

10:09:58 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,**
2 **16TH JANUARY 2008, AT 10.30 A.M:**

10:41:16 5
6 MR. QUINN: Good morning, Sir. Mr John Fitzgerald, please.

7
8 CHAIRMAN: I don't think Mr. Fitzgerald heard you.

9
10:41:21 10 MR. QUINN: Mr. Fitzgerald.

11
12
13
14 **MR. JOHN FITZGERALD, HAVING BEEN SWORN, WAS QUESTIONED**
10:41:25 15 **BY MR. QUINN AS FOLLOWS:**

16
17
18 CHAIRMAN: Good morning, Mr. Fitzgerald

19 A. Good morning.

10:41:57 20 Q. 1

21
22 MR. QUINN: Mr. Fitzgerald, I think in about September 1991 you were appointed
23 as a, was it an Assistant County Manager for Dublin with a view to being
24 appointed the County Manager for South County Dublin when the three counties
10:42:14 25 came into existence on the 1st of January 1994

26 A. That's correct.

27 Q. 2 And I think prior to that had you worked, I think you've worked all your life
28 in the local authorities either here in Dublin, Dublin City, Dublin County,
29 South County Dublin and did you for a time work in Cork or the southwest?

10:42:32 30 A. Not all my life. I worked for a while in the private sector. I have been in

10:42:40 1 local Government since 1980, Cork and Dublin.

2 Q. 3 When you were in Cork what positions did you hold?

3 A. Finance officer with Cork City Council.

4 Q. 4 Yes. Now I think on the 29th of July 2002 the Tribunal wrote to you. If we

10:42:52 5 could have 22534. And in a fairly detailed letter you were advised of a number

6 of matters including and supplied with documentation in relation to allegations

7 concerning the conduct of councillors in relation to Dublin County. And at

8 22537, at paragraph four, of that letter you were invited to assist the

9 Tribunal by furnishing a written statement by setting out evidence which if

10:43:21 10 called you would give in relation to a number of matters, isn't that right?

11 A. Yeah.

12 Q. 5 And I think you responded to that letter on the 1st of August 2002. And that

13 response is at 22539?

14 A. Yeah.

10:43:32 15 Q. 6 And you say that you acknowledge receipt of the letter 29th of July and noted

16 its contents and said "I was appointed to the position of the Area Manager,

17 South Dublin, alternatively Assistant City and County Manager along with Kevin

18 O'Sullivan and David Byrne, Area Managers for Dun Laoghaire/Rathdown and Fingal

19 respectively in September 1991 to establish the three new administrative

10:43:53 20 counties to replace Dublin County Council. Most of our attention was devoted

21 to preparation, implementation of the reorganisation report which formed the

22 basis for the creation of three new counties though we had formal delegations

23 from operational matters including planning and development for our respective

24 areas. There were largely left in the hands of the relevant Dublin County

10:44:10 25 Council Principal Officers who dealt with most operational matters. For

26 example, though I attended a number of development planning meetings that

27 related to South Dublin I played little active role. Albert Smith, Principal

28 Officer in the Planning Department sat beside the Chairman and dealt with all

29 matters of detail for each of the three areas.

10:44:28 30

10:44:28 1 I have no recollection of being lobbied by Frank Dunlop or any other lobbyist
2 acting on behalf of any developer.

3
4 The new County of South Dublin was created with effect from January 1st 1994.
10:44:38 5 I assumed full managerial responsibility for all matters in South Dublin County
6 Council including future review of the Development Plan for South Dublin from
7 that date."

8
9 And at 22540 you continue.

10:44:50 10
11 You say that "prior to September 1991 I was Assistant City and County Manager
12 with responsibility for delegated functions in Dublin City and had no direct
13 involvement with Dublin County Council or members of Dublin County Council.

14
10:45:01 15 I will be on leave from August 1st until the end of August. If you wish to
16 contact me on my return I will be happy to facilitate you."

17
18 Yours sincerely.

19
10:45:14 20 Then I think that subsequently on the 6th June 2007, if I could have 22541
21 please. You were again written to by the Tribunal. And the Tribunal advised
22 you that it understood from its inquiries that you may have had contacts or
23 involvements with the following parties in respect of lands at Quarryvale. And
24 it included in the seven identified parties were Mr Owen O'Callaghan, Allied
10:45:33 25 Irish Banks, Tom Gilmartin, John Deane, local County Councillors and senior
26 politicians and Government Department officials.

27
28 Accordingly the Members of the Tribunal are of the view that may assist them
29 with their inquiries if you were to provide to the Tribunal a detailed
10:45:48 30 narrative statement setting out the background of your involvement with the

10:45:51 1 Quarryvale project together with specific details of any dealings you may have
2 with the parties outlined above.

3
4 And I think on the 8th of June 2007 at 22542 you responded to that letter as
10:46:04 5 follows.

6
7 You say "Dear Ms. Gilvarry, I refer to your letter of the 6th inst. By way of
8 response I enclose a copy of my reply to your earlier enquiry of July 2002.
9 The position outlined in that letter remains unchanged and I have read that
10:46:17 10 earlier letter". Isn't that right?

11 A. Uh-huh that's correct.

12 Q. 7 And then I think on the 9th of July 2007 at 22562, you wrote to the Tribunal as
13 follows.

14
10:46:26 15 You say "Dear Ms Gilvarry, I refer to media coverage of evidence given at the
16 Mahon Tribunal on Friday last July 6th.

17
18 A letter of which I have never had any knowledge from Mr. Owen O'Callaghan
19 addressed to his bank manager was read into the record. This letter apparently
10:46:40 20 states that "John Fitzgerald came on our side" (Irish Times) or "John
21 Fitzgerald was on our side" (Irish Independent). The letter also apparently
22 states "as soon as the existing Dublin County Council is divided into three
23 separate counties and this will happen in January 1994 we will be in John
24 Fitzgerald's new county i.e. South Dublin and we can then get as much retail
10:47:05 25 space as we can fill".

26
27 As stated in my letter to you of June 8th last I played to part in Council
28 discussions which led to the rezoning of the Quarryvale other than to express
29 my support for the "cap" at 250,000 square feet which was imposed by the
10:47:21 30 members of the County Council.

10:47:22 1
2 There was no agreement of any kind between Mr O'Callaghan and me nor could
3 there possibly have been any such agreement because the quantum of retail space
4 was always subject to the "cap" imposed by the Council members and could only
10:47:34 5 be altered or removed by the decision of the Council members of the successor
6 county, South Dublin.

7
8 There was no attempt to alter or remove this cap during my tenure as Manager of
9 South Dublin County Council.

10:47:46 10
11 In the interest of the balance of fairness I would ask to ensure that this
12 clarification is read into the record at the earliest possible opportunity".
13

14 And I think it was indeed read into the record.

10:47:56 15
16 Now, Mr. Fitzgerald, you came, I think, to Dublin County in September 1991.
17 You became the Manager of South Dublin on the 1st of January 1994. And when
18 did you leave that position?

19 A. I left it in June 1996.

10:48:11 20 Q. 8 June. So between the 1st of January '94 and June '96 you were the Manager of
21 South Dublin?

22 A. Yeah.

23 Q. 9 And from September '91 to December '93 you were in Dublin County?

24 A. Yeah. I was officially Area Manager which was County Manager in transition.

10:48:31 25 Q. 10 Yes?

26 A. My primary role along with the other two was to take Dublin County Council out
27 of existence and create three new counties and that took about two years.

28 Q. 11 And it was obvious I think in 1991 that a development of a town centre either
29 at Neilstown/Balgaddy or indeed Quarryvale would fall into the new South Dublin
10:48:53 30 County Council?

10:48:55 1 A. Yeah. Actually the decision on the zoning of Quarryvale had been made at that
2 stage.

3 Q. 12 Yes. The review of the 1983 Development Plan had been undertaken in 1987 and
4 there had been a vote I think in May 1991?

10:49:09 5 A. Yeah.

6 Q. 13 For the draft 1991 plan which was now on public display, isn't that right?

7 A. That's it yeah.

8 Q. 14 And that decision had been made before you came to the county?

9 A. Uh-huh.

10:49:18 10 Q. 15 Now, just to go back a little bit. What did you know about the development of
11 a three satellite town strategy for the county when you arrived in September
12 '91?

13 A. My knowledge before September 1991 would have been, I was finance officer or
14 city treasurer in the corporation and then became Assistant Manager in the
10:49:42 15 corporation so I had no involvement with Dublin County Council at all nor did I
16 realise that I would have. So any knowledge that I had of planning in the
17 county would have been what I would have heard from my colleagues or read in
18 the newspapers but I had no direct involvement until I arrived.

19 Q. 16 Now, as I understand it and correct me if I'm incorrect on this Mr. Fitzgerald.
10:50:04 20 The position was that the corporation had acquired lands in the county and
21 particularly had acquired lands at Neilstown/Balgaddy and again at Quarryvale,
22 isn't that right?

23 A. Yeah that's:

24 Q. 17 And I think the Council also had lands at Quarryvale?

10:50:18 25 A. The County Council.

26 Q. 18 Yes.

27 A. I think and again I'm, I wasn't directly involved so I think it was probably
28 all city lands but I'm not sure.

29 Q. 19 Okay in a moment we'll come to the sale of Council lands and I'll deal with
10:50:31 30 that. But as I understand it, the lands at Neilstown/Balgaddy had been zoned

10:50:36 1 for the development of a town centre in the Myles Wright Report, the 1972
2 Development Plan and the 1983 Development Plan?
3 A. That's my understanding, yeah.
4 Q. 20 In fact I think by 1988 these lands had been sold to a company called Montrose
10:50:51 5 Holdings which became Merrygrove subject to contract, isn't that right?
6 A. Again, I wasn't directly involved in any of that so I'm only recollecting what
7 I read in the media.
8 Q. 21 Yes. For example if we had 17137. This is a contract for the sale of lands in
9 Neilstown/Balgaddy to Merrygrove Estates Limited on the 21st of November 1988
10:51:16 10 for a sum of 3 million Pounds. And we see those lands at 17138. They are
11 described there in the particulars of sale. And at 17144 we see the special
12 conditions. And the special conditions set out the circumstances under which
13 the sale was to take place and the consideration was to be paid, isn't that
14 right?
10:51:37 15 A. Yeah, again, I had no involvement in that in any shape or form.
16 Q. 22 But you would have been in the corporation would you in November 1988?
17 A. I was there at that time. No I wasn't in -- I was in the corporation at that
18 time as City Treasurer.
19 Q. 23 Treasurer. And presumably monies paid on foot of these contracts by way of
10:51:57 20 deposit or otherwise would come through you as treasurer?
21 A. Uh-huh.
22 Q. 24 And we see at 17144 that the lands were sold subject to application for
23 planning permission isn't that right?
24 A. It was condition No. 2 that the purchaser would apply for planning permission.
10:52:12 25 That would be the norm.
26 Q. 25 For a town centre.
27 A. Yeah.
28 Q. 26 Would it be fair to say that these lands, the property of the corporation
29 situated in the county zoned for town centre development had been sold with a
10:52:23 30 view to the purchaser making an application for the development of the lands

- 10:52:27 1 for a town centre, isn't that right?
- 2 A. That's -- it would be normal practice.
- 3 Q. 27 They were so zoned and they were sold in accordance with that zoning and the
- 4 purchaser was obligated to make an application for planning permission, isn't
- 10:52:40 5 that right?
- 6 A. Yes.
- 7 Q. 28 And therefore the view of the Council was that there would be a town centre
- 8 development in Neilstown/Balgaddy because that was the zoning and it was the
- 9 view of the corporation who owned the lands in that region that any purchaser
- 10:52:55 10 would apply for planning permission for a town centre, isn't that correct?
- 11 A. Again going on what's on file that would seem to be the position.
- 12 Q. 29 And that application for planning permission for a town centre was to be made
- 13 within two months of the date of that contract which was November 1988. But in
- 14 time and evidence has been led on this, Mr. Fitzgerald, that two month time
- 10:53:16 15 period was extended by agreement. If we could have 14117, whereby the
- 16 corporation agreed with Mr. Deane solicitor who was acting on behalf of
- 17 Merrygrove on the 26th of April 1989 to extend that condition to the 31st of
- 18 December 1989?
- 19 A. Again, that's what's on the record.
- 10:53:36 20 Q. 30 And evidence has been given that by April 1989 agreement had been reached
- 21 between Mr. O'Callaghan and Mr. Gilmartin whereby Mr. O'Callaghan had given Mr.
- 22 Gilmartin an option on these lands, isn't that right?
- 23 A. That's what's on the record.
- 24 Q. 31 Yes. Now, we know independently of this then that the corporation again in or
- 10:53:57 25 about 1989 agreed to sell lands at Neilstown to Mr. Gilmartin, isn't that
- 26 right?
- 27 A. It appears to be so, yeah.
- 28 Q. 32 But the lands in Neilstown would have been zoned for industrial or residential
- 29 purposes, isn't that right?
- 10:54:13 30 A. Um,.

- 10:54:14 1 Q. 33 Sorry the lands at Quarryvale I should say. Apologies?
- 2 A. Quarryvale. I just can't remember what the original zoning was.
- 3 Q. 34 Yet I think it was known that it was Mr. Gilmartin's intention to develop a
- 4 town centre in Quarryvale, isn't that right?
- 10:54:29 5 A. Well my understanding is that the County Council zoned the town centre at
- 6 Neilstown because that's where the County Council planners felt that the town
- 7 centre should be located. Other developers saw the potential for a town centre
- 8 at Quarryvale and tried to move the zoning from Neilstown to Quarryvale.
- 9 Q. 35 I'm talking about a period after the 1983 Development Plan has been approved
- 10:54:58 10 and before there has been any vote?
- 11 A. Yeah.
- 12 Q. 36 On the Quarryvale site. And what I am suggesting to you that just by way of
- 13 background that the position appears to be that the zoning for the town centre
- 14 was in Neilstown. The corporation property in Neilstown had been sold to a
- 10:55:17 15 purchaser. It was a condition of that sale that the purchaser would apply for
- 16 planning permission for a town centre on that site which would be consistent
- 17 with the zoning on the site. It was putting an obligation on the purchaser to
- 18 develop a town centre on the site, isn't that right?
- 19 A. I don't know if the condition was to apply for planning for a town centre.
- 10:55:35 20 They would normally be subject to planning but it would be a matter for the
- 21 developer to decide what kind of planning he wanted. Again I wasn't directly
- 22 involved so I'm only ...
- 23 Q. 37 Presumably a planning permission and application on foot of a contract
- 24 involving Dublin Corporation would by implication provide for planning
- 10:55:53 25 permission which would be consistent with the zoning pertaining to those lands
- 26 isn't that right?
- 27 A. Yeah but that would normally be left to the developer to ensure.
- 28 Q. 38 It is unlikely that the Corporation would infringe on contract requiring a
- 29 purchaser to apply for planning permission for a development which would be
- 10:56:13 30 inconsistent with the zoning on those lands isn't that right?

- 10:56:13 1 A. It would.
- 2 Q. 39 So we can take it therefore that it was intended --
- 3 A. It would be a matter for the developer to come in with a valid planning
- 4 application.
- 10:56:17 5 Q. 40 And it would be an application in accordance with the zonings?
- 6 A. Yeah.
- 7 Q. 41 So therefore we can take it that if the zoning on the Neilstown lands was for a
- 8 shopping centre or for a town centre that any application on those lands would
- 9 be for such a centre, isn't that right, and indeed I think in fact such an
- 10:56:33 10 application was eventually made, isn't that right?
- 11 A. Yeah again I'm trying to remember. I had no direct involvement in any of that.
- 12 I'm only trying to remember what's on the file.
- 13 Q. 42 But independently of all of this the corporation and the Council had lands at
- 14 Quarryvale isn't that right. And the corporation had sold those lands to Mr.
- 10:56:51 15 Gilmartin in the knowledge that it was Mr. Gilmartin's intention to put a
- 16 shopping centre in Quarryvale, isn't that right?
- 17 A. That was his intention as I understand it.
- 18 Q. 43 Yes. But the lands at Quarryvale did not have a zoning for a town centre or a
- 19 shopping centre at this time, isn't that right?
- 10:57:12 20 A. At that time no.
- 21 Q. 44 So from an internal corporation/council point of view?
- 22 A. Uh-huh.
- 23 Q. 45 There seems to have been an inconsistency in their approach to their lands both
- 24 at Neilstown and at Quarryvale, isn't that right?
- 10:57:28 25 A. Well you have to remember that there were two separate authorities, two
- 26 separate planning authorities, two separate councils. Dublin County Council
- 27 had its own Development Planner and was responsible for the planning of the
- 28 area. Dublin City Council was a separate authority with its own Council and
- 29 its own development plan and had its own lands in the area. So it would always
- 10:57:47 30 have been subject to the planning regime of Dublin County Council.

- 10:57:52 1 Q. 46 And in time I think in relation to Neilstown additional lands were sold to
2 Merrygrove, isn't that right, so as to facilitate an application for a stadium
3 on those lands?
- 4 A. Again I'm not, I wasn't, I had no direct involvement in any of that so I'm not
10:58:11 5 quite sure about the specifics of it but I know there were discussions of a
6 stadium in Neilstown.
- 7 Q. 47 If we have 16228, we see a contract dated 24th of October 1986 for the sale of
8 28 acres to Merrygrove Limited for 1.12 million Pounds of lands at Neilstown,
9 isn't that right?
- 10:58:28 10 A. Yeah that's right.
- 11 Q. 48 And internal documentation supplied by South Dublin. If I could have 16275,
12 advised that in February '94 terms were agreed for the sale of these 28 acres
13 at a price of 1.12 million, isn't that right?
- 14 A. That's correct.
- 10:58:46 15 Q. 49 You say that because that sale was agreed with the corporation you wouldn't
16 have been aware of it even though you were the Manager of the county in whose
17 area these lands were situated?
- 18 A. Oh, I was aware.
- 19 Q. 50 In respect of which a planning application had been received, isn't that right?
- 10:59:03 20 A. That's the land in Neilstown isn't it.
- 21 Q. 51 Yes, yes?
- 22 A. And that's the land for the stadium I think is it?
- 23 Q. 52 Yes yes. To facilitate a carpark for the stadium additional lands were
24 acquired, isn't that right?
- 10:59:15 25 A. Yeah there were discussions at that time which would have led to the
26 construction of a stadium on that site.
- 27 Q. 53 Now, you were asked in your -- in the correspondence from the Tribunal I think
28 in 2007 at 22541 for a statement involving your contacts with amongst others
29 Mr. Owen O'Callaghan, isn't that right?
- 10:59:40 30 A. Uh-huh.

10:59:41 1 Q. 54 And I don't think you provided any such statement but we see at 7829 in a
2 telephone message received by Mr. Dunlop on the 5th of August 1992 the
3 following statement. "9:50 a.m. Mr. O'Callaghan/contacting John Fitzgerald,
4 County Planner, on Monday to arrange a meeting next week with regard to the
11:00:01 5 stadium. No need to ring OOC." Now you weren't a County Manager isn't that
6 right?
7 A. That's what ...
8 Q. 55 You weren't a county planner. This is August 1992. It's about 11 months after
9 your appointment as the County Manager?
11:00:15 10 A. I was area Manager at that time.
11 Q. 56 You weren't the county planner?
12 A. No.
13 Q. 57 Was there a John Fitzgerald, County Planner?
14 A. No I presume that's me.
11:00:22 15 Q. 58 Yes?
16 A. As Area Manager at the time.
17 Q. 59 Yes. Indeed at 7844 on Monday 10th August at 4:40 there a further telephone
18 message which says "Mr. O'Callaghan had meeting on Thursday at 10 a.m. 11 a.m.
19 with Derek Brady and Wednesday 12th August 1992 11:30 a.m. with John
11:00:41 20 Fitzgerald" and at 7856 this is an entry for Mr. Dunlop's diary for the 12th
21 August 1992 we see an 11:30 entry, John Fitzgerald/OOC etc.?
22 A. Yeah at that time once I became Area Manager for South Dublin County Council I
23 would have had had meetings with various planners and developers about future
24 developments in the county.
11:01:03 25 Q. 60 We're taking that meeting on the 12th of August 1992. Can you tell the
26 Tribunal what was discussed between yourself and Mr. O'Callaghan at that
27 meeting?
28 A. Well the discussion -- I had a number of meetings with Owen O'Callaghan. I
29 have known Owen O'Callaghan since I was in Cork and as I know every other
11:01:19 30 developer with whom I have any other professional relationship.

- 11:01:22 1 Q. 61 By 1992 you would have known Mr. O'Callaghan from your time in Cork is that
2 right?
- 3 A. I would have yeah.
- 4 Q. 62 Would you have had quite a number of meetings with Mr. O'Callaghan during your
11:01:30 5 time in Cork?
- 6 A. I wouldn't say quite a number but we would have met.
- 7 Q. 63 You would have been on first named terms presumably?
- 8 A. I would have been on first named terms yeah.
- 9 Q. 64 When Mr. O'Callaghan came to meet you in August 1992 was he accompanied by Mr.
11:01:44 10 Dunlop or any other or Mr. Deane or?
- 11 A. I think I probably had I'd say four or five meetings with him and I think that
12 at those meeting he would have been accompanied by somebody at every meeting.
- 13 Q. 65 Were you accompanied by anyone?
- 14 A. I would always have been accompanied by the planners or senior administrator
11:02:03 15 who was involved in planning.
- 16 Q. 66 Would a memo have been prepared following on such a meeting?
- 17 A. Not always. Most of those meetings would have been briefing meetings at very
18 high level. Most of the contact on any of those developers would have been
19 with the planners who were dealing directly with the planning application. So
11:02:16 20 any meetings with me would have been really briefing sessions.
- 21 Q. 67 That meeting in August 1992 I think was in connection with the stadium which
22 was now the proposal for the Neilstown site, isn't that right?
- 23 A. Yeah generally we would have been, maybe sceptical might be the wrong word
24 about the prospects for the stadium. If it was going to happen we would have
11:02:46 25 been broadly supportive of it in terms of bringing life and bringing a facility
26 to Clondalkin which needed that kind of facility at the time. So if it was
27 going to happen maybe to say that we would have welcomed it would have been too
28 strong a word but we certainly wouldn't have been opposed to it.
- 29 Q. 68 Yes. Just in relation to that. Mr. O'Callaghan had purchased the Neilstown
11:03:09 30 site with an obligation to construct a shopping centre on it isn't that right

11:03:13 1 or a town centre. He had made an application and had been approved by the
2 Council in 1990, September 1990, for a shopping development on that site. He
3 had appealed the condition of that to An Bord Pleanala and I think in May 1991
4 after the first vote on the Quarryvale site?

11:03:34 5 A. Yeah.

6 Q. 69 He had withdrawn the application from An Bord Pleanala so that obligation had
7 now lapsed, isn't that right?

8 A. Yeah he came in to South Dublin with a full planning application I think in.
9 Q. 70 December 89 I think in accordance with that?

11:03:52 10 A. That was the first one.

11 Q. 71 Yes?

12 A. Yeah.

13 Q. 72 Yes?

14 A. But the final planning application would have been when South Dublin County
11:03:59 15 Council had been set up in 1993/4.

16 Q. 73 Yes?

17 A. That planning application was granted for Quarryvale.

18 Q. 74 It's Quarryvale. I'm talking about Neilstown and his obligation on foot of his
19 Corporation contract that I referred to earlier?

11:04:16 20 A. Oh, yes.

21 Q. 75 I think by the 6th of September 1992. If I could have 7962 there was some
22 publicity surrounding the possibility of a 55 million pound stadium being built
23 in South Dublin on this site, isn't that right?

24 A. Yeah uh-huh.

11:04:32 25 Q. 76 Now your meeting I think had been in August 92, isn't this right?

26 A. Yeah.

27 Q. 77 And I think if we look at go back as far as March 92 at 6934 we see that
28 Mr. O'Callaghan was advising the bank that in relation to the alternative site
29 of Clondalkin they are progressing the concept of a stadium and then produced a
11:04:50 30 model. Do you see that there about the fourth paragraph down?

- 11:04:54 1 A. I do.
- 2 Q. 78 And they believe that the stadium could be viable at the cost of 32 million and
- 3 would be funded by 10 million from the State, 10 million from sale of ten year
- 4 tickets and perhaps another 10 million from private promoters, isn't that
- 11:05:08 5 right?
- 6 A. That's correct.
- 7 Q. 79 I think in fact meetings had taken place with Government Departments and
- 8 Ministers and indeed even the Taoiseach in relation to the matter by the time
- 9 you met with Mr. O'Callaghan in August 92 in relation to the stadium isn't that
- 11:05:19 10 right?
- 11 A. Yeah he did tell me that he had a strong support for the concept but I would
- 12 have been a little bit sceptical.
- 13 Q. 80 You were sceptical about the stadium being built on this site were you?
- 14 A. I felt that it was a long shot.
- 11:05:38 15 Q. 81 But the designation on the site was a designation for a town centre, isn't that
- 16 right?
- 17 A. Yeah but my recollection is that the zoning would have accommodated a
- 18 development of this kind.
- 19 Q. 82 At this time I think the proposed zoning was for industrial, isn't that right?
- 11:05:54 20 A. Well the original zoning of town centre was moved to Quarryvale but the zoning
- 21 that was left at Neilstown was a fairly ...
- 22 Q. 83 Was E, industrial I think so?
- 23 A. Yeah.
- 24 Q. 84 At this time. Now I mean the actual Development Plan was for a town centre but
- 11:06:08 25 the 1991 Draft Plan which was on display?
- 26 A. Yeah.
- 27 Q. 85 I think had provided for industrial or proposed industrial zoning on the site,
- 28 isn't that right?
- 29 A. Well I think if the stadium had been a reality and if it had gone ahead. If
- 11:06:23 30 the zoning hadn't accommodated that I think the local authority and the members

- 11:06:28 1 of course would have to deal with any zoning issue would have been receptive to
2 an application like that in Neilstown at that time.
- 3 Q. 86 Now, I think then that just going forward from August 1992 I think you had
4 further meetings with Mr. O'Callaghan in the lead up to the December 1992 vote
11:06:52 5 in relation to Quarryvale, isn't that right?
- 6 A. The December 1992 vote, yes. I didn't meet with O'Callaghan about that vote
7 because it was not ...
- 8 Q. 87 Okay?
- 9 A. Within my compass.
- 11:07:03 10 Q. 88 Okay. Well before I get to that and deal with it. If I could have 7957 this
11 is an extract from Mr. Ahern's diary for the 3rd of September 1992. And it
12 shows a 4:15 meeting with John Fitzgerald. Could that have been you Mr.
13 Fitzgerald.
- 14 A. With the Taoiseach?
- 11:07:23 15 Q. 89 Yes. It's, there was to be a 4 o'clock meeting with Mr. Frank Dunlop which
16 appears to have taken place on the 4th of September 1992 at 10.30?
- 17 A. I don't believe it's me.
- 18 Q. 90 Okay. Now if we move forward then to 8179. And this is October the 9th 1992.
19 This is again an extract from Mr. Dunlop's diary and it says "10.30 drive O C
11:07:52 20 to see John Fitzgerald DCC" do you see that entry?
- 21 A. Yeah.
- 22 Q. 91 Now do you recall having a meeting with Mr. O'Callaghan on the 9th of October
23 1992?
- 24 A. I don't no.
- 11:08:04 25 Q. 92 Now?
- 26 A. I don't recall having any meeting with O'Callaghan about Quarryvale.
- 27 Q. 93 Yes?
- 28 A. Because I hadn't been directly involved in it and it was a matter for the
29 members of the Council.
- 11:08:13 30 Q. 94 If we look at a letter written to you by Mr. O'Callaghan on the 12th of October

11:08:18 1 1992. At 8251 it might be of assistance. It says "Dear John, thank you again
2 for meeting me. I know as you outlined to me the development plan for County
3 Dublin must be reviewed in the overall context of the county.
4

11:08:29 5 However I overlooked pointing out to you the attitude to Quarryvale of the 26
6 Dublin South members. I have met them all and I can confirm to you that at
7 least 75% of them are in favour of Quarryvale. The whole 26 members are in
8 favour of the stadium.
9

11:08:44 10 I know this may be irrelevant information but I think it is worth pointing out
11 to you.
12

13 Thank you again and I look forward to meeting you in the next few weeks.
14

11:08:51 15 Yours sincerely".

16 A. Yeah any discussions that I would have had would have been about the future of
17 Quarryvale if it was successfully zoned for the process

18 Q. 95 What was happening at this time, I suggest to you Mr. Fitzgerald, is that a
19 motion was likely to come before the Council in December 1992 dealing with the
11:09:14 20 review of the draft 1991 plan in relation to both Quarryvale and Neilstown,
21 isn't that right?

22 A. That's correct.

23 Q. 96 And I suggest to you that if you did, as this would appear to suggest, have a
24 meeting with Mr. O'Callaghan on the 9th of October 1992 that that meeting would
11:09:30 25 have been in the context of Quarryvale/Neilstown?

26 A. If any conversations that I would have had at that stage would have been about
27 the future planning of Quarryvale if it got through the zoning process but at
28 that stage I wasn't sure. It had been rezoned. It was subjected to review by
29 the Council and it was subject to the cap which was discussed in December 1992.

11:09:58 30 Q. 97 Yes?

- 11:09:58 1 A. So any discussions I would have had would have been about the future
2 development of Quarryvale if it got through that process.
- 3 Q. 98 For example if we look at 8581 this is an extract from Willie Murray's diary.
4 Mr Murray, I think was the Planning Officer?
- 11:10:12 5 A. He was yeah.
- 6 Q. 99 And we see there for the 25th of November he has an entry "9:30 John
7 Fitzgerald's office re Quarryvale" do you see that?
- 8 A. That's 1992, is it?
- 9 Q. 100 Yes?
- 11:10:22 10 A. Uh-huh.
- 11 Q. 101 Now?
- 12 A. That's the 25th of November.
- 13 Q. 102 November 1992?
- 14 A. Yeah that would have been before the Council meeting.
- 11:10:29 15 Q. 103 Yes and you would have been liaising with your Planning Officer in relation to
16 Quarryvale, isn't that right?
- 17 A. Yeah he would have come to me to brief me on what was happening. As I said all
18 would have been left to Willie Murray who was the professional planner and
19 Albert Smith who was the Principal Officer in the Planning Department. The
20 arrangement we had was that they would deal with all planning issues.
- 11:10:50 21 Q. 104 Now you know that Mr Gilmartin has given evidence, Mr. Fitzgerald, to the
22 Tribunal where he has suggested to the Tribunal that he was told and that Mr.
23 O'Callaghan was boasting of the fact that he was a friend of yours and that he
24 could afford to take a cap on Quarryvale in the November '92/December '92 vote
25 because that in time you would become the Manager of South County Dublin and
26 that that cap would be lifted, isn't that right?
- 27 A. Yeah that's why I wrote to the Tribunal. I was annoyed is probably the word
28 when I realised that letter had been written. I had given no authority to
29 anybody or nobody had any authority to write.
- 11:11:31 30 Q. 105 Yes?

- 11:11:32 1 A. I didn't know anything about that letter until I saw it.
- 2 Q. 106 I'm leaving the letter aside for the moment. Mr. Gilmartin's evidence was that
- 3 this was something that was said to him either by Mr. O'Callaghan or through
- 4 the banks from Mr. O'Callaghan, do you understand
- 11:11:47 5 A. He may have deduced it from the letter.
- 6 Q. 107 No no leave the letter aside for a moment. Mr. Gilmartin's evidence was that
- 7 in the lead up to that vote in 1992 he had a conversation with Mr. O'Callaghan
- 8 which he said annoyed him to the extent that it was his intention go to the
- 9 papers in relation to the matter and that that was the reason he said that he
- 11:12:07 10 was visited on the date of the vote by two representatives of Allied Irish
- 11 Banks in London. I don't know if you've read his evidence in relation to that
- 12 yeah
- 13 A. I saw the evidence.
- 14 Q. 108 I can read it to you?
- 11:12:22 15 A. I'd assumed that was he said was because of what he read in the letter or he
- 16 discovered from O'Callaghan to his bank but whether he got it through the
- 17 letter or hearsay or through a conversation with Owen O'Callaghan. Obviously I
- 18 reject that out of hand. I made it quite clear in my reply to the Tribunal
- 19 that there was no basis for that whatever and I was concerned and I was annoyed
- 11:12:42 20 when I realised that that had been written and that it had been said and put in
- 21 the public domain about any knowledge on my part. I learnt about it through
- 22 the media.
- 23 Q. 109 Leave the letter aside for one moment. Just take Mr. Gilmartin's evidence on
- 24 the matter for a moment.
- 11:12:58 25
- 26 Day 734 page 8 please.
- 27
- 28 Now, Mr. Gilmartin alleged that the phones in the Council were being manned by
- 29 Mr Deane and Mr Gilbride and each time he rang up the phone was either answered
- 11:13:17 30 by Mr. Dunlop, Mr. Deane or Mr. Gilbride. And at question 63 I said "yes

11:13:23 1 because you had made contact with the person in question and felt you might
2 have been able to encourage that person namely a councillor to move an
3 adjournment of the motion, is that correct?
4 A: Yes. I wanted that motion adjourned on that very day -- the previous, a
11:13:35 5 couple of days before that I was speaking to the bank and this motion was going
6 through. Owen O'Callaghan was going along with it because he was saying that
7 he had an arrangement with Mr. Fitzgerald that when the Council split that the
8 capping would be lifted. As I had seen it, there was a lot of publicity
9 created around Quarryvale and the use of my vote and the one and a half million
11:13:54 10 that was going to destroy the World was being used to its full extent to
11 undermine my Westpark development"
12 A. Yeah, I didn't see that as I said until recently.
13 Q. 110 Now that was Mr. Gilmartin's evidence of what was going on at that time, do you
14 understand?
11:14:11 15 A. I do but obviously what happens was quite to the contrary.
16 Q. 111 Are you saying that you had given no such assurance to Mr. O'Callaghan?
17 A. I recommended to the Council that the cap should be applied. The cap was
18 applied and there was no attempt to remove the cap while I was in office.
19 Q. 112 Just in relation to what might have transpired between yourself and Mr.
11:14:30 20 O'Callaghan in the lead up to that vote Mr. Fitzgerald. I think you have
21 accepted very fairly that you knew Mr. O'Callaghan from your time in Cork. We
22 have seen two meetings with Mr. O'Callaghan. You hadn't recollected the one of
23 the 9th October and we saw the one in August 1992, isn't that right?
24 A. Yeah.
11:14:46 25 Q. 113 I think you or your Manager on your behalf would have produced a report, a
26 manager's report, in relation to the upcoming consideration of map 16, isn't
27 that right and if I could have?
28 A. Map 16 being.
29 Q. 114 Map 16 and 17 which would have been the Quarryvale Neilstown map which would
11:15:04 30 have been coming up in December 1992. If I could have 8598 please. This is

- 11:15:09 1 an entry in Mr. Dunlop's diary for the 1st of December 1992. Now remember that
2 the vote takes place on the 17th of December 1992. But on the 1st of December
3 1992 you will see there at 12.30 entry "Owen to John Fitzgerald." This now is
4 the third meeting between yourself and Mr. O'Callaghan. And this is a meeting
11:15:34 5 which takes place some 16 days in advance of the vote. Can you tell the
6 Tribunal what that meeting was about?
7 A. Well any of those meetings if it was a meeting. I have no recollection of it.
8 It may have been a phone call for all I know.
9 Q. 115 Well if we could have 8651. This is an extract for Mr. Murray's diary for
11:15:54 10 Tuesday the 1st. "12.30 Owen O'Callaghan with John Fitzgerald." Do you see
11 that?
12 A. Yeah.
13 Q. 116 Would you agree with me that both of those diary entries would seem to suggest
14 that you met Mr. O'Callaghan in the company of Mr. Murray on the 1st of
11:16:09 15 December 1992?
16 A. Yeah. Any meetings as I said with any of those parties at that time would have
17 been about what was likely to happen in the event of a planning application
18 lodged.
19 Q. 117 This would have been your third meeting with Mr. O'Callaghan. The first being
11:16:26 20 in August '92 in relation to the stadium which was relevant to the Neilstown
21 site. The second being on the 9th of October 1992 as a result of which Mr.
22 O'Callaghan wrote to you on the 12th of October 1992. And now we have this
23 meeting on the 1st of December 1992. And whatever about your position,
24 Mr. Fitzgerald, do you agree with me that the matter which was uppermost in Mr.
11:16:48 25 O'Callaghan's mind at this stage was the zoning on the Quarryvale site?
26 A. Yeah. The site had been zoned so I think the matter uppermost in his mind
27 would have been whether there was going to be a cap or not and that at the
28 Council meeting I recommended that there should be a cap in the interests of
29 proper planning and development.
11:17:07 30 Q. 118 Can I ask you what was discussed at that meeting Mr. Fitzgerald?

- 11:17:10 1 A. My recollection, I can recollect a number of meetings with Mr. O'Callaghan and
2 some of my officials, all of which would have been about what would happen in
3 the event of a planning application being lodged for Quarryvale and what the
4 impact of that might be on the area and on the centre itself.
- 11:17:31 5 Q. 119 The matter most important at this stage, far more important than a planning
6 application would have been the zoning or the likely zoning on the site after
7 the review or consideration of these maps in 1992 in December 1992, isn't that
8 right?
- 9 A. Yes.
- 11:17:43 10 Q. 120 From Mr. O'Callaghan's point of view the consideration of these maps?
- 11 A. Uh-huh.
- 12 Q. 121 Was uppermost in his mind, isn't that right?
- 13 A. Yeah but at that stage it was confirmation of the zoning which had been already
14 agreed.
- 11:17:56 15 Q. 122 And you were about to produce or your planner was about to produce a Manager's
16 Report setting out your views in relation to the site?
- 17 A. Yeah. The Manager's Report ...
- 18 Q. 123 Could your discussions with Mr. O'Callaghan have centred on what might be
19 contained in that report?
- 11:18:14 20 A. I would have been briefed by Willie Murray on what was in that report.
- 21 Q. 124 No, no, you would have been briefed absolutely correctly as the Manager of what
22 your Planning Officer was proposing for the site. I am asking you is could Mr.
23 O'Callaghan have been enquiring of you and Mr. Murray of what might be in the
24 report or maybe seeking to influence you in some way as to what you might, what
11:18:34 25 the report might contain?
- 26 A. That's not my recollection. My recollection is that we had briefing meetings
27 about the future of Quarryvale in the event of the rezoning being confirmed.
28 And I think it was accepted by everybody at that stage that the zoning would be
29 confirmed. It had been through a long drawn out process.
- 11:18:52 30

11:18:52 1 JUDGE FAHERTY: Could I just clarify something Mr. Fitzgerald. The report I
2 think that Mr. Quinn is adhering to or talking about I should say, is the
3 Planning Officer's report I think, in the context of the Development Plan, the
4 making of a Development Plan, isn't that correct

11:19:06 5 A. Yeah there was a report.

6
7 JUDGE FAHERTY: Sorry to cut across you. As I understand it from hearing
8 various officials over the years here. In the course of the making of the
9 Development Plan once representations come in and once the statutory display
10 and objections and representations have been met, the Manager or I think the
11 Planning Officer more particularly I think under the auspices s of the Manager
12 prepare a report, isn't that correct, and it's a report in the context of the
13 making of a development plan. It has nothing to do with planning permission.
14 It is simply setting out the position of the officials in the context of the
15 making of the particular plan at that particular time

11:19:44 16 A. Yeah that's correct.

17
18 JUDGE FAHERTY: As I understand it.

19
11:19:50 20 MR. QUINN: I am about to come to that report and open the report.

21
22 JUDGE FAHERTY: Yes, I just wanted to clarify that that's what we're talking
23 about.

24
11:20:00 25 MR. QUINN: Yes.

26
27 JUDGE FAHERTY: Very well

28 Q. 125

29
11:20:01 30 MR. QUINN: You had this meeting on the 1st December 1992 with Mr O'Callaghan,

11:20:02 1 Mr. Fitzgerald and Mr. Murray isn't that right and I suggest to you that on the
2 very next day, on the 2nd of December 1992. If we could have 16476 please.
3 Mr. Smith, who had responsibility as Principal Officer, circulated a report in
4 relation to the matter to the members of the Council, isn't that right?

11:20:23 5 A. Which would have been normal practice.

6 Q. 126 And we see that report at 16477 and succeeding pages.

7 A. Yeah.

8 Q. 127 Now, what I'm, what I want to inquire from you Mr. Fitzgerald is the extent to
9 which Mr. O'Callaghan in those meetings with you and Mr. Murray either
10 contributed to your views as contained in that report or influenced your views
11 in relation to that report?

11:20:43 12 A. I would -- I'd be quite clear in my mind that any conversations with Mr.
13 O'Callaghan or anybody belonging to Mr. O'Callaghan wouldn't have influenced
14 our views in any shape or form. At that stage the report would be prepared by
15 the professional planners. Discussed with me. And sent to the Council. But
16 it would be a professional planning report based on what was correct in terms
17 of proper planning and development of the area. And I would be quite clear in
18 my mind that that would not be influenced by anybody outside of the planning
19 process.

11:21:06 20 Q. 128 But why was Mr. O'Callaghan meeting -- -

21
22 CHAIRMAN: Sorry, could I just ask Mr. Fitzgerald. I presume one of the --
23 seeking to or influencing yourself or the Planning Officer, there was nothing
24 improper about that.

11:21:31 25 A. No.

26
27 CHAIRMAN: I presume one of the purposes you or planning official would meet a
28 developer would be to hear the developer's views about a particular development
29 and to take or to hear representations from them. So presumably the developer
11:22:10 30 in question who is coming to meet the officials will seek to influence them.

11:22:15 1 And by that I mean in a completely proper way. And I assume that from time to
2 time the persuasive arguments of a developer will reach home in the sense that
3 a somewhat different view might be taken. That's the purpose I take it of
4 meeting developers in these circumstances to hear their views and on occasion
11:22:43 5 presumably the planners will be influenced in a proper way to perhaps re assess
6 their approach or would you comment on those suggestions that I am making that
7 this is A, one of the reasons why such meetings take place. And B, that
8 influence does succeed in a completely proper way from time to time

9 A. That's correct, Chairman.

11:23:11 10
11 CHAIRMAN: In changing the mind of an official?

12 A. Yeah you are absolutely right Chairman. It would be normal to meet developers
13 who were engaged in any major planning application. Not small ones obviously.
14 But any developer and I suppose every planning Manager and every planner gets
11:23:30 15 to know every developer.

16
17 CHAIRMAN: And if he hears a good argument or a strong argument then he
18 possibly might and again emphasising that this is absolutely proper, the
19 Manager or the planning official might be influenced to take a different view?

11:23:49 20 A. That's true, Chairman. As you know, managers and planners over the years have
21 often been accused to be too reluctant to meet developers who have good ideas.
22 Most of us make a point of meeting developers and the difference at this stage
23 is at this stage, and this is my recollection at that time, is that Quarryvale
24 had been through a long, long process which I would have been aware of mainly
11:24:22 25 through colleagues and the media of rezoning and the rezoning had been
26 confirmed. Or the rezoning was about to be confirmed. I don't think that
27 there was any doubt in anybody's mind that it was about to be confirmed. What
28 was really a matter of whether there should be a cap or not and what kind of a
29 development should happen in Quarryvale. You know, for me to go in regardless
11:24:46 30 of my own views on whether Quarryvale should be a town centre or not. For me

11:24:50 1 to go in and unpick that, we were going to inherit the Development Plan that
2 was agreed by the old Dublin County Council. For me to come in and try to
3 unpick that or change that at that stage would have been futile and I think it
4 would have been unwise of me to try and do that. It had been through what was
11:25:09 5 a local democratic process as the law defined it. So at that stage I think it
6 was accepted by everybody that the rezoning of the zoning for town centre was
7 going to be at Quarryvale. And there were only a number of issues to be tidied
8 up which were reflected in the report of Willie Murray and put to Council. So
9 at that stage my thought process would have been very much on what kind of
11:25:32 10 development was going to happen on Quarryvale and what kind of implications
11 that might have for North Clondalkin. North Clondalkin was a fairly devastated
12 place. If it wasn't going to be at Neilstown. That was a decision of the
13 Council at that time. And if it was going to be at Quarryvale which was a
14 decision of Council at that time. And subject to whether there was going to be
11:25:51 15 a cap or not.
16
17 My main consideration was what kind of development was it going to be, what
18 kind of implication would it have for North Clondalkin and other issues like
19 housing and employment and jobs and quality of life in that area. So it was
11:26:06 20 more than a planning issue from my point of view, as the new manager of a new
21 county which hadn't existed before. It was major development that would have a
22 lot of implications for that part of the county. Tallaght was one. We already
23 had a shopping centre in Tallaght which had been there for quite a number of
24 years. Clondalkin was the other much more devastated side of the county and
11:26:26 25 didn't have any kind of centre or retail centre. So if it wasn't going to be
26 at Neilstown, which was not my decision, and as I said I wasn't going to try
27 and unpick that at that stage. It was going to be at Quarryvale. My main
28 concern at that stage was what kind of development was that going to be. So
29 any kind of conversation that I had with O'Callaghan or anybody else would have
11:26:43 30 been along the lines of what kind of development were we talking about.

- 11:26:47 1 Q. 129 For example at 16480. In the planners report as published if we look at the
2 second last paragraph there. This is what has been suggested "the full
3 achievement of a sizeable town centre on the Neilstown lands could take many
4 years. Nevertheless for reasons of consistency and continuity and because of
11:27:05 5 the signs of a resurgence of development referred to above and possible
6 compensation implications it is recommended that the policy contained in the
7 1983 plan be continued for a further period".
8
9 That seems to suggest to me at least that the Planning Officer was recommending
11:27:21 10 a continuing of the 1983 plan and continuation of the zoning on the Neilstown
11 site, isn't that right
12 A. Yeah. The thinking at that time would have been that if the town centre was
13 going to be at Quarryvale and there was strong planning reasons why it
14 shouldn't, which were well thought through at that time, but the Council had
11:27:41 15 decided otherwise.
16 Q. 130 And if we look at 16481. I think that in relation to the change of use so to
17 speak. If we look at the last paragraph there starting with the planning
18 decision to be made by the Council is essentially between the concept 1972 and
19 83 Development Plans which had been discussed above and is recommended. And
11:28:00 20 the possible variation which would envisage the eventual development of the
21 three district communities instead of one. Then it goes on to say if it is
22 considered by the Council achieving the integration of Lucan and Clondalkin
23 into a new urban entity would be spread over an acceptable long time frame in
24 social and community terms then a modified approach could be suggested for
11:28:22 25 consideration by the council along the following lines".
26
27 And the modified approach effectively provided for the designation of the
28 Quarryvale site for a C development, isn't that right
29 A. Yeah uh-huh.
11:28:34 30 Q. 131 Now?

- 11:28:35 1 A. That's correct.
- 2 Q. 132 If we look at 14793 which is the letter that you referred to. It's a letter of
3 the 23rd of December '92 by Mr. O'Callaghan to a banker in Cork. He deals with
4 the designation which had taken place "Quarryvale has come through and we have
11:28:53 5 got all we wanted despite a lot of opposition but the County Manager, John
6 Fitzgerald came on our side" do you see that? That seems to reflect Mr.
7 O'Callaghan's view as of December '92, isn't that right?
- 8 A. Yeah well that's what I said. I wasn't aware of that letter. I gave no
9 permission obviously for him to write to anybody in those terms.
- 11:29:15 10 Q. 133 No I'm not really concerned about the fact that he wrote it. What I'm really
11 putting to you is that it would appear to give some insight into his view as to
12 why he was successful or the contribution played by you in his success in the
13 Quarryvale project, do you understand?
- 14 A. Well it doesn't stack up really because obviously the developers were opposed
11:29:38 15 to a cap. I recommended the cap of 250,000 to the councillors as a way of
16 trying to get some kind of compromise. And that was accepted by the Council.
17 So to say that they got what they wanted wouldn't be true. To say that they
18 wouldn't have wanted a cap of 250,000 would be true. And I was strongly in
19 favour of that cap because even though I think Quarryvale at that stage was a
11:30:07 20 fait accompli. I was concerned about the implications of a major development
21 that might have implications for shopping in Tallaght, Blanchardstown and city
22 centre. So I always saw the cap as a compromise. That cap remained in
23 existence for all of the time that I was Manager of South Dublin County
24 Council. I didn't ever come under any pressure to change that cap. But if I
11:30:30 25 had come under any pressure I wouldn't have changed it because I felt it was a
26 reasonable compromise at the time.
- 27 Q. 134 In private interview with the Tribunal Mr. Dunlop has said that he was told by
28 Mr. O'Callaghan that had you remained as its Manager of South Dublin the cap
29 would not have been lifted. If we could have 177470. He says "Tom Hand
11:30:52 30 with -- the one obvious," sorry, the one previous to it I can't read it. It

11:30:54 1 looks like Seamus G. "As of now they would be either setting up meetings with
2 these people, with Mr O'Callaghan and Tom. What the rest of the relationship
3 with O'Callaghan and John Fitzgerald I don't know but I do quite vividly
4 remember O'Callaghan saying to me in relation to the lifting of the cap it
11:31:07 5 would never have happened if John Fitzgerald still had been Manager of South
6 Dublin"?

7 A. I hadn't seen that before. That's a fact. I would have been opposed to
8 lifting the cap.

9 Q. 135 Did you have a further meeting on the 8th of December 1992 with Mr. O'Callaghan
11:31:22 10 and Mr. Murray. If I could have 8713 please. An extract from Mr. Murray's
11 diary 9:15 on the 8th of December 1992. It says 9:15 JF to OOC. Owen
12 O'Callaghan, do you see that?

13 A. Yeah again I have no direct recollection of any of those meetings but.

14 Q. 136 There could have been a further meeting on the 8th of December?

11:31:44 15 A. There could have been. I would have met Willie Murray quite a number of times.

16 Q. 137 No no this seems to be with Mr. O'Callaghan. I am not talking about meetings
17 between you as Manager and Planning Officer. I am talking with Mr.
18 O'Callaghan?

19 A. Is that Willie Murray's diary.

11:32:02 20 Q. 138 Yes?

21 A. Yeah. If it's there but I would have met Willie Murray almost every second or
22 third day.

23 Q. 139 So if Mr. Murray put an entry in the diary for Mr. O'Callaghan it's almost
24 certainly he put it in because he was meeting with Mr. O'Callaghan with you is
11:32:17 25 that right?

26 A. Possibly.

27 Q. 140 Did you know that Mr. Murray and Mr. Smith had met with Councillor Morrissey on
28 the 7th of December 1992 after the circulation of the Manager's Report and that
29 Mr. Morrissey wrote to Mr. Smith and Mr. Murray highlighting difficulties which
11:32:33 30 he said arose from an interpretation of the report as circulated?

11:32:41 1 A. Is that Paddy Morrissey.

2 Q. 141 No Tom Morrissey. He was a Councillor and supporter of the Blanchardstown.

3 You were talking earlier about meeting developers. Did you ever meet

4 Mr. Corcoran or a representative on behalf of Green Properties?

11:32:54 5 A. No.

6 Q. 142 They were very much opposed to the Quarryvale development, isn't that right?

7 A. That's correct.

8 Q. 143 And did you ever meet Mr. Sharkey who had lands I think close to the Neilstown

9 site and had applied at this stage for a town centre development?

11:33:09 10 A. I don't believe I did.

11 Q. 144 They would have been two developers who would have been keenly interested and

12 involved in relation to this site, isn't that right?

13 A. I think on the opposition side yeah.

14 Q. 145 There was opposition to the development of the?

11:33:20 15 A. Yeah.

16 Q. 146 Site at Quarryvale, isn't that right?

17 A. Yeah.

18 Q. 147 There is no doubt about that?

19 A. Uh-huh.

11:33:25 20 Q. 148 Now Mr. Morrissey on the 7th of December, if I could 14248, wrote to Mr. Smith

21 and Mr. Murray thanking them for meeting with him and says he found

22 simultaneous briefing very revealing and took note of the differences expressed

23 in the explanation of the Manager's Report as distinct from the impressions one

24 gets from a general reading of the report. And he says "I find this whole

11:33:50 25 matter to be extraordinarily questionable. Acceptance of the Manager's Report

26 would in effect give Quarryvale an open cheque with which they could develop

27 Quarryvale in any way they wish so as to be in conflict with the stated

28 objectives in the Manager's Report" and he highlights a number of matters which

29 he said were brought to his attention in that meeting, face-to-face meeting

11:34:09 30 with Mr. Murray and Mr. Smith.

11:34:11 1
2 For example at 14249 he says "in your verbal presentation you made it clear to
3 me that you meant the Neilstown/Rowlagh reference to refer to a new district
4 Quarryvale. In further discussing this new district and its implications you
11:34:27 5 specify the following. The new district would not be confined. The proposal
6 would not tie any developers down in the event of any development at Quarryvale
7 to any specific location within the 180 acre site. In the event of a district
8 centre at Quarryvale both of you specifically stated that this would dispense
9 with the shopping facility at Ronanstown. In response to the question what
11:34:48 10 does the Manager mean by reference to the provision of a district centre to
11 serve the larger community. Page 14 recommendation. Your joined answer was
12 that it would cater for an area larger than the immediate catchment. And in
13 terms of your joint definition of the word "is acceptably long" in the sentence
14 "if the Council considers however that the time scale is unacceptably long
11:35:11 15 "recommendation", page 14, you replied that the time frame would be defined in
16 terms of economic timescale for development and not the Development Plan
17 reviewed timescale. It would appear to me that our conversation this morning
18 that the D zoning is to be retained at Ronanstown to prevent a compensation
19 claim and that the intent of the report is to allow a C zoning at Quarryvale
11:35:34 20 which taken with the substantial addendum would give Quarryvale promoters all
21 they could possibly ask for".
22
23 In other words, what Mr. Morrissey is saying here is that as a result of his
24 face-to-face meeting with Mr. Smith and Mr. Murray he was advised that contrary
11:35:48 25 to the impression created by the planners report that in fact the official
26 stance at this stage November 92 was to support the transfer of the zoning to
27 Quarryvale
28 A. Yeah because as I said it was accepted at that stage that it had been. That it
29 was a fair accompli. Really at that stage it was a question of trying to, his
11:36:13 30 use of the word "open cheque" I don't think that's realistic because it's my

11:36:20 1 understanding and again it predates any involvement by me. That there was
2 always implicit acceptance that there would have to be a cap on Quarryvale that
3 it would not be an open cheque. The size of the cap was not determined until
4 the very end but in broad terms, you know, there are a lot of planning issues
11:36:40 5 there that I wouldn't have been directly involved in at all and I have no
6 direct knowledge on that level. But in very broad terms it was accepted that
7 Quarryvale was going to go ahead. It was accepted or implied that there should
8 be a limit or cap of some kind on it. And Neilstown should retain a zoning
9 that would allow it to be developed for some alternative, ideally job creation
11:37:00 10 purposes like industrial development or like the stadium when that came along.
11 So it wasn't a kind of either or where everything moved to Quarryvale and
12 nothing happened in Neilstown. The idea at that stage was that because the
13 local democratic decision had been made by the Council to move the zoning to
14 Quarryvale, that we should then try and develop Neilstown for some alternative
11:37:25 15 development to create jobs for that area.

16 Q. 149 Now, just in relation to that. If I could have 1125. This is the motion. The
17 base motion which subject to amendment on the day was the successful motion, do
18 you understand?

19 A. Yeah.

11:37:41 20 Q. 150 Now, that motion I suggest to you is drafted in the context of a support by the
21 councillors for your proposals, would you agree with me?

22 A. Yeah.

23 Q. 151 It says that the Council hereby resolves reference item number 1 regarding
24 Lucan/Clondalkin overall planning strategic be adopted by the Council taking
11:37:59 25 into account the manager's recognition of the recent North Clondalkin task
26 force and the inter Departmental group report in urban crime and disorder and
27 in proposing the adoption of the Manager's Report we recognise (A) commitment
28 of the IDA to job creation for North Clondalkin and propose the E zoning of 164
29 acres transferred from Dublin Corporation to IDA as recommended at page 4,
11:38:19 30 paragraph 3 of the Manager's Report and (B) to approve the C and E zoning on

11:38:23 1 the Quarryvale site as recommended by the Manager to ensure the provision of a
2 suitable centre to meet the overall needs of the area.
3
4 In other words the motion I suggest to you by councillors O'Halloran and
11:38:34 5 McGrath and Ridge and Tyndall which would eventually lead to the transfer of
6 the or confirmation at this time of the zoning on Quarryvale was a motion
7 asking the councillors to support your views and the planners view in relation
8 to the matter, isn't that right
9 A. Yeah that's correct.

11:38:51 10 Q. 152 And I suggest to you by framing a motion in that fashion, councillors were more
11 likely to vote in favour of the motion. In other words they were voting in
12 favour of the official stance on the site, isn't that right?
13 A. Yeah the official stance on the site is based on the fact that the zoning had
14 been transferred by Council and it was an attempt to come up with a solution or
11:39:14 15 a compromise that would provide best or planning and development for the area
16 that would be, that would be in keeping with the area and that would meet the
17 needs of the local community. There is a reference there for example to the
18 task force which was set up by Government to deal with crime and social
19 deprivation in North Clondalkin just prior to that and North Clondalkin at that
11:39:41 20 time was in serious trouble.
21 There were a lot of very serious problems in the area. And it was an attempt
22 to try to move along a development in the area, which if it was not going to be
23 in Neilstown which would have been the preferred decision from a planning point
24 of view. The next best option was that it would be in Quarryvale or some place
11:39:58 25 else in the county and obviously at that stage the decision was that it would
26 be in Quarryvale. So that motion was framed as a way of trying to reach
27 agreement on the compromise solution and it was of course a decision at council
28 that there would be a cap of 250,000 square feet.
29 Q. 153 In relation to the compromise. I suggest to you Mr. Fitzgerald that in fact
11:40:16 30 the vote was quite close. 8843, which is an extract from the minutes of the

11:40:20 1 voting the first vote appears to be a vote that Quarryvale would retain an E
2 zoning isn't that right. It was proposed by Councillor Burton and seconded by
3 Councillor S Ryan which is item number 10.1.(II) that Dublin hereby resolves
4 to revise the Quarryvale shown in blue and attached map to objective E,
11:40:39 5 industrial per 1983 Development Plan and there was a second motion, proposal by
6 Councillors Reeves, seconded by Sergeant and that was item 10.(V) that Dublin
7 County Council hereby resolves that the Quarryvale site outlined in red
8 attached map is zoned at 1983 zoning of E for industrial. And the motions were
9 put and the division was 32/37 with no abstentions.

11:41:03 10
11 In other words there were five votes separating the sides, isn't that right

12 A. Yeah.

13 Q. 154 That was the first vote. Had that motion been successful the town centre would
14 have remained in Neilstown, isn't that right?

11:41:17 15 A. Yeah.

16 Q. 155 In fact had three councillors changed their minds the matter would have
17 remained in Neilstown, isn't that right?

18 A. Yeah. I think there were about ten different votes and some of them were very
19 close and some of them were not.

11:41:29 20 Q. 156 But that was a stark Neilstown/Quarryvale for the town centre, isn't that
21 right?

22 A. Yeah uh-huh.

23 Q. 157 Now if we go to the next one at 8844. The next was a cap, a suggested cap of
24 100,000 square feet. That was proposed by Councillor Maher and Councillor
11:41:43 25 Lang, isn't that right?

26 A. Yeah.

27 Q. 158 He said the motion at 10.1(I) be amended by the addition of the following words
28 to propose C1 zoning with a cap of 100,000 square feet on the Quarryvale site.
29 That was defeated 32 - 37 isn't that right?

11:41:58 30 A. Uh-huh.

- 11:41:59 1 Q. 159 And then I think the cap of the 250,000 square foot is at 8845 which is the
2 successful motion. And it is proposed by Devitt and seconded by McGrath to
3 amend the motion by the addition of the words and "to restrict the retail
4 shopping to 250,000 square feet to paragraph B"?
- 11:42:18 5 A. Um, -sm uh-huh.
- 6 Q. 160 And I think the motion was further amended to deal with the Neilstown site
7 which is at 8846. Again it was an amendment proposed in the names of
8 Councillors O'Halloran, McGrath, Ridge and Tyndall to approve the managers
9 recommendation that the lands at Neilstown zoned for town centre uses in the
11:42:36 10 1983 development plan should be zoned D to provide for major town centre
11 activities with the specific objective. It is an objective to encourage the
12 development of specialised commercial, recreational, industrial and residential
13 uses in this area?
- 14 A. Yeah. That's the point that I was make that go it wasn't an either or. It was
11:42:53 15 a question of trying to retain a zoning in Neilstown that would allow it to be
16 developed not as a town centre but as next best thing.
17
- 18 JUDGE FAHERTY: Could I just ask you Mr. Fitzgerald just on that point and I
19 was. If you look at that motion. And that was passed
- 11:43:07 20 A. Yeah.
21
- 22 JUDGE FAHERTY: Effectively 18th of December as I understand it
- 23 A. Yeah.
24
- 11:43:12 25 JUDGE FAHERTY: Neilstown got back a D zoning, isn't that a town centre zoning
26 A. Yeah but with the specific objective there that you can see on the ...
27
- 28 JUDGE FAHERTY: Yes yes
- 29 A. The objective was to provide development of specialised commercial,
11:43:26 30 recreational, industrial and residential uses.

11:43:28 1
2 JUDGE FAHERTY: Yes but just to ask you on that. If you read that. To be
3 zoned D to provide for major town centre activities. And then it had obviously
4 a specific objective to encourage the development of specialised, commercial
11:43:42 5 and recreational and industrial and residential uses in the area. That was
6 quite, it had been dezoned obviously
7 A. Yeah.
8
9 JUDGE FAHERTY: In 91 but it gets back into town centre zoning effectively,
11:44:05 10 albeit with the specific objective.
11 A. Yeah but not with major commercial or retail uses. The effect of the motion on
12 Albert Smith is more ...
13
14 JUDGE FAHERTY: That's what I want to ask you. What was the differentiation
11:44:14 15 effectively between what it had in the 1972 and 83 plan. It was zoned D town
16 centre and in reality. In practical terms what did it mean for Neilstown, this
17 vote on the 18th of December 1992?
18 A. What it meant for Neilstown was the objective was that it would retain a zoning
19 that would provide it with the flexibility to generate job creating
11:44:45 20 developments.
21
22 JUDGE FAHERTY: What did that mean. I'm still none the wiser what that in
23 reality meant. If for example somebody was good enough to cross the threshold
24 of the Council the next day and said I am going to build and develop Neilstown
11:45:01 25 in accordance with what was passed on the 18th of December 1992 or indeed when
26 it was confirmed ultimately in 1993. If somebody crossed the Council threshold
27 could you please tell me what exactly that would have been built on Neilstown
28 from any time from 1994 subject obviously to planning permission
29 A. Yeah you'd have to look at each one in detail but.
11:45:24 30

- 11:45:24 1 JUDGE FAHERTY: But what did that mean?
- 2 A. In practice it would have meant -- I would think if somebody came along with a
- 3 proposal for warehousing for example which is job creating offices, small
- 4 shopping developments possibly cultural or I think the word used there was
- 11:45:46 5 recreational and obviously the stadium did come along sometime.
- 6
- 7 JUDGE FAHERTY: We'll park the stadium for a moment now because this is really
- 8 the context of the Neilstown as a community. And I just really want to know
- 9 what would have been built had somebody taken up that and gotten planning
- 11:46:02 10 permission for all of those things. What would have been there today
- 11 A. That's a difficult question to answer because it would depend on what somebody
- 12 decided was commercially viable in Neilstown. And I suppose that was the
- 13 problem with Neilstown. That a lot of people a lot of people in the
- 14 development business didn't see Neilstown as a viable option because it was cut
- 11:46:25 15 off from the main routes. It was difficult to access. That changed since
- 16 because it has much better road access now. But at that time it would probably
- 17 have been seen as being suitable for I think warehousing probably more than
- 18 anything else which is job creating and from our point of view that would have
- 19 been an attractive proposition because one of the drivers at that time in
- 11:46:49 20 Clondalkin was to try to get job creation and mixed development that would
- 21 create employment in the local community. So it's difficult to answer the
- 22 question because it depends on what somebody came in with. But the objective
- 23 was to try and leave a flexible zoning there that would encourage people to
- 24 come along and provide some form of development in Neilstown that would provide
- 11:47:11 25 jobs and employment.
- 26
- 27 JUDGE FAHERTY: But are you saying that as far as the planners were concerned
- 28 in 1993 that the best Neilstown could hope for was warehousing, if this, if
- 29 indeed this motion as it was passed was implemented
- 11:47:26 30 A. Or offices and smaller retail development.

11:47:29 1

2 JUDGE FAHERTY: Thanks.

3

4 MR. QUINN: However, the position at the date of this vote was that the

11:47:35 5 Council had received I suggest to you two planning applications in relation to

6 Neilstown. One for a National Stadium lodged by Mr. Ambrose Kelly on behalf of

7 Mr. O'Callaghan and you have indicated that you were sceptical about that being

8 successful. And the second was a planning application for a town centre by

9 Mr. Sharkey, isn't that right, on his lands?

11:47:55 10 A. Yeah uh-huh.

11 Q. 161 Both of those applications were pending at this stage?

12 A. Yeah, they would have been in the pipeline.

13 Q. 162 Yes. And indeed Mr. O'Callaghan I think felt that the planning application in

14 relation to the stadium was useful in persuading some of the councillors to

11:48:11 15 support the transfer to Quarryvale, isn't that right?

16 A. I don't know if that was so but.

17 Q. 163 You weren't?

18 A. I think.

19 Q. 164 You weren't convinced that there would necessarily be a stadium even though

11:48:23 20 there was a planning application in for a stadium at this time?

21 A. I think it would generally have been supported as a good use but what my

22 scepticism was more to do with the viability of it.

23 Q. 165 Yes as to whether it was ever going to be a reality, isn't that right?

24 A. Uh-huh.

11:48:39 25 Q. 166 In relation to Mr. Sharkey's planning application. If I could have 8514. On

26 the 17th of November 1992 Mr. O'Callaghan had written to you in relation to

27 that application, isn't that right? And he had said to you "I suggest that I

28 know that recently an outline application was lodged for mixed development on

29 the lands to the rear of our proposed all purpose stadium at Neilstown North

11:49:04 30 Clondalkin by PHI and MS limited. For the past 20 years these lands are owned

11:49:06 1 by Mr. Sharkey and a trust controlled SKC accountants. For the past four years
2 Mr Sharkey has been attempting to sell these lands to me for 100,000 per acre
3 because of my experience with our 33 acres site at Neilstown and the difficulty
4 in finding an appropriate use for this site I just could not deal with
11:49:24 5 Mr. Sharkey. It is apparent that both the timing and nature of Mr Sharkey's
6 outline application is another attempt to disrupt our stadium and Quarryvale
7 proposals. Indeed this application is quoted recently in the Irish Independent
8 as being a spur of the moment idea."
9
11:49:39 10 And he went on in that vein complaining to you about the Sharkey application,
11 isn't that right?
12 A. Yeah. I would have passed that letter on to the planners.
13 Q. 167 I was going to make that point to you Mr. Fitzgerald. Firstly, that's the type
14 of submission that one would see by way of an objection to a planning
11:49:57 15 application, isn't that right?
16 A. Yeah to either an objection or a submission.
17 Q. 168 On the planning application?
18 A. On the file yeah.
19 Q. 169 But in fact it's a letter directly to you from Mr. O'Callaghan, isn't that
11:50:08 20 right?
21 A. Yeah with a lot of submissions and planning applications addressed directly to
22 the Manager and they go straight onto the planning file.
23 Q. 170 Now, just moving on and just in relation to the stadium proposals. We know
24 that Mr. O'Callaghan and Mr. Deane dealt with the stadium proposals in
11:50:28 25 correspondence with the bank on the 10th of February 1993. If we could have
26 9241. Well it's at 9240 the letter of the 10th of February in relation to Riga
27 where he is seeking to justify payments by Riga on behalf of Barkhill. And at
28 9241 he advises the bank that in addition Riga had also incurred additional
29 expenses in the sum of 400,000 pounds approximately in order to secure the
11:50:55 30 Quarryvale zoning. And he said that they had been spent in two ways.

11:50:59 1
2 Firstly 150,000 had been sent spent on various expenses directly related to the
3 Quarryvale project and for which invoices had not been produced to the bank nor
4 had the bank been requested to make any payments out of the Barkhill account.

11:51:11 5
6 Did you know that Mr. O'Callaghan was maintaining or claiming through Mr. Deane
7 that 150,000 Pounds had been spent on expenses relating to the Quarryvale
8 project at this time?

9 A. No.

11:51:23 10 Q. 171 Now, in relation to the 250,000 which he said had been spent in connection with
11 the stadium project for the old Neilstown site. Mr. Deane said the following.
12 And I don't want to go through it in detail. "By way of background to the
13 expenditure you will recall that the Neilstown site was the original site zoned
14 for the town centre. Part of the Quarryvale problem was to obtain the moving
11:51:41 15 of the zoning from Neilstown to Quarryvale. The City Manager made it clear
16 that he expected an alternative use to be found for the Neilstown site and that
17 the site was not simply to be dumped and left there."

18

19 CHAIRMAN: Could we turnover the page.

11:51:54 20 Q. 172

21

22 MR. QUINN: Sorry. He says "However to make the project seem a real project
23 and not just a mythical scheme which was necessary to prepare detailed and
24 substantial drawings to such a standard that it would lead to detailed planning
11:52:05 25 application. Furthermore a working model with a sliding roof and moving floor
26 was also prepared. International consultants in the leisure field were
27 retained to vet the project and De Loitte & Touche Accountants were also
28 retained to give a feasibility report for the entire project for the American
29 financiers who were interested in providing the finance. Introduction of the
11:52:23 30 financiers was made by the Taoiseach Mr. Reynolds to when the financiers were

11:52:29 1 in Dublin to meet the Taoiseach who was then Minister of finance. In order to
2 establish the credibility of the stadium project it was necessary for the
3 project to see was it a viable workable project which would have the support of
4 Government, FAI and other sporting organisations who would use the project" and
11:52:46 5 then he deals with the planning application which had been put in and the
6 standard of the drawing.
7
8 He said "The stadium project also had a number of other advantages" and I just
9 wish to put these to you if I may Mr Fitzgerald. It said it provided new use
11:52:58 10 for the existing site which was very important for the goodwill of the local
11 authority and the councillors. Was he correct in that?
12 A. Well to the extent that the local authority, the councillors would have been
13 supportive of any major development for Neilstown at the time.
14 Q. 173 And I think the project, the proposed project for the Neilstown site did
11:53:21 15 feature in the planners report which I referred to earlier, isn't that right?
16 A. Yeah. Council would have been concerned.
17 Q. 174 He says that by lodging a planning application the planning for the stadium
18 obtained priority in relation to any other planning application for that
19 particular area. And in saying that I suggest to you one has to have regard to
11:53:38 20 the & PHI application which was pending at that stage also, isn't that right?
21 A. I'm not sure what he means by that.
22 Q. 175 Well I think if we go forward the local authority would not have an interest in
23 disposing of the site to any other users until such time as the stadium project
24 had run its course. You would say that was a matter for the corporation
11:53:56 25 presumably?
26 A. That would have been the corporation and the then city Manager.
27 Q. 176 In the event that Sharkey endeavours to lodge a planning application for retail
28 scheme on the lands behind the stadium it would be clear to any retailer that
29 this land was not economically viable particularly in view of the large stadium
11:54:12 30 in front of it and effectively all that Sharkey was proposing to develop was a

11:54:16 1 site to the rear of the stadium.
2
3 At 9243 he goes on to say that perhaps the most material factor was that the
4 stadium would carry such large volume of traffic that requires a whole road
11:54:26 5 network to be upgraded at a cost of approximately 36 million. Consequently any
6 other scheme for the adjoining lands including lands still zoned for town
7 centre would have to wait behind the stadium project and cannot be advanced
8 until the road problems which must be solved in order to progress the stadium
9 had in fact been resolved. The consequence of the foregoing is that the old
11:54:46 10 Neilstown site is locked up for a number of years to allow Quarryvale to
11 progress without threat from the Neilstown site".
12
13 As a strategy do you accept that that was a good strategy in relation to the
14 development of Quarryvale at this time and the zoning of Quarryvale at this
11:55:08 15 time?
16 A. From the developer's point of view.
17 Q. 177 Yes?
18 A. Well that's a matter for the developer.
19 Q. 178 No as the Manager or the incoming Manager for the new South Dublin County
11:55:17 20 Council and your knowledge of the planning and zoning of the site what do you
21 say about what's stated there by Mr. Deane to the bank?
22 A. Well my recollection is that in all of the time that I was involved we found it
23 very difficult to get, I don't remember any viable application for the
24 Neilstown lands apart from the stadium which did run for a while. But it was
11:55:45 25 accepted that Neilstown was a difficult location. And again now I'm talking
26 about us as a local authority with wider remit planning and social employment
27 and job creation and everything else, that Neilstown was a difficult site to
28 get good development on. So from that point of view, because of the access
29 problems and because of the location and everything else, it wasn't seen by
11:56:10 30 developers as an attractive location, at that time anyway. And obviously with

11:56:15 1 the efflux of time it did take quite a while for anything to happen there.

2 Q. 179 Isn't it the case that Mr. Sharkey had been writing to the corporation offering

3 to acquire the lands and develop the town centre on those lands. That is

4 offering to buy the Neilstown site which had been sold to Merrygrove?

11:56:32 5 A. I think that had been going on for quite a long time, didn't it?

6 Q. 180 Yes. But Mr. Sharkey of PHI had offered to acquire those lands which had been

7 originally sold to Merrygrove?

8 A. Again I have no direct knowledge of that so ...

9 Q. 181 I just want to deal with two final matters if I may Mr. Fitzgerald. Firstly,

11:56:52 10 on the 10th of February 93 again Mr. Deane was writing to the bank. If we

11 could have 9244. And in the course of that correspondence he advised the bank

12 "that clearly the new Manager of Dublin South area, John Fitzgerald, will be

13 anxious to see a major development commence as soon as possible within his

14 area". Was that your position?

11:57:11 15 A. Yeah. I mean my position would have been that we saw Quarryvale as a fait

16 accompli. As I said, I didn't feel that my time to unpick it and in planning

17 and development terms was going to succeed if it was acceptable in local

18 democratic terms. So it is true that Clondalkin at that time was a bit of a

19 basket case and that was recognised by the setting up of the Government's Inter

11:57:42 20 Departmental group and I was a member of that group. That did recognise that

21 there was a need for mixed development and job creation and development in that

22 area. So as the new Manager of a new county with responsibility for that

23 entire area we would have been anxious to see a development happen. The system

24 had decided that major development would be in Quarryvale but we were also

11:58:04 25 concerned about Neilstown and other parts of the county. Our objective would

26 have been to try and secure best possible development for those areas.

27 Q. 182 And again in an attendance taken on the 3rd of the 10th of March 1993 within

28 the bank on Mr. Deane and Mr. O'Callaghan. If I could have 9299 please. There

29 was discussion of Mr. O'Callaghan's meetings with you. And just to -- you

11:58:28 30 wouldn't have been aware of this but the bank were discussing the concept of

11:58:32 1 them being introduced to you. And if you deal with the matter under the
2 heading meeting with County Manager the note records as follows. We have
3 indicated that we felt that this would be helpful that is a meeting with you
4 and perhaps could help the overall scheme also. Owen O'Callaghan was effected
11:58:48 5 with this and was somewhat apprehension about it. He said that he had been
6 careful in cultivating his relationship with John Fitzgerald and did not want
7 John Fitzgerald to feel threatened by meeting us or to feel that he might be --
8 people other than Owen O'Callaghan that he was dealing with. ."
9

11:59:04 10 I just want you to comment if you would Mr. Fitzgerald on that

11 A. I presume that every developer in Dublin has probably been careful about how he
12 cultivated their relationships with me. All I can say to that is I think every
13 developer in town knows that we dealt with them on a very professional basis in
14 terms of what was good for planning and development in the area. And I think
11:59:27 15 every developer knows that. I can't stop any developer writing in those terms.
16 I can't say that I'm happy about it.

17 Q. 183 If we go on just in the second last paragraph he says. And we're dealing now
18 with, I think the plan is confirmed in December 93 and we're talking about
19 we'll say March 93. He says "In parallel with the foregoing they would be
11:59:46 20 submitting their plans by the end of April/May. It has been agreed with the
21 Manager that he will revert in July seeking additional information. A decision
22 will issue in end of October following which it will go to An Bord Pleanala and
23 they are quite happy that four months will be the deadline there. And
24 accordingly planning permissions should issue by March 1994."

12:00:04 25
26 It goes on to say "In response to our specific questioning they acknowledged
27 that technically the County Manager and the planners could refuse to deal with
28 the planning application until the development plan is actually made. However
29 they have been speaking to John Fitzgerald and to the Chief planning Manager,
12:00:16 30 Al Smith, and the two individuals are pushing them to get their plans

12:00:20 1 submitted. Owen O'Callaghan has raised the issue specifically with John
2 Fitzgerald and has received assurances to the effect that a decision will issue
3 by end of October next. Aside from the foregoing Owen O'Callaghan has been in
4 touch with the Taoiseach in the context of moving forward to ensure the maximum
12:00:34 5 jobs can be made available in the Clondalkin area for the development".
6

7 Can I ask you Mr. Fitzgerald were you and Mr. Smith anxious that Mr.
8 O'Callaghan would lodge his plans for his shopping centre prior to the
9 confirmation of the Development Plan?

12:00:48 10 A. Yeah, if you go back to what I said earlier. Once we realised that Quarryvale
11 was going to go through and rezoning was going to be confirmed and that it was
12 a fait accompli, there was every reason for us to want to get that development
13 to go ahead as quickly as possible within the confines of what was proper
14 planning and development for the area and within the confines of the cap that
12:01:08 15 had been applied by the Council.

16 Q. 184 And just finally, in relation to one matter. You might recall that earlier
17 when we commenced this morning I had referred to the sale of lands by the
18 corporation at Quarryvale. Sorry by the Council at Quarryvale to Mr.
19 O'Callaghan.

12:01:27 20 A. By the City Council.

21 Q. 185 No by the County Council. Both the Council and the Corporation had lands at
22 Quarryvale. And that a contract was entered into for the sale of the Council
23 lands. And the issue, an issue arose concerning the completion of that
24 contract for the sale of those lands. Just to give you by way of dates. If we
12:01:46 25 could have 16330. This is the contract for the sale of the Council lands for a
26 sum of 880,000 pounds to Barkhill Limited?

27 A. That was in ...

28 Q. 186 And that contract was dated, as we see there the 19th of November 1991 with a
29 closing date of the 2nd of November 1991?

12:02:07 30 A. Uh-huh.

12:02:07 1 Q. 187 There was an issue concerning a consent from the Minister for the Environment
2 in relation to the lands. But it would appear that the deposit was paid in
3 November 1991 and we see that being requested by the bank of Mr -- or being
4 given to Mr. Maguire at 14210. And Mr. Maguire has advised the Tribunal at
12:02:32 5 2744 that the contract was dated the 19th of November. That the purchase price
6 was 880,000. That the closing date was the 2nd of November. That a deposit of
7 88,000 was paid on the 1st of November. And that the contract was subject to
8 the consent of the Minister for the Environment and that the transaction was
9 completed on the 10th of December 1993.

12:02:53 10
11 What I am going to read to you, if I may, is a letter to the bank from
12 Mr. Deane if I could have 9246, please.

13
14 Just at the bottom you see there he says "as you are aware there is an
12:03:13 15 outstanding sum of 810,000 due to the Council. This has been paid to the
16 Council solely because the Council have not requested payment on foot of the
17 contract. Owen is extremely confident that in the event of, 9247, payment
18 being requested within the next 12 months he would be able to make an
19 arrangement with the County Manager whereby the payment is postponed until the
12:03:32 20 end of the 12 month period" do you see that?

21 A. Yeah.

22 Q. 188 Is there any reason why Mr. O'Callaghan could have that confidence that he
23 could persuade you to postpone the payment?

24 A. No there isn't because I wouldn't involve myself in that level of detail. All
12:03:48 25 of those issues would be handled by the development department staff and I
26 would not have involved myself directly.

27 Q. 189 And the matter appears to have arisen from time to time. For example I have
28 already quoted from that meeting with the bank on the 3rd and 10th of March
29 1993.

12:04:05 30

12:04:05 1 If we could have 9300.
2
3 Under the heading "County Council" and it says "it was agreed it would appear
4 that we have the 810,000 due to the Council by the end of this year at latest.
12:04:14 5 Accordingly we have built this in as our submission for funding".
6
7 And if we -- if I could just show you a letter of the 10th of August 1993 at
8 9975 to Mr. Seamus Maguire from Mr. O'Callaghan. It says "Purchase of lands by
9 Barkhill from Dublin County Council." It says "Dear Seamus, I am in receipt of
10 your letter regarding the above. I had a meeting at the end of July with John
11 Fitzgerald, County Manager and his officials. He mentioned to me that this
12 correspondence would be forthcoming. That he is anxious to finalise the
13 matter. The timing was inopportune for me to dissuade him as I was in the
14 process of securing the County Council yard from him. You shall stall this as
12:04:53 15 long as possible legally before I have to go and meet the County Manager. I am
16 sure that both John Deane and yourself will come up with some suitable legal
17 tactics". That seems that Mr. O'Callaghan did mention the sale of these lands
18 with you Mr. Fitzgerald, isn't that right?
19 A. Well if he did I wouldn't -- again I wouldn't have ever got directly involved
12:05:12 20 myself. Those would have been dealt with by the development people.
21 Q. 190 10256 on the 13th October 1993 at a meeting at the Bank Centre the following is
22 recorded. "The County Council had been indicating that they want to close the
23 sale of their lands, £800,000 approximately due. The Ministerial sanction has
24 been received by them. The company strategy is to string it out as long as
12:05:33 25 they can and Owen O'Callaghan is in touch with John Fitzgerald in this regard.
26 They will await receipt of a 28 day demand notice from the County Council.
27 Following receipt of this Owen O'Callaghan will take the matter up with John
28 Fitzgerald"?.
29 A. I don't remember that ever being an issue. And I don't remember it being
12:05:48 30 raised with me. But if it was I would simply refer it back to the development

- 12:05:53 1 department to follow-up any monies that were due for sales of land.
- 2 Q. 191 Now, would you agree with me, Mr. Fitzgerald, finally, that irrespective of
- 3 whether there was a basis for it or not, that Mr. O'Callaghan was of the view
- 4 that he had a special relationship with you, isn't that right?
- 12:06:09 5 A. I would have no reason to. I don't see why he should have believed that but.
- 6 Q. 192 I'm not saying whether there was a basis for it or not. But certainly from
- 7 what I have shown you. Would you agree with me that he was of the view that he
- 8 had a relationship with you?
- 9 A. If he did he had no justification for doing so. My relationship with Owen
- 12:06:32 10 O'Callaghan, as with every other developer, was a purely professional
- 11 relationship that was based on professional standards. As I said, I was, I
- 12 can't prevent any developer from writing in those terms to his bank on anybody
- 13 else but I wouldn't condone it.
- 14 Q. 193 And he certainly was crediting you with or his success in relation to the
- 12:06:53 15 Quarryvale rezoning, with the fact that you had come on side as we saw from
- 16 that letter at 14793, isn't that right?
- 17 A. Well as I said to you in my letter there is no justification for that and I was
- 18 concerned about it.
- 19 Q. 194 And he was also boasting of the fact or advising the bank of the fact that as
- 12:07:09 20 soon as the existing council had been divided that Quarryvale would find itself
- 21 within your county and therefore he would get as much retail space as he could
- 22 fill. You say that there is no basis for that claim?
- 23 A. I pointed out in my letter that it's quite the opposite. That I was the
- 24 implementor or I recommended the implementation of the cap. I supported the
- 12:07:29 25 cap and would not make any attempt to remove the cap and it wasn't removed
- 26 while I was in office.
- 27 Q. 195 I think the original proposed cap was 100,000 square feet shopping centre?
- 28 A. I think it was originally 500,000 and then various versions.
- 29 Q. 196 On the various motions on the 17th of December 92. The first proposal was that
- 12:07:51 30 Quarryvale would be zoned industrial. Then the proposal was that it would be

12:07:55 1 capped at 100,000. And then proposed to be capped at 250,000. Can I ask you
2 Mr. Fitzgerald did you discuss a cap of 250,000 with Mr. O'Callaghan prior to
3 that vote?

4 A. I don't believe I did. And I have no recollection of doing so but I was asked
12:08:10 5 at the Council meeting for a recommendation and the Council had talked it
6 through and hadn't arrived at any compromise and I expressed a view at that
7 meeting that in my opinion at that time a cap of 250,000 was suitable in terms
8 of proper planning and development. And that was accepted by Council and I
9 think it's fair to say that that's not what the developers would have wanted.

12:08:37 10 Q. 197 Thank you very much, Mr. Fitzgerald.

11 A. Thank you.

12

13 CHAIRMAN: Thank you, Mr. Fitzgerald.

14

12:08:43 15 JUDGE FAHERTY: Thank you.

16 A. Thank you.

17

18

19

12:08:46 20 **THE WITNESS THEN WITHDREW.**

21

22

23

24 CHAIRMAN: Who is the next witness?

12:08:48 25

26 MS. DILLON: I beg your pardon Sir. Mr. Michael Smith.

27

28 CHAIRMAN: All right. We'll just take a very short ten minute break.

29

12:08:55 30 MS. DILLON: May it please you, Sir.

12:08:57 1

2

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

3

AND RESUMED AS FOLLOWS:

4

12:25:02 5

6

MS. DILLON: Good afternoon, Sir. Mr. Michael Smith, please.

7

8

9

12:25:06 10

MR. MICHAEL SMITH, HAVING BEEN SWORN, WAS QUESTIONED

11

BY MS DILLON AS FOLLOWS:

12

13

14

12:25:40 15

16

CHAIRMAN: Good afternoon, Mr. Smith.

17

18

MS. DILLON: Good afternoon, Mr. Smith

19

A. I was hoping to be able to say Good Morning however it is Good Afternoon.

12:25:50 20

21

CHAIRMAN: Well at least it's before lunchtime

22

Q. 198 Good afternoon, Mr. Smith. I think that previously you have been Minister of

23

State of the Department of Agriculture. You have been Minister for Forestry,

24

Minister for Energy and Minister for State for Science and Technology. In 1991

12:26:07 25

you were appointed Minister for the Environment is that correct?

26

A. That's correct, yes.

27

Q. 199 I think that you concluded your ministry as Minister for the Environment in

28

December 1994, is that the position?

29

A. Regrettably.

12:26:19 30

Q. 200 And I think that in brief the events leading to the disillusion of that

- 12:26:24 1 particular Government was the withdrawal on the 17th of November 1994 of
2 certain Labour Ministers for the then Fianna Fail/Labour coalition, isn't that
3 right?
- 4 A. That's correct.
- 12:26:34 5 Q. 201 And the portfolios that had been held by the Labour Ministers in that
6 Government were redistributed among the remaining Fianna Fail members of the
7 Government and the Government continued until the 15th of December 1994, isn't
8 that right?
- 9 A. That's right.
- 12:26:49 10 Q. 202 There was a change of Government then on the 15th of December 1994 without
11 there being an election, isn't that right?
- 12 A. Yes.
- 13 Q. 203 And there was no dissolution of the Dail and what subsequently became known as
14 the rainbow coalition took over is that the position?
- 12:27:04 15 A. That's the position.
- 16 Q. 204 And I think it was in those circumstances that in December of 1994 you
17 concluded your ministry as Minister for the Environment isn't that the
18 position?
- 19 A. Correct.
- 12:27:16 20 Q. 205 Now, there are really a number of separate matters that I want to talk to you
21 about if I can, Mr. Smith, that arose in the course of your stewardship of the
22 Department of the Environment and while you were Minister for the Environment.
23 But in first can I ask you. In relation to the issue of urban renewal and tax
24 designation which the initial designation of pieces and parcels of land fell
12:27:40 25 within the ambit of the Department of the Environment, isn't that right?
- 26 A. Yes.
- 27 Q. 206 And the Tribunal has heard evidence from various civil servants but in essence
28 as I understand it the ultimate decision about which pieces of land were to be
29 designated was a political decision in that it was taken either by the Minister
12:28:01 30 for the Environment after consultation with the Minister for Finance or as a

- 12:28:05 1 result of a Government decision?
- 2 A. Well what would all actually happen is a small group of civil servants would
- 3 assess the propositions which were made by local authorities.
- 4 Q. 207 Uh-huh.
- 12:28:18 5 A. Invariably the proposition is made by local authorities extended over much
- 6 wider areas than were contemplated by this process. So it was diluted down to
- 7 a central part of a derelict area which in the opinion of the civil servants
- 8 involved would not develop unless it had incentives. And bearing in mind the
- 9 economic situation in the country at the time not very much was happening and
- 10 it needed this injection to make it happen. So what happened then in practice
- 11 was that this proposal would be laid before the Minister for the Environment
- 12 and in all cases I accepted the recommendation of the civil servants and we
- 13 never deviated from these proposals. These files then would come on the day a
- 14 decision was being made by the Government following a memorandum and returned
- 12:29:14 15 to the Department that afternoon following a decision. So I made an
- 16 announcement in either June or July 1993 in connection with a broad designation
- 17 across the country in that context.
- 18 Q. 208 Yes?
- 19 A. But that's the way it happened.
- 12:29:27 20 Q. 209 Yes but what I was asking you, maybe I didn't make my question precise enough,
- 21 Mr. Smith. In that I was asking you that the ultimate decision to designate or
- 22 not to designate a piece of land regardless of what advice is or is not given
- 23 by the civil servants is a ministerial or a Government decision and is
- 24 therefore a political decision, isn't that the position.
- 12:29:50 25 A. I accept that totally. The book stops with you if you are the Minister.
- 26 Q. 210 So that the way it operated, urban renewal, the way as it has been explained by
- 27 the civil servants to the Tribunal is that in the first instance applications
- 28 would be made for designation. Investigations would be carried out by the
- 29 civil servants recommendations would be made to the Minister of the day,
- 12:30:15 30 application would be made to Government in relation to the matter. Decisions

- 12:30:19 1 would be made either at Ministerial or Government level and thereafter
2 statutory instruments and maps would be prepared.
- 3 A. Absolutely yes.
- 4 Q. 211 And it was a twofold operation in that it was a decision that was made by the
12:30:33 5 Minister for the Environment with the consent of the Minister for Finance,
6 isn't that right?
- 7 A. That's correct.
- 8 Q. 212 And the statutory instrument designating any piece of land was one that was
9 signed by both Minister for the Environment and the Minister for Finance, isn't
12:30:45 10 that right?
- 11 A. That's correct.
- 12 Q. 213 Right. Now, one of the first matters that I want to ask you about. It's a
13 matter that has been discussed here Mr. Smith on a number of occasions herewith
14 councillors. But when you became Minister for the Environment you gave a
15 number of speeches in which you described that planning in Dublin was a debased
12:31:00 16 currency, do you remember those speeches. Do you remember those speeches?
- 17 A. I do, yes.
- 18 Q. 214 When you were Minister?
- 19 A. I do, yeah.
- 12:31:14 20 Q. 215 Can you outline to the Tribunals the circumstances to which you came to the
21 view after you were appointed Minister for the Environment that planning was a
22 debased currency in Dublin?
- 23 A. Well the speeches that you referred to, I would have, as I recall them, covered
24 a fairly broad canvass of issues relating to the review of the County
12:31:37 25 Development Plan by Dublin County Council. And even though I covered a lot of
26 a wide canvass, I actually didn't cover the expectation that I might be here 15
27 years later explaining what I was saying and why I was saying it. You will
28 recall at the time that Dublin County Council was embroiled in and surrounded
29 by very considerable controversy and it ... in the broad canvass that I just
12:32:08 30 want to refer to very quickly. I was asking local authorities generally to

12:32:13 1 make their plan more intelligible for the ordinary public.
2
3 I was spelling out the kind of things that a County Development Plan should do
4 and the kind of co-ordinated strategies that should be adopted which would take
12:32:26 5 care of the future needs, sustainable development and community needs etc. And
6 then in those speeches I went into the heart of some of the problems which were
7 developing as I saw it, in the zoning and rezoning in Dublin County. It was my
8 view that councillors were responding more to the promptings of landowners,
9 developers, their agents than they were, if you like, having a vision a total
12:32:57 10 vision as to how land use and development would take place in the county. Now,
11 we all know that zonings, rezonings are an integral part of the planning
12 process, have been, and will continue to be into the future. But the zonings
13 and rezonings in this instance were attracting a lot of very very critical
14 attention. There was very considerable wrangle going on. And regrettably even
12:33:29 15 the good zonings, zonings which were absolutely necessary. Rezonings which
16 were absolutely necessary and have proved to have been solidly based and were
17 necessary in the context of an accelerated growth in our population. Even
18 those ones were all being tarred with the same kind of a brush as if they were
19 just at the prompting of developers or their agents.
12:33:55 20
21 And I was deeply concerned that the overall implications, the financial
22 implications, were not being properly assessed and of. And of particular
23 concern to me was the facts that full capital cost of the provision of services
24 and infrastructure lay with the taxpayer, the Exchequer. And times were not
12:34:24 25 anything like as good then as they have been since. And the Department of the
26 Environment had know an enormous range of responsibility in terms of meeting
27 needs. And I was very, very concerned in the conservation of our total
28 resources that account would be taken of the implications of these decisions.
29 And there were also very considerable publicity and matters relating to alleged
12:34:52 30 corruption and issues of that kind. So I went as far as I could in indicating

- 12:35:00 1 my concerns at the time. And I was hoping to reign in the Council to some
2 extent on the worst excesses of what was happening/
- 3 Q. 216 May the Tribunal take it that as Minister for the Environment you had a capital
4 budget available to you and that capital budget would have been concerned with
12:35:26 5 the provision of funds in relation to capital expenditure for local
6 authorities. It would include, say for example, the provision of new increased
7 sewers such the Northern Fringe Sewer, the provision of new and increased roads
8 and the requirement to put in place those services were directly effected by
9 the decisions that were made by the councillors in relation to rezonings, is
12:35:47 10 that right?
- 11 A. Well you see roads, housing general infrastructure libraries, wherever you go
12 there was needs all about you and you had to try and spread these resources as
13 fairly, bearing in mind your total responsibility and I didn't want any of
14 those resources wasted.
- 12:36:07 15 Q. 217 So that was, would it be fair to say then that one of your concerns then in
16 relation to the rezoning that was going on in Dublin County Council relate to a
17 financial concern for the proper provision of services in accordance with the
18 needs of the communities?
- 19 A. Absolutely.
- 12:36:22 20 Q. 218 All right. So that was one concern that gave rise to the speeches that you
21 gave in May of 1993?
- 22 A. Yes.
- 23 Q. 219 Now you also said and I am just quoting now from an article that covered the
24 speech that you made. You said "the stage has now been reached where zoning
12:36:41 25 has become a debased currency in the County Dublin area". So you were
26 specifying County Dublin, isn't that correct?
- 27 A. Yeah, uniquely the problem.
- 28 Q. 220 Sorry?
- 29 A. In the review seemed to be in Dublin. We didn't appear to have anything like
12:36:53 30 similar controversies anywhere else.

- 12:36:55 1 Q. 221 So the second concern or the second matter that you have identified is that
2 this was something that was peculiar to Dublin?
3 A. Yes.
- 4 Q. 222 As far as you saw. If I can continue then with the quote where you say "the
12:37:06 5 zoning has become a debased currency in the County Dublin area where even
6 desirable changes in zoning may be tarred with the same brush as those which
7 arise on the promptings of individual landowners or developers?"
8 A. Yes.
- 9 Q. 223 So may the Tribunal take it then that the third concern that you had identified
12:37:22 10 was that some zonings were being promoted as a result of the request or desires
11 of individual landowners and that therefore what was pushing the rezoning was
12 the desire of a developer or landowner as opposed to what was required for the
13 proper planning of the overall area?
14 A. Yeah, I have no problem with landowners approaching local authority members. I
12:37:44 15 have no problem with developers approaching local authority members to make
16 their case. What in the final analysis has to be done is that the Development
17 Plan reflects the totality of what the community interests are and ensures that
18 we have the right kind of development taking place. And if people are fitting
19 into that they fit into it and if they don't they don't.
- 12:38:08 20 Q. 224 Yes was it a concern of yours in May 1993 that some zonings were being promoted
21 for and on behalf of individual landowners or developers?
22 A. Absolutely. Well that was -- there was no doubt in my mind but that was
23 happening.
- 24 Q. 225 Right. And if that was happening, Mr. Smith, it would have meant and it would
12:38:26 25 explain why you describe zoning as a debased currency, isn't that right?
26 A. I think I tried to cover that as generally as I can. There were a wide range
27 of issues involved and the primary one being my concern about the financial
28 resources available to me to deal with these problems.
- 29 Q. 226 In other words the zoning decisions were going to have a knock on effect for
12:38:46 30 your Department, isn't that right? Because you were in charge of providing

12:38:50 1 capital expenditure, isn't that right?

2 A. That's right.

3 Q. 227 Right?

4 A. I said at that time in one of the interviews I gave that I was not going to

12:39:00 5 under write applications from the County Council for financial resources to

6 provide services for haphazard or willy-nilly zonings. I made that absolutely

7 clear. It was one -- it was a piece of armoury that I had and one which I was

8 prepared to use and I think I demonstrated that later on when I set up an

9 evaluation process in my Department which would enable me to make decisions

12:39:27 10 around those typical type of rezonings that I had referred.

11 Q. 228 Right. And following the articles or your speeches in May of 1993 the Irish

12 Times embarked through Frank McDonald then the environment correspondent on a

13 series of articles covering the rezoning meetings that were then going on and

14 the rezoning process in Dublin County Council isn't that right?

12:39:50 15 A. That's correct.

16 Q. 229 And if we look first at page 22648, please.

17

18 And this is the top half of an article which is entitled "where it is possible

19 to boost the value of parcels of land beyond the dreams of Avarice on a roll

12:40:14 20 call vote". And if we can go to the next page please.

21

22 And in this the heading is "Minister tell me this, is money changing hands

23 Councillor well Minister I couldn't deny it". And that is a quote at the very

24 bottom corner of the last column wherein it is quoted. Sorry it is stated "A

12:40:38 25 Fianna Fail Minister recently confirmed to the Dublin County Council from his

26 party with a question "tell me this is money changing hands" and the reply was

27 "well Minister I couldn't deny it" and there is reference within the body of

28 that article to your blistering attacks on the land rezoning record of the

29 County Council and the decisions made.

12:40:57 30

- 12:40:57 1 And following on that series of articles a Garda inquiry was initiated isn't
2 that right by you?
- 3 A. That's correct.
- 4 Q. 230 Right. Now, the decision to initiate the Garda inquiry, Mr. Smith, that you
12:41:10 5 took in July of 1993, was that predicated on what was revealed by the Irish
6 Times articles that led up to that in June and July of 1993?
- 7 A. I have racked my brains to try to recall with whom I was speaking to when the
8 answer that you have referred to earlier was made to me "well Minister I
9 couldn't deny it". I just have a hazy recollection but I'm just not able to
12:41:40 10 pinpoint it in my mind. But obviously from, certainly from April of 1993 when
11 a particular meeting went out of total control and ended in chaos and I think
12 had to be adjourned and which would have been one of the lead in matters to the
13 development of the speeches which I gave. There was, you know, obviously quite
14 very considerable controversy about these particular matters. I had no
15 evidence. Ministers generally have been extremely reluctant to get involved in
16 these matters and the County Development Plan was always conceived as an
17 exercise in local democracy. And so I decided that while I didn't have any
18 evidence, the best way out to ensure that everything would be right was to have
19 a Garda investigation. And it was on that basis that I decided.
- 12:42:13 20 Q. 231 In May of 1993 when you gave your speeches you described planning in Dublin
21 County Council as a debased currency?
- 22 A. Uh-huh.
- 23 Q. 232 So you had already formed a view by Minister for the Environment in relation to
24 what was going on in Dublin County Council isn't that right?
- 12:43:02 25 A. Yes yes.
- 26 Q. 233 Because it was confined to Dublin County Council. Subsequently, it appears
27 that while you are not identified you are the Minister who is quoted in the
28 Irish Times article of the 12th of July 1993 where a Councillor confirmed to
29 you or said to you that he couldn't deny that money was changing hands isn't
12:43:21 30 that right?

12:43:21 1 A. That's it.

2 Q. 234 It follows from that, Mr. Smith, that on or before the 12th of July 1993 you

3 had confirmed to you by a Councillor who is a member of your own party, that

4 money was changing hands in connection with votes in Dublin County Council and

12:43:35 5 that following that, you initiated the Garda inquiry isn't that right?

6 A. No, I couldn't say that that was the only element. There was, as I said, a

7 broad picture out there which I had concerns about and I needed to try to reign

8 it in. And so my decision would have been based on, not just that conversation

9 which I'm not able to just pinpoint, but on the broad areas that I have

12:44:04 10 outlined, it was not just particular or specific because I didn't have

11 particular evidence in the areas in which you are referring, which would really

12 satisfy a person that it was absolutely happening.

13 Q. 235 But you did have the evidence of the Councillor with whom you spoke because you

14 accept that you are the Minister in question that one Councillor had confirmed

12:44:22 15 to you by saying that he couldn't deny it that money was in fact changing hands

16 isn't that right?

17 A. I accept that.

18 Q. 236 Now, that article was carried on the 12th of July 1993. And on the 13th of

19 July 1993, at page 22650. That is the following day. It was published and

12:44:45 20 indeed it is the case that the Gardai had been requested to investigate

21 rezoning claims and in the opening paragraph in that article it's stated "the

22 Gardai are to investigate a report in yesterday's Irish Times that landowners

23 and developers have offered and in some cases paid sums of money to Dublin

24 County Councillors who supported controversial land rezoning schemes in Dublin.

12:45:09 25

26 It is believed that the Minister for the Environment Mr. Smith is prepared to

27 direct the County Council to change at least part of the Draft Development Plan

28 because of the scale of the rezonings involved".

29

12:45:21 30 And the article then goes on to talk about what's going to happen.

12:45:25 1
2 And in the previous day's article there had been reference to councillors who
3 weren't identified confirming that money had been sought or that money had been
4 paid.

12:45:34 5
6 So would it be fair to say that by July the 13th 1993 you had come to a firm
7 view that there were matters afoot in Dublin County Council that required
8 investigation by the Gardai?

9 A. Yeah, I would have come to that view for a fairly long lead in period to the
12:45:54 10 13th. I wouldn't be able to say. I would say certainly for up to a couple of
11 months the concerns were gradually getting to a point where I knew that action
12 had to be taken.

13 Q. 237 Yes. And that was, that action was a Garda inquiry into effectively
14 allegations of corruption in the planning process particularly in Dublin County
12:46:14 15 Council isn't that right?

16 A. That's correct, yes.

17 Q. 238 And I think indeed Mr. Pat Rabbitte, who was then Chairman of Dublin County
18 Council, on the 26th of July 1993, at 9921.

19
12:46:23 20 Wrote to each Councillor asking them to co-operate with Inspector Michael
21 Guiney of Store Street Garda Station and he states:

22
23 "Inspector Guiney has been put in charge of the investigation initiated by the
24 Minister for the Environment Mr. Michael Smith into certain allegations arising
12:46:42 25 from the recent series of articles in the Irish Times".

26
27 So it seems clear I think that you did initiate the Garda inquiry and it was as
28 a result of the matters that had come into the public domain in May, June and
29 July of 1993?

12:46:55 30 A. That would be correct.

- 12:46:56 1 Q. 239 Would you agree with that?
- 2 A. I would agree with that.
- 3 Q. 240 Now, it would seem if you were the Minister who asked the question, it appears
- 4 that you were, that you were told by a Councillor that the Councillor couldn't
- 12:47:07 5 deny that money was changing hands. At that time can you remember whether you
- 6 were asked by the Gardai about that matter and whether you provided information
- 7 at that stage about who the particular Councillor was?
- 8 A. No, I was not asked.
- 9 Q. 241 By the Gardai?
- 12:47:25 10 A. I was not asked, no.
- 11 Q. 242 Were you ever identified to this point in time as the Minister who was quoted
- 12 in the -- in this particular article of the 12th of July 1993 as the person who
- 13 asked the question of the Councillor and got the reply that the Councillor
- 14 couldn't deny that money was changing hands?
- 12:47:44 15 A. No, I have no recollection and I'm sure I was not questioned on that by the
- 16 Garda authority.
- 17 Q. 243 And did you ever bring it yourself, can you remember, to the notice of the
- 18 Gardai that in fact a confirmation of sorts that money was changing hands had
- 19 in fact been made to you by a Councillor who was a member of your own Party at
- 12:48:01 20 that time?
- 21 A. No, the Garda investigation was initiated and it was then a matter for the
- 22 Garda authorities to examine all matters relating to that. And they had the
- 23 same access to media sources as you or I or anybody else.
- 24 Q. 244 But the query was never put to you, is that right?
- 12:48:21 25 A. No, no.
- 26 Q. 245 And once you had initiated the Garda inquiry, can you tell the Tribunal what
- 27 the results of that Garda inquiry were, can you recollect?
- 28 A. I have tried to see if I've had any relevant papers in that regard but my
- 29 recollection is fairly clear that the Garda authorities reported back to the
- 12:48:46 30 Secretary General in my Department indicating that they had not been able to

- 12:48:52 1 trace matters of corruption in the context of the investigation in which they
2 carried out.
- 3 Q. 246 And would you have discussed this matter and your decision to refer the matter
4 to the Gardai with your Cabinet colleagues at the time?
- 12:49:07 5 A. Government and Ministerial Office tends very largely to, you know, where a
6 person operates their Department and carries their worries and their problems
7 themselves and other Ministers have enough to do and enough of areas to worry
8 them in the general context, not to always be trying to lean on somebody else
9 and I have always taken a fairly independent view that it was my
10 responsibility, my job to handle it and do the best that I could with it and
11 that's what I tried.
- 12 Q. 247 Would it be fair to say that you would have seen yourself as the person in
13 charge of the Department that had ultimate responsibility for planning in
14 Ireland, including within Dublin County?
- 12:49:50 15 A. It's important to realise that planning is, you know, it's a local, generally a
16 local issue. And it was never envisaged that Central Government would impose
17 central views. It was said, it's an exercise in local democracy, worked well
18 generally, had worked very well across the country. I didn't have difficulties
19 with it, there were no controversy elsewhere. But in this one particular area
12:50:20 20 I felt an intervention was necessary and I made it.
- 21 Q. 248 And you you made the intervention by way of referring the matter to the Gardai
22 inquiry. What I had been asking you was did you discuss it, for example, with
23 the Minister for Justice who had overall responsibility for the Gardai?
- 24 A. No, the practice has always been in the general relationship between Ministers
12:50:42 25 that matters relating to investigation for the Garda authorities is a matter
26 entirely for them without any intervention for Minister For Justice,
27 Environment or anybody else.
- 28 Q. 249 And can I ask you, following the publication of your speeches and following
29 indeed your direction for the intervention of the Gardai, was there any
12:51:03 30 response from the Councillors of Dublin County Council or indeed the

12:51:06 1 Councillors within your own Party?

2 A. You see, there were a number of areas which I touched on at that time in the
3 speech and in subsequent interviews I said that I would be prepared to rescind,
4 even though I had limited powers in that area, some of the haphazard decisions
12:51:25 5 which had been made. And I said that I would not be underwriting applications
6 for the Council for funding for services for these particular zonings. So the
7 response that I got, which I do appreciate to a certain extent, that when the
8 final Dublin County Plan was completed there was a considerable drawing back
9 from the worst excesses of what I had referred to. So to that extent, there
12:52:00 10 was that particular response. But I don't recall discussions or councillors
11 ...

12 Q. 250 Did you have a meeting --

13 A. I had --

14 Q. 251 Set up by --

12:52:09 15 A. Set up, which took place in Leinster House in my office with a number of
16 councillors following the speech which you referred to where they quite angrily
17 addressed the issues as they saw them. And I think they probably
18 misinterpreted me in one sense. They felt that I actually was appearing to be
19 against all zonings, which was not the position whatsoever.

12:52:34 20 Q. 252 How did that meeting, first of all who attended the meeting?

21 A. Mr. GV Wright, Mr. Colm McGrath, Ms. Betty Coffey, there were a number of
22 others as well. I don't have all of the names before me just here. I don't
23 have any papers with me.

24 Q. 253 Yes. Do you recollect how the meeting was set up, Mr. Smith?

12:52:56 25 A. Normally in respect of meetings of that kind my office would be contacted. In
26 this particular instance, I think the Taoiseach was contacted and he in turn
27 asked me to have the meeting, which I agreed to have it.

28 Q. 254 So that following the publication of your speech to the general public in which
29 you described the planning in Dublin County Council as a debased currency, an
12:53:20 30 approach was made to the then Taoiseach, Mr. Albert Reynolds, by somebody which

- 12:53:26 1 resulted in you having a meeting with a number of Fianna Fail Councillors, is
2 that what happened?
- 3 A. That's what happened, yeah.
- 4 Q. 255 And was the purpose of that meeting, Mr. Smith, to express their
12:53:45 5 dissatisfaction with what you had stated publicly?
- 6 A. That would certainly be my view and I'm sure it's yours.
- 7 Q. 256 I don't know, I wasn't at the meeting, Mr. Smith. So what I'm trying --
- 8 A. I had made the speech that you referred to. And it obviously had repercussions
9 both for me and for the individuals who felt that they had, from their point of
12:54:00 10 view, been misrepresented to some extent and they were quite entitled to make
11 their views to me.
- 12 Q. 257 Yes. In your statement to the Tribunal at page 24670 you identify the
13 councillors who met you in Dail Eireann following the delivery of your speeches
14 as being Mr. GV Wright, Ms. Betty Coffey, the Late Cyril Gallagher and Mr. Colm
12:54:26 15 McGrath and there may have been one or two others present whose names you don't
16 recall?
- 17 A. Yes.
- 18 Q. 258 Now, will you just outline to the Tribunal as best you can describe as best you
19 can Mr. Smith the flavour of that meeting and what was said to you by these
12:54:41 20 councillors?
- 21 A. My recollection is fairly clear that the meeting went on for about three
22 quarters of an hour, each Councillor in turn fairly angrily addressed the
23 issues as they saw them, disagreed with me, with what I had said and explained
24 their position with regard to the pressures that there were for rezoning and
12:55:16 25 the necessity for zoning and the need for it, as they saw it.
- 26 Q. 259 In the course of that meeting, how long did the meeting last approximately?
- 27 A. I would say up to about three quarters of an hour.
- 28 Q. 260 So it was quite a lengthy meeting?
- 29 A. Yes.
- 12:55:31 30 Q. 261 In your schedule, which would have been a very busy schedule. In the course of

- 12:55:35 1 that meeting was there any discussion about whether or not any money was
2 passing between developers and councillors?
- 3 A. No, it was as I recall it, that very much with each Councillor making their own
4 case quite angrily, disagreeing with me and stating their own position fairly
12:56:00 5 clearly, but it wasn't the kind of meeting where you could have the type of
6 interrogation that you are kind of suggesting.
- 7 Q. 262 I am not suggesting any interrogation. But in the context of what was in the
8 public domain at that time and the discussion centering on what you had stated
9 publicly about planning being a debased currency and the series of articles in
12:56:21 10 the Irish Times about money being offered if not accepted to councillors. I
11 am enquiring on behalf of the Tribunal as to whether in the course of that
12 discussion there was you had posed the question to them, whether they had ever
13 been offered money, whether they had ever accepted money or whether they had
14 indicated to you that they had offered or they had not been offered money?
- 12:56:41 15 A. No, I didn't put any series of questions to any of those councillors at that
16 particular meeting.
- 17 Q. 263 Did any of those councillors for example volunteer to you at the time that in
18 fact they had been in receipt of money from developers but that they were
19 legitimate donations?
- 12:56:56 20 A. No.
- 21 Q. 264 Were you made aware by any of those who attended the meeting that they had in
22 fact received money from developers who had matters at hearing as it were or
23 before Dublin County Council in the Development Plan?
- 24 A. No, no, no.
- 12:57:08 25 Q. 265 If you had been told at that time by any of those who attended the meeting that
26 they had been in receipt of donations from developers who had matters before
27 the Council on which decisions would have to be made, would it have been a
28 matter of concern to you?
- 29 A. Of course it would.
- 12:57:24 30 Q. 266 Or if you had been told for example that they had been in receipt of political

- 12:57:29 1 donations or funds from a lobbyist who acted on behalf of developers who had
2 matters coming up for decision before the council, would that have been of a
3 matter of concern to you?
- 4 A. Of course it would.
- 12:57:40 5 Q. 267 And can you think of any reason now as to why in the climate that existed in
6 the time that the meeting took place and the fact that indeed within a short
7 time the matter became the subject matter of a Garda inquiry, there was in fact
8 no discussion about money passing between developers and councillors?
- 9 A. I think you would want to try and put that particular meeting into a slightly
12:58:02 10 different context. Here you had public representatives belonging to the same
11 party as myself, very aggrieved with the publicity attaching to the speech
12 which I made. And they were extremely angry and it didn't seem to me and
13 hasn't occurred to me since that that meeting presented any likely opportunity
14 to be going down the particular road which you are mentioning.
- 12:58:35 15 Q. 268 You didn't see. Sorry I don't want to put words in your mouth but was it your
16 position at the time that you didn't see the relevance of asking the question
17 about whether or not any of them had been offered money or received money as
18 political contributions from any developers or anybody on behalf of the
19 developer?
- 12:58:52 20 A. No. I had already formed certain views which were developing in my own mind
21 with regard to the general happenings in the County Council with regard to
22 zoning and rezoning. It didn't seem to me to be absolutely necessary to grill
23 or to investigate on just on a personal basis at the meeting in Leinster House
24 as to whether people themselves were directly involved or not. I had formed an
12:59:28 25 overall view of what was happening. I was addressing it on a fairly wide
26 canvass and that was my clear position.
- 27 Q. 269 And would it be --
- 28 A. I didn't think. Had I asked those questions and had I received the answers
29 which I think I might have received had I asked them, I don't think the value
12:59:50 30 of the information that I would be receiving would have changed very much what

12:59:54 1 was already developing in my mind.

2 Q. 270 Would it be fair to say that whatever submission was made to you by the
3 councillors who attended that meeting, it didn't change your own view of what
4 was happening in Dublin County Council?

13:00:08 5 A. Well if you, if you look at what would have happened therefore, the speech was
6 made in, towards the end of May. There was considerable publicity in the
7 ensuing weeks. That meeting would have taken place some couple of weeks after
8 the speech in July. I invited the Garda Commissioner to investigate the
9 matters referred to already. I made a further speech outlining that I wasn't
10 going to underwrite these haphazard rezonings in terms of the limited financial
11 resources which were available in my Department. And in December I established
12 an evaluation unit which had very strict criteria as to how I could be helped
13 in determining which of these rezonings were proper and which in our opinion
14 were not. And that evaluation process, the speech which I made about
13:01:18 15 underwriting. Not underwriting the applications from the Council in respect of
16 these particular rezonings and the Garda investigation was fairly ample proof
17 as to whether I was sticking to my position or not I believe.

18 Q. 271 I mean would it be fair to say that the answer is; is that nothing happened at
19 that meeting to change your mind in relation to the view you had taken and
13:01:43 20 subsequent events substantiate that?

21 A. That's what I'm saying.

22 Q. 272 Okay. It's one o'clock Sir. I don't know whether ...

23

24 CHAIRMAN: You will be a little ...

13:01:52 25

26 MS. DILLON: I won't be very much longer but I will certainly be half an hour.

27

28 CHAIRMAN: Okay. Well perhaps we'll sit at two o'clock. All right? Thank
29 you.

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THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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

MS. DILLON: Mr. Smith, please.

MR. SMITH, HAVING BEEN SWORN, WAS QUESTIONED

BY MS DILLON AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Smith.

MS. DILLON: Good afternoon, Mr. Smith. Just to conclude that topic. After your meeting with the councillors in which they expressed their dissatisfaction with what you had said did you go back and discuss the matter with Albert Reynolds

A. No, I think the situation would be, as I said to you, manage your own problems as best you can. The Taoiseach has plenty to do without being bothered with what I might say about individual meetings so I wouldn't have said that.

Q. 273 In light of the fact that it was subsequently confirmed to you by a Councillor that money was probably changing hands in relation to the planning, did it occur to you at that stage or did you discuss with the then Taoiseach the necessity say for an internal Fianna Fail enquiry?

A. No, as I said on foot of all that was happening over that period of time my decision was to ask the Garda Commissioner to investigate the matter and I felt that that was the proper road to go and sufficient in the circumstances.

Q. 274 Can I move on now to deal with the question of the Blanchardstown tax designation. And I think that you will have seen in the documentation the many

14:08:07 1 applications that were made on behalf of Green Property to your Department.
2 Indeed to your Department prior to you being appointed Minister, isn't that
3 right and while you were Minister?

4 A. Correct.

14:08:17 5 Q. 275 And I think it would be fair to say from a review of the documentation and
6 indeed the Tribunal has heard evidence from Mr. Finian Matthews of your former
7 Department in relation to the documentation that there were consistent efforts
8 made by Green Properties to obtain designation from Blanchardstown, isn't that
9 right?

14:08:35 10 A. Yes.

11 Q. 276 And I think it would also be fair to say from the documentation that it was the
12 official view within your Department consistently that such designation should
13 not be granted.

14 A. Yes, and I supported that very fully because the whole idea of the tax
15 incentives was to try and provide sufficient incentives to make something
16 happen where it was most unlikely to happen otherwise. And we saw
17 Blanchardstown and the areas like that as capable of development from within
18 the resources without additional tax incentives.

19 Q. 277 Mr. Matthews has told the Tribunal and indeed Mr. Liam Murphy from the
14:09:19 20 Department of Finance has told the Tribunal that in so far as Tallaght was
21 concerned, that was always regarded as a special case and do you agree with
22 that?

23 A. Oh, I do absolutely. I think you may well recall all of the different problems
24 that set that area and indeed the way it had grown-up and the need for a
14:09:37 25 different approach. And I think the decision to assist in that area has proved
26 to be extremely beneficial.

27 Q. 278 And the Tribunal has been told also that there was a view within the Department
28 that if Blanchardstown were to be granted tax designation that it would follow
29 from that that other developments of a similar type in the same locality could
14:10:01 30 apply for designation and it would be difficult to refuse them because all

- 14:10:05 1 parties must be treated equally?
- 2 A. Yeah I suppose that's a fair point. There was never any question that wasn't
3 going to arise.
- 4 Q. 279 That Blanchardstown was going to get designation?
- 14:10:15 5 A. Yeah.
- 6 Q. 280 But would it be fair to say and would you agree that Green Property and Mr
7 Corcoran made consistent and repeated applications to your Department and
8 indeed to other departments for designation, isn't that right?
- 9 A. Fortunately, we do live in a democracy and people have those rights.
- 14:10:30 10 Q. 281 Yes?
- 11 A. And sometimes cases are made by individuals which are very much to their
12 benefit. Other times they may make a presentation which could be to have the
13 opposite effect but they had every right to do that as so had other developers
14 and we had no problem with that. I say on a general basis across the country
15 at that time they'd give you two eyes for something to happen.
- 16 Q. 282 And I think it's also fair to say that throughout 1993 and in 1994 that the
17 review of the urban renewal legislation was an ongoing matter within your
18 Department, isn't that right?
- 19 A. Yes.
- 14:11:04 20 Q. 283 And that there were a number of memorandums brought to Government in relation
21 to extensions and additions to the urban renewal scheme, isn't that right?
- 22 A. That's right.
- 23 Q. 284 And while there is mention made in some of the documentation in relation to
24 Blanchardstown there was not in fact any application made or any memorandum
14:11:21 25 brought to Government seeking the designation of Blanchardstown, isn't that the
26 position?
- 27 A. No, no.
- 28 Q. 285 Did you ever yourself meet Mr. John Corcoran?
- 29 A. My recollection is that the late Brian Lenihan either asked me or wrote to me
14:11:41 30 in connection with having a meeting which was subsequently held. I would not

- 14:11:45 1 be able to give you the date but my recall would be that Mr. Corcoran and at
2 least two other people were present making the usual case that they made. I'm
3 not able to give you more information than that on it.
- 4 Q. 286 Yes. I think at 9790 on the 23rd of June 93 I think that Mr. Lenihan wrote to
14:12:07 5 you thanking you for having met Mr. Corcoran and professor Michael McCormack of
6 Green Property regarding Blanchardstown Town Centre and he enclosed a
7 submission. But your position is that notwithstanding any meetings you had
8 with Mr. Corcoran that the Departmental position and indeed your own view
9 remained the same that designation shouldn't be extended to Blanchardstown?
- 14:12:28 10 A. No, absolutely. As I said earlier, it would defeat the purpose of what the
11 whole designation thinking was established to do.
- 12 Q. 287 And would you have made your view being the Department's view and your own view
13 known to any other government minister who consulted you about the position in
14 relation to Blanchardstown?
- 14:12:49 15 A. I don't think that's the way our democracy works. You, a colleague may ask you
16 to meet people about a special interest or whatever else, you -- you'd agree to
17 have that meeting and that's as far as it would go.
- 18 Q. 288 Yes. I think in July of 1993 at 9924 the Department of Finance wrote to
19 your -- I think that's your private secretary is that right, Mr. Gerry Rice?
- 14:13:17 20 A. Right.
- 21 Q. 289 On the 28th of July 93 saying "as discussed I have the background papers as
22 required. My Minister is asking your Department's view on this proposal and
23 the documents enclosed at 9925 was a copy of a letter to you of the 10th of
24 June 1993 from John Corcoran seeking tax designation?
- 14:13:44 25 A. Yes.
- 26 Q. 290 So would this kind of communication at 9924 be commonplace between departments?
- 27 A. I suppose the simple answer to that is that somebody who wants something to
28 happen and they appear to be up against obstacles which so far they have not
29 been able to circumvent or overcome. They would go to colleagues, they would
14:14:06 30 go to different people and representations would be made through that source.

- 14:14:09 1 I don't see anything wrong with that.
- 2 Q. 291 Yes but I think indeed you wrote to another colleague of yours at 9936. That's
- 3 Mr. Ruairi Quinn TD, who was then a colleague of yours being the Minister for
- 4 Enterprise and Employment and in the last paragraph you said that there were no
- 14:14:27 5 proposals to extend the present scheme to any additional centres but that you
- 6 would however bear the case made for Blanchardstown Town Centre in mind in the
- 7 context of any future proposals, isn't that right?
- 8 A. Yeah.
- 9 Q. 292 So that where you received written representations from colleagues?
- 14:14:41 10 A. Uh-huh.
- 11 Q. 293 By colleagues I mean cabinet colleagues?
- 12 A. Uh-huh.
- 13 Q. 294 If this letter is evidence of it, you would respond and you would explain the
- 14 position. But the position as you state there is that Blanchardstown is not
- 14:14:52 15 being included but you would bear it in mind for the future, isn't that right?
- 16 A. Yeah, I suppose the phrase could convey if you wanted to put a different
- 17 interpretation on it, it would be quite usual because as long as something is,
- 18 a case is being made for something you are obliged to continue to examine it.
- 19 But when the determination is made on all the competing considerations at the
- 14:15:18 20 time you then decide what you're doing and that's what would happen in that
- 21 case, it was ruled out.
- 22 Q. 295 And in fact in the memorandum of the 14th of January of 1994 that was brought
- 23 to Government at 10659. Dealing with an extension to the urban renewal scheme
- 24 there is no need to go through the document in full. But there is no
- 14:15:43 25 suggestion in that document of any extension in connection with Blanchardstown,
- 26 isn't that right?
- 27 A. No.
- 28 Q. 296 Right. And that was a memorandum that originated in your Department and you
- 29 were seeking to extend some of the areas to new areas but none of them included
- 14:15:59 30 Blanchardstown, isn't that right?

- 14:16:00 1 A. No.
- 2 Q. 297 And I think that in January of 1994 at 10677. The Government agreed in
- 3 principle to agree with the contents of your memorandum and to provide for the
- 4 extensions that you had sought but some of them required new maps and drawings
- 14:16:24 5 and areas had to be delineated, isn't that right?
- 6 A. That's right.
- 7 Q. 298 But again none of them included Blanchardstown, isn't that the position or
- 8 indeed any of the other areas in West Dublin?
- 9 A. No.
- 14:16:34 10 Q. 299 Including Quarryvale?
- 11 A. No, no.
- 12 Q. 300 Now, I think there was an amendment to that on the 25th of January 1994. At
- 13 10688. And in this the addition there is the inclusion of Roscommon and
- 14 Ballinasloe as towns that would get designation, isn't that right?
- 14:16:52 15 A. Yes.
- 16 Q. 301 And then there was an extension of the closing date, there was an amendment
- 17 there, a reduction from 25 per cent incurred to 15 per cent?
- 18 A. Yes.
- 19 Q. 302 Right. Now, I think according to your statement, Mr. Smith. At 24670.
- 14:17:12 20
- 21 You say at paragraph three that you met with Mr. O'Callaghan in April of 1994
- 22 in Foley's Hotel in Tullamore
- 23 A. Templemore.
- 24 Q. 303 I beg your pardon. In Templemore.
- 14:17:27 25 A. I'd be happy to have Tullamore in my constituency if I was standing.
- 26 Q. 304 Templemore. At that meeting with Mr. O'Callaghan was there any discussion
- 27 between you and Mr. O'Callaghan about any designation or possible designation
- 28 of Blanchardstown?
- 29 A. No, the purpose of that meeting should be fairly clear. Mr. O'Callaghan was
- 14:17:46 30 interested in a particular designation which was in Athlone. And he sought to

14:17:52 1 have a meeting with me which took place and made the case as he saw it for the
2 designation of that particular centre. I might say just very briefly. I think
3 you know fieldwork of that kind generally for Ministers is something that we
4 always took into account and found it very, very, could find it very, very
14:18:19 5 helpful from time to time but in this particular instance that was what the
6 purpose of the meeting was from his point of view and he made that case to me.

7 Q. 305 Had you met Mr. O'Callaghan prior to this meeting with him in April of 1994?

8 A. Not on any individual basis. That meeting, there were just two of us present.
9 There was nobody else present at that particular meeting so I would have met
14:18:41 10 him if you like off side at other events and that kind but they weren't
11 meetings where we'd any discussion as I recall it about anything of this
12 nature.

13 Q. 306 And at that time you were the Minister in charge of designation, isn't that
14 right?

14:18:57 15 A. Correct.

16 Q. 307 Right. And Mr. O'Callaghan was seeking designation of a particular site but
17 not, he wasn't discussing Blanchardstown with you, is that the position?

18 A. No, no.

19 Q. 308 And the site that Mr. O'Callaghan was discussing with you was a site in
14:19:10 20 Athlone, is that right?

21 A. That's right.

22 Q. 309 Is that the Golden Island site?

23 A. That's right.

24 Q. 310 Can you just briefly tell the Tribunal members what the difficulty was in
14:19:18 25 Athlone?

26 A. Athlone. Well the Golden Island was included in a list of submissions which
27 were made to me with regard to the meeting in Dublin Castle in the middle of
28 1993. For as qualifying for the tax incentive Urban Renewal Scheme. So it
29 could have been announced at that stage but there were local concerns and I had
14:19:57 30 representations from a number of representatives in the Athlone area who were

14:20:03 1 opposed to the designation. So when I made my announcement of the general
2 scheme across the country, including many of the towns which you outlined in
3 earlier correspondence to me. I indicated that I was not satisfied to make any
4 decision on Golden Island at that stage. That I would consider the matter
14:20:23 5 further and that I would make a decision before the end of the year. Following
6 after that then Mr. Emmet Stagg, who was Minister for State in my Department,
7 in charge of urban renewal, I asked him if he would visit Athlone and look at
8 the site and meet local representatives and come back with how he saw it. So
9 Emmet came back to me with a very strong representation, recommendation that
14:20:52 10 Golden Island would qualify and should be included in the incentive scheme
11 because I was still under a bit of pressure from people that I knew very well,
12 God rest some of them, I decided it would be better to ask the local town
13 Council, the Urban Council to meet as well. And they met. And by the casting
14 vote of the Chairman agreement was reached to recommend Golden Island. Now, at
14:21:24 15 that stage they, it must have been coming near to the end of 1994 and I then
16 decided that I would recommend it and it was subsequently sanctioned by finance
17 and developed along those lines.

18 Q. 311 I think that the public announcement that you're talking about happened, Mr.
19 Smith, on the 21st of July 1994 at 25440. I think you may have said '93?

14:21:51 20 A. Sorry you're right. I'm very sorry.

21 Q. 312 No, no, not at all. I think this is a copy of your speech on the launch of
22 the new Urban Renewal Scheme at Dublin castle 1994, isn't that right?

23 A. That's right.

24 Q. 313 And there is no mention in that to any initiative involving Athlone, isn't that
14:22:08 25 right, in the body of the speech?

26 A. That's right because that didn't arise until there were subsequent questions to
27 me.

28 Q. 314 Yes and I think it was reported at the time that you were still considering the
29 question of Golden Island, isn't that the position?

14:22:19 30 A. Yeah, that arose from -- we had open forum after that speech and the question

14:22:24 1 arose on Golden Island and it arose on other areas as well. But that
2 particular one I wanted to examine it further. It had the stamp of the civil
3 servants from the word go so it qualified under all of the criteria so there
4 was no problem of that kind with it. But I still wanted to reserve my position
14:22:42 5 to look at it in more detail.

6 Q. 315 And was that because of the local concerns that had been expressed to you or
7 concerns that had been expressed to you by other parties is that the position?

8 A. Yes because there are always genuine concerns which can develop at local level
9 and often times a conflict where strictly speaking the urban renewal was
14:23:05 10 intended to be right in the heart of where the dereliction was, where Golden
11 Island was out somewhat and genuine concerns about what will happen to centre
12 town areas and all of that. They are genuine concerns and they need to be
13 addressed and listened to.

14 Q. 316 I think that in the first recommendation that was made on foot of the
14:23:25 15 memorandum to Government approximately 30 areas were designated is that right?

16 A. I couldn't give the exact number but it was a significant number.

17 Q. 317 Yes. And I think all of those statutory instruments were made on the 30th of
18 November, isn't that right of 1994?

19 A. Correct yes.

14:23:39 20 Q. 318 And then I think the Golden Island statutory instrument was made on the 14th of
21 December 1994.

22 A. Yeah it was later, yes.

23 Q. 319 Could you just explain to the Tribunal why it was that that one alone remained
24 to be made on the 14th of December?

14:23:53 25 A. I think the question is not really why it was then. I think the question was
26 could obviously be put as to why it wasn't done much earlier on foot of the
27 recommendations from the officials.

28 Q. 320 Yes?

29 A. But because it was done at a particular time there is often times a mischievous
14:24:12 30 view that there was something wrong or hidden about what was being done

14:24:17 1 although it had an exhaustive examination in its determination from the
2 Minister of State going down to the local Council meeting to everything else
3 and to the official strength behind the recommendation. As I saw it, I think I
4 would say two things about it. One, we didn't actually see ourselves going out
14:24:36 5 of office. If you remember that time, there was every expectation that we were
6 continuing in office and then all of a sudden on a Monday the picture changes.
7 I have a habit and I think you can check it with all of the various ministries
8 that I've held, right or wrong, of clearing my desk. When something is ready
9 to go it's ready to go and I never believed in leaving unfinished work to
14:25:01 10 Ministers. I inherited circumstances myself at times which taught me that
11 lesson.

12 Q. 321 It was your position that you wanted to clear your desk before you left office?

13 A. On something which had been put through an absolute mill before decision and
14 qualified to meet the criteria and had substantive support from within the
14:25:22 15 Department from the very beginning.

16 Q. 322 Why was it that couldn't have been done Mr. Smith with the rest of the
17 designations on the 30th of November 1994?

18 A. You see, the rest of the designations that you're talking about were decided
19 long since before that. They were actually publicly put to the public in July
14:25:41 20 of that year so the normal process of all the getting maps ready and everything
21 else had been developed up to that time so Golden Island didn't have that
22 opportunity. It hadn't been listed in those group. It was subsequently.

23
24 CHAIRMAN: Sorry. Ms. Dillon, we're not enquiring in any detail into. We
14:26:03 25 really don't need to look at Golden Island to any greater extent other than the
26 comments that have been made.

27

28 MS. DILLON: Very good, Sir.

29

14:26:11 30 Q. 323 May it please you. I only wanted to ask you one final question on that issue.

- 14:26:15 1 Following the direction from the Chairman.
2
- 3 Q. 324 Can you recollect, Mr. Smith, whether the issue of Golden Island itself was
4 ever brought to the cabinet in any of the memorandum from Government that you
14:26:27 5 sponsored.
6
- 7 MR. KEATING: Sorry Chairman, before your intervention I was indeed going to
8 intervene on behalf of my client. I don't think it's relevant to.
9
- 10 CHAIRMAN: There is no point. Unless we are going to go into Golden Island in
11 any great detail there is no point.
- 12 A. Golden Island, I will say, Chairman. Golden Island was absolutely above board.
13 Had approval all of the time. There was nothing amiss with it. And I would do
14 the very same again.
- 14:26:55 15
- 16 CHAIRMAN: All right.
17
- 18 MS. DILLON: Can I ask you finally about your involvement, Mr. Smith, in
19 meetings or discussions that took place concerning the National Stadium. I
14:27:06 20 know that I'm jumping now a little bit quickly from one issue to the other and
21 hoped to lead into it a little bit more gently than that but ...
- 22 A. You probably have to put up a fence somewhere but go ahead.
- 23 Q. 325 Doing the best you can. While you were Minister for the Environment an issue
24 arose about the development of a National Stadium at the Neilstown site and
14:27:28 25 O'Callaghan Properties, Merrygrove and Mr. O'Callaghan and Mr. Gilmartin were
26 all involved in the lands at Neilstown and the proposal which resulted in a
27 planning application for the development of a National Stadium on the site at
28 Neilstown?
- 29 A. Yes.
- 14:27:45 30 Q. 326 And while you were Minister for the Environment, there are references to

14:27:55 1 meetings that may have taken place, I'm not suggesting that they did, in
2 connection with the National Stadium and in particular at 7678. On July the
3 9th 1992 in a fax from Mr. Barry Flannery to Mr. Owen O'Callaghan there is
4 reference to the fact that a Neil Gunne met Minister Michael Smith with Barry
14:28:19 5 Flannery the last time he was in Ireland. You see that reference there?
6 A. I do yeah.
7 Q. 327 Now, Mr. Barry Flannery and Mr. Neil Gunne were involved with the American
8 company that was providing assistance and advice to O'Callaghan Properties in
9 relation to the development of the stadium?
14:28:45 10 A. Yes.
11 Q. 328 Now, can you remember any such meeting or contact taking place?
12 A. This is kind of hitting me out of the blue.
13 Q. 329 Well I think that --
14 A. I'm not suggesting that there is anything wrong about it or anything else. I
14:28:54 15 am just, I definitely have a vague recollection of meeting people like that.
16 What transacted at the meeting, I just don't recall. I feel I was extremely
17 peripheral to all of this.
18 Q. 330 Yes. I think on the 9th of January just for completeness Mr. Smith, the
19 Tribunal sent you a brief of documents in relation to this issue including the
14:29:17 20 document that's presently on screen?
21 A. Oh, I'm aware of all of that.
22 Q. 331 Yes?
23 A. But.
24 Q. 332 All right?
14:29:24 25 A. I've received an awful lot of documentation and I wouldn't like, Chairman, to
26 say that I've read it all.
27 Q. 333 Maybe if I show you 7123, Mr. Smith. And this is an extract from Mr. Dunlop's
28 diary. And you will see there in April 92 on the 28th of April there is an
29 entry "Ring Gerry Rice re M Smith" do you see that?
14:29:45 30 A. I do.

- 14:29:47 1 Q. 334 You will see the following day, 29th of April 1992, "tea with OOC" and that's
2 a meeting apparently between the then Taoiseach, Mr Albert Reynolds and
3 Mr. Owen O'Callaghan. And I think that at 7190. In Mr. Dunlop's diary for May
4 of 1992, on the 6th of May there is an entry "call Gerry Rice" and on the 7th
14:30:14 5 there is an entry in the morning for Owen O'Callaghan and at 12 o'clock it says
6 "M Smith, Environment" do you see that?
7 A. I do.
8 Q. 335 And I put those dates to you and show you that in the light of the document
9 dated July the 9th, that's at 7678 suggesting a meeting had taken place with
14:30:33 10 some people from America in connection with the stadium and can I ask you is it
11 likely that Mr. Dunlop contacted your office or your secretary for the purpose
12 of setting up such a meeting?
13 A. Oh, I'm quite sure he did even though he was, he had been a press secretary we
14 were never that close. I think he considered me to be kind of a lost cause I
15 think but I don't have any further. I really can't assist you very much on
14:30:53 16 this much though I'd like to.
17 Q. 336 Yes?
18 A. I am satisfied that the meeting took place. There is no, there were no
19 developments from all of this as far as I can recall or was there something ...
14:31:11 20 Q. 337 No I think ultimately at the end of 19 -- in November of 1994 it was indicated
21 to Mr. O'Callaghan that there would be no Government support for the project
22 which did require Government support at that time according to the
23 documentation?
24 A. Yeah, that's correct.
14:31:28 25 Q. 338 But it would appear from some of the documentation from De Loitte & Touche that
26 one of the financial proposals that was being muted was the likelihood or
27 possibility of getting tax designation from the project?
28 A. Yeah, well that wouldn't be something that I would have any say or control in
29 what others might be suggesting might happen. In the final analysis the final
14:31:48 30 decisions in relation to matters of that kind, the resolution of the Department

14:31:53 1 was that we'd stick to the policy of what we, what had been adopted and areas
2 like that wouldn't qualify and that fell into that category as well.

3 Q. 339 Yes. On the 25th of September 1992 at 8093. De Loitte & Touche wrote to Mr.
4 O'Callaghan and I just want to draw to your attention under the heading
14:32:12 5 "Present Position" the third paragraph beneath that says "during previous
6 discussions with the Government it was indicated that designated area tax
7 status would be granted to the proposed stadium site while this was not
8 discussed specifically at your recent meeting you believe this is still the
9 position".

14:32:30 10
11 And that is from De Loitte & Touche to Mr. O'Callaghan. Did you ever have any
12 discussions with Mr. O'Callaghan at which you indicated tax designation would
13 be forthcoming for the proposed stadium, Neilstown stadium

14 A. Absolutely none and I notice in the third paragraph it says "during previous
14:32:48 15 discussions with the Government."

16 Q. 340 Yes?

17 A. That's a fairly broad sweep. But certainly not at all, no, absolutely no.

18 Q. 341 All right. And I think that in November of 1993 at 10450. Mr. O'Callaghan
19 wrote to you on the 30th of November enclosing documentation and asking if he
14:33:14 20 could come in and discuss the matter further with you. Do you recollect
21 whether any such meeting in fact took place?

22 A. No, I most certainly don't.

23 Q. 342 Would you have known Mr. Dunlop?

24 A. How could I avoid, he was press secretary for a number of Governments.

14:33:44 25 Q. 343 Well while he was in private practice would you have known him?
26 A. In existence.

27 Q. 344 Gone to meet people he'd asked you to meet?

28 A. No. We had, I don't know for what reason, no, virtually no contact.

29 Q. 345 And if I can just show you finally just on this issue, on the 10th of June 1994
14:34:03 30 at 11090. This is a letter from O'Callaghan Properties to Mr. Ambrose Kelly

14:34:09 1 and on the following page and what's being discussed here is the stadium. At
2 paragraph 11 it says "the authority, Leisure Ireland will not pay property
3 taxes as we expect to have the site tax designated". And again, if Mr, may the
4 Tribunal take it that if Mr. O'Callaghan was of that view it wasn't as a result
14:34:31 5 of anything or any discussion you had had with him directly or indirectly?

6 A. No, and I think it would be clear to you and to everybody else that letters of
7 that kind sometimes are to banks and other institutions, they have a totally
8 different purpose so as far as we were concerned, no.

9 Q. 346 And if Mr. O'Callaghan did hold a view or did inform any person that he
14:34:52 10 expected to get tax designation for the stadium site, that was not information
11 or a belief he could have acquired as a result of any conversation and
12 discussion with you?

13 A. No, and to the best of my belief with any of my colleagues.

14 Q. 347 Thank you very much, Mr. Smith. If you would answer any questions anybody may
14:35:08 15 have.

16
17 CHAIRMAN: Do you wish to ask any questions?

18
19 MR. KEATING: No, Chairman, I have no questions.

14:35:13 20
21 CHAIRMAN: Ms. Smith?

22
23 MS. SMITH: No, Chairman.

24
14:35:18 25 CHAIRMAN: Mr. Smith, could you I just ask you one thing. You referred
26 earlier in your evidence to a meeting in the County Council which ended in
27 disarray

28 A. Yes.

29
14:35:32 30 CHAIRMAN: Is that the meeting that we've heard about where a Councillor

14:35:36 1 brandished a cheque that he had received from and he was, the whole Council
2 ended up or the whole meeting ended up ...

3 A. I think it was. If I could recall from memory, I think it was on about the
4 20th of April.

14:35:52 5
6 CHAIRMAN: Yes.

7 A. Adjourned first for about half an hour and that failed and then it ended in as
8 you say chaos.

9
14:36:00 10 CHAIRMAN: I think Mr. Sargent was the Councillor who handed up the ...

11 A. Times have change a lot since then but yes, that's right.

12
13 CHAIRMAN: He was I think objecting

14 A. Yes, that's right.

14:36:11 15
16 CHAIRMAN: He was ... he produced a cheque which I think had been given to him
17 by a developer. That's the meeting.

18 A. That's right, that's right.

19
14:36:20 20 CHAIRMAN: Thank you very much

21
22 JUDGE FAHERTY: Thank you

23 A. Okay.

24
14:36:25 25 **THE WITNESS THEN WITHDREW.**

26

27

28 MR. QUINN: Mr. Albert Smith, please.

29

14:36:30 30

14:36:30 1 **MR. ALBERT SMITH, HAVING BEEN SWORN, WAS QUESTIONED**

2 **BY MR. QUINN AS FOLLOWS:**

3

4

14:37:01 5 CHAIRMAN: Good afternoon, Mr. Smith.

6 Q. 348

7

8 MR. QUINN: Good afternoon, Mr. Smith. Mr. Smith, you were written to I think

9 on the 19th of October 2004 and asked for a statement in relation to your

14:37:13 10 contacts and dealings with Mr. Dunlop and/or Mr. O'Callaghan

11 A. Um ...

12 Q. 349 and we see that letter at 3585 and your response is in manuscript and it's at

13 3590 to 3606 and there was an attempt made to type up that response.

14 A. Uh-huh.

14:37:32 15 Q. 350 And that is a 3586 to 3589. I think we made one or two errors in our

16 transcription and you corrected those in a letter to the Tribunal on the 9th of

17 February 2005 and that letter again is at 22639 to 22642. And again, that's

18 typed up at 22637, 22638. I will try and take account of the corrections in

19 taking you through the typed form of your statement. If I am in error, you

14:38:05 20 will please correct me.

21

22 Your letter as I say which is dated the 29th of October 2004 and it's as

23 follows. "I refer to your letter on the 19th received by me on the 21st. I

24 have already informed the Tribunal that any diaries or records of mine which

14:38:22 25 were not comprehensive were disposed of either on the transfer of my office

26 from Abbey Street to O'Connell Street or on my retirement". Can I just ask

27 you, when did you retire?

28

29 CHAIRMAN: Mr. Quinn, can I just ask you, you are just going a bit too fast

14:38:34 30 for the stenographer.

14:38:35 1
2 MR. QUINN: Apologies. We should have 3586 on the screen. Sorry, Mr. Smith.
3 A. On the 16th of April 1995.
4 Q. 351
14:38:51 5
6 MR. QUINN: You said that
7
8 CHAIRMAN: Sorry, Mr. Quinn. Mr. Smith, I don't know if it was made clear
9 when you commenced your evidence. Just for the record, what was your position
10 in the Council, I know that you are retired now>
11 A. Well with Dublin County Council I was the Principal Officer in charge of
12 Planning Department. Before my retirement I was with Fingal County Council and
13 I was Principal Officer, Deputy Manager and Principal Officer in charge of
14 planning and development.
14:39:01 15
16 CHAIRMAN: And what year did you retire?
17 A. 1995.
18 Q. 352
19
14:39:33 20 MR. QUINN: And when you say in charge of planning I think you were
21 non-technical?
22 A. I was administration, yes.
23 Q. 353 In fact, I think you would have been responsible for the organisation from an
24 administrative point of view of a review of the Development Plan.
14:39:45 25 A. That's correct.
26 Q. 354 And it would appear that a lot of the letters to councillors enclosing managers
27 reports went out in your name, is that correct?
28 A. That's correct, yes.
29 Q. 355 And if I just continue with your statement at 3586 you say "this coupled with
14:39:59 30 the fact that the fact that the events in which you are enquiring took place

14:40:01 1 over 10 years ago make it impossible for me to give you a detailed account of
2 meetings with Mr Dunlop and Mr O'Callaghan that you seek. In addition with the
3 passage of time such recollections as I have are in respect blurred.

4
14:40:12 5 In particular the chronology and sequence of events is not always clear in my
6 mind. I am aware that prior to his involvement with Quarryvale Mr. O'Callaghan
7 was involved in trying to develop the designated town centres for
8 Lucan/Clondalkin. However it is not my recollection that he had any contacts
9 with the planning authority in this connection prior to his involvement in
14:40:29 10 Quarryvale.

11
12 In my recollection I first became aware of Mr. O'Callaghan when he or one of
13 his companies sought planning permission for a shopping centre on unzoned land
14 at the co-op site between Lucan and Lexlip. It is my recollection that the
14:40:43 15 planning consultant for that application was Dr. Brian Meehan and the architect
16 was, I believe, Mr. Ambrose Kelly. I do not remember Mr. Dunlop having any
17 connection with that application. As far as I am aware there was no prior
18 consultation with the planning authority before the application was lodged. It
19 was followed almost immediately by a Section 4 motion seeking to instruct the
14:41:03 20 Manager to decide to grant permission. From this I would infer that at this
21 stage Mr. O'Callaghan had political contacts in County Dublin. The motion
22 however was not passed by the Council. During the Quarryvale saga I met Mr.
23 O'Callaghan on a number of occasions.

24
14:41:17 25 Sometimes he was alone and on other occasions he was accompanied by Mr. Dunlop
26 and at times by Mr Ambrose Kelly. Apart from the first occasion these meetings
27 took place in my office in Abbey Street. They were always at Mr. O'Callaghan's
28 request. Telephone contacts were few and brief and would have been concerned
29 with the arrangements for meetings requested by Mr. O'Callaghan. The first
14:41:37 30 meeting", although it's referred to the last but in fact it was the first, "was

14:41:40 1 in the office of Mr. Kevin O'Sullivan Manager. It was my understanding that
2 the meeting took place following a request through someone who knew
3 Mr. O'Sullivan from his time working in Cork corporation.
4

14:41:52 5 At that meeting Mr. O'Callaghan indicated that he was getting involved in
6 Quarryvale at the request of Allied Irish Bank who wished to re group their
7 investment in the venture."
8

9 I am at 3587.

14:42:05 10
11 "My primary role at these meetings was to listen to what Mr. O'Callaghan had to
12 say. From his point of view I would judge that his purpose was to make the
13 official side aware of his proposals and progress in relation to them. To
14 convey his feelings that he had the support politically and commercially to get
14:42:23 15 his project off the ground and to allay hostility and opposition to it. For
16 example he was at pains to advance his theory that there was room for both
17 Quarryvale and Blanchardstown. That one centre would get either Dunnes stores
18 or Roches Stores as its anchor and the second centre would get the other one.
19 He believed that for reasons connected with the Cork original of these
14:42:41 20 companies they would not both operate in the same centre. On the other hand he
21 claimed to have Marks & Spencers committed to Quarryvale and in this he turned
22 out to be correct.
23

24 There was strong opposition to the Quarryvale proposal from the professional
14:42:54 25 planners and roads and traffic engineers. The planners opposition was based on
26 the designated town centre site for the Lucan/Clondalkin new town area being
27 Ronanstown (Neilstown). It was felt that if Quarryvale proceeded Neilstown
28 would not happed. The belief was that Quarryvale was off centre as a town
29 centre for Lucan/Clondalkin. That the proposed development was accessible
14:43:15 30 size, would attract customers from outside the local catchment area, and

14:43:19 1 because of its size and location would inhibit the development of
2 Blanchardstown Town Centre. This was a view shared by Green Property company.
3 The traffic engineers were opposed because it would mean that Quarryvale would
4 cause traffic congestion and would reduce the level of service in both the
14:43:31 5 Western Parkway, now the M50 motorway and the Palmerstown/Lucan Main Road. The
6 engineers as I recollect were also opposed to giving access to the motorway to
7 the Neilstown side although the lack of road access was one of the
8 disadvantages of that site.
9

14:43:46 10 I presumed it was part of Mr. O'Callaghan's objection to seek to influence and
11 reduce official opposition. Since the Quarryvale site was not zoned for
12 commercial development in the 1983 Development Plan its progress required
13 political support and I was aware that Mr. O'Callaghan, Mr. Dunlop acting on
14 his behalf had contacts with the members of the Council. Most of the Fianna
14:44:06 15 Fail and to a lesser extent Fine Gael councillors were supportive of the
16 project. Mr. O'Halloran of the Labour Party who represented the north
17 Clondalkin area was also in favour but generally the Labour Party, Green Party
18 and most of the independents were opposed.
19

14:44:22 20 There was a difficulty for some councillors representing the Blanchardstown
21 area in that they wished to ensure that the Blanchardstown town center was
22 built. Mr. John Corcoran of Green Property company was adopting the position
23 that if Quarryvale was zoned or got planning permission he would not proceed
24 with Blanchardstown."

14:44:37 25
26 If I could have 3588.
27
28 "Though not involved I was aware that discussions were taking place amongst the
29 councillors with a view to resolving this difficulty. I have no evidence but I
14:44:45 30 believe that Mr. Dunlop was involved in promoting these discussions. I also

14:44:50 1 believed that Mr. John Corcoran was aware of the discussions through Councillor
2 Marian McGennis who would have contacts with Mr. Corcoran.

3
4 It was during these discussions that the idea of putting a cap on the size of
14:45:01 5 Quarryvale as a means of limiting its possible effect on Blanchardstown arose.
6 I am not certain of the origin of this idea. I may have mentioned it as a
7 possibility either to Mr. O'Callaghan or Councillor McGennis or one of them may
8 have mentioned it to me. I certainly recall discussing it with the planning
9 officer who was sceptical. The planners maintained their opposition to
14:45:21 10 Quarryvale and it remained an official management policy to oppose the
11 proposal. It was my understanding that Mr. O'Callaghan was willing to accept
12 the idea of a cap in order to maximise support amongst the councillors.

13
14 It was also my understanding that the idea of a capped Quarryvale was
14:45:34 15 acceptable to Mr. Corcoran in that while it was not something that he welcomed,
16 felt he could live with particularly as the Green Property company was more
17 advanced in its planning than Mr. O'Callaghan. Shortly before the deadline
18 for the submissions of motions relating to the zoning of Quarryvale site I
19 received a tax message from Councillor Lawlor enclosing a draft motion and
14:45:52 20 asking for my comments. This message was a surprise. Prior to that I had no
21 contact or discussion with Mr. Lawlor on the matter outside the Council
22 chamber.

23
24 The draft motion was garbled and incoherent and did not reflect what I
14:46:06 25 understood to be under discussion. Following a telephone conversation with
26 Gareth May, a planning consultant retained by the Green Property company, in
27 order to clarify you my understanding of what was being discussed I drafted a
28 motion which reflected what in my understanding had been under discussion. The
29 motion which was subsequently lodged was substantially the same as my draft.
14:46:25 30 In your letter you referred to the period 92/93. The events I described

14:46:29 1 however took place prior to the Council elections in 1991. I can say this
2 because of Mr. Corcoran's attempt to interfere, intervene in that election to
3 secure the defeat of councillors who would be perceived to have supported
4 Quarryvale. I have no specific recollection of contacts with Mr. O'Callaghan
14:46:45 5 and Mr. Dunlop in 1992/1993."
6

7 At 3589 you go on to say "if such contacts took place and I accept that they
8 possibly did, they would have been generally concerned with the same sort of
9 issues as the earlier meetings I described up to the end of 1992. Council
14:47:00 10 considered representations received during the first display of the Development
11 Plan proposals during 1992/1993. Decision in relation to Quarryvale was made
12 in December 1992. If meetings took place after that, that is in 1993 it was
13 likely they were to do with Mr. O'Callaghan's plans for Quarryvale. In this
14 regard the most noticeable feature was his decision not to include a
14:47:22 15 supermarket in the centre. There was also the matter of the Neilstown site.
16 At first Mr. O'Callaghan maintained that there was a scope for shopping at both
17 Neilstown and Quarryvale. Later however he involved a proposal for an
18 International football stadium and concert centre at Neilstown to be completed
19 with a retracting roof and football pitch. I remember that there was a meeting
14:47:41 20 in my office with Mr. Dunlop and I think Ambrose Kelly present when he produced
21 plans of this proposal. I cannot say whether this was in 1992 or 1993 or
22 earlier. In the period 1992/1993 our focus was on matters other than
23 Quarryvale.
24

14:47:57 25 There was the necessity to push the Council to complete its consideration of
26 the Development Plan review and make a new plan for 1st of January 1994. This
27 entailed continuous almost daily meetings with the Council which took place
28 alongside the work of dividing the staff into three separate units preparing
29 for movements of each into separate offices and at the same time maintaining
14:48:17 30 the every day function of dealing with the decisions, enforcing issues and so

14:48:20 1 forth together with servicing and briefing the separate managers designate.
2
3 I have prepared this memorandum in some haste in order to meet your deadline.
4 I have not had the opportunity to refresh my memory by consulting Council
14:48:32 5 minutes on other records". It says members but in fact that is incorrect?
6 A. Minutes was the intention.
7 Q. 356 "If anything further occurs to me I will contact the Tribunal. I apologise for
8 this memorandum being in manuscript and do not at present have the facility of
9 a typewriter or word-processor. If you have any difficulty reading my
14:48:49 10 handwriting please contact me. Yours faithfully, Albert Smith".
11
12 Now, Mr. Smith you were in the county and you heard the evidence of
13 Mr. Fitzgerald this morning in relation to what was happening within the
14 corporation. Namely they were selling land within the county, lands at
14:49:06 15 Neilstown and also lands at Quarryvale, isn't that right
16 A. Yes.
17 Q. 357 And the lands at Neilstown were zoned for the town centre whereas the lands for
18 Quarryvale at this time were zoned for industrial development and/or housing,
19 isn't that right?
14:49:19 20 A. That's correct.
21 Q. 358 We know from the documentation I put on screen this morning and can refer to it
22 again if necessary. It was intended that the purchaser of the Neilstown lands
23 from the Corporation would apply for planning permission. Initially the
24 planning application had to be made within two months of the 21st of November
14:49:34 25 1988. But that period was extended to the 31st of December 89, isn't that
26 right?
27 A. That's so yes.
28 Q. 359 We see that letter at 14117.
29
14:49:44 30 So it was obvious that the corporation were selling their lands in Neilstown

- 14:49:48 1 for the purpose or with a view to the development of a town centre or shopping
2 centre at that site, isn't that right
- 3 A. That would be so, yes.
- 4 Q. 360 At the same time, the same corporation were selling lands at Quarryvale to Mr.
14:50:01 5 Gilmartin or ultimately to Mr. Gilmartin?
- 6 A. Uh-huh.
- 7 Q. 361 Decision having been taken I think in June 89 at a time when it was obvious
8 that Mr. Gilmartin's intentions were to try and construct a shopping centre or
9 town centre at Quarryvale, isn't that right?
- 14:50:15 10 A. That's right.
- 11 Q. 362 It would appear therefore that from an official point of view and from within
12 the council there appears to be some contradiction in their approach to their
13 lands, isn't that right.
- 14 A. Well I think you have to recollect what Mr. Fitzgerald said this morning. That
14:50:34 15 the corporation was a separate local authority with separate interests and
16 separate objectives. I'm not quite sure the exact words he said but basically
17 that's what he was saying. So, in other words, they had interests other than
18 those of the County Council.
- 19 Q. 363 We saw also I think that the Council were selling lands at Quarryvale as well,
14:50:55 20 isn't that right?
- 21 A. I think it was, yes.
- 22 Q. 364 And they would have been selling them to Mr. Gilmartin and it was known that
23 Mr. Gilmartin intended to develop a shopping centre there, isn't that right?
- 24 A. Yeah.
- 14:51:05 25 Q. 365 And it's also fair to say that by June 89 it was known that Mr. Gilmartin had,
26 first of all that Mr. O'Callaghan had taken over Montrose Holding/Merrygrove
27 which was the contract or the purchaser of the Neilstown site. It was also
28 known that Mr. O'Callaghan and Mr. Gilmartin had done a deal in relation to
29 those lands, isn't that right, and that there was an agreement between the two
14:51:28 30 that in fact there would be a push to develop a town centre in the Quarryvale

- 14:51:34 1 lands?
- 2 A. Yeah.
- 3 Q. 366 Now, I think that the Development Plan was under review throughout 1990 but
4 that by November 1990 if I could have 3342 please. You wrote to the
14:51:48 5 councillors and you advised the members that there would be a wrap up series of
6 motions and a time limit would be given for the furnishing of those motions to
7 the Council, isn't that right?
- 8 A. Yes.
- 9 Q. 367 And in fact if we go forward just slightly. I think by the 18th of January
14:52:04 10 1991. If I could 889 please. You again wrote to the councillors reminding
11 them that motions would be submitted not later than Friday the 8th of February
12 1991. I think that February was in fact extended to the 15th of February '91.
13 But by early January '91 it was hoped that all of the motions would in by
14 February 91, isn't that right?
- 14:52:24 15 A. That was an attempt to in some way or other speed up, become a very slow and
16 tedious process.
- 17 Q. 368 You were anxious to get the Development Plan published, isn't that right. That
18 had been going on since 1987?
- 19 A. So was the Department without being -- the Department was being very, they
14:52:41 20 weren't being very co-operative or forthcoming in giving extensions of time
21 which was their requirement of the Council and they were pressing very hard at
22 the time to speed things up.
- 23 Q. 369 And it had to be reviewed within the five years. But they were giving
24 extensions?
- 14:52:59 25 A. They were giving extensions that's correct.
- 26 Q. 370 Now, before we get to the motion stage, it is the case that the lands both at
27 Neilstown and at Quarryvale had been the subject of review and discussion and
28 papers had been presented initially in February 1990 when the plan had been
29 proposed and we see that plan at meeting of the 8th of March 1990 at 4208 and
14:53:23 30 the plan review is at 4209 and I think a decision had been taken at that time

- 14:53:28 1 to refer the maps back for a new plan to be drawn or produced, isn't that
2 right?
- 3 A. That's so.
- 4 Q. 371 I think a new plan was published and provided at the meeting of the 7th of
14:53:39 5 September 1990 and we see that at 4365 and that came up I think on the 7th,
6 adjourned to the 14th of September 1990 and at that stage they decided that
7 the councillors to go back to the plan which had been presented the previous
8 February, isn't that correct?
- 9 A. That's correct, yes.
- 14:53:58 10 Q. 372 Do you know why that decision was taken or was that, was there some controversy
11 concerning that decision?
- 12 A. Controversy. Initially as you say the members rejected the proposal of the
13 Manager in the Planning Department. Effectively to continue with the Myles
14 Wright report which mentioned, it really meant staying with ...
- 14:54:28 15 Q. 373 The 1983 plan?
- 16 A. The 1983 plan and Neilstown and they sort of wanted to see what the options,
17 other options were and they got a review of it and having seen what the options
18 were, that were being presented to them, they said we'll stick with the
19 original.
- 14:54:45 20 Q. 374 Now, we saw your letter of the 18th or the 8th of January 1991 for the
21 submission of motions etc. When he came to give evidence Mr. Gilmartin was
22 under the impression or gave evidence to the Tribunal that he thought that the
23 Quarryvale site would have been the subject of a motion or debate prior to May
24 1991 and certainly towards the end of 1990?
- 14:55:10 25 A. Uh-huh.
- 26 Q. 375 I don't know if you've seen that evidence or heard that?
- 27 A. It doesn't ring a bell to me anyway.
- 28 Q. 376 If that was the case, was there ever a suggestion in late 1990 that the
29 Quarryvale site would be or indeed that the three satellite town sites would be
14:55:29 30 the subject of perhaps a separate Development Plan or would be hived off from

- 14:55:34 1 the review of the planning area?
- 2 A. No I don't think I've any recollection of that happening.
- 3 Q. 377 And was there any prospect of a motion in relation to these sites coming before
- 4 the Council in late 1990?
- 14:55:47 5 A. It wouldn't have come from management as far as I can say.
- 6 Q. 378 Yes?
- 7 A. If it was going to come it would have been from the councillors.
- 8 Q. 379 Yes.
- 9 A. I think Mr. Gilmartin said that Mr. Boland who at that time I think was the
- 14:55:58 10 Chairman of the Council was giving him assurances along those lines. I wasn't
- 11 aware of that.
- 12 Q. 380 You weren't aware of that?
- 13 A. No.
- 14 Q. 381 Would it be fair to say to you that as an official, as a planner and somebody
- 14:56:10 15 intimately involved, would by and large know what was happening amongst the
- 16 councillors.
- 17 A. I would endeavour to do so and I can't say that I was always successful, no.
- 18 You try to speak to councillors and piece together from their comments and so
- 19 forth what was going on and try to keep those up to date as possible, yes.
- 14:56:31 20 Q. 382 But certainly if the councillors were taking their leave from either Dublin
- 21 County Council or Dublin Corporation, they could well argue that by early 1991
- 22 having regard to the sale of the lands in Quarryvale and at Neilstown that they
- 23 were getting confused signals coming from both councillors?
- 24 A. Well I think certainly as far as the corporation is concerned, they had a
- 14:56:55 25 different set of priorities. I can't help you in relation to the County
- 26 Council and other than to say that I don't think that the Planning Department
- 27 was greatly involved in that particular transaction.
- 28 Q. 383 Yes. I know that there are various departments within the local authorities
- 29 and I think you have told the Tribunal in and your evidence has been I think
- 14:57:14 30 that there was strong opposition to any departure from the 1983 development

- 14:57:20 1 proposals?
- 2 A. That is so.
- 3 Q. 384 And that was there throughout until the new Council was set up in 1994 isn't
- 4 that what you?
- 14:57:27 5 A. That was there throughout, subject to the fact that it became obvious that
- 6 prior to the 91 election when the motion was passed, the first motion or the
- 7 amending motion, transferring effectively the town centre from Neilstown to
- 8 Quarryvale, what would have been obvious then was that the Planning Department
- 9 couldn't remain absolutely inflexible and that we would have to prepare, as it
- 14:57:55 10 were, a second position.
- 11 Q. 385 But would it be fair to say that a lot of the councillors who supported that
- 12 transfer lost their seats in the 1991 Local Elections?
- 13 A. A number of them did, yes.
- 14 Q. 386 And would it be fair to say that you would find it more difficult to assess the
- 14:58:10 15 mood of the new Council after the 1991 Local Elections?
- 16 A. Yes.
- 17 Q. 387 You were in a different?
- 18 A. Very different, we had a different set of people, yes.
- 19 Q. 388 And presumably the official position in relation to their opposition or support
- 14:58:23 20 from the status quo stemmed not from the fact that it might reflect the wishes
- 21 of the majority of the Council members but for good strategic and planning
- 22 reasons and in particular the fact that that had been identified as the proper
- 23 way to develop that region right through from the Myles Wright Report in the
- 24 60s?
- 14:58:40 25 A. In an ideal world that would have been the situation yes.
- 26 Q. 389 And that had ideal World had existed in the Myles Wright report, the 92
- 27 Development Plan and 1983 Development Plan?
- 28 A. Yes.
- 29 Q. 390 And subject to perhaps?
- 14:58:51 30 A. Subject to -- sorry that's correct, that the thing didn't happen.

- 14:58:54 1 Q. 391 I accept it hadn't happened but subject to the difficulty with the Fonhill
2 Road, presumably the Council had put services in place and had made efforts to
3 drain and make -- put in infrastructure to support the zonings that had
4 remained there over that period?
- 14:59:15 5 A. I think there were efforts made yes certainly. Not absolutely certain what the
6 position was.
- 7 Q. 392 So the official position insofar as it was to support the Neilstown?
8 A. Uh-huh.
- 9 Q. 393 Town centre was well based and was long-standing, is that fair to say.
14:59:31 10 A. It was long-standing, whether it was well based is a matter of opinion, yeah.
- 11 Q. 394 But it was based on the fact that it had been there?
12 A. It had been there.
- 13 Q. 395 And infrastructure had been put in to support?
14 A. It was the professional view that the best policy was to stick with it, yes.
- 14:59:47 15 Q. 396 Yes. Now, in fact I think that as we saw on foot of the contract there a
16 planning application was indeed lodged by Merrygrove?
17 A. Uh-huh.
- 18 Q. 397 If we could have 846. In relation to the Neilstown site and planning
19 permission I think came through on the 28th of September 1990 for the Neilstown
15:00:06 20 site, isn't that right?
21 A. That correct.
- 22 Q. 398 So that there would have been a planning permission in accordance with the
23 zoning?
24 A. Uh-huh.
- 15:00:12 25 Q. 399 On the Neilstown site, isn't that right?
26 A. That's correct.
- 27 Q. 400 Now, we know that a planning or sorry?
28 A. Sorry, subject to. I think that planning application was appealed.
- 29 Q. 401 It was. And the appeal was withdrawn and I ...
15:00:28 30 A. And sorry there is.

- 15:00:29 1 Q. 402 You got involved and gave the opinion in relation to the status of the
2 withdrawal of the appeal, isn't that right?
- 3 A. It wasn't an appeal. What they did was they withdrew the application which is
4 what created the difficulty.
- 15:00:42 5 Q. 403 And I think you advised the Manager and your advice differed somewhat from the
6 law agent. Your advice to the Manager was in fact that there was no appeal
7 pending. There was no planning application pending once the appeal was
8 withdrawn, isn't that right?
- 9 A. That's right. It was the law agent of the Corporation not the County Council.
- 15:00:59 10 Q. 404 I see. You appreciate that we don't always appreciate the subtle difference
11 between the Corporation and the Council?
- 12 A. Um,.
- 13 Q. 405 If I could have 915.
14
- 15:01:09 15 This is a motion lodged on the very last day for the receipt of motions in
16 relation to the site in question it's -- it was received by the secretariat on
17 the 15th of February 1991 and it's signed by Colm McGrath
- 18 A. Uh-huh.
- 19 Q. 406 You will have seen that motion in the papers?
- 15:01:26 20 A. Yes.
- 21 Q. 407 I think there was an attempt to lodge a motion in relation to the Neilstown
22 site.
23
- 24 If we could have 4654.
- 15:01:38 25
26 And we know from 4653 and a note from Mr. Lawlor to Mr. O'Callaghan dated the
27 18th of February 1991 that he said that the attached motion submitted with
28 attached map.
29
- 15:01:50 30 Now, I think that that's, that motion in relation to the Neilstown site which

- 15:01:55 1 would have zoned from D to E industrial was submitted after the cut-off date of
2 the 15th and therefore was rejected, isn't that right?
- 3 A. Yes I think so.
- 4 Q. 408 But I think that when the motion of the 16th of May in relation to the
15:02:11 5 Quarryvale site was successful, I think you published the Draft Plan and dealt
6 with the anomaly by dezoning the Neilstown site to industrial, is that right?
- 7 A. Yes, uh-huh.
- 8 Q. 409 Now, subsequently it went back to D, isn't that right?
- 9 A. Yes I think so yes.
- 15:02:35 10 Q. 410 Now Mr. Lawlor has advised the Tribunal in relation to that motion and the
11 circumstances under which it came to be entered and placed on the record. But
12 I just want to ask you, if I may, Mr. Smith, when you first became aware that
13 that motion in fact had been lodged.
- 14 A. At this stage I don't know.
- 15:02:53 15 Q. 411 Okay. We're talking about a period between February 91 and May 91. The 16th
16 of May 91 when it's ultimately debated. I think in your statement you have
17 advised the Tribunal about the circumstances under which you came to draft a
18 motion?
- 19 A. A motion, yes.
- 15:03:08 20 Q. 412 What I wish to establish really is, is that the motion you drafted or was it
21 the amendment to that motion that you were involved in drafting. Sorry, 8915,
22 please.
- 23
- 24 A. On balance, I think that the motion that is now on the screen is the one I
15:03:40 25 drafted or close thereto.
- 26 Q. 413 You think that may be the one?
- 27 A. I think it may be yes. I'm not absolutely certain.
- 28 Q. 414 We'll come in a moment to the amendment to that motion but you think you may
29 have been involved in the drafting of that motion?
- 15:03:53 30 A. Yeah.

- 15:03:54 1 Q. 415 There was a meeting in Mr. Dunlop's diary for the 8th of March 1991. If I
2 could have 4752 please for 11:30 meeting with Al Smith. And in his redacted
3 diary given to the Tribunal if I could have 15352, please. This is the entries
4 in his diary which relate to Quarryvale. He has included that entry?
- 15:04:17 5 A. Uh-huh.
- 6 Q. 416 Al Smith. Do you think you might have met Mr. Dunlop in March 1991?
- 7 A. It's possible, yes. I mean I have no recollection when precisely but I could
8 have.
- 9 Q. 417 When I say met him, met him in the context of Quarryvale?
- 15:04:34 10 A. I could have.
- 11 Q. 418 Meetings previously in relation to Mr. McGennis and Baldoyle but at this stage
12 in March 1991 you think you might have?
- 13 A. Other than to say that it could have been, no I don't know, I cannot say.
- 14 Q. 419 We know for example if I could have 5028 that a draft letter was sent or a
15:04:51 15 letter was sent to Mr. Willie Murray dated the 3rd of May 1991 thanking him for
16 meeting himself, meeting. The letter is signed Tom Gilmartin and Owen
17 O'Callaghan at 5029. It's not signed. It appears to have been prepared for
18 signature and this is only a copy obviously of the letter that might have been
19 sent. At 5028 the letter suggests that there had been two meetings. One
15:05:23 20 meeting with Mr. Murray and yourself and then an earlier meeting between the
21 County Manager, John Prendergast, the assistant Manager Mr Patrick Morrissey
22 and the planning Manager, Mr. Kevin O'Sullivan?
- 23 A. Other than to say that I have no recollection of meeting Mr. Gilmartin and Mr.
24 O'Callaghan on the same occasion.
- 15:05:40 25 Q. 420 Okay. Can you --
- 26 A. I can't help you.
- 27 Q. 421 Okay. Do you recall ever meeting with Mr. Gilmartin?
- 28 A. Mr. Gilmartin says he met me and I'm not prepared to deny it but the answer is
29 no.
- 15:05:53 30 Q. 422 Okay. Now, we know that there had been, that the McGrath motion which I dealt

- 15:06:03 1 with a moment ago at 915 was the subject of some controversy?
- 2 A. Uh-huh.
- 3 Q. 423 With Mr. Corcoran who had the adjoining Blanchardstown site, isn't that right?
- 4 Mr. John Corcoran?
- 15:06:18 5 A. Yes, yeah.
- 6 Q. 424 And at 5335 Mr. Corcoran wrote to Mr. McGrath on the 14th of June 1991. And in
- 7 that letter he reviews what took place?
- 8 A. Uh-huh.
- 9 Q. 425 In the immediate?
- 15:06:32 10 A. Yes.
- 11 Q. 426 Period prior to the hearing of the 16th of May 1991?
- 12 A. Uh-huh.
- 13 Q. 427 Just if we look at the letter just for a moment. He says "the true effect of
- 14 motion No. 38 to rezone Quarryvale site was explained to me at a meeting I had
- 15:06:47 15 with a senior official in Dublin County Council on Friday the 10th of May
- 16 1991".
- 17
- 18 Do you recall ever having a meeting with Mr. John Corcoran in the lead up to
- 19 the 16th of May 1991?
- 15:07:02 20 A. I have only a recollection of meeting Mr. Corcoran on one occasion and that was
- 21 when he made a presentation of some sort in the Council Chamber to the members
- 22 of the Council. I have no recollection of meeting him other than that.
- 23 Q. 428 Okay and in the course of that letter he talks about a meeting which appears to
- 24 have been arranged by Councillor McGennis with Tommy Boland, Liam Lawlor,
- 15:07:25 25 Councillor McGennis and Councillor Ned Ryan?
- 26 A. Uh-huh.
- 27 Q. 429 And a that as a result of that meeting there was a decision to amend or replace
- 28 the motion what I referred to earlier as the McGrath motion?
- 29 A. Uh-huh.
- 15:07:46 30 Q. 430 And then he fast forwards. He himself with Mr. May, Gareth May, his consultant

15:07:47 1 had prepared his own motion. And then if we go to 5336.
2
3 He says that at approximately 2:30 p.m. He is talking now about the 16th of
4 May, the day of the vote. He says "Mr. Liam Lawlor approached me having
15:07:58 5 emerged from the Chairman's office and showed me an amendment to motion No. 38.
6 I had not previously seen this document nor was it ever discussed with me or
7 any of my advisors. On reading same I and my advisors who were present
8 immediately conveyed our total objection to this amendment and stated that it
9 was contrary to our understanding of what had been agreed with our meeting with
15:08:19 10 the Chairman on Monday 13th of May. We confirmed that if passed it had would
11 have the effect of forcing us to stop building Blanchardstown".
12
13 Now, the amendment if we could have 933, please.
14
15:08:33 15 There is an amendment dated the 16th of May 1991 and it's 933. And it's headed
16 add to motion 38. As I say, motion 38 is at 915 and If we stay with what's on
17 screen. It says "that a statement be included in the Development Plan to
18 indicate that the total area of commercial development in the area zoned E
19 shall not exceed the total area of commercial development which would be
15:08:58 20 appropriate to the Lucan/Clondalkin town centre site designated in the County
21 Development Plan 1983 and signed by Councillors Hand, Colm McGrath and Finbarr
22 Hanrahan"
23 A. Uh-huh.
24 Q. 431 Now, can I ask you what you know, if anything, about that?
15:09:17 25 A. I'm afraid my mind is blank on that. I can't answer you.
26 Q. 432 And if we could have 915, please. This is the original McGrath motion. You
27 think that's the motion that you may have drafted?
28 A. I thought so yes.
29 Q. 433 And it would have been on foot of a draft sent to you by Mr. Lawlor which was
15:09:38 30 you say incoherent etc.?

- 15:09:40 1 A. Uh-huh.
- 2 Q. 434 And that would have been back prior to obviously the 15th of February '91 which
3 was the date that this motion was received by the Council, isn't that right?
- 4 A. Yeah. Well it states down here in February.
- 15:09:54 5 Q. 435 February 91. So it would have to be prior to February 91?
- 6 A. I'm not dogmatic on this but that's the best of my recollection.
- 7 Q. 436 I mean, for example, if we revert to 933. This is the addendum to that motion.
8 Do you think that that might have been what you drafted?
- 9 A. All I can say is that I am uncertain.
- 15:10:19 10 Q. 437 Yes.
- 11 A. I am sorry about that.
- 12 Q. 438 Yes. The matter I think came before the Council then on the 16th of May and
13 there was a vote and the motion as amended was passed, isn't that right?
- 14 A. That's correct, yes.
- 15:10:36 15 Q. 439 Now I think within days of that there was a notification to you from An Bord
16 Pleanala advising you that the planning application had been withdrawn and we
17 see that at page 856?
- 18 A. Um,.
- 19 Q. 440 And we see the decision of the board at 857, isn't that right?
- 15:10:54 20 A. Yes.
- 21 Q. 441 And I think that at 5556 there is a letter dated the 16th of July 1991 from you
22 and we see that at 5557 to Mr. O'Sullivan, the County Manager, when you more or
23 less advise that there is effectively no planning decision to be made, there is
24 no planning application.
- 15:11:15 25 A. Application before the Council.
- 26 Q. 442 That the entire matter has been withdrawn, isn't that right?
- 27 A. Yes.
- 28 Q. 443 Now, I think on the 6th of June '91. If we could have 5252 please. You wrote
29 to Councillor Boland?
- 15:11:31 30 A. Uh-huh.

- 15:11:32 1 Q. 444 Clarifying motion No. 38?
- 2 A. Uh-huh.
- 3 Q. 445 Can I ask you how you came to write to Councillor Boland at the time?
- 4 A. Well I don't know but I would assume, excuse me, I would assume that I wrote
- 15:11:44 5 the letter at his request. This would have been during the election campaign.
- 6 Q. 446 Yes?
- 7 A. I know that Councillor Boland was extremely concerned during that campaign and
- 8 he did have discussions with me from time to time about the status of
- 9 Blanchardstown and the status of Quarryvale and so. I assume that that letter
- 15:12:08 10 was written to put on record at his request.
- 11 Q. 447 Yes?
- 12 A. Information that I had been given.
- 13 Q. 448 I think it would be fair to say that Mr. Corcoran and Green Properties launched
- 14 a campaign against councillors who had supported the Quarryvale motion, isn't
- 15:12:25 15 that right?
- 16 A. Very much so.
- 17 Q. 449 Yes. In fact if we look at 5049 on the 14th of May 1991 Mr. Corcoran had
- 18 written to Councillor McGennis enclosing his draft of a motion, isn't that
- 19 right, and we see that draft at 5050?
- 15:12:55 20 A. Uh-huh.
- 21 Q. 450 And this is what Mr. Corcoran understood had been agreed between himself and
- 22 the councillors at that meeting. Did you have any hand, act or part in
- 23 drafting that motion?
- 24 A. No.
- 15:12:59 25 Q. 451 Now, I think you also wrote to Councillor McGennis on the 17th of June 91 at
- 26 5364 again setting out the position in relation to the vote which had taken
- 27 place, isn't that right?
- 28 A. Yes.
- 29 Q. 452 And just in relation to the letter to Mr. Boland I think that was the first
- 15:13:22 30 mention of a 500,000 square foot cap, isn't that right?

- 15:13:26 1 A. Yes, Sir.
- 2 Q. 453 And I think you came to that conclusion on the basis of the planning
3 application which had been lodged in relation to the Neilstown site?
- 4 A. Uh-huh.
- 15:13:33 5 Q. 454 It was the first of a two phased application which would be of concern?
- 6 A. Basically the application was for a quarter of a million square feet or
7 thereabouts, that's phase one. And there was reference in the documentation to
8 a second phase of roughly the same.
- 9 Q. 455 5252 please. And I think that that was the only mention of 500,000 square feet
10 of a cap, isn't that right?
- 11 A. That would be so yes.
- 12 Q. 456 It's not mentioned in the motion?
- 13 A. It's not mentioned in the motion but ...
- 14 Q. 457 But you would have interpreted the limitation in the amendment to the motion as
15 capping the site effectively?
- 16 A. Yes, that and the general reference to the general policy in relation to new
17 towns. I know that Blanchardstown and I suppose Tallaght were ... but the
18 documentation supported the idea that a town centre for the towns would
19 generally be of the order of 500.
- 15:14:35 20 Q. 458 At 933. The amendment had spoken about a zoning not exceeding the total area
21 of commercial development which would be appropriate to the Lucan/Clondalkin
22 town centre site and because the application had gone in for a quarter of a
23 million and --
- 24 A. Yes I think I'm changing my opinion. I think that may well be the motion that
15:14:55 25 I drafted.
- 26 Q. 459 You think that that is the amendment?
- 27 A. Quite possibly. Very possibly. I'm not going to be absolutely adamant.
- 28 Q. 460 Yes. Now, I think that after then we had the Local Election. There were a lot
29 of casualties in that election, if I may put it that way. And then
15:15:11 30 subsequently I think in July 91 there was a motion seeking by way of Section 4

- 15:15:16 1 to reverse the decision of the 16th of May 91 and I think you ruled that out of
2 order?
- 3 A. Yes on procedural reasons.
- 4 Q. 461 Now just in relation to the site at Neilstown which was the subject of the
15:15:32 5 contract between Merrygrove and the corporation. I think adjoining that site
6 there was a site owned by Mr. Sharkey, isn't that right?
- 7 A. Yes.
- 8 Q. 462 And different companies?
- 9 A. Uh-huh.
- 15:15:40 10 Q. 463 And I think that one of his companies was PHI Limited?
- 11 A. Uh-huh.
- 12 Q. 464 And I think a series of correspondence was entered into between Mr. Sharkey of
13 PHI Limited and the corporation and the County Council in relation to their
14 site, isn't that right?
- 15:15:56 15 A. Uh-huh.
- 16 Q. 465 And I think they were querying the sale of and the development of the
17 Corporation lands, the subject of the Merrygrove contract, isn't that right?
- 18 A. Yes.
- 19 Q. 466 And I think that they were very vocal in their criticism of the Council,
15:16:09 20 particularly since the condition dealing with the planning application was no
21 longer in existence, isn't that right?
- 22 A. Yes, that's correct.
- 23 Q. 467 And I think that that correspondence went on over a period between April 91 and
24 November 91, which I think the 28th of November 91, culminated in a decision or
15:16:31 25 a submission on the Development Plan, isn't that right?
- 26 A. That's correct.
- 27 Q. 468 And just in relation to that correspondence. Would you agree with me that on
28 at least three occasions PHI Limited offered to acquire the site from the
29 corporation?
- 15:16:48 30 A. Well that is in the documentation, yes.

- 15:16:50 1 Q. 469 For example on the 11th of June 1991 at 5289. It says "the purpose of this
2 letter is to inform you officially that as part owners of the official site we
3 are still interested in pursuing town centre development in accordance with the
4 requirements of the Development Plan?"
- 15:17:09 5 A. Uh-huh.
- 6 Q. 470 And I think again on the 29th of September 91. At 20622. They said "our site
7 in the town centre, as matters stand, cannot be developed in advance of the
8 corporation site. We have already given you notice that we are interested in
9 purchasing or obtaining a letter, a letting on the site from the corporation
10 with the objective of developing it for town centre purposes. We repeat our
11 interest."
12
13 And I think on the 7th of November 1991. At 6226. They again say "once again
14 we are informing you that we are prepared to negotiate for the leasing and
15:17:56 15 purchase of the said lands and of course we are also prepared to bid for the
16 lands if they are put out for public tender" isn't that right?
- 17 A. Uh-huh.
- 18 Q. 471 Their position wasn't unreasonable in that the corporation sold the lands for
19 an obvious purpose namely to develop a town centre at that time. That purpose
15:18:05 20 was not now being proceeded with by the purchaser yet the contract wasn't at an
21 end. Nonetheless PHI Limited who had adjoining lands couldn't develop their
22 lands until the corporation lands were developed, isn't that right?
- 23 A. Well that would appear to be the situation yes.
- 24 Q. 472 And they had seen a situation where their lands which had had designation right
15:18:24 25 through from the Myles Wright Report 92. The 72 Development Plan, 83
26 development down graded from town centre to industrial use, isn't that so?
- 27 A. Well that would be so except for the lands in Neilstown generally had been
28 zoned for town centre development for, well since 19 -- certainly since 83 and
29 I suppose arguably since 72 and there was absolutely no sign. None I know that
15:18:53 30 the Sharkeys were saying that they would build. They hadn't made any serious

- 15:18:57 1 effort to build in that period.
- 2 Q. 473 They would argue that they couldn't build until the corporation lands were
3 built on?
- 4 A. They may well have done.
- 15:19:04 5 Q. 474 I think in fact they put in a submission on the 28th of November 91 to the
6 development plan review as they were entitled to do and we see that at 1032 to
7 1040?
- 8 A. Uh-huh.
- 9 Q. 475 And again they set out the history of the sale of the corporation lands to Mr.
15:19:21 10 O'Callaghan, isn't that right, and I think that submission was given reference
11 759, isn't that correct?
- 12 A. I haven't got that in front of me but I assume you're right.
- 13 Q. 476 Yes. We see that sorry at 1032. 28th of November 91.
- 14 A. Yeah.
- 15:19:37 15 Q. 477 I think the map had been on public display from the 2nd of September 91 to the
16 3rd of December 91, isn't that right?
- 17 A. Uh-huh yeah.
- 18 Q. 478 Now submissions I think were also received from others including the Quarryvale
19 Residents Association on the 2nd of December 91 at 23796. And Mr. McCann who
15:20:00 20 signed that letter addressed to you said that they supported Mr. O'Callaghan
21 and his development, isn't that right?
- 22 A. Yes.
- 23 Q. 479 And I think that you had received 10,000 signatures personally delivered to
24 you. If you look at 6390. Do you recall receiving those?
- 15:20:18 25 A. Well multiple signatures were a feature of the representation stage of the
26 development and usually they had been organised by somebody.
- 27 Q. 480 Yes. Now, in 1992 the push was underway to deal with the submission which had
28 been received on the Draft Plan, isn't that right?
- 29 A. Correct yes.
- 15:20:39 30 Q. 481 And I think if we look at the 29th of April 1992 at 7123 we see an entry in Mr.

- 15:20:45 1 Dunlop's diary "2:30 Al Smith (Owen alone), do you see that?"
- 2 A.
- 3 Q. 482 It's Wednesday the 29th?
- 4 A. I have the 27th. Oh, 29th sorry.
- 15:20:59 5 Q. 483 Yes. Third last entry "Owen alone". Do you recall meeting Mr. O'Callaghan on
- 6 his own on the 29th of April 1992?
- 7 A. Not specifically on that date but I mean I would agree that there were
- 8 occasions when I met him by himself yes.
- 9 Q. 484 And I think there was a further meeting I think on the 28th of May 1992. At
- 15:21:22 10 7328.
- 11 A. On which date sorry.
- 12 Q. 485 7328. It's 28th of May 1992.
- 13 A. Yes.
- 14 Q. 486 Now if I could have 7351, please. Now, this is a document 7350 first please.
- 15:21:54 15 This is a document in relation to the stadium, action to be taken on stadium
- 16 meeting on 28th last and it's a letter from Mr. O'Callaghan to Mr. Dunlop do
- 17 you see that?
- 18 A. Yes.
- 19 Q. 487 Dated 29th of May which would have been the day, following a meeting between
- 15:22:08 20 you and Mr. O'Callaghan?
- 21 A. Uh-huh.
- 22 Q. 488 Now if we could go please to 7351. You see "PS" at the bottom "Quarryvale, we
- 23 need to meet as many councillors as we can on Wednesday and Thursday afternoon.
- 24 We must ensure at all costs that our rezoning decision does not come up until
- 15:22:27 25 September" do you see that?
- 26 A. I do.
- 27 Q. 489 By the time the zoning decision came up in December 1992 Mr. O'Callaghan and
- 28 Merrygrove had lodged an application for a stadium development which had been
- 29 lodged, I think, in October 92?
- 15:22:42 30 A. Uh-huh.

- 15:22:43 1 Q. 490 Now can I ask you Mr. Smith, in his meeting with you on the 28th of May 1992,
2 had Mr. O'Callaghan raised with you his desire as expressed there that the
3 zoning motions in relation to Quarryvale would not come up until September?
4 A. No, absolutely sure about that.
- 15:23:03 5 Q. 491 You are absolutely sure?
6 A. That wasn't.
7 Q. 492 That request was never made of you?
8 A. No, not to me.
- 9 Q. 493 In relation to the Development Plan after the 1991 publication. In 1991 it had
15:23:16 10 gone from I think Balbriggan to Bray but the review?
11 A. It reversed.
12 Q. 494 Bray to Balbriggan?
13 A. That was -- the members decided that.
14 Q. 495 Did that surprise you that they had decided that?
15:23:27 15 A. Not really. It was always a great deal of tension between what you might call
16 the South County members and the North County members. The fact that the South
17 County members decided that they wanted to have their cake before the North
18 didn't surprise me.
- 19 Q. 496 Okay. Now again in August 1992. At 7872. This is again a letter from Mr.
15:23:49 20 O'Callaghan properties to Frank Dunlop dated 14th of August 1992 dealing with a
21 programme for the announcement of the stadium as agreed on the 13th of August
22 1992. On the second page at 7873 under the heading "Quarryvale", it says "AFK
23 to draw up a revised zoning plan as outlined by himself in discussion and
24 possible presentation to Al Smith. This new plan to have 45 acres of whatever
15:24:12 25 is required marked C, 15 acres open space marked F, hotel leisure Cineplex etc.
26 marked C. Town centre related or whatever is the correct zoning letter. The
27 industrial estate is marked F. Having discussed this, if we all agree we
28 should bring this to Al Smith's attention and ask his advice. LL feels that
29 this should be in Al Smith's interest. Remembering his help in the May 1991
15:24:35 30 decision this confirms our bona fides to him and serious intention of capping

15:24:41 1 at 0.5 million square feet and possible single storey development".
2
3 Can you you comment on that Mr. Smith?
4 A. No, I can't comment on it. It's obviously something that Mr. Lawlor or Mr.
15:24:56 5 O'Callaghan was arcing arranging for his own people. I am not aware or I
6 haven't seen such a plan.
7 Q. 497 Yes.
8 A. The only thing that occurs to me there is the football stadium.
9 Q. 498 Yes. And we know that that application was lodged on the 20th of October 1992.
15:25:21 10 1054 we see that application and I think on the very following day on 21st of
11 October 92 at 1082 there was an application for a town centre by PHI Press
12 Limited?
13 A. Yes.
14 Q. 499 And both of those applications were pending in December '92 when the matter
15:25:39 15 came on for review?
16 A. For final review.
17 Q. 500 And I think in in fact there was outline permission for major town centre
18 development on the PHI lands and we see that at 1087 a decision I think having
19 been received on the 26th of March '93 isn't that right?
15:26:01 20 A. Well I'm -- I can't read it very easily but yes okay.
21 Q. 501 Now on the 2nd of December '92. At 16476. I think you sent out the Planners
22 Report or the Manager's Report in relation to the review of maps 16, 17 and 18
23 which are the maps in question isn't that right?
24 A. Uh-huh, correct.
15:26:19 25 Q. 502 And we see that at 16477 the Manager's Report. And I dealt to some extent with
26 that report this morning with Mr. Fitzgerald, isn't that right?
27 A. Yes.
28 Q. 503 And I think on the 7th of December 1992. At 14247 there is a letter from Mr.
29 Morrissey to his colleagues enclosing a letter to yourself and Mr. Murray which
15:26:40 30 is at 14248 on the same date?

- 15:26:43 1 A. Uh-huh.
- 2 Q. 504 Arising out of his meeting with you?
- 3 A. Yeah.
- 4 Q. 505 And Mr. Murray on that date?
- 15:26:47 5 A. Uh-huh.
- 6 Q. 506 And where he allegedly or he alleges that as a result of his conversation with
- 7 you, the Manager's Report and the official report to the zoning transfer from
- 8 Neilstown to Quarryvale was different to what might first appear on the written
- 9 report, isn't that right?
- 15:27:05 10 A. That's what he is saying.
- 11 Q. 507 Yes. You didn't query at that time what he was saying, you didn't take issue
- 12 with any of the issues?
- 13 A. I don't think we responded to it as he requested.
- 14 Q. 508 Yes. At 14250, second last paragraph, he says "I request a formal and
- 15 comprehensive response in writing to the issues I have raised prior to the
- 16 close of business on Tuesday 8th of December '92 to allow me consider the
- 17 position prior to the close of business on the 9th of December"?
- 18 A. All I can say about that letter, obviously I wrote. I think the meeting to
- 19 which he refers was held at his request. I don't accept the interpretations
- 15:27:46 20 that he is putting on the meeting and I would draw your attention to the second
- 21 paragraph on the second page. "I would be urging my colleagues on the Council
- 22 to strongly support the 1983 County Development Plan without modification."
- 23 All I can say about that is if he had succeeded in getting his colleagues
- 24 support for that, management would have been quite supportive of him and would
- 15:28:23 25 be pleased. But there was no prospect of that.
- 26 Q. 509 I thought that I understood management and planning policy up to this point to
- 27 support the status quo?
- 28 A. That's what I'm saying.
- 29 Q. 510 Are you saying that the Manager's Report ought to be interpreted by the
- 15:28:27 30 Tribunal as supporting the status quo?

- 15:28:29 1 A. No -- yes I think so yeah.
- 2 Q. 511 Now can I just ask you one minor issue arising out of that letter of the 2nd
3 December 1992 at 16476, that letter I think invited members to submit motions
4 by 5.00 pm on Monday 7th December 1992 and you might recall earlier in relation
15:28:31 5 to the motion on the Neilstown site submitted by Mr Lawlor back in February
6 1991 that that motion was rejected because it was received out of date, isn't
7 that right?
- 8 A. Yes.
- 9 Q. 512 So the cutoff date was 7th of December '92, isn't that right?
- 15:29:22 10 A. Yes.
- 11 Q. 513 And if we look at 1125. The actual base motion which was successful on the
12 date appears to have been received by the secretariat on the 9th of December
13 '92?
- 14 A. Uh-huh.
- 15:29:33 15 Q. 514 Can you advise the Tribunal why that motion wasn't deemed to be out of date
16 since it was two days after the cutoff date?
- 17 A. Immediately, no. I don't know that anybody has looked at the calendar for
18 1992. It may have been a Monday as distinct from a Friday other than that I
19 can't comment.
- 15:29:56 20 Q. 515 But you agree with me that technically that it would suggest that the motion
21 was received out of date?
- 22 A. It could suggest that, yes.
- 23 Q. 516 The 7th of December 1992 was a Monday. The 9th of December 1992 was a
24 Wednesday?
- 15:30:17 25 A. I can't offer any other explanation.
- 26 Q. 517 Do you recall receiving that motion?
- 27 A. Not specifically no.
- 28 Q. 518 Who would have received that motion?
- 29 A. The most likely thing is that it would have been handed in to our secretariat
15:30:33 30 and logged and stamped by them.

- 15:30:36 1 Q. 519 Can I just ask you one --
- 2 A. Sorry. Another possible explanation has occurred to me.
- 3 Q. 520 Yes?
- 4 A. That is date stamped "secretariat the 9th."
- 15:30:48 5 Q. 521 It may have been received somewhere else?
- 6 A. It may have been received somewhere else on the 7th.
- 7 Q. 522 Okay. Can I just ask you one other thing. In, we saw the Manager's Report and
- 8 we saw how it was referred to in the and read to the officials present, isn't
- 9 that right and to the members present?
- 15:31:08 10 A. Uh-huh.
- 11 Q. 523 We see that at the meeting of the 17th of December 1992 at 8818. And we see
- 12 the Manager's Report there and the succeeding pages, isn't that right.
- 13 A. Yes.
- 14 Q. 524 At 8827 we see the representations received from Green Properties plc and
- 15 O'Callaghan Properties and other representations. Do you see that?
- 16 A. Uh-huh.
- 17 Q. 525 And you list the representations from Green Property and from O'Callaghan
- 18 Properties?
- 19 A. Um,.
- 15:31:37 20 Q. 526 Green Property representation is at 8827 and succeeding pages, the O'Callaghan
- 21 property representation which was given representation number 530 was at 8830
- 22 and succeeding pages. What you don't give is the representation which you have
- 23 received on behalf of PHI Investments limited which is at 1032. Now, you do
- 24 refer to it at page 8835 with a number of other representations all of which
- 15:32:05 25 had been received?
- 26 A. Uh-huh.
- 27 Q. 527 But I just suggest to you that it's curious that having regard to the close
- 28 proximity of the PHI lands to the Neilstown lands, that you would not have
- 29 included what they had to say in that letter of the 28th of November 1991 in
- 15:32:22 30 your report, having spelt out in some detail the submission from both Mr.

15:32:27 1 O'Callaghan which I can understand and Green Properties?

2 A. Green Property. Well they would have been the main protagonists.

3 Q. 528 Well it would be fair to say that PHI, Mr. Sharkey, was also fairly exercised

4 about the proposed rezoning?

15:32:45 5 A. He was yes but so were a lot of other people as well as ...

6 Q. 529 But he was directly involved, isn't that right?

7 A. Yes.

8 Q. 530 After Green and after Mr. O'Callaghan in fairness?

9 A. I accept that but I think that obviously the view taken was that the two main

15:33:02 10 objectives we reached, our representations, and represented as it were the

11 support or argument for and against were Green and the O'Callaghan companies.

12 Q. 531 Would you agree with me that in that report from them, the Planning Officer and

13 the Manager that there is no reference to a cap of either 100 or 250,000 square

14 feet?

15:33:29 15 A. I haven't read the report recently but I would accept that if you say so.

16 Q. 532 You were present at the meeting I think on the 17th of December?

17 A. I was.

18 Q. 533 Would it be fair to say that it was a fairly divided meeting?

19 A. Yes.

15:33:42 20 Q. 534 And that there were very strong views held on both sides?

21 A. Yes.

22 Q. 535 It was a knife edged decision, isn't that right?

23 A. That's right, yes.

24 Q. 536 And where did the decision that the cap would be at 250,000 square feet come

15:33:54 25 from?

26 A. On that day it was purely a political decision.

27 Q. 537 If we could have 8845 please. I think the proposal or the amendment in

28 relation to the cap appears to have been proposed by councillors Devitt and

29 McGrath on foot of an amendment in the names councillors Devitt McGrath and

15:34:12 30 Tyndall. But where did they get the idea that that might be acceptable?

- 15:34:17 1 A. That I don't know. I do know that 250,000 square feet was under discussion in
2 the days immediately preceding it. It's one of these things that people ... I
3 think ... I think that the political groups if I might put it that way, the
4 pros and the anti's were meeting on the fringes of that Council meeting to try
15:34:47 5 and reach some kind of a compromise that they could present to the Council.
6 Q. 538 Well what was the attitude of the planners?
7 A. I think the attitude of the planners was that basically they wanted the members
8 to retain Neilstown.
9 Q. 539 You say that that was the outside, that was the position of the planners going
15:35:05 10 into that meeting?
11 A. I think so, yes.
12 Q. 540 This morning Mr. Fitzgerald felt that he was responsible for imposing the cap?
13 A. I think what Mr. Fitzgerald said was that somebody asked him did he recommend
14 the cap.
15:35:22 15 Q. 541 Was there --
16 A. And he said yes in the context that the motion was going to be passed. That
17 was what I understood them to be saying or something to that effect.
18 Q. 542 But certainly the cap at either 100,000 or 250,000 square feet was something
19 that was being discussed by the planners and the politicians in the lead up to
15:35:49 20 that vote?
21 A. No, not by the planners and the politicians. At that stage of the activity,
22 the management and the planners were practically redundant or excluded. It was
23 a purely political series of discussions and arguments that was going on prior
24 to the meeting.
15:36:14 25 Q. 543 Well the planners and officials obviously had a view in relation to it?
26 A. And the view I think was just to stick with the long-term zone.
27 Q. 544 Now, on the eve of that vote I think if we look at 8794, there is a telephone
28 attendance at Mr. Dunlop's office?
29 A. Uh-huh.
15:36:33 30 Q. 545 At 11:49 Al Smith looking for OOC, what was that about?

- 15:36:39 1 A. I have no idea what it was about.
- 2 Q. 546 Why were you looking for Mr. O'Callaghan?
- 3 A. Possibly returning a call.
- 4 Q. 547 You were returning it to Mr. Dunlop's offices?
- 15:36:49 5 A. Well obviously Mr. O'Callaghan would have been in town, he was in town from
6 Cork. When he was in Dublin he would have been operating from the offices of
7 either Ambrose Kelly or less frequently Frank Dunlop.
- 8 Q. 548 There was one matter I meant to clarify with you. You spoke about your
9 contribution to the amendment to the motion or the motion itself back in May
10 1991?
- 15:37:14 11 A. Uh-huh.
- 12 Q. 549 In his statement to the Tribunal?
- 13 A. Uh-huh.
- 14 Q. 550 If I could have 2629. This is dated the 12th of January 2004. Mr. Lawlor said
15 the following.
16
17 "Up to May 16th 1991 decision to restrict the acreage on the Quarryvale lands
18 three months public consultation my recollection is that Tom Gilmartin solely
19 lobbied for the Quarryvale lands. It is also my recollection at the May
15:37:41 20 meeting as Local Elections were scheduled for one month later there was very
21 little debate on the decision. I do not believe that Mr. Gilmartin or any
22 other personnel were in attendance at the meeting which was at the preliminary
23 stages of consideration of the Development Plan".
24
- 15:37:53 25 Now, in just in relation to Mr. Lawlor's recollection that in fact Mr.
26 Gilmartin solely was involved prior to the 16th of May 1991 vote
- 27 A. Uh-huh.
- 28 Q. 551 Was that your recollection?
- 29 A. I can't honestly say that I know when precisely Mr. O'Callaghan became involved
15:38:15 30 but I think it was prior to the 1991 Local Election. In fact I'm fairly

15:38:21 1 certain it was prior to the Local Elections in 1991.

2 Q. 552 And Mr. Dunlop?

3 A. I would think that once Mr. O'Callaghan appeared on the scene Mr. Dunlop was

4 there, yes.

15:38:32 5 Q. 553 And of course there were meetings between Mr. O'Callaghan and councillors and

6 officials isn't that right?

7 A. That is so, yeah.

8 Q. 554 Now, I think there were some meetings or telephone attendances?

9 A. Uh-huh.

15:38:49 10 Q. 555 And diary entries for meetings with you and Mr. Dunlop?

11 A. Uh-huh.

12 Q. 556 In 1993. On the 2nd of March 1993 at 9293 there is 3 p.m. Al Smith meeting?

13 A. Yeah.

14 Q. 557 On the 6th of April at 9403 there is an 11:30 Al Smith meeting?

15:39:12 15 A. Uh-huh.

16 Q. 558 On the 14th of April 1993 there is a telephone attendance at 9424, 3:35 Al

17 Smith 3:35 spoke to Dan Sullivan FD can contact him on 741204. 20th of April

18 1993 at 9437 telephone attendance 4:25 Al Smith?

19 A. Uh-huh.

15:39:32 20 Q. 559 18th of May 1993 at 9582 9:35 telephone attendance Al Smith's office. And then

21 a meeting on the 31st of May 1993 at 9648 at 12:30 Al Smith and then again on

22 the 31st of May 1993 9:25 telephone attendance at 9650 Al Smith?

23 A. Uh-huh.

24 Q. 560 Do you have any recollection what ...?

15:39:55 25 A. No, the only one I can give you assistance is the one which mentions

26 Mr. O'Sullivan and I think I have already told the Tribunal that that had to do

27 with a matter relating to Baldoyle.

28 Q. 561 Yes. And then I think that in June 1993 the Proposed Written Statement was

29 further amended on foot of a motion, isn't that right, by Councillors Tyndall,

15:40:29 30 this is the Written Statement in relation to?

- 15:40:32 1 A. To bring the Written Statement into correspondence.
- 2 Q. 562 Yes?
- 3 A. And the maps.
- 4 Q. 563 Yes. I think the Council position was that your draft wording was correctly
15:40:42 5 reflected the vote, isn't that right?
- 6 A. Uh-huh.
- 7 Q. 564 Do you recall any discussion in relation to that proposed amendment?
- 8 A. I know there was discussion. But I don't recall the details,.
- 9 Q. 565 Yes. We see that vote on the 4th of June 1993 at 7671 and 7672. And I think
15:41:01 10 on the same day if we can have 9674. There is a 2:25 Al Smith Tuesday's
11 appointment changed to 11:30?
- 12 A. Yes.
- 13 Q. 566 Do you recall that?
- 14 A. I cannot be of any assistance, no.
- 15:41:13 15 Q. 567 No, I think that --
- 16 A. I know that there is another name there which suggests to me that it had
17 nothing more to do with the ...
- 18 Q. 568 With Quarryvale?
- 19 A. With what we're dealing with at the moment, yes.
- 15:41:26 20 Q. 569 I think on the 4th of June '93 Green Properties, through their solicitors, A&L
21 Goodbodys, at 9680, wrote complaining about that proposed change of wording and
22 alleged that in fact it had the effect of altering the decision of the 17th of
23 December '92, isn't that right? And you would have got a copy of that letter.
24 If we look at 9682?
- 15:41:48 25 A. Yes.
- 26 Q. 570 And again I think that there was a meeting between yourself and Mr. Dunlop on
27 the 8th of June 1993 at 9684 11:30 Al Smith?
- 28 A. Uh-huh.
- 29 Q. 571 And on the same day at 9686 there was 10:55 telephone attendance Marian heading
15:42:08 30 into town for 11:30 Mr. Smith has a management meeting until time and her

- 15:42:14 1 mobile number?
- 2 A. Yes. I can't help you, I don't know what these meetings were about.
- 3 Q. 572 Can I ask you, Mr. Smith, have you any knowledge of the sale of the corporation
- 4 lands and the additional corporation lands?
- 15:42:28 5 A. No.
- 6 Q. 573 That happened after your retirement, is that right?
- 7 A. Well certainly I don't even know when they took place but certainly I wasn't in
- 8 any way involved in them.
- 9 Q. 574 And this morning I referred to -- meetings within the bank where it was
- 10 suggested that both yourself and Mr. Fitzgerald were anxious to get on with.
- 11 Sorry. That Barkhill or ...
- 12 A. Uh-huh.
- 13 Q. 575 To get on with the planning application?
- 14 A. Uh-huh.
- 15:42:55 15 Q. 576 Do you recall any?
- 16 A. I had nothing whatsoever to do with the bank and I cannot be ...
- 17 Q. 577 Nor indeed whilst I accept you say you never met AIB or had anything to do with
- 18 them. These are records of what's being said to the bank by Mr. O'Callaghan as
- 19 a result of?
- 15:43:13 20 A. Well certainly I can't be responsible for whatever it was Mr. O'Callaghan told
- 21 the bank.
- 22 Q. 578 Yes?
- 23 A. There was no question of our, of my pushing him to get on with the job. I
- 24 would think at that stage I was, I had either lost interest or was losing
- 15:43:31 25 interest in Quarryvale and was concentrating on Fingal.
- 26 Q. 579 Thank you very much, Mr. Smith.
- 27 A. Thank you.
- 28 Q. 580 If you answer any questions.
- 29
- 15:43:43 30 CHAIRMAN: Do you want to ask any questions?

15:43:45 1

2

MR. KEATING: No. Sorry. No questions.

3

4

CHAIRMAN: Thank you very much, Mr. Smith.

15:43:49 5

A. Thank you.

6

7

THE WITNESS THEN WITHDREW.

8

9

CHAIRMAN: That concludes today's evidence. We are sitting tomorrow at 10

15:43:55 10

o'clock for Mr. Dunlop and other witnesses in the afternoon.

11

12

MS. DILLON: There is one witness in the afternoon. There are two witnesses.

13

Well ...

14

15:44:07 15

CHAIRMAN: All right. Well we'll sit at 10 o'clock then.

16

17

MS. DILLON: May it please you, Sir.

18

19

CHAIRMAN: Thank you. All right.

15:44:10 20

21

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

22

THURSDAY, 17TH JANUARY 2008, AT 10: 00 A.M.

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