95 You may also know Mr. Dunlop's evidence to the Tribunal here has been that he
11:24:28 20 did not charge for any work over and above the time when he got his 75,000
21 pounds payment by means of a shareholding in the company. He says that he
22 wasn't charging for new work so whilst he acknowledges that he asked you for
23 money, it was for what he had done originally rather than for what he did
24 subsequently?
- 11:24:53 25 A Well, I would not agree with that.
- 26 Q 96 I appreciate that.
- 27 A Yes.
- 28 Q 97 Now, when do you say the ICC imposed on you and your steering committee, which
29 comprised Mr. McLoughlin, I think, and Mr. Hickey, is that right, were they the
11:25:12 30 three of you who were actually the managing partners?

- 11:25:15 1 A Yes, well Ciaran in a non-executive capacity, Brendan and myself.
- 2 Q 98 Yes, you didn't have to go back with these sort of executive figures back to
3 the partnership as a whole to find out whether or not --
- 4 A No.
- 11:25:28 5 Q 99 So the constraint against payment to Mr. Dunlop didn't arise from the fact that
6 you had to justify it to your own partners? You could do that?
- 7 A That's correct.
- 8 Q 100 The difficulty you say was that you had an existing arrangement with ICC that
9 they would have to be satisfied that there was a payment in the nature of a
11:25:46 10 capital payment if they were to meet it, is that so?
- 11 A To do with the infrastructure improvements.
- 12 Q 101 Okay. And when was it that that restraint or constraint was put in place by
13 ICC in relation to expenditure?
- 14 A I couldn't tell you but I presume when we got the loan facility sometime in
11:26:10 15 1992. Please don't hold me to that. I am not part of the payments mechanism
16 here, this was all done in Davy Hickeys so I can't give you a precise time.
- 17 Q 102 Irrespective of when it exactly was, it wasn't an additional restriction
18 imposed on the manner in which you were going to operate the partnership who
19 was there ab initio from the time you took on the finance, this was one of the
11:26:33 20 conditions on which it was given?
- 21 A The finance from ICC.
- 22 Q 103 Yes?
- 23 A It was part of the ICC arrangements.
- 24 Q 104 They didn't, in other words, conduct some form of a review on it in 1993 and
11:26:43 25 say look, we are veering now into the red, here is a new set of conditions?
- 26 A I couldn't tell you that unfortunately.
- 27 Q 105 Well, I suspect that it would have been a worry to you had it happened and
28 since you don't recollect it happening, it didn't happen?
- 29 A As I say, I don't know, so I can't give you the answer to that.
- 11:27:02 30 Q 106 You see about four months before this payment was made to Mr. Dunlop, Citywest

- 11:27:11 1 made a payment of 10,000 pounds on foot of what Mr. Dunlop says is a bogus
2 invoice and even if it wasn't when one looks at it on its face, a payment which
3 claims to be in respect of services provided vis-a-vis refresher facilities for
4 strategic --
- 11:27:27 5 A Did you sorry, did you say Davy Hickey or Citywest paid the 10,000?
- 6 Q 107 Citywest.
- 7 A Yes, fine.
- 8 Q 108 Well I should say Newlands to be more --
- 9 A That's fine.
- 11:27:42 10 Q 109 Newlands becomes Citywest so I think that the difference may be more apparent I
11 suppose than real there but the payment was made in any event four months
12 beforehand on foot of an invoice which was raised in connection with, as I say,
13 refresher facilities for strategic something or other, meaningless according to
14 Mr. Dunlop who generated it but it's the 10,000 payment in November. Now if
11:28:14 15 that payment was met, albeit that there is nothing on the face of it to suggest
16 that it has anything to do with capital costs, is there any reason why an
17 invoice from Mr. Dunlop in the same terms could not have been met firstly and
18 even if it was structured in a way that it was for time and effort on his part
19 carried out in the various services that you detailed he provided for you, in
11:28:46 20 in what circumstances would that not have been met?
- 21 A I couldn't tell you.
- 22 Q 110 I am putting to you if there was a requirement to satisfy ICC that this payment
23 or any payment was of a capital nature, that requirement had not been met to
24 this point in time in 1993 because the payments which had been made by Citywest
11:29:11 25 to that point were not so constrained, understand?
- 26 A I understand what you are saying, yes.
- 27 Q 111 So, can I suggest there would have been no impediment to this payment being
28 made to Mr. Dunlop had he produced an invoice from Shefran in identical terms
29 to those which we have seen so far from Shefran and which were honoured.
- 11:29:40 30 A Well, all I can tell you is that I formed the view that we couldn't pay it

11:29:45 1 through Citywest and I paid it myself. That's my evidence and that's exactly
2 what I did.

3 Q 112 I see. I want to move now, Mr. Shubotham, from that payment to dealing briefly
4 with the other significant events in the chronology of the Pennine Holdings
11:30:13 5 rezoning application and the extent to which you had meetings with or contacts
6 with Mr. Dunlop in and about the time of those significant events. We will
7 just have a look at some documentation that deals with that, if we may.

8
9 We will see that the motion papers signed on the 12th of March were intended to
11:30:38 10 be considered before a special meeting of the council to take place on the 20th
11 April of 1993 and if we look to page 2003, we will see that on that day, there
12 were contacts between yourself and Mr. Dunlop, meetings I think generally
13 started at 10.30 and generally over by lunch time, if they weren't, there had
14 to be special arrangements made I understand

11:31:23 15 A Sure.

16 Q 113 You contacted at 9.45 on Tuesday, 20th of April 1993 and that would be in
17 advance of any meeting. You contacted his office and you left a number in the
18 UK, presumably for him to ring back and you returned to Dublin later that day
19 and again, contacted him at 1.45 that day and in the interim, between those two
11:31:49 20 periods of time which are set out there, the Pennine Holdings motion was being
21 considered by the councillors in Dublin County Council, one motion, that is the
22 first motion brought and signed by the four councillors on the 12th March had
23 been withdrawn and an amendment had been proposed to a second motion but again,
24 dealing with these particular lands, a substantial part, in other words, of the
11:32:21 25 motion activities in Dublin County Council between these hours was concerned
26 with the project to rezone the Baldoyle lands. Now you contacted him before
27 that meeting and after it, do you have any recollection of Mr. Dunlop raising
28 the fact that he had been at that meeting all morning and had been endeavouring
29 to steer things a particular way or any other conversation by him in relation
11:32:49 30 to where he was that day and what he was doing.

- 11:32:52 1 A No, and the specific recall I have because I have no idea, I am happy to
2 discuss with you in due course the generality of both the meetings and the
3 telephone calls to try and put some flesh on the Citywest aspect of it but in
4 relation to Pennine or Baldoyle, no.
- 11:33:18 5 Q 114 You may take it that the reason why Mr. Dunlop was not available for you
6 between those times was we know that he was physically in the chamber of the
7 council at that time and we have seen the motions which were typed up in the
8 council at that time which were drafted by him so he was quite busy between
9 those times. Do you have any recollection of any specific Citywest issue being
11:33:41 10 discussed as of the 20th April 1993?
- 11 A I cannot put a date on any specific Citywest issue. Mr. Hickey dealt with a
12 number of the issues that we had going on at the time and I could certainly
13 recall and again it will be clear from his diary records that we operated a
14 very formal structure with Frank, we would meet in the mornings ahead of the
11:34:12 15 Development Plan or maybe a day ahead of the Development Plan. I think you
16 will see his diary records, both meetings were put in, I think he entitles them
17 Draft Development Plan. We would discuss whatever we believed were the issues
18 and there were very many of them at the time. Frank would then use the
19 chamber, if that's what it's called, as a place to meet with the various
11:34:39 20 different council officials, is that what they are called? Whatever.
- 21 Q 115 Elected representatives.
- 22 A No, not the elected representatives, I meant the officials.
- 23 Q 116 Yes.
- 24 A And that was a very big time for him to try and persuade and to try and bring
11:34:57 25 these people around to specific points of view or to address issues that we
26 were finding very difficult to get addressed in direct contact with him. So,
27 you should, if one wanted to get Frank to do something or to whatever, then you
28 would be prompted to either have a meeting with him or call him ahead of a time
29 he was going to meet with council officials. You will see that this, and I am
11:35:22 30 sure the Council officials will confirm all this to you, this was a time when

- 11:35:26 1 he did a lot of discussing, I guess, looking at what he did in hindsight with a
2 lot of issues that he was dealing with. That's how we saw it and we would meet
3 at 8 o'clock in the morning and discuss the various issues that we had
4 confronting us and then at the Draft Development Plan meetings, Frank would
11:35:46 5 raise whatever issues we thought and as the person that I was, if I needed, I
6 would follow up with him to see what the outcome had been but specifically,
7 unfortunately, I cannot tell you.
- 8 Q 117 You may be aware, Mr. Shubotham, of the fact that there were very many, what
9 were called special meetings of the council, which were convened on the basis
11:36:09 10 that each individual area of the council remit was considered separately by
11 reference to the maps of the Draft Development Plan and when one was discussing
12 Baldoyle, Portmarnock, that was as a result of a special meeting being convened
13 to discuss Baldoyle, Portmarnock and maps 8 and 9 which referred to that area?
- 14 A Sure.
- 11:36:38 15 Q 118 Do you believe that at those meetings convened for that purpose that Mr. Dunlop
16 was in fact discussing properties which were not contained within maps 8 and 9
17 but were the Citywest Holdings?
- 18 A Well I can't tell you, if we had an issue, the county manager, he met on many
19 occasions and a series of other officials as well on a regular basis -- I mean
11:37:01 20 Frank did things the way Frank did things but that was one of his major ways of
21 either imparting information or trying to get decisions.
- 22 Q 119 Are you saying that he indicated to you that he was going to be going to a
23 Development Plan meeting tomorrow and that he was going to raise the Citywest
24 issue at that meeting even though the primary purpose of and listed purpose of
11:37:30 25 that meeting was a Baldoyle meeting, is that what he would have said to you, I
26 will take the advantage of being there?
- 27 A If we can just take Baldoyle out for a moment and talk about all the meetings
28 that we would have, yes, the answer would be that he would say I will be
29 meeting the various officials and we will go through the list of issues we have
11:37:50 30 to deal with and he would try and get some progress or make progress on the

11:37:56 1 issues that were of concern to us at the time and again, if I may just and if
2 the chairman will indulge me a little bit because it's a little difficult in
3 taking telephone calls in isolation like that and meetings in isolation when I
4 can't give you a full recollection of what was discussed at any of them so I
11:38:18 5 feel a little bit, that I should be capable of doing it but can't. If I may,
6 and this might just take me five minutes, if you will let me, if we go back and
7 I am trying to explain the process of the way we went about our business in
8 Citywest. We go back about four years ago, in or around, we took it upon
9 ourselves when the two LUAS projects were coming to a conclusion in Dublin, to
11:38:49 10 try and get the LUAS out to Citywest. Big project. It was not on the radar,
11 it was not even considered by the RPA at the time. And the reason I am just
12 trying to give this to you is to explain to you that in the process of any
13 issues that we have in Citywest, we have an enormous number of different
14 contact points that we have to make.

11:39:20 15

16 So, in relation to something like this, you have got to go to the RPA, you
17 have got to go to various Government departments, you have got to go to the
18 council officials. You have got to go to the local councillors and you have
19 got to go to the local TDs. You have got to go to your neighbours and you have
11:39:39 20 got to go to community groups and you have got to go to Residents Associations
21 and there is an incredible array of issues that crop up, the timing, the
22 putting of those together, how you go about it, how you persuade and cajole
23 people if you believe you have something and you are really convinced in it, to
24 believe you have a good idea, it's a very complex process and that we had to do
11:40:10 25 in the case of LUAS and Citywest without a Frank Dunlop and it is a very very
26 difficult exercise. Frank was able to condense a lot of the issues that we had
27 and bring them in front of officialdom for a comment or a view and revert back
28 to us and the meetings that we had, I think generally speaking, 8 o'clock in
29 the morning in Davy's were generally followed by a Development Plan meeting
11:40:34 30 either that day or the next day, which as you rightly say may well have dealt

11:40:34 1 with a map year or a map there -- that I wouldn't be able to recall but that
2 was the mechanism and the process through which Frank did his work for us and
3 he did excellent work and I think that without him we would have floundered on
4 a number of issues

11:40:58 5 Q 120 I didn't -- I think that when you were recounting what might have taken place
6 of advance of development meetings, you made the point that this wasn't
7 necessarily the position in the case of Baldoyle?

8 A No, I was excluding Baldoyle. I was just saying that you could do any map so
9 It wouldn't necessarily be in relation to Baldoyle.

11:41:20 10 Q 121 Right, so you are saying that the same principle would have applied in relation
11 to Baldoyle as far as you are concerned. What he was likely to do at a meeting
12 for Citywest could take place at any meeting including a Baldoyle meeting as
13 far as you are concerned?

14 A As far as I am concerned, that would be correct.

11:41:39 15 Q 122 And you say that that is the reason why you would see that there are meetings
16 held in your offices in advance of Development Plan meetings, isn't that so?

17 A And I am no handwriting expert but they appear to be slowly, they are arranged
18 and pre-arranged and it was certainly a process that we went through fairly
19 diligently.

11:42:03 20 Q 123 And I am sure that after such meetings then Mr. Dunlop would account to you for
21 what had taken place at the meeting?

22 A He would account to us or if he didn't account to us, I would chase him up to
23 find out what had happened or what the account of meeting was so that we could
24 progress and continue on and get to the next level and again, for the benefit
11:42:27 25 of perhaps the chairman and others understanding what was going on here, this
26 was not all plain sailing. It was not as though we had John Fitzgerald who was
27 a very big supporter of the Citywest project but there were others within the
28 officials that were concerned that the lands owned by the Council themselves
29 and in particular in Kilmahuddrick were under threat by virtue of the fact that
11:42:57 30 we would produce a better product. So we had a fairly constant battle and I am

- 11:43:02 1 not even saying that that battle is complete to this day.
- 2 Q 124 Right. Can I suggest to you that since Mr. Dunlop was at these meetings, I am
- 3 talking now of the Baldoyle meetings, undoubtedly advancing his own project
- 4 Pennine Holdings, it is likely that a considerable amount of his time and
- 11:43:23 5 effort would have been devoted towards that primary purpose, even if he was to
- 6 raise Citywest issues as well.
- 7 A Oh, I am certain of that.
- 8 Q 125 Yes. And he would be accounting to you after the meeting, you say, in relation
- 9 to whether or not he had advanced whatever Citywest query was required to be
- 11:43:46 10 discussed at that meeting?
- 11 A Or Saggart.
- 12 Q 126 Yes, could I suggest to you he wouldn't have confined his responses to you to
- 13 that issue and he would have advised you of what the position was in relation
- 14 to how he was getting on in relation to the Newlands, sorry, to the Pennine
- 11:44:02 15 Holdings Baldoyle lands?
- 16 A In relation to the meetings that we had, certainly I can recall that at the end
- 17 of our meetings and that was the way our meetings were structured, he would
- 18 refer sometimes, maybe not always, I really can't remember, to his East View or
- 19 Baldoyle project as he saw it. So for certain, the comments that he would make
- 11:44:26 20 would not be to the exclusion of him.
- 21
- 22 Now on a telephone call, I simply don't know.
- 23 Q 127 Well, I mean the purpose of you ringing him if you were ringing him after a
- 24 meeting was to find out what took place?
- 11:44:40 25 A Correct.
- 26 Q 128 Could I suggest to you because of your relationship with him, the extent of
- 27 which your dealings with him, there was no way in which he would have kept
- 28 secret the fact that something extraordinary might have happened in the council
- 29 that day, for example on the 20th April the Council broke up in disarray
- 11:45:01 30 because of his attempts to have his plans advanced at that meeting, that was

- 11:45:06 1 not something I suggest he kept to himself?
- 2 A I am sure he didn't keep it to himself ... a lot of the calls that you would
- 3 have with Frank were very brief. He was in a hurry, rushing here and rushing
- 4 there so you can see through phone records you have to ring him several times
- 11:45:22 5 to get a hold of him so he was very busy so sometimes he would, Mr. O'Neill, I
- 6 can't tell you whether he did or he didn't.
- 7 Q 129 Right. Well --
- 8 A But it was not to the exclusion of him never mentioning Baldoyle, that I would
- 9 acknowledge. That's for sure.
- 11:45:38 10 Q 130 We know from the minutes of the respective meetings that at the first meeting,
- 11 the matter was adjourned due to disorder in the chamber to the 27th, one week
- 12 later, and one week later on the eve of that meeting again you contacted
- 13 Mr. Dunlop by telephone, I think you were in Bermuda at that time as we see
- 14 from page 2088, at 3.35 that -- at 3.35 that afternoon calling you from
- 11:46:11 15 Bermuda, will call again. I don't know if you were there on business or
- 16 pleasure but presumably you try to limit the amount of activity you bring away
- 17 with you, you wouldn't be ringing somebody from Ireland in Bermuda unless it
- 18 was important to you?
- 19 A Correct. Could I just you to see the next date, this is the 26th and I will
- 11:46:31 20 come back to that.
- 21 Q 131 Sure the 27th is page 2097 and you will see on that day you telephoned him at
- 22 255?
- 23 A Now, can I go back, it was just to jog my memory. I don't have the benefit of
- 24 having all this in front of me. I did refer before to the fact that we had
- 11:46:57 25 other partnerships. So we have discussed so far here, I think, only Citywest
- 26 and Saggart as the two partnerships, we had a third partnership at the time and
- 27 Frank helped us to, the best way to describe it was to broker some
- 28 disagreements that existed between the developer who had been the major partner
- 29 in the development and the local officials. In this case, we would be dealing
- 11:47:30 30 with the officials from Dun Laoghaire/Rathdown. At that time we had another

11:47:37 1 partnership as I say, I don't really remember the numbers but we owned 71 acres
2 of land in St. Helen's in Booterstown and again, it was one of those multiple
3 partnership structures, the same deal and hard and all as it is to recall now
4 in those very difficult times, there were lots of issues in the market place
11:48:05 5 and it wasn't again a particularly successful investment but from time to time
6 the main property developer who handled this had or ran into conflict with the
7 local officials over different matters and in the event of that happening, I
8 would go to Frank to try and smooth out and to try and move processes along.
9 Again, I am not saying to the Tribunal or to anybody that that is a matter of
11:48:40 10 fact but as I looked through the records of that week and that's why I referred
11 to the 27th. I see Sean Dunne rings Frank and I see he rings him later than
12 week. It would certainly suggest to me and he was the developer who was
13 developing St. Helen's and he was part of our partnership but it would
14 certainly suggest to me that there was some issue that we were trying to get
11:49:07 15 Frank to get us assistance with and in fact I am not sure if one of the days
16 there isn't a local councillor, Betty Coffey from Dun Laoghaire referred to as
17 well as making a telephone call but I say no more than to say that it would be
18 a suggestion there was a Berland issue when I was in Bermuda and I would also
19 say to you again that I was Bermuda part on business and part on holiday, I was
11:49:34 20 able to recall it because it was a financial services conference which was held
21 for two or three days but I was there for the week and it would be extremely
22 unlikely if you knew me really well to be missing, to be out of town when
23 something important was going on as clearly had I been involved in Baldoyle.
24 There was something very important going on. So it's not of my nature but I
11:50:00 25 know it's very difficult to prove that to you here, I just make the point
26 because I took those days in Bermuda as a holiday and if I had some major
27 business dealings going on in Dublin, I certainly wouldn't have done that but I
28 can only say that by way of --
29 Q 132 So you believe that the two contacts that you had on 26th and 27th April of
11:50:26 30 1993 may well have been related to your other project involving Berland and

- 11:50:31 1 Mr. Dunlop's role in that?
- 2 A May well have been, I am not saying it was but Sean Dunne, if you go back and
- 3 look at the various records that we have, Sean Dunne does not appear as a
- 4 regular caller to him and I know that we employed Frank as a broker or an
- 11:50:56 5 adviser when we had issues in relation to Berland.
- 6 Q 133 Now, was Mr. Dunlop engaged professionally by that partnership?
- 7 A Oh, not initially. And I would have to go back and get you the details but --
- 8 Q 134 I'm just wandering whether we can say that in April 1993, you had a
- 9 professional relationship with this third entity partnership, whatever it might
- 11:51:27 10 be and Mr. Dunlop which would have resulted in Mr. Dunlop billing for services
- 11 in relation to that at this time.
- 12 A I couldn't tell you but I can certainly say that we used Frank on a couple of
- 13 occasions as a conduit or somebody to help us smooth out some problems within
- 14 Dun Laoghaire/Rathdown. Whether he billed us for the services and paid us, I
- 11:52:01 15 don't know.
- 16 Q 135 I see, before leaving the entry that we will see on the 27th, it's at 255 which
- 17 I think was, had the conclusion of a meeting which had taken place in Dublin
- 18 County Council on that date, and again, it was a meeting which was of huge
- 19 significance from the point of view of Mr. Dunlop because the very last item on
- 11:52:23 20 the agenda really was the pronouncement by the manager of the fact that the
- 21 Pennine Holdings motion which had been deferred as the parties thought until
- 22 the 15th May for consideration at a meeting in and around that time had in fact
- 23 fallen because of a vote taken on another motion, that of councillor David
- 24 Healy, with the result that the opportunity for Pennine Holdings or those
- 11:52:54 25 behind Pennine Holdings to achieve rezoning in the 1993 plan was effectively
- 26 lost if that decision stood. You understand I think the significance of the
- 27 findings or the dealings of the council on that day?
- 28 A I do now but I would not have then.
- 29 Q 136 And as you know, your telephone call with him was at 2.55 that day which I
- 11:53:21 30 suggest was at the conclusion of the meeting and because it was such a

11:53:24 1 significant meeting for him, could I suggest to you that it would have been
2 almost a matter of certainty that he would have expressed to you some view on
3 what the position was in relation to Pennine's prospects of success given this
4 decision in the council that day.

11:53:44 5 A Well as I say, I can't remember the details in any of the calls. I have not
6 excluded the possibility at any time that I spoke to Frank that he did not make
7 some comment in relation to it but I can't be more categorical than that Mr.
8 O'Neill and as I say, I do repeat it, because it's just not in my nature if
9 something significant or as significant as this was going on that I would be
11:54:14 10 away taking a few days holiday in conjunction with a conference but as I say, I
11 can only, I'm here as a witness and I am doing what I can. and again, as I
12 believe in relation to these things, nothing much counts on it but I met on
13 Saturday night John Fitzgerald, who was as you know the County Manager or City
14 Manager at the time, and I just asked him did I ever mention Baldoyle to him
11:54:45 15 ever and we would have met on a number of occasions. We became business
16 friends through Citywest, he nominated me as chairman of the city gallery for
17 six years, the first chairman, we had a very good relationship and I never,
18 according to him, ever, mentioned Baldoyle, so I only raise that as a minor
19 issue and it's of no more benefit to you I understand than any of the other
11:55:16 20 calls I can't remember but that's as much as I can tell you about those calls.

21 Q 137 Yes. I think it is common case whatever disputes there may be between parties
22 as to what the facts are, everybody is in agreement that Mr. Frank Dunlop was
23 to be the interface on this project, the public face of it and it's hardly
24 surprising therefore that those who are behind him, whoever they may be, are
11:55:43 25 not identifiable with the project because if they were, they would really
26 defeat the whole purpose of having him in the role in which he was acting,
27 isn't that so?

28 A That I understand of course but -- but you could be trying to help Frank, if
29 you wanted to, by making comment about it or you could be making comment about
11:56:05 30 the fact that if it were all to happen, you would be involved which we

- 11:56:08 1 wouldn't, I am just making that point to you. Anyway, I have only brought it
2 up, it was a chance meeting.
- 3 Q 138 Sure. In this sequence of events, the next important event was to be a meeting
4 of the 6th May 1993 when matters had been put in place by Councillor John
11:56:31 5 O'Halloran writing to the manager, sorry, writing to the chairman of the
6 council questioning the validity of the decision of the 27th April and
7 indicating that it was a matter which was going to be or might be the subject
8 of legal challenge. Now, irrespective of Mr. Dunlop contacting you on this
9 issue, it was a matter which was in the public press at the time, you might
11:56:59 10 remember, that the question of the decision of the 27th April being a valid on
11 invalid one was discussed at length in the press at the time. You may be
12 unaware of that perhaps?
- 13 A Absolutely, unaware of that.
- 14 Q 139 In any event, in advance of the meeting at which this was taken, to be decided,
11:57:20 15 this motion of Councillor O'Halloran's, you -- sorry, I should say at the
16 conclusion of the meeting on the 6th of May of 1993, you telephoned Mr. Dunlop
17 at 3.25 that afternoon, page 2184. Again a contact made on a date which is
18 significant in the chronology of events which we have examined in detail and I
19 take it that the same issues arise here from the point of view you believe you
11:57:57 20 had ongoing contact with him and you don't believe they were related to
21 Baldoyle and as regards this particular contact, you don't have a memory of
22 making it or what the subject matter of it was at the time?
- 23 A No, I don't.
- 24 Q 140 Is that a summary of it?
- 11:58:12 25 A I would be certain that the substantive nature of it was not to do with
26 Baldoyle.
- 27 Q 141 Yes. What do you believe might have been the subject matter of it, do you
28 know, was it anything over and above Citywest at this time?
- 29 A I really don't know, Mr. O'Neill.
- 11:58:30 30 Q 142 You knew, or did you know that Mr. Dunlop in the course of his PR activities

- 11:58:39 1 represented many business interests in addition to this diversion into the
2 property world, he was by no means exclusively centred on lobbying councillors
3 as an activity, isn't that right?
- 4 A That's right.
- 11:58:54 5 Q 143 Yes and one of the matters that he advised on he tells us was the Greencore as
6 a client, he was an adviser on the PR side to them and he had dealings with
7 their management, isn't that so?
- 8 A If you tell me, I am sure it's true.
- 9 Q 144 Right. But that was also a company which found itself involved, albeit with
11:59:22 10 Davy stockbrokers and your involvement with it would be, I take it, to wearing
11 your stockbrokers hat rather than a property developer interest.
- 12 A Okay.
- 13 Q 145 And in and around this date, that is the 6th of May of 1993, I think there was
14 a very significant matter arose in connection with Greencore and the flotation
11:59:49 15 of Greencore on the stock market, is that so?
- 16 A I wouldn't remember the date. I remember that the Greencore placing was on the
17 Friday of the week I was in Bermuda, whatever that date was.
- 18 Q 146 That was on the 30th, I think.
- 19 A Okay, so the Greencore event, for want of a better word, would have taken place
12:00:16 20 on the Monday so if you can tell me what date that was, that's the Greencore
21 day.
- 22 Q 147 I think that the matter was reported in the press on the 7th, on the previous
23 day, the 6th, shares in Greencore had been suspended.
- 24 A I mean I wasn't involved, I was on the bonds side of the business, not the
12:00:46 25 equity side of the business so I wasn't involved. Obviously I wasn't involved,
26 the placing was on the Friday and I was in Bermuda so I wasn't involved in the
27 detail of Greencore.
- 28 Q 148 I appreciate that you may not have been the partner involved in either
29 organising the flotation or dealing with the aftermath of the flotation but it
12:01:11 30 was a matter in respect of which your senior colleagues were directly involved

- 12:01:17 1 and all of you as directors had a knowledge, I suggest, and a responsibility
2 for what had taken place as directors of Davy's?
- 3 A You are saying knowledge and responsibility, what am I to take from that.
- 4 Q 149 Firstly, you would have been made aware at some point in time and I can't say
12:01:42 5 when this is that the flotation of the shares in the Irish Government's share
6 in Greencore, which as I understand it amounted to some 25 million shares, was
7 being placed by Davy's, being floated through Davy's, is that right.
- 8 A Chairman, I am not very anxious to get into a discussion on this particular
9 issue, unless it's of real relevance and I say this now because there are other
10 people involved, Davy's are involved, there are press here and I don't want to
11 be saying things that are patently inaccurate or because I haven't been asked
12 to prepare myself in relation to Greencore so I mean -- I don't want to have to
13 come back again so I want to answer, I am here as a witness and happy to answer
14 your questions.
- 12:02:39 15
- 16 CHAIRMAN: If you have a particular difficulty in relation to a particular
17 question, we will endeavour to deal with it
- 18 A Okay, thank you.
- 19
- 12:02:50 20 MR. O'NEILL: It might be in ease Mr. Shubotham if I was to explain to you why
21 it is that this might be relevant to the Tribunal
- 22 A Okay, fine.
- 23 Q 150 One of the issues the Tribunal will have to consider is obviously the extent to
24 which, if at all, yourself, Mr. Hickey and Davy Hickey Properties were involved
12:03:10 25 in any real sense in the promotion of the rezoning of the Baldoyle lands, you
26 appreciate that?
- 27 A I appreciate that.
- 28 Q 151 If that wasn't the case, you wouldn't be here. One of the reasons -- one of
29 the criteria, I suppose, that one might apply in determining what exactly your
12:03:29 30 role was is to establish not only how you came into the operation, if you did,

12:03:35 1 but how you left it, if you did.

2 A Fine.

3 Q 152 Part of the information that has been provided to the Tribunal has been
4 information provided by the late Mr. Liam Lawlor. Who attributes your leaving

12:03:53 5 the project to the fact that the Irish Sugar Company, as he described it,
6 scandal broke at that particular time

7 A Right, correct.

8 Q 153 That issue therefore brings into play whether or not there was a reason in
9 independent of the Baldoyle lands which might have motivated you and the others

12:04:19 10 who were involved in Davy's and possibly also in relation to Baldoyle, to
11 pulling out of the Baldoyle situation in circumstances where Davy's had found
12 itself in the limelight in an adverse limelight, and its core business was
13 under scrutiny at the same time as this particular planning matter was under
14 scrutiny?

12:04:45 15 A Yes, okay.

16 Q 154 It's in that context the matter is being raised firstly and I think that that
17 is certainly apparent from the documentation which has been circulated in the
18 brief for quite sometime.

19

12:04:58 20 CHAIRMAN: I wonder could we take a few minutes break and we will resume in
21 about ten minutes.

22

23

24

12:19:37 25 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**

26 **AND RESUMED AS FOLLOWS:**

27

28

29

12:21:31 30 MR. O'NEILL: Mr. Shubotham, we were dealing just before the break with the

- 12:21:38 1 question of the Greencore aspect, if I might put it that way, of the Baldoyle
2 project and we will be dealing with it really in the context of what was
3 published about Davy's in and around this time. Possibly the best way to set
4 about that is to look firstly at the public identification of Davy's with the
12:22:04 5 project in Pennine and that was as a result of an article in the Irish
6 Independent on the 27th of April and that's at page 2107. We will see that
7 there is a rather poor copy, I am afraid of this, we can blow it up if you wish
8 but what it effectively says is that a group was to net 10 million pounds if
9 the green belt went and it identifies certain members of Davy's stockbrokers as
12:22:41 10 being connected with the project, though not exclusively. And you, Mr. Brian
11 Davy, and Mr. Ciaran McLoughlin were named in that context, is that right
12 A Yes, that's right.
13 Q 155 And also a number of parties were named who, some or other of whom may or may
14 not have been clients of Davy's but are named in this context as well. I think
12:23:05 15 the inference being that Davy Hickey Properties was to be involved here and to
16 bring in, these people would also be investors in it, is that right?
17 A That's what the article says.
18 Q 156 That's what the article sought to convey?
19 A Sure.
12:23:17 20 Q 157 And amongst those parties included Mr. Sean Dunne, he is named in this article
21 as one of those parties. And could I suggest that if he was to be contacting
22 Mr. Dunlop about it at this time, the high likelihood is that it was in the
23 context of a project which was associated with Mr. Dunlop and whose photograph
24 appears on the front of this is said to have had Mr. Dunne as an investor in
12:23:48 25 the matter and as far as you know he wasn't such an investor, isn't that right?
26 A He wasn't, as far as I know.
27 Q 158 And certainly, I think, you can equally tell us whoever the investors were to
28 be, the investors were to come through Davy and Davy Hickey Properties if Davy
29 Hickey Properties were going ahead with this scheme, you don't know of anybody
12:24:10 30 else being another channel of investment?

- 12:24:11 1 A No.
- 2 Q 159 Isn't that right, yes. So, this article, I think, caused some concern to
- 3 Davy's because they insisted upon there being a correction of what was said to
- 4 be erroneous information published in this article, isn't that right?
- 12:24:32 5 A Correct.
- 6 Q 160 Now, are there any circumstances where after the publication of this article,
- 7 which is listing you personally and Davy's as an entity and Davy's clients with
- 8 the project that you would not have discussed with Mr. Frank Dunlop in some
- 9 detail exactly what the position was in relation to you, Davy Hickey
- 12:24:53 10 properties, Mr. Hickey and your clients, in the context of him?
- 11 A No recollection of ever discussing that with Frank.
- 12 Q 161 But do you think you would likely, given (A) that he was a continuing partner
- 13 in Citywest with you?
- 14 A Yes.
- 12:25:09 15 Q 162 That you had to that point in time, a good relationship with him and ease of
- 16 access to him to the extent of being able to ring him and have him ring you on
- 17 all sorts of subjects, that you would have not followed up this article with
- 18 him and discussed the matter.
- 19 A Well, obviously again if I had a conversation with him on the telephone, I
- 12:25:35 20 can't recall what the conversation was but again, as I pointed out to you at
- 21 that time, I am in Bermuda and I am in Bermuda all that week so undoubtedly,
- 22 some of my colleagues would have been on to me discussing it. I would have
- 23 been telling them that we had no involvement and whatever communications were
- 24 taking place were probably done in Dublin rather than in Bermuda.
- 12:26:00 25 Q 163 Do you know when you got back from Bermuda?
- 26 A I am pretty certain I got back from Bermuda the following weekend.
- 27 Q 164 Right. Which is the 30th?
- 28 A I think so, yes.
- 29 Q 165 In and around?
- 12:26:13 30 A Yes, it was certainly that weekend.

- 12:26:15 1 Q 166 On the 30th, we see at page --
- 2 A Sorry, is the 30th not a Saturday? It will have been that weekend now rather
- 3 than the Friday. Maybe I am back on the Friday.
- 4 Q 167 Friday is the 30th?
- 12:26:34 5 A Okay, well I am back on the Friday or the Saturday, I am not sure.
- 6 Q 168 In any event, were you aware of the fact that the newspaper published under the
- 7 heading "Land Rezoning, an Apology" on page 2137, in which they indicate that
- 8 the parties in question might not be involved in it and that your involvement
- 9 was one that was to happen at some future date, if at all?
- 12:27:04 10 A If at all.
- 11 Q 169 Again I am paraphrasing now?
- 12 A Sure, sure, that's fine.
- 13 Q 170 But certainly a position was taken, the matter had been aired, it had been of
- 14 sufficient concern to you and to Davy's to ensure that steps would be taken to
- 12:27:20 15 undo whatever damage you felt resulted from your association with this project,
- 16 isn't that right?
- 17 A As I think Brendan said, I think the individuals involved were the, you know,
- 18 were the primary source of concern.
- 19 Q 171 Yes. Although we will see that the statement is made that neither Davy Hickey,
- 12:27:40 20 sorry, neither Davy's stockbrokers nor Davy Hickey were prepared to get
- 21 involved in the rezoning process, that is the message that was sought to be
- 22 conveyed, isn't that right?
- 23 A Seems to be, yes.
- 24 Q 172 But it was conveyed in terms where the apology is expressed in the following
- 12:27:59 25 terms "We would like to make it clear that it was Davy Hickey, the property arm
- 26 of the stockbroking company, Davy's, that had expressed an interest in the
- 27 development but only if it was rezoned." And again, you take issue with that
- 28 as being inaccurate from the point of view of the relationship which actually
- 29 you say exists between Davy Hickey properties and Davy stockbrokers?
- 12:28:24 30 A What issue am I taking? Sorry?

- 12:28:26 1 Q 173 As I understood it, you were saying that Davy and Davy Hickey Properties were
2 two entirely separate companies?
- 3 A Yes.
- 4 Q 174 That they were in different premises, connection was that the shareholding in
12:28:45 5 the holding company Mulroy Securities, were Davy's and Davy's clients but other
6 than that ...?
- 7 A Fine, okay.
- 8 Q 175 But this goes further, this in effect is saying that Davy Hickey properties is
9 the property developing arm of Davy's, isn't that right?
- 12:29:01 10 A That's what that says, yes.
- 11 Q 176 That's what that says and that as we say was not the subject of any further
12 correction or anything of that nature?
- 13 A Not that I know of it.
- 14 Q 177 And Mr. Hickey has confirmed that that's the case. At a minimum, if one puts
12:29:16 15 this information in relation to the involvement of yourself and Davy
16 Stockbrokers, and the clients of Davy's together with the controversy which was
17 being generated in the press at the same time about the meeting of the 27th,
18 which had effectively dezoned or prevented the rezoning of Baldoyle, both
19 Baldoyle and Davy stockbrokers and Davy Hickey properties were a news item
12:29:55 20 throughout this period, isn't that right?
- 21 A That seems to be, yes.
- 22 Q 178 And now we know then that the efforts to undo the harm from the point of view
23 of Pennine Holdings in this project commenced immediately after this meeting,
24 they resulted in a motion being brought by Councillor O'Halloran to a meeting
12:30:15 25 of Dublin County Council on the 4th of May which was adjourned until the 6th of
26 May and on the 6th of May, there was a further motion advanced which had the
27 result of allowing a glimmer of light to shine through from the point of view
28 of Pennine Holdings because the councillors were going to go on a site visit on
29 the 19th of May and if they, if the chairman adopted the view that she had
12:30:46 30 expressed in relation to that meeting, it was possible that the Pennine

- 12:30:55 1 Holdings issue could be reopened before the Council at a meeting to take place
2 after that date. I am summarising the Council's position?
- 3 A I wasn't aware of any of that but fine, I am listening to you.
- 4 Q 179 Now, all of that put the events of the 6th of May in context and again, it was
12:31:13 5 a newsworthy event because it was reported as being one which put the whole
6 green belt issue in relation to Baldoyle back on the agenda. That's what was
7 being said at the time?
- 8 A I see. I see.
- 9 Q 180 Now, in that context, I wanted to look at Davy's position vis-a-vis the
12:31:36 10 flotation of the Greencore shares and I don't want to go into it in any massive
11 detail at all?
- 12 A Okay, thanks.
- 13 Q 181 I just want to establish that as and from the 6th, dealing in the shares of
14 Greencore were suspended, isn't that right?
- 12:31:53 15 A I don't remember the dates but we will rely that you have researched it.
- 16 Q 182 On the 7th, there was considerable amount of publicity stemming from the fact
17 that some 19.5 million pounds worth of the shares which had been placed were
18 being held for Davy stockbrokers associated entities, be they the directors or
19 firms connected with it, do you remember that?
- 12:32:23 20 A I remember that.
- 21 Q 183 And that was a matter which apparently was not known to the client which in
22 this instance was the state, the Minister for Finance.
- 23 A Correct.
- 24 Q 184 And as a result of that, there were questions raised in the Dail, there was --
12:32:44 25 considerable press coverage what exactly the role of Davy Stockbrokers was and
26 whose interest they were serving by the actions I have just described, isn't
27 that right?
- 28 A Yes, that's correct.
- 29 Q 185 And as a result of that, there were two inquiries immediately put in train, one
12:33:01 30 was a Stock Exchange inquiry into the legitimacy of a firm engaged in the

- 12:33:10 1 flotation of shares to invest itself in the matter without declaring that
2 interest and secondly, there was an investigation by the then Attorney General
3 into the circumstances surrounding it, isn't that right?
- 4 A I don't remember the precise detail but that's fine, I am sure.
- 12:33:27 5 Q 186 There is, in the brief, there's a document which is a press release -- sorry
6 it's not a press release, it's a news coverage in the Irish Times which was an
7 analysis of Davy's role at the time.
- 8 A I am sorry, I didn't read it but fine.
- 9 Q 187 It's at page 2865 of the brief. And this is the Irish Times of the 7th of May,
10 it's the publication the day after the motion was heard in Dublin County
11 Council in relation to Pennine and firstly, could I draw your attention to the
12 fact that in this article, although its focus is what it describes as a debacle
13 in relation to the flotation of the Greencore shares, it makes the connection
14 between Davy's and Pennine Holdings and the lands at Baldoyle, that's in the
12:34:22 15 column to the immediate right. If we could enlarge that bottom column there.
16 It says "Davy Hickey is developing the 60 million Newlands Business and
17 Industrial Park, the 300 acres in the development are reported to have been
18 bought for 4.5 million pounds. The property development company had expressed
19 an interest in the Pennine Holdings plan to build a major housing scheme on the
12:34:50 20 old Baldoyle Racecourse if it was rezoned. The rezoning, sought by the public
21 relations consultant, Mr. Frank Dunlop, was rejected by Dublin County Council."
22
23 So, both of these matters are brought together in this article and both of
24 those matters were matters which were potentially serious from the point of
12:35:19 25 view of Davy stockbrokers, isn't that right?
- 26 A It is.
- 27 Q 188 Obviously, any damage to the core entity of Davy stockbrokers would be very,
28 very significant, isn't that right?
- 29 A When you say two matters there.
- 12:35:32 30 Q 189 Two, well the first matter is the central article here is dealing with

- 12:35:37 1 Greencore?
- 2 A Yes.
- 3 Q 190 It's very much an addendum in this article which is in the business section and
4 it's focusing on Davy stockbrokers as opposed to other articles in the
12:35:48 5 newspapers which are dealing with Pennine Holdings and the events of the
6 council meeting of the 6th but they are all current.
- 7 A Okay you said two, what's the second one? One is the Greencore, I have it,.
- 8 Q 191 The second issue is Pennine Holdings?
- 9 A I don't think Pennine Holdings would have had any great impact in the Davy's
12:36:09 10 fears, so to speak.
- 11 Q 192 Well it was sufficiently capable of having impact to cause Davy's to write
12 immediately upon the article being published seeking an apology from the Irish
13 Independent Newspaper for associating them with --
- 14 A Yes, but as I think both Brendan and I have said, I think that was more
12:36:29 15 focused, I could be wrong but more focused on the individuals that were named
16 rather than on the project itself.
- 17 Q 193 Well, so you say and even if that is absolutely the case, it nonetheless
18 remains the case that the connection has been made through the various articles
19 with Davy's Stockbrokers being involved in the property business and also Davy
12:36:53 20 Stockbrokers being involved in the flotation of the Greencore shares. The
21 Greencore shares flotation is one which has attracted massive controversy
22 because of the role that I have already explained and I don't intend to go into
23 in any great detail but it was, could I suggest, one which was of fundamental
24 importance to Davy's and indeed if it went the wrong way could be threatening
12:37:18 25 to the entire enterprise, isn't that so?
- 26 A I don't think it was threatening to the entire enterprise.
- 27 Q 194 I am not saying that it ultimately transpired to be the case but if there was a
28 situation in which the conclusions of the stock market were that the role of
29 the Davy's stockbrokers in the flotation was motivated by a desire for personal
12:37:40 30 gain rather than for the client's interest in maintaining share value, there

- 12:37:45 1 would have been very significant consequences for Davy's, I think you would
2 have to accept that?
- 3 A Well, I am not going to comment on what I think the outcome would have been.
- 4 Q 195 In any event, at the time, could I suggest to you, that it was of itself a
12:38:00 5 very, very serious position for Davy's and one in which at a minimum they would
6 not like to be involved or publicly identified with any other controversial
7 issues current at the time?
- 8 A If that's your view. It wasn't the Pennine, to my memory of it, wasn't such a
9 big thing but I would accept that Davy's would not like to have had another
12:38:27 10 Greencore on their hands.
- 11 Q 196 Yes. And if Mr. Dunlop's evidence is correct and that is yet a matter to be
12 determined --
- 13 A Of course.
- 14 Q 197 -- his role in advancing the rezoning of Baldoyle was one which was achieved or
12:38:49 15 to be achieved by illicit payments and bribes to councillors, that's what he
16 says.
- 17 A Okay. That's fine.
- 18 Q 198 In the event that any aspect of that had found itself aired at that time, it
19 would have had very, very serious complications and connections for Davy
12:39:13 20 stockbrokers, isn't that so?
- 21 A But we would have known that we were not involved so it wouldn't have concerned
22 us that such an issue would arise, we couldn't dampen speculation I suppose,
23 that's true, if it were to arise or maybe we would by denying it but as we
24 weren't involved, we just didn't have it as a worry at that time.
- 12:39:34 25 Q 199 You see what Mr. Dunlop says in relation to your cessation of involvement is
26 that the cessation of your involvement commences from this time forward, in
27 other words, that to this time, you -- and by that I mean Davy Hickey
28 Properties, you personally, Mr. Hickey personally -- were absolutely involved
29 at every stage of the process but that interest ceased at this point and that
12:40:09 30 that is conveyed in attendances taken by a third party, Mr. Gore-Grimes, on the

- 12:40:16 1 8th. That's one day after this article here.
- 2 A I may be wrong but I thought that when I read it, Mr. Dunlop was getting,
3 taking the Independent article as the one that ceased our involvement.
- 4 Q 200 I am not saying that Mr. Dunlop --
- 12:40:36 5 A Which is not at the same time as this, okay, sorry, I thought you were talking
6 about Frank.
- 7 Q 201 I am not saying that Mr. Dunlop relates your cessation of involvement to any
8 particular article or to Greencore as opposed to the Baldoyle Lands project, he
9 merely says that the controversy at this time was such as to cause you to
10 decide not to proceed further. Okay. Now, that is what Mr. Dunlop says. What
11 Mr. Lawlor said in his communications with the Tribunal was that it was because
12 of the Greencore involvement --
- 13 A I saw that.
- 14 Q 202 -- that you pulled out. What you say is that neither of those had any
15 connection with your pulling out because it pre-dated this incident by some six
16 to nine months.
- 17 A Yes, that's definitely, yes.
- 18 Q 203 Isn't that right. So, I merely drawing those matters together to you to say
19 that what the Tribunal certainly is faced with is information from sources
12:41:44 20 other than yourself suggesting that you were involved to the extent of being
21 fully engaged in this project until this date in May, in and around the 6th or
22 7th?
- 23 A Correct, I have read that.
- 24 Q 204 That when this publication of these events comes about on the 7th, that two
12:42:06 25 inquiries are launched involving Davy's, one in the Stock Exchange and one in
26 the Attorney General's office, both of which are extant for a period after this
27 and that the first recorded documentation available to the Tribunal, which
28 confirms that you are no longer going to be involved, stems from this time.
29 So, we might look to that documentation, which is an attendance of
12:42:41 30 Mr. Gore-Grimes on the 8th. 2217 please. Sorry, 2210. It's in fact 2218.

12:43:17 1 2218, Mr. Shubotham, is an attendance which is taken on the 11th, which is
2 Tuesday, the 11th of May and the relevant part of it there is about a little
3 over halfway down "We also telephoned John Byrne and spoke to him, Frank Dunlop
4 is to remove Brendan Hickey and David Shubotham from the Pennine board. There
12:43:41 5 is to be absolutely no conversation with the press."
6 And the last issue certainly, Mr. Lawlor who was present at this meeting,
7 Mr. Dunlop who was present at the meeting and Mr. John Gore-Grimes also present
8 at the meeting shared the view that the press certainly wasn't to get any more
9 information whatever they were up to?

12:44:03 10 A Sure.

11 Q 205 They then talk about Mr. Dunlop having a role in removing you from the Pennine
12 board and Mr. Hickey and we know that in none of the documentation which is
13 filed with the Companies Office was there ever an additional two directors,
14 that is yourself and Mr. Hickey. So that unless there was a meeting of the
12:44:24 15 board which was not which was not followed up by the completion of the B10
16 forms, you were not a director of the company at the time though
17 Mr. Gore-Grimes believed that you were. But in either event --

18 A And sorry, being a director of a lot of companies as you may know, you have to
19 keep a record of them all.

12:44:45 20 Q 206 Absolutely?

21 A I can assure you Pennine was not on the list of companies that I was a director
22 of.

23 Q 207 That's so and if you had been, the documentation would be available to us and
24 we would be able to produce it.

12:44:55 25 A Okay that.

26 Q 208 That all of course depends upon the filing of the B 10 forms and in the event
27 that they are not filed or filed late, one might be a director for that interim
28 period but in any event, certainly from the face of this document, it seems
29 Mr. Dunlop was claiming that both yourself and Mr. Hickey were on the board of
12:45:16 30 Pennine and to be so, you would have to be directors of the company, isn't that

12:45:19 1 right?

2 A Yes.

3 Q 209 Now, the significance of this, this is the first recorded documentation which

4 indicates that you are no longer to be involved in the project, understand?

12:45:35 5 A I do.

6 Q 210 Now, this document, the attendance of the 11th is the culmination of the series

7 of events which started on the 8th, some three days before. And those events

8 were geared towards drafting letters which were to be written by councillors to

9 the chairman of the council and which were to be responded to by the chairman

10 of the council to the councillors. Mr. Dunlop has given evidence that he and

11 Mr. Lawlor were the authors of those documents, both coming from the

12 councillors and going from the chairman to the councillors and that those

13 documents were to be approved by Mr. Gore-Grimes, sorry, Mr. Byrne's legal

14 representatives, before they were dispatched and the Tribunal has heard

12:46:00 15 evidence that in anticipation of that taking place, Mr. Dunlop had arranged a

16 series of meetings to take place on the day before this attendance, that is on

17 the 10th. And we will see that attendance, sorry, that diary entry at page

18 2111, sorry, 2211, I beg your pardon, and that's his diary entry for May the

19 10th on the top left-hand corner there, it starts with recording the fact that

12:47:03 20 Therese Ridge was to return from Paris that morning, his first meeting of the

21 morning at 10 o'clock was with Liam Lawlor, the next at 11.15 was with yourself

22 and Mr. Hickey, the next at 12 was to take place with Mr. John Gore-Grimes an

23 the next at 12.45 with councillors Liam Creavan and Michael Joe Cosgrave and

24 those were the matters he had in that diary which were to deal with the

12:47:40 25 strategy which was being adopted in relation to the motions which were before

26 Dublin County Council at the time. Now what Mr. Dunlop tells the Tribunal is

27 that meeting with you was a meeting at which that strategy would have been

28 discussed and you would have been brought up to speed on what the parties

29 intended to do to try and progress their attempts to undo the damage caused at

12:48:01 30 the meeting of the 27th. And the following day, Tuesday, the 11th, at 8.30.

12:48:08 1 there's a meeting there for John Gore-Grimes, that meeting is put to that time
2 because on the previous day, Mr. Liam Lawlor had indicated that the meeting
3 should be adjourned, I think, and it was adjourned to that time.
4

12:48:26 5 So that the attendance which we saw on screen of Mr. Lawlor, Mr. Dunlop and
6 Mr. Gore-Grimes coming together was a meeting which took place on the 11th
7 which had been scheduled to take place the previous day and which was in
8 connection with the matters intended to be dealt with that day.
9

12:48:47 10 Now, that rather complicated scenario is one in which Mr. Dunlop says that all
11 of the parties mentioned here are being consulted and met with on the basis of
12 the advance by Pennine Holdings limited of its position in relation to rezoning
13 and that you were brought up to speed yourself and Mr. Hickey, at this meeting
14 in relation to these matters.

12:49:17 15
16 Now, you dispute that, I take it
17 A I would dispute that but I have no recollection of the content of the meeting.
18 Again, we go through development plans and meetings and development plans, they
19 are my memories of the times but I am sorry but I have to dispute that version
12:49:33 20 of events.

21 Q 211 Well, is it likely that given that there had been a public association of
22 yourself and your stockbroking firm, Davy's, with the affairs of Pennine
23 holdings in the newspapers that we just looked at over the previous week and
24 leading up to this period that you would not have, had you met with Mr. Dunlop,
12:50:00 25 discussed the matter with him?

26 A Unless of course it had been previously discussed with him and whatever but I
27 can't give you any information as to what took place at the meeting.

28 Q 212 Could I suggest to you that it is indeed probable that at a minimum, you
29 reiterated that you would not be involved in this project in any circumstances
12:50:27 30 in Baldoyle given the level of controversy that was there?

- 12:50:30 1 A If that meeting took place --
- 2 Q 213 Yes.
- 3 A And we hadn't had any other meetings, I am sure we would have reconfirmed the
- 4 fact that we were not involved, I can't believe we wouldn't have done that at
- 12:50:44 5 some stage.
- 6 Q 214 So at a minimum, it would have been a reconfirmation and if Mr. Dunlop is
- 7 correct in this account, this would be the first time you had form formally
- 8 indicated we were not going with this project?
- 9 A If that's Mr. Dunlop's view, that's Mr. Dunlop's view.
- 12:51:01 10 Q 215 And could I suggest that it's from this point onward that all the bills are
- 11 then sent and finalised, the bills to the architects, for example, the bills --
- 12 A I, they would not have come to me and I haven't got the chronology of the
- 13 payments but you have all those so ...
- 14 Q 216 Effectively for better or for worse, your involvement, your connections in any
- 12:51:28 15 way with Pennine ceased at this time, you don't become, there's no re-emergence
- 16 of any interest in Pennine at any point from now on?
- 17 A I am going back obviously to when it ceased which is back in 1992 of course.
- 18 Q 217 I know that you have told us that to this point certainly at a minimum on this
- 19 date, everything would have been brought to finality?
- 12:51:50 20 A I had no, I would have no significance attached to that date at all.
- 21 Q 218 Right. But this date couldn't have passed by without your position being made
- 22 abundantly clear given the level of press coverage on this issue which was
- 23 current at that time?
- 24 A I can't choose the dates for you, that's -- you know, because I was away in the
- 12:52:12 25 week of the Independent article, no doubt there had been conversations with
- 26 Frank at that stage. So it would surprise me if it wasn't made clear to him
- 27 that we were not involved at that stage back when the Independent Newspapers
- 28 article came out but nobody's memory is good enough to recall the exact date.
- 29 Q 219 Of course. You probably accept, Mr. Shubotham, that in the event that this
- 12:52:37 30 meeting hadn't taken place, just as Mr. Gore-Grimes' meeting didn't take place

- 12:52:42 1 on that date, it would have been struck out of his diary and cancelled, which
2 isn't the case?
- 3 A I have no idea.
- 4 Q 220 No. The next meeting that I can see that involves both of you is on the 12th
12:52:59 5 of May again at page 211 at nine o'clock in the morning in advance of the
6 Development Plan, there's a meeting between the two of you, is that right?
- 7 A Hmm and that's a regular pattern in his diary.
- 8 Q 221 And on the, by the end of June, the 28th of June, Mr. Byrne's solicitor is
9 indicating to him that Mr. Dunlop and Mr. Lawlor are both saying that Davy's
12:53:28 10 are no longer involved, that Frank Dunlop is now Pennine, but that they are
11 talking in riddles and he can't decipher what exactly they are on about. You
12 might have noticed that attendance?
- 13 A I saw that.
- 14 Q 222 Certainly as far as everybody was concerned by the end of June, nobody believes
12:53:47 15 you are involved, is that right?
- 16 A That seems to be the case.
- 17 Q 223 You share that view. Thanks, Mr. Shubotham.
18
- 19 CHAIRMAN: Thank you. Mr. Gordon?
- 12:54:00 20
- 21 **THE WITNESS WAS CROSS-EXAMINED AS**
22 **FOLLOWS BY MR GORDON:**
23
- 24 MR. GORDON: Just a few questions and if I can address you immediately to the
12:54:04 25 second last matter dealt with by Mr. O'Neill, if we could have page 2211 again,
26 the diary entry for the 12th May.
27
- 28 That records a meeting at nine o'clock in the morning between Mr. Dunlop and
29 yourself and Mr. Hickey, isn't that correct?
- 12:54:24 30 A Yes.

- 12:54:24 1 Q 224 And there's a reference to a Development Plan meeting at 10 am?
- 2 A Yes.
- 3 Q 225 Of course on Mr. O'Neill's own case and I think it's quite evident anyway, on
4 the 12th of May, 1993, there was no question of your having any interest at all
12:54:42 5 in the Baldoyle project.
- 6 A Correct.
- 7 Q 226 Isn't that right?
- 8 A That's correct.
- 9 Q 227 Yet you are having a meeting there which is designated Development Plan.
- 12:54:52 10 A Correct.
- 11 Q 228 Would it be reasonable to draw the inference that that was in fact a Citywest
12 meeting?
- 13 A I would think it was. I would think that to be the case of all the meetings,
14 that is what happened, that is the way we ran our meetings.
- 12:55:06 15 Q 229 I think this is a type of entry which we see repeatedly used throughout the
16 diary of Mr. Dunlop, he will have a meeting down with you or Mr. Hickey and
17 there will be reference to Development Plan.
- 18 A That's correct.
- 19 Q 230 And is it your evidence that those meetings would have had always as their
12:55:24 20 primary purpose discussion of the Citywest project.
- 21 A Absolutely the case, yes.
- 22 Q 231 Now, if I can bring you back Mr. Shubotham to something which was touched upon
23 last Friday and that was the reference to a shareholding which Mr. Lawlor had
24 taken in Gandon Holdings in the late 1980s. I think over the weekend, the
12:56:03 25 papers in relation to that issue were actually furnished to us by the Tribunal.
- 26 A Correct.
- 27 Q 232 And I think you have had an opportunity to look at those papers.
- 28 A I have.
- 29 Q 233 Those documents are to be found at pages 3067 on through to 3098 as they have
12:56:27 30 been furnished to us by the Tribunal. And can you inform the Tribunal as to

- 12:56:35 1 the significance of the holding that Mr. Lawlor took in Gandon Holdings at that
2 time?
- 3 A I can. I can explain to you that the company that was being put together had a
4 capital value of about 60 million, maybe 66 million. There was cash being
12:56:58 5 raised of I think about 33 million and he put in 15,000 so it was a fairly tiny
6 investment relative to the monies that were being raised and it was a new plc
7 that was being formed at the time, the equivalent of mini IPO I guess.
- 8 Q 234 Given the size of his shareholding, would Mr. Lawlor have had any influence at
9 all on the manner in which Gandon Holdings conducted its business?
- 12:57:32 10 A No, certainly not.
- 11 Q 235 If I can then bring you to the transcript for last Friday's hearings, there's
12 just a couple of matters I want to bring to your attention, Mr. Shubotham. If
13 I can bring you to page 92 of the transcript, question 433 and the following
14 question and your answers. I think there's a question there "Do you recall
12:58:28 15 many meetings -- sorry, were there such meetings that you recall about East
16 View?" and you go on then to mention East View and give a lengthy answer. Did
17 you intend to address East View or Citywest in fact in that answer?
- 18 A Sorry, that's Citywest.
- 19 Q 236 And I think that becomes evident in fact when you go on to the following
12:58:55 20 questions. If I can then ask you to turn to the questions in the middle of
21 that page, it's put to you by Mr. O'Neill in relation to Citywest, he says at
22 question 436: "Pre-dated the involvement by about 16 months or so of any
23 possible involvement in Baldoyle, isn't that right. It had advanced in
24 tandem?" And you say sure. There seems to be perhaps a mistake in the
12:59:31 25 question put by Mr. O'Neill there in suggesting that Citywest had happened some
26 16 months before Baldoyle?
- 27 A Yes, it's more like six months.
- 28 Q 237 Yes. I think we know that the contract in relation to Citywest was around June
29 of 1990.
- 12:59:50 30 A That's correct.

- 12:59:52 1 Q 238 The Davy Hickey properties was set up in July of 1990, the planning application
2 for Citywest was filed in December of 1990 and the material contravention was
3 voted upon by the Council in March of 1991.
- 4 A Correct.
- 13:00:08 5 Q 239 So it would appear that at the time that Mr. Dunlop had introduced the Baldoyle
6 project, which we understand commenced in January of 1991, the vote by the
7 Council on the Section 4 motion hadn't yet taken place.
- 8 A That's correct.
- 9 Q 240 So would it be correct to say that at the time that Baldoyle seems to have been
10 introduced to you, that Citywest was in fact itself only getting underway as a
11 project?
- 12 A It was only starting, yes.
- 13 Q 241 Now, if I can ask you about a number of matters that were brought up this
14 morning. First of all, can you tell us what is the time difference between
13:01:04 15 here and Bermuda?
- 16 A Varies between four and five hours.
- 17 Q 242 Well in the month of April, are you --
- 18 A Ours changes in April so I can't be certain, in or around four or five hours.
- 19 Q 243 If we just take it as being four hours at a minimum?
- 13:01:29 20 A Oh at a minimum, yes.
- 21 Q 244 When we look at Mr. Dunlop's telephone diary, we must assume that the time in
22 Bermuda when you make these calls is four hours earlier, isn't that right?
- 23 A That's right.
- 24 Q 245 And if I can ask you to look first of all at the 27th of April, I think it's
13:01:57 25 2107, I beg your pardon, that's the newspaper article itself, it's 2096 and the
26 actual entry in question is over the page at 2097 but it's all the same day.
- 27 A Yes, that's coming up at.
- 28 Q 246 You call at 2.55. As far as you are concerned, it's either 9.55 or 10.55 in
29 the morning in Bermuda at that time?
- 13:02:36 30 A Correct.

- 13:02:36 1 Q 247 This is the morning that the Irish Independent article broke.
- 2 A That's correct.
- 3 Q 248 Did you have phone calls from Dublin about the Irish Independent article?
- 4 A Unfortunately I can't recall but it would be very unlikely that I didn't.
- 13:02:52 5 Q 249 And would you have been upset by it?
- 6 A Very definitely.
- 7 Q 250 Is it possible that you rang Mr. Dunlop about that?
- 8 A It's possible.
- 9 Q 251 Can I ask you to look at the independent apology at 2137. That was published
- 13:03:35 10 on the 30th April, isn't that so?
- 11 A Yes.
- 12 Q 252 And we have already had the language that was deployed in relation to the Davy
- 13 Hickey interest in this project read out a number of times, it's on the right
- 14 hand column of the apology?
- 13:03:55 15 A Yes.
- 16 Q 253 If I can then ask you to look at the Irish Times article which Mr. O'Neill has
- 17 referred to, it's at page 2865 and Mr. O'Neill has sought to make reference to,
- 18 I think it's the far right hand column on the bottom half of that page and he
- 19 has read out what is mentioned there about Davy Hickey and Pennine Holdings,
- 13:04:22 20 isn't that right?
- 21 A Mmm, yes, correct.
- 22 Q 254 Would it be a reasonable inference, Mr. Shubotham, to deduct that that
- 23 reference to the Davy Hickey involvement in Pennine actually comes from the
- 24 journalist in question, having read the apology which was published on the 30th
- 13:04:43 25 April?
- 26 A It would be reasonable.
- 27
- 28 CHAIRMAN: Mr. Gordon, it's after one o'clock.
- 29
- 13:04:57 30 MR. GORDON: I will be another maybe ten minutes, chairman.

13:05:01 1
2 CHAIRMAN: All right.
3 A Thank you. Chairman.
4
13:05:05 5 MR. GORDON: I think in relation to the Greencore issue, you indicated that
6 you thought about it on the Monday but it seems more likely it fell into the
7 public domain on the Thursday, the 6th of May, is that right
8 A Yes, that seems to be so.
9 Q 255 Can I ask you again in relation to, not again by me but to bring you back to
13:06:19 10 this 20,000 pound payment that you made to Mr. Dunlop out of your personal
11 account in March of 1993. Why did you make a payment to him out of your
12 personal account, Mr. Shubotham?
13 A Because Mr. Dunlop approached me, because he felt that he hadn't got rewarded
14 for his time and effort in the period since 1991. He was financially strapped,
13:06:53 15 it was well known that I was very well off and on that basis, I gave him the
16 money in deference to the work that he had done. And it's very much as I
17 stated I think in 2000 or 2001.
18 Q 256 Yes.
19
13:07:17 20 CHAIRMAN: Sorry, Mr. Gordon, I notice there are other witnesses here, they
21 needn't return, if they wish to go now they can, until 2.15.
22
23 MR. GORDON: And if I could ask you again to revisit something that Mr.
24 O'Neill has addressed at a little length this morning. He has suggested that
13:07:44 25 the Tribunal might consider it relevant that this 20,000 pounds payment
26 increased your debt to the Bank of Ireland at that time and you have explained
27 in general terms why the Tribunal shouldn't draw any adverse inference. Can
28 you be a little more helpful to the Tribunal about that because Mr. O'Neill
29 seems to regard it as being of some importance.
13:08:14 30 A Well, without disclosing my net assets situation, Mr. Gordon, it was a

13:08:26 1 diminution of my net assets by 20,000 and I had substantial assets at the time.
2 Q 257 In relation to the Gore-Grimes attendance of the 8th of May of 1993, this makes
3 reference to yourself and Mr. Hickey resigning as directors of Pennine
4 Holdings, we have already seen the attendance, isn't that so?

13:09:28 5 A Yes.

6 Q 258 I think it is the case, of course, as we see from the documentation in relation
7 to this company that neither of you were or were ever even proposed to be
8 directors of this company, isn't that right?

9 A That's correct.

13:09:42 10 Q 259 So, that observation in that attendance is factually incorrect.

11 A It's factually incorrect.

12 Q 260 Insofar as Mr. Gore-Grimes made such a record in his attendance, the
13 information coming to him would appear more than likely to have come from
14 Mr. Dunlop?

13:10:21 15 A I think that's a reasonable inference, yes.

16 Q 261 So might we infer that Mr. Dunlop, for his own reasons, may have represented to
17 Mr. Gore-Grimes and indeed to Mr. Byrne that you and Mr. Hickey had a greater
18 involvement in his project than you actually had?

19 A That would seem to be the case.

13:10:44 20 Q 262 Thank you, Mr. Shubotham?

21 A Thank you.

22

23 CHAIRMAN: Thank you very much Mr. Shubotham. 2.15?

24

13:11:05 25 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

26

27

28

29

30

13:11:07 1

2

THE TRIBUNAL RESUMED AS FOLLOWS:

3

4

14:19:23 5

6

MR. O'NEILL: Good afternoon, Mr. Chairman, the next witness is Mr. Liam

7

Cosgrave.

8

9

Mr. Cosgrave please.

14:19:30 10

11

MR. LIAM COSGRAVE, HAVING BEEN SWORN, WAS EXAMINED

12

AS FOLLOWS BY MR. O'NEILL:

13

14

CHAIRMAN: Good afternoon, Mr. Cosgrave.

14:19:59 15

Q 263 Mr. Cosgrave, you were an elected member of Dublin County Council throughout the period of the review of the Dublin County Development Plan of 1983, isn't that so?

16

17

A That's correct.

18

Q 264 I think you represented the ward of Dun Laoghaire/Rathdown, is that right?

14:20:16 20

A Dun Laoghaire, I think it was called Dun Laoghaire/Rathdown, Dun Laoghaire ward I think.

21

22

Q 265 As you may be aware in this particular Module of inquiry of the Tribunal, it's inquiring into the circumstances in relation to an attempt at rezoning of the lands at Baldoyle formerly Baldoyle Race Course in County Dublin, you are aware of that?

23

24

14:20:41 25

A I am aware of that.

26

27

Q 266 And that was a process which commenced with motions before the Council in 1993 having been the subject of an earlier draft development map which was circulated by the officials of the council and which was not the subject of any amendment in the earlier stages. In other words, its opportunities for review

28

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14:21:06 30

- 14:21:10 1 arose after the public display of the map, were you familiar with that?
- 2 A Yes.
- 3 Q 267 And that gets us into the year 1993 when the Council was sitting to consider
- 4 map numbers 8 and 9 in relation to Baldoyle and to Portmarnock and that process
- 14:21:35 5 took place in April of 1983.
- 6 A 1993.
- 7 Q 268 I beg your pardon. The Tribunal has been informed by Mr. Frank Dunlop that in
- 8 the course of that rezoning process, that he paid monies to councillors to
- 9 secure their votes in respect of the rezoning of the Baldoyle lands and he says
- 14:22:03 10 that in the course of that process, he paid you the sum of 1,000 pounds and
- 11 that he did so in order to secure your support for his proposals. What do you
- 12 say in relation to that contention by Mr. Dunlop?
- 13 A Well, basically I am not that interested Mr. O'Neill in some of Mr. Dunlop's
- 14 evidence, but it's false.
- 14:22:29 15 Q 269 It's false evidence. Yes. The Tribunal has in fact sought from you a
- 16 voluntary statement over time in relation to the Baldoyle lands and your
- 17 knowledge and involvement in the rezoning of those lands in the 1983 to 1993
- 18 review. You elected not to provide such a statement, isn't that so?
- 19 A That's correct, yes.
- 14:22:54 20 Q 270 Now, if we turn perhaps to the motion itself or the initiation of the motion
- 21 itself, the period that the Tribunal is inquiring into commences really on the
- 22 1st March or thereabouts, being approximately two weeks prior to the date upon
- 23 which submissions were to be received by Dublin County Council in the event
- 24 that councillors wished to propose an amendment or variation to the plan which
- 14:23:28 25 had been on public display. And we will see that on the 12th of March 1993, at
- 26 five o'clock, that was the deadline for such motions to be received by the
- 27 Council. And a motion was received which was signed by Councillors Liam
- 28 Creavan, Sean Gilbride, Cyril Gallagher and Michael Joe Cosgrave, 1866 on the
- 29 screen before the Tribunal and you will see that it's signed by each one of
- 14:24:04 30 those councillors and it's dated the 12th of March, it was accompanied by a map

14:24:09 1 in relation to the area and this is a motion which found itself for hearing
2 before the Council at the scheduled special meeting which is to take place on
3 the 20th of that month, that is the 20th April. Have you any particular
4 recollection of considering the agenda for that meeting or the motions that
14:24:32 5 were to be heard at that meeting?

6 A Not Mr. O'Neill at this point in time, it's a good while ago.

7 Q 271 Yes. And I take it the areas in which you would have a particular or
8 heightened interest would be in your own ward and would I be correct in saying
9 that the further you got away from that in the council, the less your interest
14:24:58 10 was or am I wrong in that surmise?

11 A Well, obviously the fact that I represented and represented that other area
12 both constituency wise and council wise, you probably, you knew that area
13 probably better. I still went to most of the meetings and obviously would
14 follow debates, etc.

14:25:21 15 Q 272 Yes. Now, we will see when we turn to the minutes of that meeting which are at
16 page 2032 that there were a series of motions listed for hearing in relation to
17 the Baldoyle lands, the first of them was a motion number 14 (5) 1 which was
18 proposed by Councillor Healy and seconded by Councillor Gordon which provided
19 that Dublin County Council hereby resolves that all lands zoned B and G on the
14:25:59 20 Draft Plan between Baldoyle and Portmarnock retain that zoning. And then if we
21 work down through the motions that followed upon that, the next one had the
22 number 14 (5) (1) which was a motion proposed by Councillor Creaven, Gilbride
23 Gallagher and Cosgrave that we saw an screen earlier and it provided for
24 development effectively of part of those lands so as to provide for new low
14:26:30 25 density residential communities in accordance with the action area plans and to
26 improve district centre facilities and to provide for industrial related uses.
27 It also provided for a pay as you play golf course said to project and enhance
28 the open nature of land between those urban areas. That was the motion that we
29 saw a little earlier, having been signed on the 12th and it appears that at
14:27:01 30 that motion hearing, it was intended to amend that so as to alter the nature of

14:27:11 1 the development that was going to be carried on there.
2
3 Had you any particular input in either the substance of the original motion or
4 in the proposed amendment of that motion which was outlined at the meeting of
14:27:28 5 the 20th?
6 A Which amendment are you talking about?
7 Q 273 I am talking about the amendment to the councillors Creavan, Gilbride,
8 Gallagher and Cosgrave's motion, that's the one to develop the area which was
9 green belt so as to provide for the pay as you play golf course, the low
14:27:47 10 density residential communities, the district centre facilities and the
11 industrial related uses, that's number 14 (5) (G) (1), did you have any
12 particular knowledge in that interest or motion as such?
13 A No.
14 Q 274 Or in the amendments that were proposed to be made to that motion?
14:28:13 15 A No.
16 Q 275 There then was a second motion in respect of the same lands which was proposed
17 by two of the four councillors that were --
18 A Could I see it please?
19 Q 276 Of course you can, yes. The second motion is at page 23 --
14:28:47 20
21 JUDGE FAHERTY: 2033 I think.
22
23 MR. O'NEILL: 2033, it follows immediately up on screen there. This is the
24 motion that was intended to be amended, it's number 14 5(g)(ii). The amendment
14:29:14 25 follows on the next page, that is 2034 and effectively the amendment,
26 Mr. Cosgrave, was to particularise or identify the extent of the development
27 that was proposed. It quantifies the number of houses intended to be built on
28 the lands at 450 new houses at Baldoyle on an acreage of 75 acres and the
29 building of 450 new houses on 75 acres at Portmarnock. If you contrast that
14:29:53 30 with the earlier motion, those earlier motions hadn't quantified the number of

- 14:29:56 1 houses that were intended to be built on the site. This amendment was intended
2 to identify with precision what it was intended to be built on the site.
3 Essentially it still provided for the pay as you play golf course, and for the
4 district centre facilities but it quantified the number of houses. Had you any
14:30:22 5 knowledge, input or interest in that amendment or variation
6 A No.
7 Q 277 Right. It seems that that matter was not voted upon on that date as there was
8 confusion and disorder in the chamber and the matter was adjourned to the
9 following meeting which was to take place on the 27th. At any part of that
14:30:53 10 meeting, do you recollect the presence of Mr. Dunlop at the meeting and did he
11 make any contact with you either before or at the meeting with a view to
12 influencing your vote in any particular way?
13 A Not that I can recall.
14 Q 278 Do you remember him being there?
14:31:11 15 A No.
16 Q 279 We will see that the matters then adjourned until the 27th and if we look to
17 page 2113, this effectively is an adjourned motion considering essentially the
18 same agenda for the motion on the 20th which hadn't been reached and in the
19 course of that motion you may note that there was a proposal by councillors
14:31:52 20 Cosgrave, that's Michael Joe Cosgrave and Councillor Creaven to have motion 14
21 5(g)(ii) deferred, we can see that at page 2115. The motion sought to be
22 deferred here is the motion we referred to earlier, the one which quantifies
23 the number of houses to be built at the two given locations. That motion to
24 defer was advanced by councillors Cosgrave and Creavan, have you any
14:32:31 25 recollection at this point in time as to why it was that those councillors
26 sought to have that motion adjourned, or deferred I should say?
27 A I don't recall, no.
28 Q 280 Do you remember that it coincided with a publication in the Independent
29 Newspaper which was indicating that Mr. Frank Dunlop and those associated with
14:32:55 30 him were likely to take a 10 million pound profit in the event that the

- 14:33:05 1 councillors who were going to vote on the matter voted in favour of rezoning.
2 Have you a recollection of that publication in the newspaper?
- 3 A No.
- 4 Q 281 When the motion came for hearing, that is the motion to defer, it was passed by
14:33:22 5 37 to 33, you were in the Chamber and one of the councillors who voted to have
6 the motion deferred until a date not before the 15th of May, have you any
7 recollection why it was that you believed that it was appropriate to have that
8 motion deferred?
- 9 A I don't have any recollection.
- 14:33:46 10 Q 282 The motion was deferred and it was followed then by a motion which we see at
11 page 2116 which was proposed by Councillor John O'Halloran and seconded by you,
12 the terms of that proposal were that decisions relating to the Baldoyle
13 Portmarnock area be deferred until a site meeting is held in that area to allow
14 all councillors view land proposed for rezoning.
- 14:34:20 15 A Can I see a copy of that motion.
- 16 Q 283 It's on screen at 2116 and it's about one third down the page. In heavy print
17 you will see the word passed and it was after that, the motion was withdrawn by
18 Councillor Maher which was agreed and I will read it, it was proposed by
19 Councillor O'Halloran?
- 14:34:43 20 A Sorry, Mr. O'Neill, just to cut across you, you have a copy of the motion as
21 such?
- 22 Q 284 I am sorry, you want -- I think this motion was put before the house, on the
23 floor of the house, I am not sure if that actually is -- no, we don't have a
24 copy of that, Mr. Cosgrave, I can only offer you the minutes of the meeting in
14:35:09 25 which it's recorded that this took place?
- 26 A I see the motion and from a reading of it, I can't be definite but the fact
27 that it wasn't if you like listed as an item, it probably was from the floor.
- 28 Q 285 It was and it was ruled out of order we will see a little further down because
29 of that. The motion, as I say, proposed that all decisions would be deferred
14:35:35 30 until a site meeting had taken place and we will see from the minutes here the

- 14:35:42 1 Chairman asked the manager to advise whether the motion was in order.
- 2 Councillor Healy said that he did not wish to have the motion 1451 deferred,
- 3 the manager advised the members that the tradition of the council was that if a
- 4 councillor moved a motion, it should not be deferred if he dissented. The
- 14:36:01 5 manager advised that the motion was not in order. This is referring to
- 6 Councillor O'Halloran's motion, as seconded by you, and the chairman ruled it
- 7 out of order.
- 8
- 9 So, the body of members never got to vote upon the motion which you had
- 14:36:16 10 seconded because it was ruled out of order by the chairman following the advice
- 11 of the manager. But prior to that having happened, obviously you had taken a
- 12 decision to support the proposition which was being advanced by Mr. O'Halloran,
- 13 isn't that so?
- 14 A That's correct.
- 14:36:36 15 Q 286 And I am just wondering if you can recollect what it was that motivated you to
- 16 do so and what you sought to achieve by seconding that motion.
- 17 A Well Mr. O'Neill, quite a number of times in my 19 years on the Council, one
- 18 went on site visits because there used to be a thing about councillors that
- 19 maybe they didn't know where the areas were. Now, I was probably one of the
- 14:37:08 20 few that had been on these lands back in the 60's and would also have known the
- 21 area quite well as I had some clients out that way. Now, from looking at the
- 22 list of councillors there, a good few of them did not grow up in Dublin and
- 23 would not have known the area at all and probably were never in Baldoyle. So
- 24 we often had various site meetings to areas to see it firsthand exactly what we
- 14:37:45 25 were talking about. So that would have been to, I suppose, better inform -- I
- 26 mean I would imagine that 80 or 90 percent of the people had never been within
- 27 a stone's throw of Baldoyle and that would have been the intention that well it
- 28 wasn't going to hurt anyone to go and look at the area.
- 29 Q 287 Yes. I think that it is the procedure of the council secretariat that the --
- 14:38:13 30 A Can I just say, a site visit did take place there at some stage, I know,

- 14:38:19 1 because I recall going there but I am not sure exactly when it was.
- 2 Q 288 The 19th May of the same year. I think the procedure of the council was to
- 3 circulate to the elected members the submissions or the motions which were
- 4 intended to be considered at a future meeting, isn't that right?
- 14:38:44 5 A That's correct.
- 6 Q 289 So, you and all other councillors would have received with the initial motion
- 7 signed by councillors Michael Joe Cosgrave, Creavan, Gilbride and Cyril
- 8 Gallagher, the accompanying map behind it, isn't that so?
- 9 A That's correct.
- 14:39:02 10 Q 290 And this particular area was shown marked clearly on the map and it's one which
- 11 I suggest has fairly clearly defined boundaries, it's in the middle of nowhere
- 12 really, we can see, I will get you a copy of that now. It's bounded on one
- 13 side by the estuary, it's got Baldoyle village on the bottom of it, Portmarnock
- 14 Railway Station on the top. It's fairly readily identifiable to anybody who
- 14:39:39 15 happened to look at the map itself rather than perhaps some of the lands within
- 16 the county itself that aren't immediately distinguishable by clear boundaries
- 17 and therefore might require the assistance of the Council to identify precisely
- 18 where it is. This, I suggest, was immediately apparent to anybody who would
- 19 have considered the map accompanying the motion. Would you agree with that as
- 14:40:08 20 a principle or not?
- 21 A Well I haven't seen the map so I don't know how clear it was?
- 22 Q 291 Well, you know the lands.
- 23 A I do, I know the lands.
- 24 Q 292 I am not trying --
- 14:40:21 25 A You know, I am not, I don't know how good you are at reading a map but often
- 26 seeing a thing on the ground if you like in the flesh is more informative than
- 27 maybe looking at a map. I am not saying you won't get away with looking at a
- 28 map but what I am saying is that at times you can see the whole area, you can
- 29 see there where it's affected into as you say the road and the sea on one side
- 14:40:46 30 and the village and wherever else, that's the boundaries.

14:40:51 1 Q 293 Sure. If we look at 1887 please. That's the map that accompanied the motion I
2 should say and it indicates the various areas by reference to the proposed
3 rezoning of them, A1, B and G, A1, E and G. And it's fairly universal in size,
4 almost a rectangle location by reference to the village can be ascertained.

14:41:31 5 The estuary is to the right, the railway track to the left. Portmarnock
6 Railway Station at the top and the Grange Road and Willie Nolan Road down at
7 the bottom of it there. In any event, you felt that notwithstanding what they
8 had before them, the councillors would benefit from a site visit, is that so
9 and you therefore were happy to second Councillor O'Halloran's motion, although
14:41:58 10 it wasn't considered because of the fact it was ruled out of order, isn't that
11 right?

12 A That's correct.

13 Q 294 When you were doing so and you will see from the sequence of the motions that
14 there was a motion 14.5.1, that is a motion of Councillors Healy and Gordon to
14:42:27 15 have all the areas rezoned B and G. Had you any realisation that the deferral
16 of Councillor Michael Joe Cosgrave's motion to a later date might fall in the
17 event that Councillor Healy's motion was passed?

18 A I don't, could you put up the motion, sorry?

19 Q 295 Yes. The first motion is at page 2113. That was the first in sequence there.
14:43:02 20 You will see it's the motion proposed by Councillor Healy, seconded by
21 Councillor Gordon, "Dublin County Council hereby resolves that all lands zoned
22 B and G on the Draft Plan between Baldoyle and Portmarnock retain this zoning."
23 Now there was an amendment proposed to that but I don't think we have to
24 consider it because the amendment wasn't actually moved in the time. But that
14:43:24 25 motion of Councillor Healy's was ultimately passed at this hearing of special
26 meeting of the Council on the 27th April. And in advance of it having been
27 debated before the house, the second motion in the list here, that is on the
28 bottom of page 2113, the motion 14 5(g)(ii), which was Councillor Cosgrave and
29 Creaven's motion, that had been deferred until a date not later than the 15th
14:44:05 30 of May. Now the effect of Councillor Healy's motion being considered, debated

- 14:44:10 1 and passed by the members was that the other motion, which had been deferred,
2 fell as a matter of course.
3
- 4 Now, I am asking you whether or not you, at the time you were proposing or
14:44:25 5 seconding rather your motion, had had regard to the fact that this was a
6 possibility or did you believe that Councillor Creaven and Cosgrave's motion
7 would appear in the normal course for further debate at a later hearing of the
8 meeting of the council to take place before the 15th of May
- 9 A I don't recall.
- 14:44:48 10 Q 296 You don't. So you can't say whether or not you were surprised by the fact that
11 their motion fell after the vote on the motion of Councillors Healy and Gordon,
12 is that right?
- 13 A That's right.
- 14 Q 297 Now, again this was a day upon which apparently Mr. Dunlop was present in the
14:45:17 15 chamber and he has indicated that he was instrumental in actually drafting the
16 terms of the motion which was advanced to the members by councillors Cosgrave
17 and Creavan. I am not suggesting that that necessarily is a matter that would
18 be within your knowledge, but do you have Mr. Dunlop being present at this
19 meeting?
- 14:45:39 20 A No.
- 21 Q 298 No. And it follows that you have no recollection of discussing any of the
22 affairs of the day with him at that time, isn't that right?
- 23 A That's correct.
- 24 Q 299 Do you remember, in relation to the other motion, that is the motion on the
14:45:56 25 20th, whether -- that's the motion which was adjourned to the 27th -- do you
26 remember after the business of the day on the 20th, contacting Mr. Dunlop in
27 relation to the motion which was then on the agenda?
- 28 A No.
- 29 Q 300 No. We will see that in his telephone records for Tuesday the 20th of April
14:46:24 30 1993, at page 2004, there is a message taken by his secretary at 3.20 that

14:46:31 1 afternoon saying "Liam Cosgrave, not urgent, call him this evening at home",
2 would you have any particular reason to have Mr. Dunlop ring you, indeed ring
3 you at home at any time?

4 A It says not urgent, I honestly don't know what it was about, it could have been
14:46:55 5 about anything.

6 Q 301 Right. Now I think that with the ruling of your motion, that is the one which
7 you seconded out of order, you did not either propose or second any further
8 motion in relation to what are called the Baldoyle lands, the racecourse lands,
9 the Pennine Holdings lands, any one of those headings, isn't that right?

14:47:23 10 A Well I haven't got all the minutes here in front of me so I mean I am taking
11 your word for it.

12 Q 302 Sure. You may take it that having gone through the minutes, it would appear
13 that you were neither the proposer nor the seconder of any other motion other
14 than the one I have just mentioned and that while you were present and voted,
14:47:44 15 you were one of a body of persons who did vote in relation to these motions but
16 you were not the person who was the initiator of the motions. How frequently
17 would you be meeting with Mr. Dunlop at this time, Mr. Cosgrave?

18 A Well, I suppose if he was down there at meetings or in the local hostelry or
19 hotel, you could run into him but I wouldn't call them meetings as distinct
14:48:19 20 from just you might pass, there used to be a number of people in the foyer of
21 the council, if you are going through, people you knew, you would probably
22 acknowledge them.

23 Q 303 Yes. And while Mr. Dunlop tells the Tribunal that he paid you money, he
24 doesn't either identify a date upon which he paid you that money or a location
14:48:46 25 at which he paid you that money but from your point of view, both of those are
26 irrelevant really because he did not pay you any money, isn't that the
27 position?

28 A That's the position.

29 Q 304 Right. Did you have any knowledge of the late Mr. Liam Lawlor playing any role
14:49:08 30 in relation to the gathering of support for these motions or the strategising

- 14:49:19 1 of any of the motions which were put before the house by other councillors?
- 2 A Simple answer is no. I don't think Mr. Lawlor was on the Council at this
- 3 stage.
- 4 Q 305 He wasn't a councillor himself but the evidence of Mr. Dunlop has been that he,
- 14:49:35 5 Mr. Lawlor, and Mr. Dunlop, came together to strategise how the Council would
- 6 vote upon the Pennine holdings motions and between them, they drafted letters
- 7 for councillors, they drafted letters for the chairman, they drafted the
- 8 motions which were before the Council, albeit all of those last mentioned items
- 9 were all in the name of others. Do you know of Mr. Lawlor playing that shadow
- 14:50:10 10 role, I am not for a moment selecting he was an elected member of the council
- 11 at that time or legitimately entitled to control its activities but were you
- 12 aware of this shadow role that Mr. Dunlop says he was playing of this --
- 13 A I am not so aware, neither of those men drafted any letters for me.
- 14 Q 306 The Tribunal has, Mr. Dunlop, endeavoured to establish from you, sorry,
- 14:50:40 15 Mr. Cosgrave, the source of certain lodgments which were made to your accounts
- 16 or investments made by you at the time that the motions in relation to Pennine
- 17 Holdings were being considered by the Council. The Tribunal has looked at a
- 18 period during which the motions affecting the Baldoyle lands were before the
- 19 Council. That period commences in and about the beginning of March of 1993 and
- 14:51:13 20 ends probably in September of 1993 and there are I think two lodgments in
- 21 particular or acquisitions in particular of yours which have been furnished by
- 22 An Post to the Tribunal and I'd like to put those on screen now if I may at
- 23 page 2743. You see that the first item there is the purchase price, 1,000
- 24 pounds of a savings certificate on the 1st of June of 1993. Have you been able
- 14:52:02 25 to identify or establish what the source of the underlying funds used to
- 26 acquire that investment at that time were?
- 27 A The quick answer is no but I think if you go from the 1st June to, say, the, I
- 28 don't know did you say you finished at September, well you know, going through
- 29 even August, I know some of those are, as far as I am aware, cheques but
- 14:52:33 30 obviously I would have had monies available to me from the Oireachtas, from the

- 14:52:37 1 County Council, from Seanad Eireann and from my legal practice.
- 2 Q 307 Whilst those headings are identified as being possible sources of income or of
- 3 funds to you during that period, it hasn't been possible for you to identify
- 4 the individual source of either that lodgment or a subsequent purchase of a
- 14:53:10 5 certificate for the same amount on the 16th June, sorry, on the 1st July of
- 6 that year, is that so?
- 7 A Where's the 1st July.
- 8 Q 308 The next one down?
- 9 A 21st.
- 14:53:25 10
- 11 CHAIRMAN: It's the 21st.
- 12
- 13 MR. O'NEILL: Sorry, I beg your pardon. The 21st July there is a certificate,
- 14 yes, I am sorry. That is one of the certificates you have. I think we have
- 14:53:44 15 another document from you, if I could put that on screen, 2744, where we again
- 16 see on the beginning of that list a certificate of the 16th June 1993 for 1,000
- 17 pounds paid for cash and cheque 500, do you see that? And beneath that,
- 18 another one for the 1st July of 1993. Again for 1,000 pounds, this time by
- 19 cheque. In respect of any one of those certificates for that amount,
- 14:54:31 20 Mr. Cosgrave, the situation is that you cannot establish where exactly the
- 21 funds came to make those investments, is that right?
- 22 A That's correct. I have a feeling that one of the cheques there at, I think,
- 23 the 14th October is possibly a refund of --
- 24 Q 309 This is the 5,000 pounds sum on the 14th October. I don't think we need
- 14:54:58 25 concern ourselves with that because we are outside the window period that the
- 26 Tribunal is considering but between March and September in respect of any one
- 27 of those payments, I don't think you are in a position to differentiate between
- 28 the income you received as a solicitor, the expenses you received from the
- 29 council or any other salary or donations or other amounts?
- 14:55:26 30 A No, it was normally my practice to probably cash expenses cheques.

14:55:32 1 Q 310 Thank you, Mr. Cosgrave. If you answer any questions of the Tribunal or
2 anybody else might have.

3

4

CHAIRMAN: Thank you Mr. Cosgrave.

14:55:44 5

6

THE WITNESS THEN WITHDREW.

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Mr. O'NEILL: Mr. Fox please.

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14:55:55 1 **MR. TONY FOX, HAVING BEEN SWORN, WAS EXAMINED**

2 **AS FOLLOWS BY MR. O'NEILL:**

3

4 CHAIRMAN: Good afternoon, Mr. Fox.

14:56:36 5 A Good afternoon, chairman.

6

7 MR. O'NEILL: Sit down and make yourself comfortable, Mr. Fox.

8 A Thanks.

9 Q 311 Mr. Fox, I think you also were a councillor in the period the subject of the
14:56:51 10 current review by the Tribunal, isn't that so?

11 A That's correct, yes.

12 Q 312 And you also were a councillor for the Dun Laoghaire, sorry, you are presently
13 a councillor for Dun Laoghaire/Rathdown, isn't that right?

14 A Yes, Dundrum ward.

14:57:05 15 Q 313 I am sorry?

16 A The Dundrum ward.

17 Q 314 The Dundrum ward and again not immediately adjacent to or connected with
18 Baldoyle, though of course it was in the broader county when you were a member
19 of Dublin County Council which encompassed at that stage all of the areas in
14:57:24 20 question?

21 A The far side of the city, yes.

22 Q 315 And I take it not something which necessarily your constituents would lobby you
23 in relation to one way or the other, is that right?

24 A They were sending out correspondence, you would get correspondence, oh the
14:57:42 25 constituents, sorry, I thought you said the people out there.

26 Q 316 Your constituents wouldn't particularly be lobbying you in respect of that
27 area?

28 A No.

29 Q 317 That you can recollect.

14:57:53 30 A No, no.

- 14:57:53 1 Q 318 No. And in relation to the general submissions, do you have any memory of
2 getting submissions from third parties in relation to the Baldoyle rezoning
3 proposals of Pennine Holdings in 1993.
- 4 A No, I have no records or no knowledge of them, yeah.
- 14:58:16 5 Q 319 Okay. Now, I think that again, you were asked to assist the Tribunal in
6 relation to its inquiry in relation to the Baldoyle lands and you furnished a
7 written reply to the Tribunal in that regard and I will just put that on screen
8 and briefly go through it with you if I may. Page 393. This is provided dated
9 15th August 2006, it says "I Anthony Fox of 93 Mountain View Park, Rathfarnham,
10 Dublin 14 am currently a councillor in Dun Laoghaire/Rathdown County Council.
11 I have provided statements prior to this setting out the history of my
12 involvement in Dublin County Council and at all material times was a member of
13 that council. I refer to my evidence given to Tribunal before insofar as it
14 relates to the allegations by Frank Dunlop that he gave money to me in return
15 for my support for any particular project, motion or otherwise. I emphatically
16 deny his allegation that he states that in respect of the above lands, he paid
17 the amount of 1,000 pounds to me in return for which I supported the vote.
18
19 "In the letter from the Tribunal dated 22nd June 2006, they request my response
14:59:38 20 to this allegation which is set out above. I am not aware of any option
21 agreement involving Pennine Holdings Limited and any other parties. In reply
22 to the specific queries required of the Tribunal I set out the following. 1, I
23 do not recall any specific representations made to me in respect of these
24 lands.
- 15:00:02 25
26 2. I would not recall at this remove not only whether any specific
27 representations were made or by whom they were made.
28
29 3. I would not remember if such representations were made or on whose behalf
15:00:14 30 they were made.

- 15:00:15 1
2 4. I did not receive any payment from any party or received any benefit either
3 directly or indirectly in respect of these lands.
4
- 15:00:25 5 5. No person offered payments or conferred benefit on me in connection with
6 the rezoning of these lands.
7
- 8 I wish to refer to my previous evidence given to Tribunal and previous
9 statements in this respect."
- 15:00:42 10
11 That was your statement in August, Mr. Fox, and have you any addenda for
12 qualifications or corrections you wish to make to it or do you adopt it as
13 being accurate so far as you are concerned in relation to this land
14 A Absolutely I adopt, it, yes.
- 15:01:03 15 Q 320 Mr. Dunlop is the person who has made the allegation to the Tribunal that he
16 paid you money in respect of this particular rezoning exercise and the Tribunal
17 has heard an amount of evidence and considered an amount of documentation which
18 would appear to indicate that as regards this project, as opposed to other
19 projects in which Mr. Dunlop may have been a lobbyist or a person seeking to
15:01:32 20 achieve rezoning for others, he was publicly identified with this particular
21 project as a distinction to others, is that your recollection of events or do
22 you have a memory of Mr. Dunlop being the face of the Pennine Baldoyle
23 development at the time?
24 A I don't remember him being the face of that development.
- 15:01:54 25 Q 321 Right.
26 A I don't even recall that development.
- 27 Q 322 You don't?
28 A No.
- 29 Q 323 It was certainly one of the larger planning/An Bord Pleanala appeals which had
15:02:10 30 been heard before Dublin, before An Bord Pleanala and through the zoning and

- 15:02:20 1 planning process in Dublin County Council in the 1970s and 1980s, you might
2 have remembered it under its name Endcamp.
- 3 A I don't.
- 4 Q 324 You don't. That was something that was the subject of television ...
- 15:02:34 5 A When you say '97?
- 6 Q 325 Sorry, in the 1970's and 80's, this Baldoyle land was the subject of television
7 programmes, massive coverage dealing with the allegations that Mr. Charles
8 Haughey was connected in some way or intended to be connected in some way to
9 the eventual successful development of these lands through Mr. John Byrne who
10 was its owner. None of that rings a bell with you?
- 11 A Absolutely not, no, never heard of it.
- 12 Q 326 And there are again, an attempt to rezone 400 acres of land, I think it was in
13 fact probably 436 acres of land, that was a pretty significant rezoning of land
14 in Dublin, isn't that right?
- 15:03:30 15 A Probably was, I don't know the figures now to be truthful to you, you know?
- 16 Q 327 Well, we are told --
- 17 A If you tell me that, I am just taking your word for it.
- 18 Q 328 Well, you have seen it on plan, it's the entire area between Baldoyle and
19 Portmarnock and the planners have told us that it was 436 acres of land?
- 15:03:52 20 A Yeah.
- 21 Q 329 And it's not an insignificant piece of land to be rezoned. I mean are you
22 saying you have no memory at all of the rezoning process I am just trying to
23 establish --
- 24 A I do remember we were making a Development Plan and motions came before us in
15:04:08 25 the council. And then would be dealt with, yes, the whole process, the purpose
26 was we were making a Development Plan. That's how --
- 27 Q 330 Of course, yes?
- 28 A You either voted for or against or abstained or whatever.
- 29 Q 331 Absolutely. I mean you started from the basis of considering what the
15:04:24 30 Council's officials, I think, might be referred to as the manager's plan is, is

- 15:04:30 1 that right?
- 2 A That's true.
- 3 Q 332 And then if there was to be a variation on that, that involved the councillors
- 4 themselves taking on that quasi judicial position of reviewing all that
- 15:04:43 5 information and coming to a decision as to what in the best interests of the
- 6 community on the rezoning side, isn't that right?
- 7 A That's true, yes.
- 8 Q 333 And in relation to this particular rezoning of Baldoyle, do you have any
- 9 recollection at all of anybody coming to you and saying "Look, this is either a
- 15:05:03 10 good idea, it's a bad idea"?
- 11 A No.
- 12 Q 334 Neither Councillor Michael Joe Cosgrave or Liam Creavan, for example, came to
- 13 you in relation to it, did they?
- 14 A I don't recall them coming to me, no.
- 15:05:19 15 Q 335 So, other than the fact that you were at meetings at which this was on the
- 16 agenda, you don't have particular memory of the detail of any of the proposals
- 17 that were advanced before the Council with a view to varying the manager's
- 18 plan, is that right?
- 19 A That's very true, yes.
- 15:05:37 20 Q 336 Right. You have no recollection of discussing this in any detail or any
- 21 context with Mr. Frank Dunlop, is that right?
- 22 A No, absolutely not, no.
- 23 Q 337 And I think that at this time, you would have known who Mr. Dunlop was, isn't
- 24 that right?
- 15:05:56 25 A I would have, yes.
- 26 Q 338 He was a lobbyist as far as you were concerned, is that so?
- 27 A That's the name he has given it, lobbyist now.
- 28 Q 339 Right, what did you understand Mr. Dunlop's role and function to be at the
- 29 meetings in Dublin County Council?
- 15:06:15 30 A Well, I never really judged him to what his roles was, do you know?

- 15:06:23 1 Q 340 Well, certainly the picture painted so far is that he was almost a permanent
2 fixture at meetings concerned with the Development Plan?
- 3 A Well, he was.
- 4 Q 341 Throughout this time?
- 15:06:38 5 A He was there.
- 6 Q 342 Well, now he is not an elected representative and he is not the owner of all
7 those lands, what did you think?
- 8 A A representative. A representative.
- 9 Q 343 Okay. What sort of a representative?
- 15:06:49 10 A Representing people, it must be.
- 11 Q 344 Yeah. And what was he to get from the councillors as a representative that you
12 understood it?
- 13 A I would presume he would be making representations to councillors or to whoever
14 it may be, to council itself or management or whatever, you know, that's what
15 any of those people does.
- 15:07:10 15
- 16 Q 345 While that's your belief as to what his function was, do I understand that you
17 have no recollection of him making those representations to you?
- 18 A That's true, yeah.
- 19 Q 346 I see, he never made any representations to you ever, is that the position or
20 is it just in relation to Baldoyle that he didn't make representations?
- 15:07:24 20
- 21 A Chairman, we have went through a number of ones that he made representations to
22 me, I don't know whether -- Mr. O'Neill, is it?
- 23 Q 347 Yes.
- 24 A Are you, that you are aware of.
- 15:07:36 25 Q 348 Yes. Just you are giving evidence at this point in time and I want to
26 establish exactly what you are saying in relation to representations made by
27 Mr. Dunlop, because so far, in the course of the current evidence you are
28 giving, you have indicated that you knew what his function was but you have not
29 indicated that he made representations to you. You are saying --
- 15:07:59 30 A He did in relation to the Texas Home Care, ones off the top of my head trying

- 15:08:05 1 to -- the Paisley Park, not the Paisley Park, what do you call it, the Jackson
2 Way.
3
4 CHAIRMAN: Jackson Way.
- 15:08:13 5 A The -- I think that's -
6
7 MR. O'NEILL: They are the only ones you remember
8 A He brought a man to me one time, I think, as well, you know, in relation to, I
9 think, I wasn't allowed mention the name.
- 15:08:30 10
11 CHAIRMAN: Quarryvale
12 A Quarryvale, yes.
13
14 MR. O'NEILL: In relation to Baldoyle, he didn't make either representation
15 A I am telling you the facts of the case.
- 16 Q 349 Yes, I just want to be clear?
17 A I come in here to tell the facts, you know.
- 18 Q 350 Absolutely. Do you remember whilst he is a person who would be making
19 representations to you, do you have a memory of your making contact with him by
20 telephone, for example?
- 15:08:57 21 A Well, there's a number of telephone calls that's come up here and in relation
22 to it and they were attempted contacts, there was no contact made. Now, I
23 think there's one or two there that's in this Module, I think, we discussed
24 them here before as well, Chairman, and so there was attempt at contact but I,
25 by me, it would seem, it's written down there, you don't need to put it up, I
26 have seen it so many times.
- 27 Q 351 There are two, just to clarify it --
28 A I have seen it so many times, so I am saying that I would presume I was
29 returning a call.
- 15:09:40 30 Q 352 Yes.

- 15:09:41 1 A I don't, I have no record or recollection of the call.
- 2 Q 353 You don't know what it was about and you believe that you were returning his
3 call?
- 4 A Absolutely, that's my full belief in it really.
- 15:09:55 5 Q 354 Yes. Do you in fact return all calls that are made to you or is it just Frank
6 Dunlop's calls you were?
- 7 A Returning calls all the time, Chairman, I mean it's --
- 8 Q 355 In the course of at any time did Mr. Dunlop ever offer you any money in respect
9 of your support for any of his projects. In particular now we are talking
10 about Quarryvale, did he ever say to you I am prepared to advance monies to you
11 for your support for this project?
- 12 A Absolutely not. No I wouldn't even tolerate it. You know.
- 13 Q 356 Yes. Well if he had done what you are saying, you would have communicated, you
14 would have made a complaint, would you, in relation to that?
- 15:10:42 15 A Well, you wouldn't know what you would have done but it never happened so I am
16 saying that's the position.
- 17 Q 357 Okay. It never happened, you never had reason to complain, you didn't
18 complain.
19
- 15:10:52 20 CHAIRMAN: Sorry Mr. O'Neill you said a few minutes ago, you asked in the
21 course of at any time did Mr. Dunlop ever offer you any money in respect of
22 your support for any of his projects, in particular now we are talking about
23 Quarryvale, I think you meant Baldoyle.
24
- 15:11:09 25 MR. O'NEILL: Sorry that's a mistake on my part, Mr Fox, I meant Baldoyle
26 A I wondered why you were mentioning it because we are not supposed to be talking
27 about it.
- 28 Q 358 If you consider the question with Baldoyle?
- 29 A I emphatically deny wholeheartedly, it's complete untruth.
- 15:11:30 30 Q 359 Yes.

- 15:11:31 1 A I said before here I never asked him nor I never took a penny from him and
2 that's --
- 3 Q 360 And equally he never offered you any money and had he done so, you would have
4 done something about that if it happened since. It didn't, you didn't have to
15:11:46 5 do anything about it.
- 6 A Yes.
- 7 Q 361 It's not as if he came and endeavoured to compromise you and failed, he simply
8 never came to you to try and compromise you?
- 9 A Compromise my vote?
- 15:11:57 10 Q 362 Yes.
- 11 A Absolutely, nobody. I mean I wouldn't accept, I think it's outrageous even for
12 somebody to do that.
- 13 Q 363 It is indeed. And I think that in relation to your financial affairs during
14 the window period involved, there is no lodgment corresponding with any
15:12:19 15 supposed payment to you of a thousand pounds in cash at the time, isn't that
16 right?
- 17 A Yeah.
- 18 Q 364 You don't, there's nothing in your account showing a lodgment of a thousand
19 pounds, isn't that right?
- 15:12:30 20 A When are you talking about?
- 21 Q 365 I am talking about the period between the 1st March of 1993 and the 30th
22 September?
- 23 A I think you know for a fact there's nothing in it, you have seen it there.
- 24 Q 366 I am putting to you, just so that you have the opportunity of making that
15:12:49 25 point. I am not in any way trying to compromise you, I am saying there isn't
26 any evidence in your account to support the fact that Mr. Dunlop says he paid
27 you the money, is that right.
- 28 A Yes.
- 29 Q 367 Thanks, Mr. Fox.
- 15:13:03 30

15:13:03 1 CHAIRMAN: All right. Mr. Smith do you want to ask?

2

3

THE WITNESS WAS CROSS-EXAMINED AS

4

FOLLOWS BY MS SMITH:

15:13:07 5

6

MS. SMITH: Yes, Chairman. Just one question arising out of that if I could.

7

8

Q 368 Councillor Fox, you can't see me. You have consistently said in Module after

9

Module before this Tribunal that you didn't receive any monies from Mr. Dunlop

15:13:18 10

be it as a political donation, illicit payment, bribe or otherwise and that

11

remains your position today,

12

A Absolutely, correct.

13

14

MS. SMITH: Nothing further, Chairman.

15:13:29 15

16

CHAIRMAN: Thank you very much.

17

A Thanks very much. Thank you very much Mr O'Neill.

18

MR O'NEILL: Thank you very much, Mr Fox.

19

15:13:31 20

THE WITNESS THEN WITHDREW.

21

22

MR. O'NEILL: Senator Lydon please.

23

24

25

26

27

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29

30

SENATOR DONAL LYDON, HAVING BEEN SWORN,

WAS EXAMINED AS FOLLOWS BY MR. O'NEILL:

- 15:13:35 1
- 2
- 3
- 4
- 15:14:11 5 MR. O'NEILL: Good afternoon, Senator Lydon
- 6 A Good afternoon.
- 7 Q 369 As you know and you have been here to hear the evidence of your certainly
- 8 former colleagues on the Council in respect of Councillor Cosgrave and your
- 9 colleague Councillor Fox, this is an inquiry which stems from the fact that
- 15:14:35 10 Mr. Frank Dunlop has made allegations against a number of councillors,
- 11 including yourself, isn't that so?
- 12 A That's true.
- 13 Q 370 And he makes an assertion that he paid you and a number of other councillors an
- 14 equal sum of a thousand pounds each in cash and that he made that payment in
- 15:14:55 15 the environs of the Dublin County Council offices and that he did so at a time
- 16 which is unspecified but is a time at which the Council was considering the
- 17 review of the Baldoyle plan, that is map number 8, and that that period is
- 18 probably between March and September of 1993. You understand that to be what
- 19 he says about --
- 15:15:24 20 A That's what he says.
- 21 Q 371 Isn't that right. And I think that you have given evidence in other Modules
- 22 and in particular in this Module I want to focus on the question as to whether
- 23 it was or was not the case that he ever approached you to pay you money for
- 24 your support in Baldoyle?
- 15:15:43 25 A No, he never did, no.
- 26 Q 372 I think you and other councillors would have been very familiar with the
- 27 presence of Mr. Frank Dunlop in the environs of the Council throughout the
- 28 period of the review of the 1993 Development Plan, of the 1983 Development
- 29 Plan, isn't that right?
- 15:16:04 30 A I think it's fair to he was nearly always present.

- 15:16:06 1 Q 373 Yes.
- 2 A I don't specifically remember him being present on this but it would be
3 extraordinary if he wasn't. He did write to me about this particular project,
4 I remember getting a letter from him all right. Probably looking for support
15:16:20 5 or something but -- he probably talked to me about this as well because it
6 would be absolutely, beyond belief if he didn't because he was going to make 10
7 million out of it, I think he canvassed everybody.
- 8 Q 374 Exactly. He was the public face of the project, isn't that right?
- 9 A Well I thought he owned it actually but ...
- 15:16:41 10 Q 375 Well, could you seriously have thought that he owned it given that it's 400
11 acres of land on the edge of Dublin?
- 12 A Well, I never heard some of these names mentioned like Mr. Shubotham and that
13 until, lately I hadn't had much time but I read the transcripts over the last
14 few days yesterday but apart from that, I wouldn't know about these fellas at
15:17:05 15 the time, I never heard about them.
- 16 Q 376 But surely you would know Mr. John Byrne, the whole country knew Mr. Byrne and
17 his efforts to rezone the Endcamp lands throughout the 70s and the 80s?
- 18 A I had heard about him but I never met the man. These names wouldn't mean much
19 to the council really. I thought, I actually thought that Frank Dunlop owned
15:17:25 20 this land.
- 21 Q 377 When you would have seen this project covered in the newspapers, Mr. Dunlop
22 himself was responsible for the first press coverage of this which in effect
23 was a script that he had provided to the press which was extolling the benefits
24 of developing the whole of Baldoyle which had been derelict for over 25 years,
15:17:52 25 you might remember that in the newspaper. It didn't immediately identify
26 Mr. Dunlop as being the person who was the promoter but the first public
27 notification of this intended plan took place in 1991, which is a comprehensive
28 review of the area indicating it was going to be the subject of redevelopment
29 from its derelict status to residential area. I take it as a councillor you
15:18:24 30 would be following this type of information, would you not, in the press?

- 15:18:29 1 A Honest to God I wouldn't. I really wouldn't. I might have seen it but I
2 wouldn't pay any attention to it. It was away in the far end of the county, it
3 didn't matter to me to be honest with you.
- 4 Q 378 Sure. But I think it is the case that you attended at the meetings at which
15:18:44 5 the Baldoyle lands were considered. We have seen them over the past number of
6 days, they started with a meeting on the 20th April, there was one on the 27th
7 April, there was a brief reference to the motion on the 4th of May, it then was
8 dealt with on the 6th of May when it was agreed there would be a site visit to
9 the lands that was to take place on the 19th of May, you might remember that?
- 15:19:12 10 A I remember that from the reading of it, but not from memory.
- 11 Q 379 But I mean not every meeting of the council was contentious or broke up in
12 disorder or led to walk outs or that sort of thing.
- 13 A No.
- 14 Q 380 There were some that had their moments but there were considerable number of
15:19:35 15 them in the context of Baldoyle in that it seemed to be controversial from the
16 first time it came before the members until it ceased to be a live issue?
- 17 A All I remember about the meeting, I do remember it was a controversial thing, I
18 do remember the hall being packed with people but I don't remember the actual
19 detail, it was controversial and I read that it broke up in disorder and those
15:19:59 20 things did occur an odd time, I had a moment myself one time but I don't
21 remember much about the meeting to be honest with you.
- 22 Q 381 One of the unusual features of the series of meetings that took place in
23 relation to Baldoyle was the fact that the motion advanced by Councillor Healy
24 and Gordon had the effect of snookering a decision which had already been taken
15:20:27 25 by the body of members to defer a motion to a later date, isn't that right?
- 26 A That's true.
- 27 Q 382 And I think that that was something of a procedural knock out, if I put it that
28 way, for the project other than one which would have involved a debate upon the
29 merits or lack of merits of the project which would have resulted in a decision
15:20:52 30 of the council on the merits, if I could call it that, of the project, isn't

- 15:20:56 1 that right?
- 2 A Yes.
- 3 Q 383 This is one really that never got off the ground because of the inter position
4 of the first motion, that is the Healy motion.
- 15:21:06 5 A I think if the Healy motion hadn't been there, the thing might have been
6 deferred and brought up some other time.
- 7 Q 384 Yes, in fact it had been voted on as being a motion that should be deferred?
- 8 A Yes.
- 9 Q 385 The body of members had voted for that, that had been carried and in the normal
15:21:21 10 course, you would have expected that that would have come up for hearing again
11 on a date before the 15th May. That's --
- 12 A Probably. The normal course of events would be if there was something
13 controversial, I think, that you would defer it and get everybody a chance to
14 talk about it and see if anything could be done about it.
- 15:21:39 15 Q 386 Yes. Do you have any memory of the reason for that deferral of the motion of
16 Councillors Creavan and Cosgrave and its connection, if anything, with the fact
17 that there was this newspaper article that morning saying that your decision
18 and that of your fellow members would have the result of creating a 10 million
19 pounds profit for Mr. Dunlop and those believed to be associated with him?
- 15:22:06 20 A I don't have any recollection of it but I would assume that was the reason,
21 maybe they thought it wouldn't go through or something.
- 22 Q 387 Yeah and I suppose in real politics, there's no way it would have gone through
23 with that sort of publicity attaching to it, isn't that right?
- 24 A I think so, yes. It wasn't Anything to do with Mr. Dunlop making money, I
15:22:27 25 don't think anybody minded him getting rich but it was the controversy that
26 surrounded the whole zoning thing.
- 27 Q 388 Well, there was the whole zoning thing, this was the first occasion upon which
28 those behind Mr. Dunlop, if I can call it that, were identified, whether
29 correctly identified or otherwise, this article drew attention to the fact that
15:22:49 30 Mr. Dunlop was a front, effectively, for others, isn't that so?

- 15:22:54 1 A That's what the article said, yes but I don't recall seeing the article at the
2 time. Honestly, I don't.
- 3 Q 389 Well, you seem, I think, to agree with me in the proposition that the article
4 was the trigger factor for the deferral, isn't that right?
- 15:23:17 5 A Seems to be.
- 6 Q 390 As far as we know from anybody attending that meeting and anybody who has given
7 evidence in relation to that meeting so far, neither the proposer of the motion
8 to defer nor the seconder offered to the body of members present a reason for
9 deferral, they merely moved the deferral without offering an explanation for
10 it, is that so?
- 11 A That, I don't know but, I really don't know that.
- 12 Q 391 Right. Mr. Dunlop has given evidence that he was the author of the decision to
13 defer in conjunction with Mr. Liam Lawlor and that they had made a strategic
14 decision to seek deferral motivated solely by content of the press article and
15 he, Mr. Dunlop, drafted up that motion in the body of the council at the time,
16 had it typed up and moved before the Council. Is all of that a surprise to
17 you?
- 18 A Well, it was when I read it but I didn't know much about it at the time but it
19 was a surprise to me. Yes, I didn't know about it at the time.
- 15:24:36 20 Q 392 Does it indicate to you anything about the manner in which the Council of which
21 you were a member was being effectively controlled at that time?
- 22 A Well, it seemed like he had control over a couple of people anyway. But I
23 don't think he had control over many more. I think -- I always thought that
24 Frank Dunlop assumed he had control when he hadn't. Mr. Dunlop. I mean as I
15:25:04 25 said before one time before all those motions, he would be outside there, 'go
26 on in there and vote for that and I'll look after you' that's what he kept
27 saying and but I don't think people ever voted for him or indeed for anybody
28 else if they didn't want to.
- 29 Q 393 Does it surprise you that he was in possession of documentation which was the
15:25:27 30 Fingal area committee documentation upon which he was entitled?

- 15:25:30 1 A That really surprised me, I didn't know that.
- 2 Q 394 And that he was drafting letters both from councillors, if his evidence is
3 correct, and from the chairman of the council back to councillors, doesn't that
4 effectively indicate that he was controlling the Council there?
- 15:25:45 5 A Well, he was certainly attempting to do it, yes. In a way. I find that
6 extraordinary. Yes.
- 7 Q 395 Right. Again, Senator Lydon, whilst you have sources of funds that include the
8 payments of both salary, wages, expenses as a committee member from various
9 sources, the deposits to your accounts are deposits that do not contain any
10 individual 1,000 pound lodgments of funds, is that right in this period now, I
11 am talking about a period in March 1993 to September 1993, did you lodge any
12 single payment of that amount?
- 13 A I don't know.
- 14 Q 396 Well, I am synopsising effectively what you have provided to us by way of your
15 accounts and I am indicating to you that there wasn't such a lodgment in that
16 period?
- 17 A I must say just to clarify, the accounts that I provided to you are the ones
18 that you provided to me. I didn't have any to begin with.
- 19 Q 397 Exactly. But it's not that the Tribunal is providing you with a set of
15:26:58 20 accounts but rather bank statements, lodgment documentation which has been
21 obtained from financial institutions, on foot of orders for discovery, has been
22 provided to you in the hope that you might be able to assist the Tribunal as to
23 exactly --
- 24 A The only records we came across or that we had were lodgment slips and
15:27:17 25 sometimes on the back of that my wife would write whether it was cash or cheque
26 but that's all we ever had and I provided all the those to the Tribunal.
- 27 Q 398 And again, insofar as you ever did receive a payment from Mr. Dunlop, it was a
28 payment in respect of a Senate election contribution, is that right?
- 29 A At that time, yes, I received two from him, one for the Council election later
15:27:43 30 on and one at that time for the Senate.

- 15:27:44 1 Q 399 The one you received for the Senate election I think at that time was a
2 thousand pounds but was received in January of 1993?
- 3 A January or February I think, yes, that was unsolicited. And the Council one I
4 asked for was solicited in 1999 I think.
- 15:27:58 5 Q 400 And in relation to the 1993 payment of monies to you, you believe that to be a
6 contribution towards your election expenses and that it was not subject to any
7 conditions or ties as to your future support in relation to --
- 8 A No, it wasn't, no. He did this with a number of people, he sent them donations
9 for the Senate and I suppose he did it, like I said before, because he was a
10 lobbyist and he wanted to keep well in with us, but there was no conditions
11 attached, he didn't attach any, definitely, I can say that for him.
- 12 Q 401 And as regards his allegation made against you, you have rejected that as being
13 a false allegation against you, isn't that right?
- 14 A Well of course I do, only look at what he did, he did the same thing in
15 Cherrywood and the same thing at Cargobridge, he said in private he had given
16 me money and in public he said he didn't. He has done this two or three times.
17 You only need to think of what he said about Jack Larkin, the description he
18 give of slipping the money across the seat and definitely pocketing it but the
19 man was in hospital with a triple bypass. You can't believe anything he said.
- 15:29:15 20 Q 402 Have you any reason to believe he has any grounds for a personal grudge or
21 antagonism towards you that would have motivated him to give false testimony in
22 relation to you and your affairs as a councillor at the time?
- 23 A I don't think he has any personal grudge against me, I never thought he had. I
24 think that he got stuck the night he was sent home by Justice Flood and he
25 picked out the people who had done favours for him, proposed or seconded
26 something and the rest were dead and that's all there is to it. That's what I
27 believe.
- 28 Q 403 I see. Thanks, Senator Lydon.
- 29
- 15:29:47 30 CHAIRMAN: Mr. O'Tuathail, do you want to ask?

THE WITNESS WAS CROSS-EXAMINED BY MR O'TUATHAIL AS FOLLOWS:

- 15:29:49 1
- 2
- 3 MR. O TUATHAIL: Just one question, Chairman.
- 4
- 15:29:51 5 Q 404 There were several votes, Senator Lydon, on the 27th April 1993 and Mr. O'Neill
- 6 has brought you through some of them. But the particular vote, the motion
- 7 proposed by councillors Healy and Gordon, were you, you were not present for
- 8 that vote, is that correct?
- 9 A That's correct.
- 15:30:12 10 Q 405 And that vote was carried by, I think, it was 43 for and three against, with 23
- 11 abstentions.
- 12 A I think that's the figure, yes.
- 13 Q 406 But while you were, I think you were present at the earlier part of the meeting
- 14 but you were not present for that vote.
- 15:30:28 15 A No, I might have had to go back to the hospital, I don't know where I was to
- 16 tell you the truth. I probably had to leave and just left.
- 17 Q 407 Yes. You did vote for the deferral motion earlier on, that's the Michael Joe
- 18 Cosgrave and Liam Creaven sponsored motion that the proposed amendment be
- 19 deferred to a date, the motion and the proposed amendment to it be deferred to
- 15:30:54 20 a date not later than the 15th May?
- 21 A I thought there was a majority in all the motions but I just wasn't present for
- 22 the last one.
- 23 Q 408 That vote was carried I think 37 for and 35 against.
- 24 A I think so, yes.
- 15:31:08 25 Q 409 Yes, thank you.
- 26

THE WITNESS WAS RE-EXAMINED BY MR O'NEILL AS FOLLOWS:

- 27
- 28
- 29 MR. O'NEILL: Senator Lydon, just one matter I left hanging there, if I could
- 15:31:13 30 get back to it, we were discussing the question of Mr. Dunlop having control

15:31:18 1 over certain persons in the council.

2 A Well, it seemed that way to me but I can't say that he had.

3 Q 410 Right. I just want to develop that slightly if I may. How did it appear to

4 you that he seemed to have that control, what was it in their actions?

15:31:37 5 A It's only from reading the transcripts the last few days.

6 Q 411 I see. I was unclear about that. So this is an assumption made now rather

7 than one apparent to you in 1993?

8 A Yes.

9 Q 412 I see. Thank you.

15:31:54 10

11 CHAIRMAN: Thank you

12 A May I say, when you rose for lunch, I was down the back, I didn't rise, I

13 apologise, I was asleep, I am sorry.

14

15:32:01 15 CHAIRMAN: You needn't worry.

16 A I had fallen asleep, I didn't mean to be bad minded. Thank you.

17

18 CHAIRMAN: Thank you. We will sit at half ten tomorrow?

19

15:32:10 20 MR. O'NEILL: We have Mr. O'Halloran here I think.

21

22 CHAIRMAN: Sorry.

23

24

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30

MR. JOHN O'HALLORAN HAVING BEEN SWORN WAS QUESTIONED

AS FOLLOWS BY MR. O'NEILL:

CHAIRMAN: Good afternoon, Mr. O'Halloran.

MR. O'NEILL: Mr. O'Halloran, good afternoon

A Good afternoon.

Q 413 I think you have been contacted over time from the Tribunal in relation to various matters and I want to focus if I can on the contacts that have taken place with you in the Tribunal on the subject of the Baldoyle lands or the Pennine Holding lands that are the current Module of inquiry before the Tribunal. I just want to briefly go through a number of the documents that were statements and letters to you setting out your recall of events in response to the queries put to you by the Tribunal over time. In December of 2000, I think you wrote a letter containing information for the Tribunal which is at page 599. You might see that letter on screen in front of you there and you will see that this is a letter from your solicitor, it's been redacted insofar as material which isn't immediately relevant to this Module is not on screen to some extent. You say that you didn't receive any payment from Frank Dunlop in the course of the review of the 1993 Dublin County Development Plan. That's 1989/1993 approximately, in connection with the proposed rezoning of land in the Carrickmines Valley, Ballycullen, Airlie Stud and at Baldoyle Racecourse. That's the lands we are looking at. Paragraph B you say "I have already indicated in my previous statement to the Tribunal that I did receive a sum of 2,500 from Frank Dunlop as a political contribution in the course of my campaign as an Independent candidate in a Dail by-election in 1996. I personally solicited these funds as a political donation." So, effectively from that point forward, you say there's no payment whatsoever made in relation to the Baldoyle lands and the Tribunal then followed up when it was dealing specifically with this Module advising you in June of this year that there was

15:34:51 1 to be a Module in relation to the lands at Baldoyle, East View and you will see
2 at page 603 on screen now, copies of the Tribunal's letter to your solicitor
3 saying "The subject matter of lands at Baldoyle East View, the Tribunal will in
4 due course proceed to a public hearing in respect of the attempted rezoning of
15:35:14 5 the lands. Mr. Dunlop has made allegations that he paid the sum of 1,000
6 pounds to a number of councillors in turn for their support for the Baldoyle
7 East View project and in relation to your client, Mr. Dunlop has indicated that
8 part of the monies paid during the course of the Development Plan related to
9 your client's support for Baldoyle.

15:35:36 10
11 I am now directed by the members of the Tribunal to request that your client
12 provide to the Tribunal a detailed narrative statement regarding his knowledge
13 of and involvement with the attempts to rezone the lands in Baldoyle. The
14 lands in question formed the subject of an option agreement involving Pennine
15:35:52 15 Holdings and a number of other parties.

16
17 To assist you, I have attached a copy of the minutes of the County Council
18 meeting held on the 27th April 1993.

19
15:36:03 20 Your client's narrative should include but not be limited to the following, all
21 details of representations made to your client in respect of lands at Baldoyle,
22 East View. 2. By whom the said representations if any were made. On whose
23 behalf the said representations if any were made. Details of all and any
24 payment received by your client or benefit conferred upon your client directly
15:36:24 25 or indirectly in respect of the lands at Baldoyle, East View. The identity of
26 any person who offered payments or conferred benefits upon your client in
27 connection with the rezoning of the above lands."

28
29 And your response to that was provided, we will see at page 615, this was
15:36:50 30 accompanying a letter of the 28th September 2006. The actual document itself

15:36:55 1 is undated, although there is a reference to the month of August 2006 on the
2 face of it. It was received as I say on the 28th September 2006. It reads, "I
3 say as follows, Mr. Frank Dunlop or any person acting on behalf of Mr. Frank
4 Dunlop did not make representations to me at any time in relation to the lands
15:37:16 5 at Baldoyle Racecourse.

6
7 No other party made any representations to me that I can recollect in relation
8 to the lands at Baldoyle Racecourse.

9
15:37:25 10 3. I do not recollect whether or not I voted in support of the motion. If I
11 did so I do not recollect my reasons for so doing. The area at the lands at
12 Baldoyle Racecourse were of no interest to me. It may have happened that on
13 the day of the vote, a fellow councillor would have requested my support for
14 the motion but I have no recollection of this.

15:37:47 15
16 4. There is one matter in which I am absolutely concern in certain in relation
17 to the Baldoyle Racecourse lands and it is that Frank Dunlop nor any person
18 acting on his behalf ever made any representation to me nor did I ever have any
19 discussion with Mr. Dunlop in relation to same. If Mr. Dunlop states that to
15:38:06 20 the contrary, then I refute this entirely."

21
22 There was a further letter then from the Tribunal to you at page 2569, rather
23 to your solicitor, I should say. It says that "I confirm that the Members of
24 the Tribunal have now had an opportunity to peruse the contents of same",
15:38:28 25 that's your earlier letter "and have directed me to write to your client
26 further in respect of this matter.

27
28 The Tribunal has received information that on the 27th April 1993, your client
29 proposed a motion that decisions relating to the Baldoyle Portmarnock area be
15:38:44 30 deferred until a site meeting was held in that area to allow all councillors

15:38:49 1 view lands proposed for rezoning. The Tribunal further understands that the
2 manager advised that the motion was not in order as a Councillor Healy had
3 indicated that he did not wish to have motion 1551 deferred. A letter dated
4 the 4th May 1993 was written by your client to Therese Ridge enclosing a motion
15:39:12 5 which he wished to have put to the meeting of the 4th May 1993. Your client
6 indicated that Ms. Ridge's decision on his motion of the 27th April 1993 was in
7 breach of Standing Orders. I attach a copy of this letter for your client's
8 convenience.
9

15:39:30 10 The Tribunal understands that the letter was read out at the meeting and the
11 matter was deferred for further consideration to a meeting on the 6th May 1993.
12 On the 6th May, 1993, your client advised members that he wished to amend the
13 motion dated the 4th May 1993. It would appear that your client then added the
14 words, "The site visit to take place on Tuesday, 18th May 1993." I attach for
15:40:02 15 your attention a copy of the aforementioned motions.
16

17 The Tribunal members have noted at paragraph 1 of your client's statement,
18 dated August 2006, that your client indicated that Mr. Frank Dunlop or any
19 person acting on his behalf did not make any representations to him in relation
15:40:18 20 to the Baldoyle -- I think that should read did not obviously -- did not make
21 any representation to him in relation to the Baldoyle lands. The members are
22 now anxious to establish whether or not your client had any contact with the
23 persons outlined below in respect of the Baldoyle lands generally, but in
24 particular, in respect of the motions proposed by your client on the 27th April
15:40:40 25 1993 and the 6th May 1993.
26

27 Furthermore, the Tribunal members are anxious that your client address the
28 matters outlined below:
29

15:40:50 30 1. Please give details of why your client proposed the motion on the 27th

- 15:40:56 1 April 1993.
- 2
- 3 2. On whose instructions did your client propose that motion.
- 4
- 15:41:01 5 3. Please provide details of correspondence passing between your client and
- 6 the Council or council members.
- 7
- 8 4. Please identify the identity of the person who drafted the correspondence
- 9 or advised on the correspondence generally.
- 15:41:13 10
- 11 5. On whose instructions was that correspondence drafted.
- 12
- 13 To that there was a reply, on the 13th November 2006 on page 2634. Reply says
- 14 "we have discussed the contents of that letter with our client and he has
- 15 instructed us to respond on his behalf to the points raised as follows. 1. As
- 16 has already been indicated to the Tribunal, due to the passage of time, our
- 17 client's recollection of those events is extremely patchy. Our client has no
- 18 records of any correspondence which may have been written at the time and is
- 19 limited to attempting to remember these events with no clear recollection.
- 15:42:11 20
- 21 2. Our client recalls proposing a motion that councillors view the site locus
- 22 of lands proposed for rezoning prior to making any decision on same. This, he
- 23 believes, was a view held by a considerable number of people across different
- 24 parties and was his oft stated view.
- 15:42:31 25
- 26 In formulating this motion, he was not prompted or assisted by any other
- 27 parties. The correspondence furnished by the Tribunal has prompted our clients
- 28 recollection of these events somewhat.
- 29
- 15:42:43 30 It is his belief that he alone drafted this motion without assistance from any

15:42:51 1 other persons. No persons advised him and it was not done on the instructions
2 of any person.

3
4 The motions -- this is page 2624, the motions of the 27th April 1993 and 6th
15:43:07 5 May 1993 were original originated, prepared and executed by our client
6 exclusively without assistance from any other party and in accordance with his
7 stated belief at the time, that the councillors should first inspect the lands
8 prior to voting on proposing to rezone.

9
15:43:26 10 We again reiterate that this is our client's recollection of events that
11 occurred some considerable time back and he has not got the assistance of my
12 records, I think that perhaps should read any records, or documents save for
13 those produced by the Tribunal.

14
15:43:47 15 Should you require anything further in this regard, our client will of course
16 continue to assist the Tribunal in whatever way he can."

17
18 I think that was the most recent of your narratives or statements on the
19 subject matter of this inquiry, isn't that correct, Mr. O'Halloran

15:44:10 20 A I think so, yes.

21 Q 414 We will see from those various written responses to the Tribunal that in all
22 instances, you highlight the fact that because of lapse of time and the absence
23 of your own records of the events, you are relying on a recollection which you
24 don't claim to be perfect and you are aided by documents which have come from
15:44:36 25 the Tribunal rather than your own records, your not having any records of the
26 time, isn't that so?

27 A That's correct, that's right.

28 Q 415 I think you indicate by inference and directly to the Tribunal, you ask the
29 Tribunal to consider your evidence in that light, isn't that right?

15:44:55 30 A Yes.

- 15:44:56 1 Q 416 Yes. Now, your involvement here in this Module of the Tribunal stems from the
2 fact that Mr. Lawlor, sorry, Mr. Dunlop has given evidence to the Tribunal in
3 which he says that he paid a number of councillors in connection with the
4 Pennine Holdings application to rezone, one which we know failed and of the
15:45:23 5 councillors he paid money, you were one of that number, you were aware of that?
- 6 A I am aware of that.
- 7 Q 417 He differentiates between the payment he made to you --
- 8 A Sorry the alleged payment.
- 9 Q 418 Of course. That is, I am not for a moment pre-judging or finally judging what
15:45:43 10 the Tribunal will say but I am telling you what he says about it and obviously
11 you will say that he didn't. I know that from your statement.
- 12 A Yes.
- 13 Q 419 But he differentiates between you and the other councillors in the manner in
14 which the money is paid because he says he paid you as part of a composite sum
15:46:02 15 of some 5,000 pounds paid to secure your support for a number of motions.
16 Whereas in relation to the other councillors, he says that he paid them an
17 individual sum of 1,000 each, other than that, he doesn't distinguish the role
18 or the position that pertained to paying you as opposed to paying them. I draw
19 this to your attention because it is one of the distinctions which are there.
- 15:46:34 20 As regards providing any detail to the Tribunal over and above that, he is not
21 of assistance to the Tribunal because he cannot identify the date upon which he
22 says he paid you the money, he cannot identify precisely the location where the
23 money was allegedly paid to you nor to any one of the other councillors
24 involved. Though he does make the case that you were a councillor whose
15:47:05 25 support was delivered on this project and he identifies a role which he says
26 you played which was assisting the attempts being made to rezone the Pennine
27 Holdings lands. It's in that basis I will be questioning you in relation to
28 the role which I hope to establish through the minutes of the council that you
29 played and through documentation which was generated at that time. The precise
15:47:40 30 detail of what took place can only be gleaned at this point in time from the

15:47:49 1 documents which are generated at the time and the records which are generated
2 at the time.

3
4 Now, one of the matters which is pertinent to establishing whether or not
15:48:02 5 Mr. Dunlop is correct in the version he gives of events, and it is only a
6 version at this point in time, is the extent and level of contact which he had
7 with you and the relationship which he had with you in and around that time and
8 I think you have been asked questions on this subject before and it's not
9 particularly confined to the Pennine Holdings Module but it is clear from a
15:48:32 10 consideration of the documentation which has resulted from the telephone record
11 keeping of Mr. Dunlop's secretary of calls which were made to him which were
12 not capable of being dealt with by him at the time, and by meeting records
13 which were kept by him at the time, that there was a considerable level of
14 contact between you and him during the period that we are considering now, that
15:49:01 15 is in 1993 and if I take January to September of 1993, could I suggest to you
16 that a review of the documents from the two sources I mentioned to you just a
17 moment ago would show that there were at least 54 days between the period in
18 the beginning of January, say the 6th January 1993 and the middle to end of
19 September 1993 where you are recorded as endeavouring to contact Mr. Dunlop
15:49:38 20 during that period. Now I can go through them if you wish and show you where
21 the references are if they are an aid to you in either ascertaining what the
22 subject matter was of that contact or indeed of allowing you to indicate that
23 perhaps you didn't in fact try to contact him on that day and you believe the
24 record to be erroneous but you have been circulated with the brief of
15:50:04 25 documentation

26 A I don't think it will serve any purpose, no need to show the detail, at this
27 far remove I couldn't help you anyway.

28 Q 420 Sure, but as regards possibly dealing with the question as to whether or not
29 these records might be contrived records or otherwise generated by Mr. Dunlop
15:50:27 30 after the event or any other reason to challenge these documents as such, have

15:50:32 1 you any such challenge to make to the documents or do you accept that what's in
2 those documents is probably an accurate record of your contacts or attempted
3 contacts with Mr. Dunlop over that period?

4 A Unfortunately I am not in a position to challenge the records he has produced
15:50:49 5 and I have no theory as to what he might have done, whether contrived or not, I
6 wouldn't put forward any theory on that matter.

7 Q 421 Right. Well you may take it that if we were to go through the individual dates
8 as I say in that period, we would find that there are over 54 different days in
9 that period, there are records of you endeavouring to contact Mr. Dunlop. We
10 are talking about a period of a little, nine months or so. And this level of
11 contact, if it happened, would illustrate that there was a considerable degree
12 of interchange between yourself and Mr. Dunlop during this period of time,
13 isn't that so? If they are true?

14 A If they are true, yes.

15:51:40 15 Q 422 Now, do you dispute that they are true?

16 A Mr. O'Neill I am not in a position to dispute or agree. It's 13 years ago or
17 something.

18 Q 423 Can I come at it another way then perhaps, Mr. O'Halloran, and ask you this:
19 Do you believe that you had a very considerable level of interchange and
15:52:03 20 exchange with Mr. Dunlop during the period I mentioned, that is between January
21 and September of 1993 and that that level of contact was not confined to
22 meetings in the environs of Dublin County Council?

23 A I can't comment. Mr. Dunlop, as was stated by witnesses earlier, was a
24 constant presence in Dublin County Council. I stated here a number of
15:52:30 25 occasions before, Mr. Dunlop never sought my support for any motion on the
26 Council. I wasn't aware of his involvement in any of them except one, which I
27 won't mention now but so it came as a surprise to me that he was involved in
28 anything, including this one by the way. He never sought my support for this
29 at all.

15:52:50 30 Q 424 Yes. We will get to the extent and subject matter of what your contacts with

- 15:52:56 1 him were but I think it is important to endeavour to establish, if we can, what
2 the level of contact was because on its face, if one took these documents as
3 being an accurate record of what took place on the individual days, it would
4 appear that in 54 separate days over that period of time, there are records of
15:53:19 5 you telephoning Mr. Dunlop seeking to contact him, often twice a day and more
6 on particular issues. Now, if that is so, it would appear to illustrate a high
7 degree of interchange between you. If it is --
- 8 A If it's true, yes.
- 9 Q 425 So, if it is not true, it follows that the documents, the telephone records,
15:53:43 10 are a falsity or, that's one option, one possibility, or that there was such a
11 degree of communications between you and you simply have forgotten about them?
- 12 A Again, I am not in a position to comment. But I am saying is if I had contact
13 with Mr. Dunlop, it certainly wasn't about lands at Baldoyle because at the
14 time I wasn't aware of his involvement. I only became aware of it in fact when
15:54:11 15 the motion fell.
- 16 Q 426 Right. Well had you any reason, leaving Baldoyle aside for the moment then, to
17 be in contact with him with the frequency that the records would appear to
18 suggest? And I have, as I say, outlined them as being 54 individual contacts
19 in that period.
- 15:54:27 20 A You have said 54 several times, I can't comment. I can't say there was any
21 particular reason as to why I might have tried to contact him so many times.
- 22 Q 427 Okay. The meetings then with Mr. Dunlop, have you any recollection of meeting
23 Mr. Dunlop outside of the council chamber where he would have been appearing on
24 the fringes of it as a lobbyist, do you remember meeting with him?
- 15:54:55 25 A Mr. Frank Dunlop was a constant presence in Dublin County Council. I mean
26 that's a well known fact.
- 27 Q 428 Yes, I accept that and that's the premise of the question I am putting to you,
28 do you remember meeting him other than in that environment? Did you meet him
29 anywhere else?
- 15:55:10 30 A I did on another matter with other people.

- 15:55:12 1 Q 429 Right. Okay. Now, what did you understand the position to be in relation to
2 the Baldoyle lands when it came for review in the 1983 review, we have been
3 through the dates, the first date upon which the Tribunal has focused is the
4 day upon which the signed motions were meant to be in. That was the 12th March
15:55:37 5 of 1993. Now, we know that you didn't sign a motion for that day seeking to
6 vary the plan, isn't that right?
- 7 A That's right.
- 8 Q 430 And that I take it is illustrative of the fact that you did not have any
9 particular interest in advancing any particular project at that time for
15:55:57 10 Baldoyle, isn't that right?
- 11 A That's correct.
- 12 Q 431 It wasn't within your ward in any event, isn't that right?
- 13 A That doesn't make any difference, we were elected to represent the whole
14 country, you know.
- 15:56:07 15 Q 432 Yes?
- 16 A And in fact what you are saying now led to me suggesting that we go and visit
17 these lands because people were suggesting that people who didn't live in the
18 area or represent the area shouldn't be voting on these matters and that was
19 contrary to the Standing Order.
- 15:56:22 20 Q 433 Of course. The theory was that all members should vote upon the issues so that
21 the Council made the decision rather than the individual councillors.
- 22 A That's right.
- 23 Q 434 In an area. I think the Tribunal has heard that because the Council area is so
24 large, that no single councillor would have the knowledge necessary to allow
15:56:47 25 him to fully acquaint himself with the immediate zoning requirement of that
26 area and often a local councillor's view would be sought with a view to guiding
27 the decision of the councillor who wasn't the councillor for that area, isn't
28 that so?
- 29 A That's correct, on occasion, yes.
- 15:57:07 30 Q 435 That generally put persons, who were the local councillors, as being the

- 15:57:14 1 parties who would be the moving councillors for a variation rather than
2 councillors outside the area who mightn't have the same level of interest or
3 knowledge and therefore while they might vote on the subject, they would not be
4 the instigators of it, do you understand what I am putting to you?
- 15:57:32 5 A I do understand, that wasn't always the case, you were entitled to move a
6 motion on any rezoning motion on the Council.
- 7 Q 436 Absolutely?
- 8 A Whether you represented the area or not, that was your entitlement.
- 9 Q 437 Exactly and in your dealings with the Tribunal on this subject, you had no
15:57:47 10 recollection of having any involvement in relation to any motion, isn't that
11 right?
- 12 A To rezone, yes.
- 13 Q 438 To rezone. Yes, or anything that was instrumental in the rezoning, your
14 involvement in the motion came to you when you considered the documents
15:58:02 15 furnished to you by the Tribunal. That lapse being a lapse --
- 16 A Sorry, are you referring to some way to the motion I moved for site visit?
- 17 Q 439 Yes. Exactly?
- 18 A I was aware of that but I didn't realise it took on the importance that seems
19 to be attached to it now. It was a simple matter of maybe getting people to go
15:58:21 20 out and have a look at lands and acquaint themselves with the land in question.
- 21 Q 440 If we look to the motion at which you proposed to your fellow members that
22 there should be a site visit, it's page 2116 on screen, this was a motion which
23 was being considered by the Council on the 27th April 1993. And we have heard
24 that the motion was originally -- sorry the motions for Baldoyle were
15:59:06 25 originally returnable to the 20th, on the 20th, the meeting broke up in some
26 disorder and the matter was adjourned to the 27th, the agenda which was on the
27 agenda for the 20th found itself as the agenda for the 27th and amongst the
28 motions considered on that day was your motion which we see here on page 2116
29 which was a proposal by you, seconded by Councillor Liam Cosgrave that "That
15:59:41 30 decisions relating to Baldoyle Portmarnock area be deferred until a site

15:59:45 1 meeting is held in that area to allow all councillors view lands proposed for
2 rezoning."

3
4 And we will see, as you are aware, having read this sometime ago, that that
15:59:55 5 motion was one which wasn't entertained by the chairman as being an appropriate
6 motion to be before the Council at the time. It had come from the floor and
7 she took the manager's advice as to whether it should be considered as being in
8 order. The manager advised it wasn't in order and she upheld that and rejected
9 it, isn't that so

16:00:21 10 A I have been reminded through the records you produced, yes.

11 Q 441 In the normal course, that I take it was a decision which you would take on the
12 chin, some you win and some you lose but this wasn't, this was a motion which
13 you put forward from the floor, it was not something you had come to the
14 motion, to the meeting to propose, it was an incidental motion as far as you
15 could see it.

16 A Yes.

17 Q 442 And its rejection is one which I would have thought was one that you would have
18 accepted without further ado and let the matter proceed.

19 A Why would you accept it? I thought that was the --

16:01:04 20 Q 443 I am just wondering why it was that you became involved in pursuing this motion
21 to the extent that you did. You had not come to the motion proposing -- you
22 had not come to the meeting proposing such a motion though you had been
23 circularised from March onward with a series of motions that would consider the
24 Baldoyle area. It was open to you at an earlier stage to have brought your own
16:01:32 25 motion if you believe there to be any lack of clarity in the minds of your
26 fellow councillors as to what the issues were here and to have proposed that
27 this site be visited. That was open to you before the 27th, isn't that right?

28 A It would have been, yes.

29 Q 444 And you didn't elect to bring such a motion then, you brought it on the floor.
16:01:59 30 That was ruled out of order. Isn't that right?

- 16:02:01 1 A That's right, yes.
- 2 Q 445 It is of course open to you to complain about any decision which is taken by
3 the Chair or by the councillor and to pursue that remedy but I am wondering why
4 it was in this instance you did do?
- 16:02:20 5 A Well again, given that it's 13 years ago, it may have been because of the
6 debate taking place at this time. I don't know. I can't tell you exactly why.
- 7 Q 446 Right.
- 8 A Other than as I said I would have thought it was a good idea for people to see
9 the lands that would have been discussed.
- 16:02:38 10 Q 447 Yes. You had been present I take it when the -- you had been present when the
11 motion to defer, the what I call the substantive motion was considered, in
12 other words, there was a motion before the house or before the Council which
13 was the motion of Councillor Healy and Councillor Gordon. That effectively was
14 to copperfasten what was already in the publicly circulated plan. It was to
16:03:26 15 maintain B and G zoning for the lands which were presently shown as B and G in
16 the Draft Development Plan, isn't that right?
- 17 A Well you have reminded me of it, I have no particular recollection, substantive
18 motions or anything else.
- 19 Q 448 I will remind of you it then. It was the first of these motions?
- 16:03:45 20 A Sorry, Mr. O'Neill, I heard you earlier and I accept what you are saying but I
21 am just saying that I don't have a clear recollection of the sequence of events
22 or proposals of motions but I do accept what you are saying.
- 23 Q 449 Okay, I will have to take you through it in some detail and since it's 4
24 o'clock, it's going to have to be tomorrow morning?
- 16:04:04 25 A I can't be here tomorrow morning, I have a job to hold down, I have domestic
26 responsibilities because of circumstances.
- 27 Q 450 I appreciate that that is so, Mr. O'Halloran, it is something that the Tribunal
28 might have to rule on but you are here as a witness?
- 29 A I know.
- 16:04:22 30 Q 451 You are compelled to be here?

16:04:24 1 A I appreciate that.
2
3 CHAIRMAN: Is this a particular difficulty just tomorrow morning?
4 A All day tomorrow.
16:04:31 5
6 CHAIRMAN: And what about --
7 A Meetings were arranged in my work place for tomorrow, one in the morning and
8 one in the afternoon.
9
16:04:41 10 CHAIRMAN: Is there some other time tomorrow that would suit you better than
11 half ten
12 A No, one meeting is scheduled for the morning and the second one in the
13 afternoon at half two.
14
16:04:50 15 CHAIRMAN: And how long, Mr. O'Neill, you will be another half an hour or
16 more?
17
18 MR. O'NEILL: Sorry, I'd say there's probably less than an hour involved in
19 the questioning.
16:05:08 20
21 CHAIRMAN: What about Thursday, is that --
22
23 MR. O'NEILL: Mr. Dunlop is for cross-examination, I understand that that will
24 take half a day from Mr. Gordon. Senator, sorry, Councillor Therese Ridge is
16:05:22 25 on that day and may well take the balance of the day. The attendance, I have
26 to say of Mr. O'Halloran at this session is one which has been flagged for
27 quite sometime, the Tribunal has done its best to accommodate him and other
28 witnesses and --
29
16:05:44 30 CHAIRMAN: Well, I think in those circumstances, Mr. Halloran, we will have to

16:05:50 1 ask you to be here tomorrow. We will give you the opportunity to be here at
2 another time rather than half ten.

3 A Mr. Chairman, can I just say I appreciate being accommodated for this afternoon
4 because when I was told by Mr. O'Tuathail this morning it was scheduled for
16:06:04 5 tomorrow, I outlined to Mr. O Tuathail the difficulty. However, I did say, I
6 will have to appear but when I got word I was coming this afternoon, assumed
7 this afternoon would finish the evidence so I changed things again in work.
8

9 CHAIRMAN: Well I can appreciate the inconvenience but it's really impossible
16:06:29 10 ... what I can suggest to you is that you, if it's suits you, be here at 2
11 o'clock tomorrow. And that will give you an opportunity to make ...
12 A The morning would be better.
13

14 CHAIRMAN: All right

16:06:41 15 A I have to look after a grandson in the afternoon as well.
16

17 CHAIRMAN: All right, we will say half ten with a view to finishing you by
18 half 11.
19

16:06:49 20 MR. O'NEILL: What about ten o'clock, would that be of assistance
21

22 CHAIRMAN: Would that be better
23 A Yes, it would.
24

16:06:56 25 CHAIRMAN: Ten o'clock tomorrow,
26

27 CHAIRMAN: All right. Thank you.
28

29 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**
16:07:13 30 **WEDNESDAY, 13TH DECEMBER 2006 AT 10.00 A.M.**

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16:07:18 5

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