

**THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY**

**1ST OCTOBER 2008 AT 10.30 AM:**

09:45:58 1  
2  
3  
4 MS. DILLON: Good morning, Sir. Could I have page 23297 please before  
10:37:10 5 Mr. O'Callaghan takes the witness box?

6  
7 This is the summary of the global position that was opened to  
8 Mr. O'Callaghan yesterday and which was backed by a number of documents,  
9 and Mr. Lucey for Mr. O'Callaghan has indicated insofar as the global  
10:37:27 10 picture represented by this page is concerned, Mr. O'Callaghan is in  
11 agreement, but there are two matters that Mr. Lucey wishes to be  
12 emphasised to the Tribunal.

13  
14 One is that the 1997 payment totalling 203,348.83 to Frank Dunlop &  
10:37:44 15 Associates includes a sum of 100,000 pounds plus VAT paid to Mr. Dunlop in  
16 respect of Mr. Dunlop being retained by Mr. O'Callaghan in connection with  
17 the Horgan's Quay development, that is a matter that I will be dealing  
18 within some little detail with Mr. O'Callaghan when we come to the date of  
19 payment but that was one point Mr. Lucey wanted me to address.

10:38:08 20  
21 The second matter is that, and I didn't mention this yesterday although  
22 it's recorded on the page, that the payments of 1.6 million pounds  
23 approximately, well in full the payments of 1,633,556.81 which are the  
24 payments in total received by Frank Dunlop & Associates between 1991 and  
10:38:30 25 2001 include VAT payments by either Riga or Barkhill in the amount of  
26 185,109.53 pounds and that is recorded at this bottom of the portion of  
27 the document that is presently on screen.

28  
29 CHAIRMAN: I see that, yes.

10:38:46 30

10:38:47 1 MS. DILLON: Other than those two issues that arise, I understand that  
2 insofar as the back up documentation which are contained between pages  
3 23298 following through to 23308 are concerned, Mr. O'Callaghan is in  
4 agreement with the contents of the material that's contained in the  
10:39:05 5 summaries and I don't propose, therefore, to deal in detail with any of  
6 the individual retainer payments, other than when the retainer payments  
7 commenced and concluded.

8  
9 The second matter, the third matter that Mr. Lucey mentioned to me this  
10:39:20 10 morning was my inelegant use of the word squire Ms. Ridge around Cork that  
11 is correct Mr. O'Callaghan has a concern about it, I thought I had  
12 corrected that yesterday, but I am happy of course to withdraw that and,  
13 there is no difficulty with that.

14  
10:39:37 15 Mr. O'Callaghan please.

16  
17 MR. LUCEY: Thank you, Sir. I accept the context in which it was said by  
18 Ms. Dillon.

19  
10:39:45 20 CHAIRMAN: All right.

21  
22 MS. DILLON: Mr. O'Callaghan please.

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10:40:02 1 **MR. OWEN O'CALLAGHAN CONTINUES TO BE QUESTIONED**

2 **BY MS. DILLON AS FOLLOWS**

3  
4 CHAIRMAN: Good morning, Mr. O'Callaghan. In fact, Ms. Dillon, we  
10:40:11 5 weren't too sure what "squired" meant but anyway.

6  
7 MS. DILLON: I can explain it to you later, Sir, your Lordship and Judge  
8 Keys, Judge Faherty seems to know.

9

10:40:26 10 Q. 1 Mr. O'Callaghan, good morning.

11 A. Good morning.

12 Q. 2 Yesterday afternoon I think at the conclusion of the day's business I had  
13 asked you I think about the summary sheet and the documentation in  
14 relation to page 23297, isn't that correct?

10:40:37 15 A. Yes.

16 Q. 3 And I think subject to the two matters that I outlined to the Tribunal  
17 this morning, that you are in agreement with the contents of the document  
18 and the back up pages that record, in global terms, on this page, the  
19 payments made either by Riga or Barkhill to Frank Dunlop & Associates, or  
10:40:56 20 the payments that were made by Riga or Barkhill to Shefran?

21 A. Yes.

22 Q. 4 Right. And I think similarly, Mr. O'Callaghan, documents were prepared by  
23 the Tribunal in relation to the payments to Mr. Ambrose Kelly and again I  
24 propose to provide your counsel with those documents from the brief and  
10:41:14 25 maybe tomorrow or next week you can confirm that you are in agreement with  
26 the schedule of payments that were made to Mr. Ambrose Kelly?

27 A. Yes.

28 Q. 5 But I don't propose at this point in time to deal with them on an  
29 individual basis?

10:41:27 30 A. Yes.

- 10:41:27 1 Q. 6 Now, if I can turn back then to deal with really, the issues that arose in  
2 early 1993, and the issue of your relationship with the bank in early  
3 1993, leading into a number of meetings and applications that were made  
4 for additional financing, by Riga and by Barkhill, isn't that right?
- 10:41:49 5 A. Yes.
- 6 Q. 7 And I think, well I might have hurried the issue a little bit yesterday,  
7 in broad terms, once the vote had been passed by Dublin County Council in  
8 December 1992, you were facing into a new situation, isn't that right?
- 9 A. Yes.
- 10:42:05 10 Q. 8 You were going to have to decide with your bankers whether you were going  
11 to sell off part of Quarryvale, whether you were going to proceed to  
12 obtain planning permission and if so, how the expenses that were going to  
13 be incurred would have to be funded, isn't that right?
- 14 A. Yes.
- 10:42:20 15 Q. 9 Would you agree with me, Mr. O'Callaghan, that in your discussions with  
16 the bank, in January/February/March/April/May and June of 1993, apart from  
17 one instance, you didn't raise any issue in relation to seeking any  
18 funding for Mr. Frank Dunlop or Frank Dunlop & Associates?
- 19 A. Raise any funding?
- 10:42:42 20 Q. 10 Any issue from the bank. In other words, when you provided a list of  
21 either expenses you anticipated you would have to incur, or expenses that  
22 you had incurred which would become due with one or two exceptions, you  
23 did not include any reference to Mr. Frank Dunlop or Frank Dunlop &  
24 Associates?
- 10:42:59 25 A. No, that's correct.
- 26 Q. 11 That's correct. Now, is that because it was your view at this stage that  
27 in 1993 you would not have a necessity for the services of Mr. Frank  
28 Dunlop insofar as the zoning of Quarryvale was concerned?
- 29 A. Yes.
- 10:43:15 30 Q. 12 Right. And was that because you were reasonably happy come December 1992

- 10:43:21 1 that you would hold onto the zoning you had obtained at the meeting in  
2 December 1992?
- 3 A. Reasonably happy, yes.
- 4 Q. 13 You would of course have known that the matter would have to come back in  
10:43:31 5 before the council again, isn't that right?
- 6 A. Very much so, yes.
- 7 Q. 14 And indeed, I think you were involved in preparing an amendment to the  
8 written statement, isn't that right, which came before the council, in  
9 June of 1993?
- 10:43:44 10 A. Yes.
- 11 Q. 15 Right. And I think there was a second public display after that  
12 amendment, isn't that right?
- 13 A. Yes.
- 14 Q. 16 And the matter came back in before the council again in October of 1993,  
10:43:54 15 isn't that right?
- 16 A. Yes.
- 17 Q. 17 And there were certain motions brought which weren't proceeded with, which  
18 sought in October 1993, to overturn what had been achieved in December,  
19 isn't that right?
- 10:44:06 20 A. Yes.
- 21 Q. 18 And I think it was around that time that you met with Mr. Pat Rabbitte,  
22 isn't that the position?
- 23 A. Yes, when he was chairman of -- I'm not sure of that, when I met Pat  
24 Rabbitte.
- 10:44:19 25 Q. 19 I think I may have mislead you, Mr. O'Callaghan, by suggesting yesterday  
26 that in fact Mr. Rabbitte was the chairman of the meeting in December  
27 1992, in fact he was the chairman of the meeting in October 1993, isn't  
28 that right?
- 29 A. Yes.
- 10:44:30 30 Q. 20 And Ms. Fitzgerald was the chairman of the meeting in 1992, isn't that

10:44:34 1 right?

2 A. '92. Yes, that's correct.

3 Q. 21 But in terms of a broad planning picture, at the commencement of 1993,

4 effectively, insofar as paying money to -- insofar as dealing with the

10:44:45 5 bank was concerned, you weren't seeking funding from the bank in respect

6 of any monies you were going to have to pay to Mr. Dunlop, is that right?

7 A. Yes.

8 Q. 22 All right. But you still had a need for Mr. Dunlop's services until the

9 Development Plan was concluded, which in fact didn't happen until December

10:45:01 10 1993, isn't that right?

11 A. Yes, yes.

12 Q. 23 You had three inter-reactions really, well two main inter-reactions in

13 1993 with the councillors, that was the June 1993 dealing with the

14 amendment to the written statement, isn't that right?

10:45:15 15 A. Yes.

16 Q. 24 And then the October 1993 after the second public display when it came

17 back in for consideration by the councillors again, isn't that right?

18 A. Yes.

19 Q. 25 All right. And I will deal with those, the records are a matter of

10:45:27 20 formality. But in January we had looked at yesterday, at the event

21 leading up to your meetings with the bank in January and it might be more

22 appropriate if I went a little bit slower through these than I probably

23 tried to shorten the matter yesterday, if we look at 9142,

24 Mr. O'Callaghan. On the 26th January 1993, Ms. Basquille telephoned

10:45:55 25 Mr. Gilmartin to see whether he would attend a meeting on the 9th

26 February, isn't that right?

27 A. Yes.

28 Q. 26 And that was in relation to Barkhill and she advised him that the purpose

29 of the meeting was to enable all the shareholders take part in discussions

10:46:07 30 to decide how Barkhill should move forward in relation to the Quarryvale

10:46:10 1 site.

2 A. Yes.

3 Q. 27 She told him that you were in the process of finalising an outline

4 development proposal to form the basis of discussions and that AIB

10:46:18 5 considered it beneficial that all shareholders would have the opportunity

6 to clear the air, isn't that right?

7 A. Yes.

8 Q. 28 In order to ensure the next stage of the project progresses as smoothly as

9 possible with the agreement of all parties.

10:46:30 10 A. Yes.

11 Q. 29 Do you agree with that?

12 A. Yes.

13 Q. 30 Now, what needed to be cleared as between the shareholders in January of

14 1993, Mr. O'Callaghan?

10:46:43 15 A. Well, it was a case, it was an opportunity to explain to everybody what

16 our plans would be to go forward with Quarryvale, and the how we would

17 develop it and how we would get anchors on board etcetera, how we would

18 develop the scheme. We were now getting into the planning stages.

19 Q. 31 Yes, you have two matter that is you are going to be dealing with, one is

10:47:04 20 the planning in relation to Quarryvale, one is the continued rezoning

21 matters which you have agreed with me, was going to come back in before

22 the council in 1993 and you had the additional matter of the stadium to

23 manage is well, isn't that right?

24 A. Yes. And the additional matter of funding for everything.

10:47:18 25 Q. 32 Yes. But insofar as this memorandum records the bank considering it

26 beneficial that all shareholders would have the opportunity to clear the

27 air, it suggests the bank were of the view in January 1993 that for

28 whatever reason, something had occurred between yourself and Mr. Gilmartin

29 that required in effect peace to be brokered, do you agree with me that

10:47:38 30 that's what that seemed to record?

10:47:40 1 A. That's right, yes.

2 Q. 33 And what was it, Mr. O'Callaghan, that had led, by January of 1993 to the  
3 break down, if I can call it that, of your relationship with  
4 Mr. Gilmartin?

10:47:52 5 A. Well, I am trying to remember, I do know we discovered that, around that  
6 time that Tom Gilmartin tried to upset the vote and tried to get certain  
7 people to vote against Quarryvale at the time and that wasn't very  
8 encouraging needless to say. I believe he rang Sean Gilbride and possibly  
9 McGrath to get them to vote -- the vote in November, November 17th, in  
10 other words, to shoot down Quarryvale. It wasn't very encouraging to hear  
11 that.

12  
13 Secondly, I am not too sure if Tom Gilmartin was very happy with 250,000  
14 square feet. As you know he wanted one and a half million square feet,  
10:48:36 15 and thirdly, he wanted to go, walk away from Quarryvale. He suggested  
16 that I think probably six months before that. The difficulty was we were  
17 not in a position at the time to buy him out to give him his money back  
18 and the banks wouldn't deliver.

19 Q. 34 When you refer to the meeting of November 17th, do you mean,  
10:48:55 20 Mr. O'Callaghan, the meeting of December 17th?

21 A. Sorry the vote, yes.

22 Q. 35 Now, is it possible that in fact what had led to the deterioration in your  
23 relationship between Mr. Gilmartin and yourself was the threat that the  
24 bank had received in December 1993, that Mr. Gilmartin would go to the  
10:49:12 25 newspapers and that he would bring the entire Quarryvale development down?

26 A. No, in fact I don't think the banks ever even mentioned that to me. First  
27 of all Mr. Gilmartin never said that to me and, like, the only person  
28 Mr. Gilmartin ever said that to the best of my knowledge was Mary  
29 Basquille. I don't think he ever said to O'Farrell, to McGrath or myself,  
10:49:32 30 or John Deane for that matter but that would be Tom Gilmartin's style, he



- 10:49:37 1 would say something to us and something to somebody else but that point  
2 never came to me, in fact I wasn't even aware of that as far as I know.
- 3 Q. 36 Was Mr. Gilmartin making complaints to you about the conduct of the  
4 operation, not necessarily in relation to rezoning but how he himself had  
10:49:53 5 been dealt with vis-a-vis the shareholder's agreement?
- 6 A. No, not to me.
- 7 Q. 37 All right. So is it a surprise to you then, Mr. O'Callaghan, that the  
8 bank apparently have recorded in January 1993, that one of the beneficial  
9 matters that would happen if yourself and Mr. Gilmartin could be brought  
10:50:09 10 together would be to give you an opportunity and him to clear the air?
- 11 A. Of course, and for us to be able to set out the whole situation and tell  
12 him naturally where we were going and what we hoped to do, assuming that  
13 the zoning would hold in and that we were then going to make progress and  
14 make a planning application and try and get anchors in place and try and  
10:50:27 15 start development phase and hopefully do then what Tom Gilmartin always  
16 wanted at that stage, that was to buy him out.
- 17 Q. 38 And you would of course have known from the 17th December 1993 when  
18 Mr. Deane told you, that Mr. Gilmartin had been seeking to contact at  
19 least Councillor McGrath on at least two occasions in the offices of  
10:50:45 20 Dublin County Council on the evening of the 17th, isn't that right?
- 21 A. Oh, yes, I knew that. Yes.
- 22 Q. 39 Did you subsequently then find out about Mr. Gilmartin contacting Mr.  
23 Gilbride and Mr. McGrath?
- 24 A. I heard that, yes. I was told that as well.
- 10:50:57 25 Q. 40 Was Mr. Gilmartin's complaints as relayed to you by Mr. Gilbride and  
26 Mr. McGrath arising from an attempt to reduce the existing cap?
- 27 A. Yeah, I'm not quite sure what it was, I think it was a case of, I think  
28 basically it was a case that he wanted, probably wanted me out of it to be  
29 blunt about it.
- 10:51:24 30 Q. 41 Well, that's not a matter he was likely to discuss with either Councillor

10:51:24 1 Gilbride or Councillor McGrath, would you agree with me, Mr. O'Callaghan,  
2 that if Mr. Gilmartin was ringing Councillor Gilbride and Councillor  
3 McGrath it was in connection with something to do with the council  
4 business, is that right?

10:51:33 5 A. Yeah, probably about the size of the development actually, the cap.  
6 Q. 42 It was probably it do with the cap, isn't that right?  
7 A. Possibly, yes.  
8 Q. 43 Because Mr. Gilmartin had a view that the cap was being reduced  
9 deliberately to dilute his equity or interests in Barkhill, isn't that  
10:51:45 10 right?  
11 A. Oh, yes. Yes, yes.  
12 Q. 44 Does that assist you now, Mr. O'Callaghan, at recollecting what it was  
13 that had yourself and Mr. Gilmartin at odds in January of 1993, that led  
14 the bank to seek to effectively broker a peace or clear the air between  
10:52:00 15 the two of you?  
16 A. Well you see, I don't think we were really at odds, that's the amazing  
17 things about all this. Around this time I would have been talking on the  
18 telephone to Tom Gilmartin, but Tom never told me or never -- he'd never  
19 tell me up front what his problems were, in fact he occasionally told the  
10:52:16 20 bank but he mainly told Mary Basquille about his problems.  
21  
22 So we didn't have any great problem that could not be solved if we got  
23 together and met, I presume that's what the bank were trying to do at that  
24 stage. I knew at that -- I knew well that Tom Gilmartin was on the  
10:52:33 25 telephone on the 17th December because John Deane told me that. That  
26 wasn't very nice. I am not too sure if at that time I had actually known  
27 that he had been in contact with Gilbride and possibly McGrath to try and  
28 scupper the vote, I wasn't quite sure about that, if I knew that happened  
29 at that particular stage, and at any rate we had so many problems, we had  
10:52:54 30 so many, many, many problems to solve, mainly money to close sales and the

10:52:59 1 balance of the lands for Quarryvale together, that any little argument  
2 Gilmartin and myself had were insignificant I can assure you, in the  
3 context of the whole project.

4 Q. 45 If you had been told about Mr. Gilmartin's complaints is its the case,  
10:53:11 5 Mr. O'Callaghan, that you were so concerned with the other issues arising  
6 in Barkhill that you would have dismissed Mr. Gilmartin's concerns?  
7 A. Quite possibly yeah, we had a huge amount of problems at the time, massive  
8 problems.

9 Q. 46 You would have known of course about Mr. Gilmartin's telephone calls on  
10:53:24 10 the 17th December 1993, isn't that right?  
11 A. '93.  
12 Q. 47 '92?  
13 A. '92.  
14 Q. 48 Is that right?  
10:53:32 15 A. To the Council.  
16 Q. 49 To Mr. Deane?  
17 A. Oh, yes.  
18 Q. 50 Handled by Mr. Deane. And you would have known that Mr. Gilmartin wanted  
19 to meet with at least Councillor Gilbride or talk to him on the evening of  
10:53:40 20 the 17th December?  
21 A. Yes and McGrath, Councillor McGrath.  
22 Q. 51 Isn't that right?  
23 A. Yes. I knew that.  
24 Q. 52 And you would have known I assume, by January, that the bank had visited  
10:53:50 25 with Mr. Gilmartin on the 17th December 1993?  
26 A. I knew that, but I assumed it was just Dave McGrath had actually gone to  
27 meet him, I didn't know two people had gone.

28 Q. 53 And you would have known about the publication about Mr. Gilmartin's  
29 bankruptcy by Mr. Harding in the Sunday Business Post on 13th December  
10:54:09 30 1993, isn't that right?

- 10:54:10 1 A. Well I knew that long before that.
- 2 Q. 54 No you wouldn't have -- would you have known of the proposed publication
- 3 by Mr. Harding?
- 4 A. No but I knew before that, about the bankruptcy.
- 10:54:19 5 Q. 55 Yes but you would have known about the publication in the newspapers when
- 6 it was published, isn't that right?
- 7 A. Oh, yes.
- 8 Q. 56 Did you meet in January of 1993 with Mr. Gilmartin?
- 9 A. I can't remember. I don't think -- I can't remember.
- 10:54:36 10 Q. 57 At 9154, Mr. O'Callaghan, is an attendance by the bank on Mr. Gilmartin,
- 11 and in that it records on the second paragraph he, that's Mr. Gilmartin:
- 12 "Indicated that Owen O'Callaghan had been with him last week discussing
- 13 the overall Barkhill situation. O'Callaghan is meeting them again on
- 14 Thursday in the UK and they are going to meet a major institution, pension
- 10:55:02 15 fund in relation to a significant involvement in Barkhill, he mentioned a
- 16 figure of 10 million Irish pounds. He felt he had no choice but to get
- 17 O'Callaghan involved in that Tom needed" -- the sentence doesn't make much
- 18 sense after that?
- 19 A. That never happened anyway.
- 10:55:18 20 Q. 58 You didn't a meeting with Mr. Gilmartin as is recorded in that memorandum
- 21 --
- 22 A. No.
- 23 Q. 59 -- in January of 1993?
- 24 A. Yes.
- 10:55:24 25 Q. 60 And you had no plans to visit with Mr. Gilmartin or to meet institutional
- 26 investors?
- 27 A. Not at all.
- 28 Q. 61 Is that correct?
- 29 A. I never met an institutional investor with Tom Gilmartin.
- 10:55:33 30 Q. 62 With Mr. Gilmartin. Now, I think by the 2nd February 1993, at 9163,

- 10:55:38 1 Mr. O'Callaghan, information was sent to Mr. Gilmartin in advance of the  
2 proposed meeting on the 9th February, '93 isn't that right?
- 3 A. Yes.
- 4 Q. 63 And in of the letter that was sent, at 9164, Ms. Basquille for Mr. McGrath  
10:56:02 5 acknowledges that Mr. Gilmartin wanted a one-on-one meeting and in the  
6 first paragraph acknowledges that "Mary Basquille had a been in contact  
7 with Mr. Gilmartin to arrange a meeting for the purpose of reviewing  
8 Barkhill's facilities with AIB and that understanding that Mr. Gilmartin  
9 would attend on the 9th February '93", isn't that right?
- 10:56:18 10 A. Yes.
- 11 Q. 64 And with that documentation was sent 9165, which is an authorisation for  
12 two payments to Mr. Frank Dunlop?
- 13 A. Yes.
- 14 Q. 65 And a payment to Mrs. Gilmartin which was the equivalent of sterling 5,000  
10:56:35 15 pounds?
- 16 A. Yes.
- 17 Q. 66 Which was debited I think to the Barkhill loan, isn't that right?
- 18 A. Yes.
- 19 Q. 67 Now, did you know the circumstances in which that arrangement was made to  
10:56:44 20 pay Mrs. Gilmartin 5,000 pounds?
- 21 A. I am not quite sure of the actual details, but I do know that those  
22 arrangements were made by the bank, yes, I knew that was done actually,  
23 but I didn't know any great detail of it.
- 24 Q. 68 Were you aware, did you know whether or not that money had been brought  
10:57:05 25 over to Mr. Gilmartin at the time that Mr. McGrath and Mr. Kay went to  
26 visit with Mr. Gilmartin on the 17th?
- 27 A. I'm sorry, no, I did not know that.
- 28 Q. 69 Also attached to that is 9166, and what was set out here by the bank was  
29 the loan summary for Barkhill, isn't that right?
- 10:57:26 30 A. Yes.

10:57:27 1 Q. 70 And one matter I want to draw to your attention, under the heading  
2 "payments outstanding". Do you see first of all drawings under the number  
3 2 loan which is further up the page please, do you see there a sum of  
4 "88,000, County Council"?

10:57:47 5 A. Yes.

6 Q. 71 And that was under the number 2 loan up to December 1992, that was the  
7 deposit on the County Council lands, isn't that right?

8 A. Yes, yes.

9 Q. 72 If you move down there then, you see that the payments outstanding, you  
10 will see a sum of 812,000 for the balance of the County Council lands?

10:58:01 11 A. Yes.

12 Q. 73 And I had put it to you yesterday, Mr. O'Callaghan, and you disagreed with  
13 me that in fact the bank had authorised the loan on the basis of the  
14 800,000 pounds being paid to the Council and that by January of 1993 that  
10:58:22 15 money had been spent and the lands hadn't been bought, I think you  
16 disagreed with me, isn't that right?

17 A. Yes. Well, I think what you said was the money was spent on something  
18 else.

19 Q. 74 Well the money was spent was the first point, isn't that right, and the  
10:58:35 20 lands weren't bought?

21 A. Yes.

22 Q. 75 Okay. If you look at the documentation at 5180 of the 31st May, 1991,  
23 Mr. O'Callaghan, this is where you receive an additional 3 million pounds?

24 A. Yes.

10:58:48 25 Q. 76 Do you see that? And you see it says "sought additional 3 million to  
26 fully assemble site, taking to planning stage and a further 2.5 million of  
27 interest roll up, making 14.5 million in all". Isn't that right?

28 A. Yes.

29 Q. 77 The purpose of that can be found further down the page, which is described  
10:59:06 30 as "to part finance site assembly of 176" --

- 10:59:10 1 A. Sorry I haven't got that, I have sorry.
- 2 Q. 78 "To part finance site assembly of 176 acres at Palmerstown Dublin and to  
3 bring to planning stage". Is that right?
- 4 A. Yes.
- 10:59:21 5 Q. 79 And then if you turn to page 5183 under the heading "security, to be  
6 obtained". If we just scroll down the page please, you will see that  
7 under the security to be obtained were 11 acres, Dublin Corporation  
8 costing 0.8 million, is that right?
- 9 A. Yes.
- 10:59:41 10 Q. 80 And I think I had put it to you that when it came to, at 9127, in January  
11 '93 at your meeting, Mr. McGrath had highlighted, in the first paragraph  
12 please, that "The last increase in facility sanctions from 9 million to 14  
13 million had incorporated 0.9 million to acquire the County Council lands  
14 which remains outstanding, despite the fact that this portion of the  
11:00:07 15 facility and more besides had been utilised for increased fee payments  
16 beyond the level anticipated". Isn't that right?
- 17 A. "Fee/Land payments beyond the level."
- 18 Q. 81 Isn't that right?
- 19 A. Yes.
- 11:00:17 20 Q. 82 Do you agree with me that when the loan was sanctioned in May of 1991 part  
21 of that sanction, Mr. O'Callaghan, related to the acquisition of the  
22 County Council lands for the sum of 9 million pounds, being an 88,000  
23 pounds deposit and balance of 810,000?
- 24 A. I think so, yes.
- 11:00:35 25 Q. 83 And that the bank were correct in January of 1993 when they were  
26 discussing with you, or one of the points they were make something they  
27 had given sanction to you and to Barkhill to acquire the County Council  
28 lands for 890,000 pounds, and that while 88,000 pounds had been paid, and  
29 that sanction used up, the land had not yet been acquired, is that right?
- 11:01:00 30 A. Yes, yes.

- 11:01:00 1 Q. 84 And in 1993 part of the sanction that you obtained in 1993 related to --
- 2 A. 1991.
- 3 Q. 85 In 1993, when you --
- 4 A. Yes.
- 11:01:08 5 Q. 86 -- when you achieved in June of '93 a later sanction, part of that
- 6 sanction was to deal with, on an ongoing basis, the acquisition of those
- 7 lands, isn't that right?
- 8 A. Yes.
- 9 Q. 87 So in fact the bank were correct in January '93 when they put it to you
- 11:01:20 10 that they had advanced you money on one basis and how ever it had been
- 11 utilised, it had not been utilised for the basis upon which it was
- 12 advanced, isn't that right?
- 13 A. Yes.
- 14 Q. 88 Now, just looking then at 9167 which is another, the next page that was
- 11:01:37 15 given to Mr. Gilmartin, under the letter from Ms. Basquille of the 2nd
- 16 February '93, and do you agree with me that set out there is, in the first
- 17 part of that page, the utilisation of the Riga subordinated 1 million
- 18 pounds loan, is that right?
- 19 A. Yes.
- 11:01:55 20 Q. 89 That clearly shows three Sheafran payments as they were there described,
- 21 is that right?
- 22 A. Yes.
- 23 Q. 90 And in addition a sundry item of 20,000 pounds?
- 24 A. Yes.
- 11:02:03 25 Q. 91 Now, we have dealt with those already, Mr. O'Callaghan, and the accounting
- 26 treatment of them, but do you agree with me that insofar as those two
- 27 sundry items were concerned they were ultimately attributed to
- 28 Mr. Gilmartin's loan account?
- 29 A. The two tens, 20,000 yes.
- 11:02:19 30 Q. 92 Yes, the two tens?



- 11:02:21 1 A. Yes, I do.
- 2 Q. 93 I think you agreed that that should not have occurred, isn't that right?
- 3 A. Absolutely. Yes.
- 4 Q. 94 And one of those payments was a payment to Councillor McGrath?
- 11:02:28 5 A. Yes.
- 6 Q. 95 And the other now transpires to be a payment to the late Liam Lawlor,  
7 isn't that right?
- 8 A. That's correct.
- 9 Q. 96 They were never identified as such I think to Mr. Gilmartin or the bank,  
11:02:37 10 isn't that right?
- 11 A. Yes.
- 12 Q. 97 Right. And when back up documentation was sought by either DeLoittes &  
13 Touche or by anybody else, no back up documentation was furnished, isn't  
14 that right?
- 11:02:48 15 A. Except that they were made -- the bank were aware of that actually, those  
16 two payments.
- 17 Q. 98 Yes. You disagree with Mr. Kay's evidence, isn't that right, in relation  
18 to the letter that you sent in December I think of 1991, and Mr. Kay has  
19 told the Tribunal that he did not receive information from you indicating  
11:03:04 20 those payments were made to politicians, isn't that right?
- 21 A. That's correct.
- 22 Q. 99 You disagree with Mr. Kay's evidence and you say you told him?
- 23 A. Correct.
- 24 Q. 100 Isn't that right, that ultimately is a matter for the Tribunal to resolve?
- 11:03:15 25 A. Yes.
- 26 Q. 101 And insofar as the three Sheafran payments are recorded there totalling  
27 80,000 pounds, these are the three payments made in 1991 to the end of the  
28 1991 campaign for the rezoning of Quarryvale, isn't that right?
- 29 A. Yes.
- 11:03:29 30 Q. 102 Right. And insofar as they are concerned, do you agree that in December

11:03:34 1 1992, and May of 1993 that Deloitte & Touche were seeking back up  
2 documentation in relation to those invoices among other invoices and that  
3 they were not produced?  
4 A. Yes.

11:03:45 5 Q. 103 And that those three invoices, which you say you got from Mr. Dunlop were  
6 invoices that you yourself kept exclusively in your office in Cork, isn't  
7 that right?  
8 A. Yes.

9 Q. 104 And you don't believe that you ever produced them either to Mr. Lucey, who  
11:03:59 10 was your accountant in Riga with whom Mr. Lucy was, to Mr. Lucey your  
11 accountant in Riga with whom Mr. Fleming was communicating, isn't that  
12 right?  
13 A. Yes.

14 Q. 105 You didn't produce them to the bank, isn't that right?  
11:04:13 15 A. Yes.

16 Q. 106 You didn't produce them to Deloitte & Touche?  
17 A. Yes.

18 Q. 107 And you didn't produce them to Mr. Gilmartin?  
19 A. Yes.

11:04:19 20 Q. 108 Right. In fact, I think it's fair to say that the first time you produced  
21 them was when the Tribunal came looking for them, is that right?  
22 A. Yes.

23 Q. 109 All right. Now, but it is clear from this documentation that on receipt  
24 of this document Mr. Gilmartin had to be fully aware of the two sundry  
11:04:35 25 items, in other words, he had to be aware of the fact that there was a  
26 claim in respect of the two sundry items, isn't that right?  
27 A. Yes.

28 Q. 110 He may not have known what they were for, but he knew it was there, isn't  
29 that right?  
11:04:46 30 A. Yes.

- 11:04:46 1 Q. 111 And the same for the Sheafran payments?
- 2 A. Yes.
- 3 Q. 112 If you go down then to the fees paid from Barkhill number 2 loan?
- 4 A. Yes.
- 11:04:54 5 Q. 113 It is clear there that fees were paid to Ambrose Kelly and Mr. Frank  
6 Dunlop, or Frank Dunlop & Associates, isn't that right?
- 7 A. Yes.
- 8 Q. 114 And in addition payments were made this time to a company called Shefran,  
9 out of the number 2 loan, isn't that right?
- 11:05:08 10 A. Yes.
- 11 Q. 115 You will see approximately half way down that please, if it could be  
12 increased please?
- 13 A. Yes, I have it.
- 14 Q. 116 And they were two payments made by the bank by way of bank draft to Mr.  
11:05:20 15 Dunlop in 1992 totalling 70,000 pounds, isn't that right?
- 16 A. Yes.
- 17 Q. 117 And they were made to Shefran as opposed to Sheafran, isn't that right?
- 18 A. Yes.
- 19 Q. 118 And regardless of whether, what are described in these lists are either  
11:05:35 20 Sheafran or Shefran, by February of 1993, Mr. Gilmartin had to be aware of  
21 payments totalling 80,000 pounds to Shefran in 1991, isn't that right?
- 22 A. He should have been aware if he read this, yes.
- 23 Q. 119 And he should equally have been aware of 70,000 pounds to Sheafran in  
24 1992?
- 11:05:53 25 A. Yes.
- 26 Q. 120 Isn't that right? Did Mr. Gilmartin ever raise any queries with you,  
27 Mr. O'Callaghan, about Shefran or Sheafran, who it was, what it was and  
28 why payments were being made to it?
- 29 A. Never.
- 11:06:13 30 Q. 121 Now, the meeting for the 9th February, 1993, Mr. O'Callaghan, is it fair

- 11:06:20 1 to say that the purpose of that meeting was to decide on a strategy  
2 between yourself and Mr. Deane and Mr. Gilmartin on one side, on behalf of  
3 Barkhill, and the bank on the other side for going forward?  
4 A. Absolutely.
- 11:06:32 5 Q. 122 Now, I think the position is that while it was expected and hoped that  
6 Mr. Gilmartin would attend that meeting, he didn't do so, is that right?  
7 A. That's correct, yes.
- 8 Q. 123 And on the day prior to the day on which the meeting was to happen, at  
9 9195, Mr. Lucey, that is Mr. Aidan Lucey, on your behalf effectively, or  
11:06:57 10 be laugh of O'Callaghan Properties or Riga, wrote to Deloitte & Touche,  
11 Mr. Leo Fleming Barkhill, isn't that right?  
12 A. Yes.
- 13 Q. 124 And in that letter he referred to Mr. Fleming's letter of the 15th  
14 December, isn't that right?  
11:07:10 15 A. Yes.
- 16 Q. 125 And he referred to items one to ten and confirmed in the third paragraph  
17 "he did not have any further supporting documentation for items one to  
18 ten".  
19 A. Yes.
- 11:07:19 20 Q. 126 And advised him to check with AIB, isn't that right?  
21 A. Yes.
- 22 Q. 127 Because they had made the payments and item one to ten as we have seen,  
23 Mr. O'Callaghan, at 8792, they contained the three Shefran 1991 payments  
24 and the two sums of 10,000 pounds, isn't that right?  
11:07:38 25 A. Yes.
- 26 Q. 128 And I think we have seen the documentation at 9539 and you have confirmed  
27 that these handwritten notations in relation to those documents were made  
28 by you, isn't that right?  
29 A. Yes.
- 11:07:52 30 Q. 129 And they would have been made by you in the course of your consideration

11:07:56 1 of the document prior to the meeting in January, I beg your pardon, in  
2 February 1993?

3 A. Yes.

4 Q. 130 Isn't that right? Now, Mr. Fleming gave evidence to the Tribunal as you  
11:08:12 5 are aware, in relation to his request for information, and he says that  
6 the most -- it was his view that the most appropriate reference point for  
7 the invoices would have been Riga, and would you agree with that?

8 A. Yes.

9 Q. 131 In other words, what Mr. Fleming was telling the Tribunal is that because  
11:08:32 10 Riga had made the payments in the first instance, albeit out of the  
11 subordinated loan, that they, it was the person or body who should be able  
12 to provide the information, rather than it being referred on to AIB, isn't  
13 that right?

14 A. Yes.

11:08:45 15 Q. 132 And do you agree with Mr. Fleming that it was his view and his view was  
16 correct that it was from you, or Riga, that he should have been able to  
17 obtain the information?

18 A. Yes.

19 Q. 133 Can you explain why it is that Mr. Lucey didn't go to you for the  
11:09:04 20 invoices, Mr. O'Callaghan, when was writing on 8th February 1993 to  
21 Mr. Fleming?

22 A. Well he did come to me for the invoices.

23 Q. 134 Why didn't you give him the invoices?

24 A. Because at the time I didn't think, I wasn't able to locate the invoices  
11:09:18 25 because they were on, included in a bunch of 50 or 60 files I had on a  
26 bench, and probably was too busy, if the invoices didn't seem very  
27 important to me, because at that stage the invoices had been cashed, been  
28 paid. We had been refunded so they were not of any great significance and  
29 I didn't have any time to look for them. And I gave him, as I said to you  
11:09:39 30 before I gave him a short answer, which I probably shouldn't have done,

11:09:43 1 that was I can't find them, cant locate them.

2 Q. 135 If you had given that short answer to Mr. Lucey that would explain

3 Mr. Lucey's letter of the 8th February '93 at 9195, that he is saying

4 effectively on behalf of Riga, that he can't assist in relation to items

11:10:02 5 one to ten, isn't that right?

6 A. That's right.

7 Q. 136 But when you came to discuss the matter, Mr. O'Callaghan, at the bank's

8 meetings, and the issue arose about the completion of the audited

9 accounts, then I suggest to you the significance of providing those

11:10:16 10 invoices became more real, isn't that right?

11 A. That never came up at the bank meeting.

12 Q. 137 Did you not consider the contents of this documentation at a bank meeting?

13 A. No, if it is I don't recall it, I doubt it very, very much. I don't think

14 anybody went through the detail, if it was looked at it was looked at very

11:10:36 15 very quickly and somebody said we better look after it, there was no

16 detailed discussion, I can assure you.

17 Q. 138 Yes, at 9539, then in the absence of your recollection of discussing that

18 at any bank meeting, Mr. O'Callaghan, what remains are the notes that you

19 undoubtedly made at some stage when you considered the document, isn't

11:10:55 20 that right?

21 A. In my own office.

22 Q. 139 In your own office. Which was that there were no invoices and that the

23 80,000 pounds was for the June elections, is that right?

24 A. Sorry.

11:11:06 25 Q. 140 Can you increase number six please? Isn't that right?

26 A. Yes. That's right, written on the side there is "no invoice", that's

27 correct.

28 Q. 141 Yes. And then written in the centre between the three dates and three

29 payments there are the words "no invoice June elections"?

11:11:27 30 A. "No invoice", yes.

- 11:11:29 1 Q. 142 You have given your evidence in relation to that.
- 2 A. Yes I have.
- 3 Q. 143 But in the absence of a recollection of discussing this documentation,
- 4 Mr. O'Callaghan, with anybody arising out of a bank meeting, what remains
- 11:11:40 5 account contemporaneous record you made at some stage in 1993 when you
- 6 considered page 9539, isn't that right?
- 7 A. Yes.
- 8 Q. 144 All right. Now, I think on the 9th February at 9237, Mr. Gilmartin
- 9 advised he wouldn't be attending the meeting, isn't that right?
- 11:12:00 10 A. Yes.
- 11 Q. 145 And Mr. McGrath is reported as speak to him and advising him they would
- 12 fund his travelling costs and while he initially agreed that he telephoned
- 13 back to say he wasn't coming, isn't that right?
- 14 A. Yes.
- 11:12:15 15 Q. 146 At 9232 there is a record of the meeting on 9th February and it is taken
- 16 by the bank, isn't that the position?
- 17 A. Yes.
- 18 Q. 147 Now, Mr. Deane has told the Tribunal that he doesn't regard it as being a
- 19 board meeting it was more a bank customer meeting because Mr. Gilmartin
- 11:12:30 20 did not attend, would you agree with that?
- 21 A. That happened a few times, yes, yes I would.
- 22 Q. 148 In other words, what he said while it was intended that it would be a
- 23 board meeting, it turned into an ordinary meeting because Mr. Gilmartin
- 24 wasn't in attendance?
- 11:12:43 25 A. Yes.
- 26 Q. 149 Right. And there is no reference in this document which is taken by the
- 27 bank, of any discussion about the audit queries?
- 28 A. Yes.
- 29 Q. 150 Right. And what the bank were discussing in the first instance was the
- 11:12:54 30 planning permission, isn't that right?

11:12:55 1 A. Yes.

2 Q. 151 And it records as follows "An outline plan of the development on the basis  
3 of the reduced retail element was produced, although it was indicated that  
4 this effectively a first draft only, and will more than likely change.

11:13:07 5 Owen O'Callaghan confirmed that John Fitzgerald the local County Manager  
6 will accept a planning application from Barkhill prior to finalisation of  
7 the Draft Development Plan."  
8

9 And I think you have already confirmed that he had agreed that with you,  
11:13:20 10 isn't that right?

11 A. Yes.

12 Q. 152 Then you deal with the second issue which is the retail cap of 250,000  
13 square feet and the following is recorded "Owen feels that this can be  
14 grossed up to 350,000 square feet when malls, service areas, restaurants  
11:13:35 15 etcetera are taken into account and broken down as follows". You set out  
16 250,000 square feet for retail use and non-retail at 100,000?

17 A. Yes.

18 Q. 153 Would it be fair to say what you were saying there what would only be  
19 contained in the 250,000 square feet was actual shopping, which was  
11:13:53 20 selling goods, whereas as the common areas and the other parts would fall  
21 into a different category of non-retail?

22 A. Yes.

23 Q. 154 Right. So effectively you were hoping to maximise the interpretation of  
24 the 250,000 square feet?

11:14:06 25 A. Oh, yes, absolutely.

26 Q. 155 Right. The next discussion relates to creditors and at 9233, the details  
27 that were outlined is the 80,000 completion of the County Council lands,  
28 10,000 for legal fees and that arose for Seamus Maguire and included in  
29 that were matters in relation to the moving of the itinerants from the  
11:14:29 30 from your lands at Quarryvale, is that right?



- 11:14:33 1 A. That is correct.
- 2 Q. 156 25,000 repairs to Bruton House, 20,000 to mound and fence in the site.
- 3 That's an expense that arose after you moved the itinerants off?
- 4 A. Yes.
- 11:14:43 5 Q. 157 300,000 planning application, 800,000 pounds Kelly is seeking 350,000
- 6 pounds to cover costs with balance at the construction stage, but it's
- 7 hoped to have the initial outlay reduced to 300,000. 15,000 Ove Arup,
- 8 10,000 Deloitte & Touche, 2.4 million bank interest, total 3.6 million,
- 9 isn't that right?
- 11:15:05 10 A. Yes.
- 11 Q. 158 Now, you are not including there any forward position in relation to Mr.
- 12 Dunlop, isn't that right?
- 13 A. Yes.
- 14 Q. 159 You are not telling the bank that you will incur any expenses in relation
- 11:15:14 15 to him going forward, isn't that the position?
- 16 A. Yes.
- 17 Q. 160 Now, then you are recorded as saying that "the priority must be to obtain
- 18 planning permission for the site and get anchors committed". Isn't that
- 19 right?
- 11:15:27 20 A. Yes.
- 21 Q. 161 Then later down in the same paragraph the bank record "O'Callaghan and
- 22 Deane were requested to provide details in relation to the proposed
- 23 development programme in terms of timings, cost and appraisal". Isn't
- 24 that right?
- 11:15:39 25 A. Yes.
- 26 Q. 162 Finally "the subject of Tom Gilmartin was raised and it was suggested that
- 27 Owen O'Callaghan should officially inform Tom of the various matters
- 28 discussed at the meeting and arrange a formal board meeting to review
- 29 matters". Isn't that right?
- 11:15:51 30 A. Yes.

- 11:15:51 1 Q. 163 I think at 9230 through items one through to 16 there is a record of what  
2 was formally discussed at that meeting.
- 3 A. Yes.
- 4 Q. 164 Which was not a board meeting. And I think that on the 10th February,  
11:16:06 5 Mr. McGrath wrote to Mr. Gilmartin at 9239, expressing his extreme  
6 disappointment at Mr. Gilmartin's non-attendance, isn't that right?
- 7 A. Yes.
- 8 Q. 165 And in the third paragraph said "the bank found the meeting helpful and  
9 Mr. O'Callaghan had brought them fully up to date and that he would be  
11:16:26 10 formulating brief minutes and those would be sent to him". Isn't that  
11 right?
- 12 A. Yes.
- 13 Q. 166 And again the bank are there expressing their desire that Mr. Gilmartin  
14 would attend the meetings, isn't that right?
- 11:16:37 15 A. Yes, everybody wanted that, yes.
- 16 Q. 167 Now, had you at this stage, were unaware of any complaints by  
17 Mr. Gilmartin in relation to payments that had been made out of the  
18 Barkhill account, is that right?
- 19 A. No complaints made to me at that stage.
- 11:16:50 20 Q. 168 And the bank had never recorded to you any complaints made by  
21 Mr. Gilmartin in relation to how the funds were spent?
- 22 A. No.
- 23 Q. 169 And no queries had been raised with you other than the ones from Deloitte  
24 & Touche in relation to the payments made to Shefran or to Sheafran or the  
11:17:05 25 sundry payments, isn't that right?
- 26 A. That's correct.
- 27 Q. 170 And the only queries you had ever received in relation to the utilisation  
28 of the one million subordinated loan arose from Deloitte & Touche in the  
29 audit, isn't that right?
- 11:17:17 30 A. Yes, Tom Gilmartin never discussed any subject like that with me.

- 11:17:21 1 Q. 171 Did Mr. Gilmartin ever raise it with you at any stage, Mr. O'Callaghan, a  
2 complaints in relation to how the monies had been spent?
- 3 A. Never, the only time this came up was at a board meeting that follows on  
4 from this I think in a couple of months time, sometime in '93 he came to a  
11:17:37 5 board meeting and discussed these items. When he discovered that we were  
6 making progress and that there was a possibility of the scheme coming  
7 together and that our anchors, we could get planning permission to get the  
8 anchors in place, it was then he started to discuss this matter about  
9 monies etcetera.
- 11:17:54 10 Q. 172 And can you date approximately when it was, Mr. O'Callaghan, that you  
11 became first aware of the fact that Mr. Gilmartin was making allegations  
12 about how the money that had been used by Barkhill was spent?
- 13 A. I'm not sure when it was, it was late '93 or early '94, at a board  
14 meeting.
- 11:18:14 15 Q. 173 Right. It was only when the matter was discussed at the board meeting  
16 that you became aware for the first time of these complaints by  
17 Mr. Gilmartin?
- 18 A. That's right. Tom Gilmartin would talk to anyone but would never say  
19 anything to you except nice things. So I was never aware of any of these  
11:18:30 20 things at all. I was never even aware of how bad his financial situation  
21 was.
- 22 Q. 174 So if Mr. Gilmartin was making complaints to Mr. Maguire or to  
23 Ms. Basquille in the bank or was making complaints that led the bank to  
24 visit in December 1992, they were matters that were not discussed with  
11:18:49 25 you, not alone by Mr. Gilmartin but either by Mr. McGrath or Mr. Kay or  
26 Ms. Basquille, is that right?
- 27 A. I think the only person that was aware of that was Ms. Basquille, and she  
28 obviously told people in the bank, Dave McGrath and O'Farrell, but I  
29 wasn't told about it.
- 11:19:07 30 Q. 175 So whatever precipitated the visit on the 17th December by Mr. McGrath and

- 11:19:14 1 Mr. Kay to see Mr. Gilmartin, and the evidence from Ms. Basquille and  
2 Mr. McGrath has been that it was Mr. Gilmartin's threat to go to the  
3 newspapers and bring down Quarryvale that sent them, that was not a matter  
4 which you were ever alerted?
- 11:19:34 5 A. Oh, yes, I heard about that, afterwards, but not from Tom Gilmartin.
- 6 Q. 176 And approximately when afterwards do you think it was that you heard about  
7 that, Mr. O'Callaghan?
- 8 A. Probably some time in the middle of '93 it was, yeah.
- 9 Q. 177 All right. Now, I think arising from that meeting on the 9th February  
11:19:46 10 1993, Mr. Deane provided two letters of information to the bank, 9240  
11 related to Riga, isn't that correct?
- 12 A. Yes.
- 13 Q. 178 And 9244 related to Barkhill. If we go back to 9240, in this letter  
14 effectively what this letter is providing, the information that Mr. Deane  
11:20:21 15 and yourself had been asked for, isn't that right?
- 16 A. Yes.
- 17 Q. 179 And Mr. Deane I think, in evidence, says, told the Tribunal that he was  
18 providing a cashflow information to the bank --
- 19 A. Yes.
- 11:20:34 20 Q. 180 -- in relation to Riga. And if we turn then to look at 9241, having  
21 outlined the expenses incurred by Riga in relation to certain matters in  
22 the second part of that page Mr. Deane records as follows, starting with  
23 "In addition to the foregoing, at the bottom of the page".
- 24 A. Yes.
- 11:20:54 25 Q. 181 "Riga Limited incurred additional expense in the sum of 400,000 pounds  
26 approximately to secure the Quarryvale zoning."
- 27 A. Yes.
- 28 Q. 182 Do you agree with me, Mr. O'Callaghan, that what that sentence is saying  
29 is that Riga had spent 400,000 pounds to achieve the Quarryvale zoning?
- 11:21:11 30 A. Riga had spent 400,000 pounds, 250,000 of that as the letter says there

11:21:16 1 was to, for the stadium which basically was helped to achieve the  
2 Quarryvale zoning yes because stadium was the alternative use for the  
3 Neilstown site.

4 Q. 183 Do you agree what Mr. Deane was telling the bank there in that sentence  
11:21:32 5 before he went on to break the sum down, was Riga had spent 400,000 pounds  
6 to achieve the Quarryvale zoning?

7 A. Yes.

8 Q. 184 He then goes on to say "this was spent in two way as follows. A. 150,000  
9 pounds has been paid on various "Expenses" directly related to the  
11:21:49 10 Quarryvale project and for which invoices have not been produced to the  
11 bank nor has the bank been requested to make any payment out of the  
12 Barkhill account."

13  
14 Now, do you agree this is a sum of 150,000 pounds that Mr. Deane is  
11:22:03 15 dealing with, isn't that right?

16 A. Yes.

17 Q. 185 And he is telling the bank they have no invoices in relation to it, and  
18 they haven't been asked to make any payments, isn't that right?

19 A. Well, what he is saying there is that there were certain payments to be  
11:22:15 20 made and we couldn't ask the bank for, because the bank refused to pay  
21 certain payments that they should have paid, with regard to Quarryvale.

22 Q. 186 No, Mr. O'Callaghan, I suggest to you it doesn't say that. I am just  
23 asking you now to look at what Mr. Deane has said. What Mr. Deane has  
24 said about these expenses which he puts within quotation marks, is that  
11:22:34 25 invoices have not been produced to the bank, that's statement one, isn't  
26 that right?

27 A. Yes.

28 Q. 187 And the second statement he makes is the bank has not been requested to  
29 make any payment out of the Barkhill account, isn't that right?

11:22:45 30 A. Yes.

- 11:22:46 1 Q. 188 Right. So they are two matter that is Mr. Deane is stating as a matter of  
2 fact to the bank, suspect that the position?  
3 A. Yes.
- 4 Q. 189 And insofar as item B is concerned he says "250,000 pounds has been spent  
11:22:59 5 in connection with the stadium project for the old Neilstown site". Then  
6 he goes into background which I will deal within a moment in relation to  
7 the Neilstown site and the reason for the development of it as a stadium,  
8 isn't that right?  
9 A. Yes.
- 11:23:11 10 Q. 190 Now, insofar as the sum of 250,000 pounds has been concerned, what is the  
11 breakdown of that sum, Mr. O'Callaghan?  
12 A. I think that breakdown has been provided by Mr. Deane.
- 13 Q. 191 No, in fairness to Mr. Deane, what Mr. Deane has told the Tribunal is that  
14 he doesn't believe at the time that he wrote this letter that he had a  
11:23:36 15 breakdown for either the 150,000 pounds or the 250,000 pounds, but he  
16 refers the Tribunal to an addendum to the statement of Ms. Cowhig at  
17 27639, as being of assistance?  
18 A. Yes.
- 19 Q. 192 In how he came to the figures, although he did not, if I understand his  
11:24:01 20 evidence correctly, again I am subject to correction, he did not have that  
21 information in that format available to him when he wrote the letter in  
22 February 1993?  
23 A. Yes, he did not have it at that time, his figures were approximate I  
24 believe.
- 11:24:15 25 Q. 193 All right. Insofar as we are dealing with February of 1993,  
26 Mr. O'Callaghan, is it the position that when Mr. Deane wrote this letter  
27 the figures that he was providing to the bank were provided by him without  
28 the benefit of a consideration of the documentation subsequently created  
29 by Ms. Cowhig for the assistance of this Tribunal?  
11:24:35 30 A. I think so, yes.

- 11:24:35 1 Q. 194 All right. So when Mr. Deane sat down to write this letter,  
2 Mr. O'Callaghan, could I have 9241? And as Mr. Deane is not the person  
3 who is involved in the day to day running of the Dublin operation, may the  
4 Tribunal take it that the likely source of the information to Mr. Deane in  
11:24:54 5 relation to the monies that had been spent to secure the Quarryvale zoning  
6 is likely to have been yourself?  
7 A. He was -- that information would have come from either Ms. Cowhig or Aidan  
8 Lucey.  
9 Q. 195 Mr. Deane does not tell the Tribunal that he obtained, if I understand his  
11:25:11 10 evidence correctly, again I will be corrected if I am wrong, that he  
11 obtained that information from Ms. Cowhig or from Mr. Lucey?  
12 A. That's where he would have got it I'm sure.  
13 Q. 196 Yes. Is it not more likely, Mr. O'Callaghan, that it's from you he got  
14 it?  
11:25:26 15 A. No.  
16 Q. 197 Right. Mr. Lucey has told the Tribunal that insofar as the Dublin  
17 operation was concerned, his only function was to record information in  
18 the books that was in general provided to him by you?  
19 A. Mm-hmm.  
11:25:39 20 Q. 198 And that of his own knowledge he had no information in relation to how the  
21 Dublin development worked, or how the expenses were incurred in general,  
22 would you agree with that?  
23 A. Yes.  
24 Q. 199 And insofar as Ms. Cowhig is concerned, these expenses are expenses that  
11:25:54 25 are unlikely to have been considered by Ms. Cowhig as she would not have  
26 commenced at that stage the audit for the year end April '93, isn't that  
27 right?  
28 A. Yes.  
29 Q. 200 When this letter was written, isn't that right?  
11:26:07 30 A. Yes.

- 11:26:07 1 Q. 201 Isn't it likely therefore, Mr. O'Callaghan, that the person who would have  
2 discussed this matter between Mr. Deane and yourself is yourself?
- 3 A. No, I don't think so. That did not happen because -- it did not happen  
4 that way. I think the background on this is very brief that Michael  
11:26:25 5 O'Farrell had taken over at this stage and the Riga account overdraft had  
6 gone up considerably and the bank were concerned about it and the reason  
7 for that was the Riga account was allowed to go up to fund a lot of the  
8 Barkhill expenses and the bank wanted us to regularise the Riga account,  
9 and the meeting we had with them, and this letter was written on the  
11:26:49 10 strength of that.  
11  
12 Now, that information that John Deane has got there, he would have got  
13 from Aidan Lucey or Clare Cowhig, not from me but they would have got it  
14 from me. I wouldn't have given that information to John Deane because I  
11:27:01 15 wasn't even aware he was writing, at the time I was not aware he was  
16 writing that letter. So he would have got that information from either of  
17 the two, Clare Cowhig or Aidan Lucey, but yes, they in turn would have got  
18 that information originally from me of course.
- 19 Q. 202 With respect to you, Mr. O'Callaghan, you had to be aware that Mr. Deane  
11:27:19 20 was writing the letter because you are at the meeting at 9233 please, of  
21 the 9th February 1993 and in the second last paragraph the following is  
22 recorded "O'Callaghan and Deane were then requested to provide further  
23 details in relation to a proposed development programme in terms of timing  
24 costs and appraisal". Isn't that right?
- 11:27:44 25 A. Yes.
- 26 Q. 203 And following on that meeting and indeed following on the January meeting  
27 at which you were also present at which Mr. Deane agreed provide further  
28 information to the bank, this information is provided, is that right?
- 29 A. But I wouldn't have seen that letter being written, that would have  
11:27:56 30 happened afterwards. That was a function John Deane carried out, I wasn't



11:28:00 1 involved in it.

2 Q. 204 But insofar as the person within the operation of Riga who has most

3 knowledge or information about the day to day activities in Quarryvale, if

4 Mr. Lucey, your accountant is correct and Ms. Cowhig, your accountant,

11:28:15 5 both of whom are based in Cork are correct, the person with the

6 information is yourself, isn't that right?

7 A. Oh, yes.

8 Q. 205 Right. So when Mr. Deane comes to prepare his letter for the purpose of

9 sending it in to the bank, to explain the project going forward as it

11:28:30 10 were, the two people with most information is Mr. Deane and yourself,

11 isn't that right?

12 A. Yes.

13 Q. 206 And when Mr. Deane introduces a figure of 400,000 pounds which he has

14 broken down into two categories, that information, Mr. Deane says he did

11:28:48 15 not have in a breakdown format in front of him?

16 A. Yes.

17 Q. 207 Now, he didn't have a breakdown of the 150,000 and he didn't have a

18 breakdown of the 250,000 pounds?

19 A. Yes.

11:28:58 20 Q. 208 So where do you say he got the global position?

21 A. They were approximate figures and he got them from either Aidan Lucey or

22 Clare Cowhig.

23 Q. 209 If he didn't get them from either of them, do you think it's likely that

24 Mr. Deane is the sort of person that would have plucked those figures out

11:29:19 25 of the air?

26 A. Not at all.

27 Q. 210 Isn't it likely if he wasn't involved himself in writing the cheques and

28 operating the matter that he would have gone to somebody else?

29 A. He would have gone to Clare Cowhig or Aidan Lucey, that's where he got his

11:29:25 30 information.

- 11:29:26 1 Q. 211 Are you saying he would not have approached you, Mr. O'Callaghan?
- 2 A. No.
- 3 Q. 212 He didn't approach new relation to compiling these figures?
- 4 A. No.
- 11:29:32 5 Q. 213 Can you assist the Tribunal at 9241, other than relying on Ms. Cowhig's
- 6 document, can you assist the Tribunal as to how this figure of 150,000
- 7 pounds that was paid on various expenses is calculated?
- 8 A. I would say they were figures that Aidan Lucey had, there was a breakdown
- 9 figure between the stadium and Quarryvale, 250 and 150, approximate
- 11:30:00 10 figures. This was just a cashflow exercise to give to the bank to let the
- 11 bank see, in particular Michael Farrell, what the expenditure was taking
- 12 place at the time because he was concerned about the Riga overdraft which
- 13 was being used to fund Barkhill.
- 14 Q. 214 One of the things that Mr. Deane says that the bank had not been requested
- 11:30:19 15 to make any payment out of the Barkhill account, isn't that right?
- 16 A. Yes.
- 17 Q. 215 And Mr. Deane, in his evidence, referred to Ms. Cowhig's document at
- 18 27639, and in calculating the figure of 150,000 pounds, and doing the best
- 19 that he could, Mr. Deane was of the view that the figure of 130,000 pounds
- 11:30:46 20 which is in the second items there --
- 21 A. Yes.
- 22 Q. 216 -- was a figure that that figure was 130,000 is 130 of the 150,000 he was
- 23 referring to in the letter, isn't that right?
- 24 A. Yes, I would agree with that.
- 11:30:59 25 Q. 217 Right. Now, you will see included in that is an item of 64,397.78 to Mr.
- 26 Dunlop.
- 27 A. Yes.
- 28 Q. 218 Isn't that right? That was an item that you had asked the bank to pay,
- 29 isn't that right?
- 11:31:11 30 A. Yes.

- 11:31:11 1 Q. 219 And the bank had refused to pay it?
- 2 A. Yes.
- 3 Q. 220 So when Mr. Deane writes his letter at 9241, he couldn't really be
- 4 referring to that 64,000 pounds because he tells the bank that the bank
- 11:31:24 5 had not been requested to make any payment in relation to these expenses,
- 6 isn't that right?
- 7 A. What I think he meant by that, he was well aware of the fact that the bank
- 8 had refused to pay that, it was such a big amount of money. What he is
- 9 referring -- I told him that the bank had refused to pay that. He was
- 11:31:38 10 aware of that, he was present when the bank refused to pay that amount of
- 11 money. I think what he probably means there is that invoice wasn't
- 12 produced to the bank because it was a waste of time producing it, they
- 13 refused to pay it.
- 14 Q. 221 That's not what Mr. Deane says, isn't that right, Mr. O'Callaghan? He
- 11:31:53 15 simply makes the plain simple and unambiguous statement that insofar as
- 16 that sum of 150,000 pounds, the bank had not been requested to pay it?
- 17 A. I'd say what -- I wouldn't say that's 100 per cent correct, because he was
- 18 aware of that 64,000 pounds, the bank just blankly refused to pay it and I
- 19 think there is correspondence there to prove that.
- 11:32:15 20 Q. 222 Mr. Deane in attempting to assist the Tribunal to a better understanding
- 21 or an understanding of that figure of 150,000 pounds when he was referring
- 22 to Ms. Cowhig's document at 27639, said that insofar as the Sean Gilbride
- 23 figure of 15,500 was concerned by the time he wrote the letter in February
- 24 '93, not all of that had been paid, isn't that right?
- 11:32:41 25 A. Yes.
- 26 Q. 223 So he says that an allowance would have to be made to that, is that right?
- 27 A. Yes.
- 28 Q. 224 Isn't that the position?
- 29 A. That's correct, yes.
- 11:32:47 30 Q. 225 But again in fairness to Mr. Deane what Mr. Deane is doing is attempting

11:32:51 1 to reconstruct the matter looking back at it, isn't that right?

2 A. Yes.

3 Q. 226 But you say he never came to you for assistance in relation to the

4 compilation of that figure?

11:33:00 5 A. No but he would have been very much aware of everything that was

6 happening. He would have known exactly what was happening, continuously

7 so, he would have had that information without even asking me for it.

8

9 MR. LUCEY: I think should be pointed out to in fairness to

11:33:12 10 Mr. O'Callaghan, Mr. Deane's evidence in this is that he didn't do the

11 breakdown himself and he can only assume that he either asked Aidan, or he

12 Aidan might have got Clare, or I might have asked Clare myself, that's

13 Mr. Deane's evidence, not that he asked Mr. O'Callaghan, that's day 880,

14 page 45 of Mr. Deane's evidence.

11:33:29 15

16 MS. DILLON: I think that Mr. Deane's evidence also at day 880 is that he

17 didn't believe he ever had a breakdown for the 150,000 or the 250,000.

18 And that can be found at question 347.

19

11:33:41 20 CHAIRMAN: What day is that?

21

22 Q. 227 MS. DILLON: Day 880 question 347.

23 Can I ask you one thing, Mr. O'Callaghan, while that's being obtained,

24 just something I think -- at 9241, under item A you see the way Mr. Deane

11:34:18 25 has described "expenses" in this letter.

26 A. Yes.

27 Q. 228 And he has quotation marks around the word "Expenses"?

28 A. Mm-hmm.

29 Q. 229 Can you assist as all as to why Mr. Deane would have given that somewhat

11:34:34 30 unusual description about the expenses of which he was talking.

11:34:37 1 MR. LUCEY: Well, I think before Mr. O'Callaghan answers that question,  
2 Mr. Deane was not asked that question, Sir. It's a matter of some  
3 concern, because obviously the inclusion of inverted commas was something  
4 of some significance, Mr. Deane was not asked why he did that, just for  
11:34:52 5 fear there is any issue in it, there are many, many documents in the  
6 writing of Mr. Deane which have the use of inverted commas in them and  
7 Mr. Deane would have told the Tribunal if he had been asked, that it was  
8 an issue of emphasis, Sir. And there are I think at least 30 documents in  
9 the brief which have the use of inverted commas in letters written or  
11:35:13 10 statements uttered by Mr. Deane, Sir, but I think it's a matter which  
11 should have been canvassed if it's now going to become an issue with  
12 Mr. Deane and not with Mr. O'Callaghan.

13  
14 CHAIRMAN: Well Mr. O'Callaghan can be asked does he himself know why  
11:35:26 15 expenses has inverted commas on it, that's as far as he can be asked that.

16  
17 MR. LUCEY: I have no difficulty with him being asked that, but insofar as  
18 there is any either implication or connotation put on it, Sir, it's not a  
19 matter that was not addressed with Mr. Deane

11:35:42 20  
21 CHAIRMAN: I accept that. He can be asked, obviously he either has an  
22 idea as to why it was treated in that way or not. He can be asked, that's  
23 really as far as it can go.

24 Q. 230 MS. DILLON: Mr. Lucey has said, I think fairly said, Mr. O'Callaghan,  
11:36:01 25 that the inclusion of the word in quotation marks was a matter of some  
26 significance, I think Mr. Lucey is correct, when he makes that submission  
27 to the Tribunal. Can I ask you what significance, Mr. O'Callaghan, you  
28 would attach to expenses being described in the manner in which Mr. Deane  
29 described them at paragraph A of the letter of the 10th February '93 at  
11:36:23 30 9241?

11:36:28 1 A. I really don't know, something that he does quite a lot.

2 Q. 231 Yes we have heard that from Mr. Lucey.

3 A. Yes.

4 Q. 232 Yes.

11:36:34 5 A. I don't know why he does that, I do the same thing myself, I don't know.

6 Q. 233 Did you ever discuss that with Mr. Deane?

7 A. No, no, not at all.

8 Q. 234 Right. Do you agree with me the following, that there is no similar

9 attribution in relation to the 250,000 pounds at paragraph B?

11:36:53 10 A. Yes.

11 Q. 235 Right. And that the expenses that are so identified by Mr. Deane in

12 relation to the sum of, relate only to the sum of 150,000 pounds which had

13 been paid directly for the Quarryvale project, isn't that right?

14 A. Yes.

11:37:07 15 Q. 236 That they, invoices had not been produced to the bank, isn't that right?

16 A. Yes.

17 Q. 237 And nor had the bank been asked to pay those figures, isn't that right,

18 although you think Mr. Deane may have made a mistake in relation to?

19 A. Yes the bank certainly, but never asked by me --

11:37:24 20

21 JUDGE FAHERTY: Ms. Dillon, sorry, could I just have on screen 9127 for a

22 moment, if that's possible? Yes, I wanted just to ask Mr. O'Callaghan, if

23 you go back to Mr. Deane's document, letter, there is a reference there of

24 64,000, that payment of 64,000 came, due to Frank Dunlop in relation to

11:37:58 25 zoning costs and requested payment of this invoice from Barkhill's loan

26 facility.

27

28 MS. DILLON: Yes, that's the points I have been making, sorry, Judge,

29 that's the points I have been making to Mr. O'Callaghan.

11:38:11 30

11:38:11 1 JUDGE FAHERTY: I understood Mr. O'Callaghan to say he didn't believe that  
2 invoice was produced to the bank.  
3  
4 MS. DILLON: It was certainly referred to on the 23rd January 1993, that  
11:38:21 5 was the point I have been trying to make to Mr. O'Callaghan.  
6  
7 JUDGE FAHERTY: Yes.  
8  
9 Q. 238 MS. DILLON: Do you see, what's on screen before you, Mr. O'Callaghan, is  
11:38:29 10 an extract from the meeting of the 20th January 1993 which you attended?  
11 A. Yes.  
12 Q. 239 Right. And in relation to outstanding fees the following is recorded  
13 "Owen O'Callaghan advised that a payment of 64,000 was still due to Frank  
14 Dunlop in relation to zoning costs and requested payment of this invoice  
11:38:47 15 from Barkhill's loan facility" isn't that right?  
16 A. That's right.  
17 Q. 240 And I had asked you, 9241 please that if Mr. Deane, at paragraph A was  
18 including the 64,000 pounds in his figure of 150,000 pounds, then he was  
19 not correct in so doing, because you had in fact A, referred to the  
11:39:11 20 invoice, but you had sought payment of it from the Barkhill loans?  
21 A. Many a time, yes.  
22 Q. 241 Yes. And I think you had agreed me, if Mr. Deane was including the 64,000  
23 pounds, then he must have been in error, either in including it in the  
24 first place or in the letter he wrote to the bank, isn't that right?  
11:39:26 25 A. That's what I'm saying, yes.  
26 Q. 242 Now, insofar as this is concerned, if I can just go back at 9241 to deal  
27 with the issue of expenses, is it possible, from your knowledge of the way  
28 Mr. Deane operates, Mr. O'Callaghan, that he was describing untraceable  
29 expenses in effect, to the bank?  
11:39:52 30 A. I wouldn't think so, no.

11:39:54 1 Q. 243 Because the features he identifies, first of all he calls them expenses  
2 within quotation marks, isn't that right?  
3 A. Yes.  
4 Q. 244 That's a distinguishing feature, isn't that right?  
11:40:03 5 A. Yes.  
6 Q. 245 Second of all, he says that the invoices have not been produced to the  
7 bank, so the bank don't have any paper on them, and second of all he says  
8 the bank haven't been requested to make payment of that, isn't that right?  
9 A. Yes.  
11:40:15 10 Q. 246 If Mr. Deane was correct in what he told the bank, it would mean,  
11 Mr. O'Callaghan, that there was a figure of 150,000 pounds for which there  
12 is no documentation, which had been used to assist in securing the zoning  
13 of Quarryvale, isn't that right?  
14 A. Yes but that is not correct.  
11:40:30 15 Q. 247 That's not correct. But I have to put it to you, Mr. O'Callaghan, that  
16 looking at that letter on a simple interpretation of that letter, that  
17 what Mr. Deane was telling the bank in simple English was that 150,000  
18 pounds in expenses effectively untraceable, had been spent to secure the  
19 zoning of Quarryvale, by Riga.  
11:40:51 20  
21 MR. LUCEY: Before Mr. O'Callaghan answers that, that's my objection  
22 unfortunately to this line of questioning, I accept Ms. Dillon is entitled  
23 to put certain matters to Mr. O'Callaghan on the letter of Mr. Deane, but  
24 Mr. Deane was not asked how he was using that term expenses in that regard  
11:41:05 25 --  
26  
27 CHAIRMAN: But leave aside the use of the term expenses, I mean clearly  
28 it wasn't dealt with Mr. Deane, it would be improper to suggest to  
29 Mr. O'Callaghan that the fact that the term expenses is in inverted commas  
11:41:23 30 necessarily means, or does mean, that there is something unusual about the



11:41:31 1 nature of the expenses, but that obviously isn't -- that isn't being done.  
2 Mr. O'Callaghan is simply being asked about what, how the 150,000 pounds,  
3 what's the make up of the 150,000 pounds. Now, that can be asked whether  
4 or not the term expenses is there in that form or not.

11:41:50 5  
6 MR. LUCEY: I have no difficulty with him being asked that question, but  
7 it's being suggested to him that there are they are a particular type of  
8 untraceable expenses, I have no problem with him being asked --  
9

11:42:01 10 CHAIRMAN: He can be asked that so long as it's not being asked on the  
11 basis that that's what the term, that's what the meaning or the effect of  
12 putting the word expenses into inverted commas.  
13

14 JUDGE FAHERTY: I agree with the Chairman, the question can surely be  
11:42:16 15 premised on what's set out, forgetting the word expenses, simply that  
16 there was no paper invoices, nor had the bank been asked for payment, and  
17 I think the question, as the Chairman said can be put by Ms. Dillon on  
18 that basis.  
19

11:42:34 20 Q. 248 MS. DILLON: Yes. Now, Mr. O'Callaghan, leaving aside the issue of how  
21 expenses have been described by Mr. Deane in the letter, do you agree with  
22 me that what Mr. Deane is telling the bank, that a sum of 150,000 pounds  
23 was spent to secure the zoning of Quarryvale, and insofar as that sum is  
24 concerned, the bank have not received any invoices, and the bank have not  
11:42:57 25 been asked to make any payments out of the Barkhill loan. Do you agree  
26 with me first of all that that's what Mr. Deane is saying in the letter?

27 A. That's what it reads.

28 Q. 249 That's what it reads, isn't that right?

29 A. Yes.

11:43:11 30 Q. 250 Now, you have a different interpretation, Mr. O'Callaghan, at what

- 11:43:14 1 Mr. Deane meant, is that right?
- 2 A. I don't want to put words into his mouth because he wrote the letter
- 3 actually, and I don't want to put words into his mouth, but I am trying to
- 4 interpret it myself, and it's a loose, it's quite a loose paragraph
- 11:43:25 5 actually, I think it's got to be put into context. To reply to the bank
- 6 again, to justify why Riga's overdraft had gone over the top really,
- 7 mainly because of Barkhill, Quarryvale, and what he is saying there is
- 8 that and he is not 100 per cent accurate in the my opinion, but it's up to
- 9 him -- I can tell you that he says, he actually says it relates to
- 11:44:01 10 Quarryvale project for which invoices have not been produced to the bank.
- 11 They certainly have and I produced them and they weren't paid and I had to
- 12 bring them back, nor has the bank requested to make any payment out of the
- 13 Barkhill account that's not correct either, the bank were requested to pay
- 14 but they refused to pay, so I find it -- I think it's a pretty loose
- 11:44:14 15 paragraph.
- 16 Q. 251 Yes, would you agree with me, Mr. O'Callaghan, that insofar as the Riga
- 17 subordinated loan was concerned there were invoices for all of those
- 18 payments if your evidence is correct, isn't that right?
- 19 A. Yes, absolutely.
- 11:44:27 20 Q. 252 Insofar as the utilisation of the Barkhill number 2 loan is concerned
- 21 there were invoices for all of those payments?
- 22 A. Yes.
- 23 Q. 253 So Mr. Deane couldn't have been talking about those matters when he is
- 24 talking about the 150,000 pounds, isn't that right?
- 11:44:40 25 A. Yes.
- 26 Q. 254 If you are correct in what you are telling the Tribunal then either
- 27 Mr. Deane is thinking of an entirely separate and different 150,000
- 28 pounds, but he can't be thinking about the invoices or the expenses where
- 29 you spoke to the bank and produced invoices, is that right?
- 11:44:55 30 A. Well maybe he wasn't aware of that, but I did say to you everything that

- 11:44:58 1 happened with the bank I have told him.
- 2 Q. 255 Are you aware of any sum of 150,000 pounds, Mr. O'Callaghan, other than
- 3 the figures that have been canvassed in this Tribunal, that were spend by
- 4 Riga in connection with the rezoning of Quarryvale?
- 11:45:11 5 A. Absolutely not, there was not, there just was not anything else.
- 6 Q. 256 Did you, can I ask you this, is it Mr. Deane's normal characteristic as a
- 7 very senior solicitor, to use loose language of the sort that you describe
- 8 here?
- 9 A. No.
- 11:45:28 10 Q. 257 Would you describe that as a hall mark?
- 11 A. I wouldn't say loose, John Deane is the last person to use loose language,
- 12 I can assure you, I am sure he has established that.
- 13 Q. 258 I would have to say, Mr. O'Callaghan, that Mr. Deane seems to be a
- 14 meticulous solicitor?
- 11:45:43 15 A. Yes.
- 16 Q. 259 Would you agree with that?
- 17 A. I would agree totally with that.
- 18 Q. 260 And if this, if it is to be given the interpretation that you suggest, is
- 19 an aberration on the part of Mr. Deane in view of the looseness of the
- 11:45:58 20 letter?
- 21 A. That's why I was trying to put it into context actually, that's not his
- 22 type of letter at all, it's quite -- it's a bit loose and that's my
- 23 opinion, now I'm speaking for him and I shouldn't be doing that.
- 24 Q. 261 But if on the other hand Mr. Deane is meticulous here and he is acting on
- 11:46:12 25 foot of information he has been given, that could suggest,
- 26 Mr. O'Callaghan, that there was a sum of 150,000 pounds that was off the
- 27 books as it were, that was paid to secure the Quarryvale zoning, do you
- 28 agree with that?
- 29 A. No, absolutely not.
- 11:46:28 30 Q. 262 Insofar as item B is concerned at 9241, insofar as the 250,000 pounds was

11:46:35 1 spent in connection with the stadium, again as I understand Mr. Deane's  
2 evidence, and again I am subject to correction, Mr. Deane did not believe  
3 that he had at the time he wrote this letter, a breakdown of that sum of  
4 250,000 pounds?

11:46:49 5 A. Just approximate figures again, yes.

6 Q. 263 And again I think that he did his best by, with the assistance of the  
7 documentation prepared by Ms. Cowhig when he came to give his evidence to  
8 the Tribunal, isn't that right?

9 A. I believe so, yes.

11:47:03 10 Q. 264 Again, the situation must be same then, Mr. O'Callaghan, in relation to  
11 the 250,000 pounds, isn't that right?

12 A. Yes.

13 Q. 265 Right. He gives his explanation then of the background for the  
14 expenditure and I just want to put this to you to see do you agree with  
11:47:19 15 Mr. Deane's explanation as provided to the bank in February '93, he says  
16 "By way of background to the expenditure you will recall that the  
17 Neilstown site was the original site zoned for the town centre. Part of  
18 the Quarryvale problem was to obtain the moving of the zoning from  
19 Neilstown to Quarryvale. The City manager made it clear that he expected  
11:47:38 20 an alternative use to be found for the Neilstown site and that the site  
21 was not simply to be dumped and left there. With this in mind the stadium  
22 project was conceived."  
23  
24 Do you agree with Mr. Deane insofar as the contents of that paragraph are  
11:47:50 25 concerned?

26 A. Yes, I do.

27 Q. 266 Next paragraph "However, to make the project seem a real project and not  
28 just a mythical scheme, it was necessary to prepare a detailed and  
29 substantial drawings to such a standard that would lead to a detailed  
11:48:03 30 planning application, furthermore a working model with a sliding roof and

11:48:07 1 moving floor was also prepared. International consultants in the leisure  
2 field were retained to vet the project and Deloitte & Touche accountants  
3 were also retained to give a feasibility study for the entire project for  
4 the American financiers who were interested in providing the finance." Do  
11:48:20 5 you agree with that?

6 A. Yes.

7 Q. 267 Do you say he is accurate there?

8 A. Yes.

9 Q. 268 Next paragraph "The introduction to the financiers was made by the  
11:48:27 10 Taoiseach, Albert Reynolds to Owen when the financiers were in Dublin to  
11 meet the Taoiseach who was then Minister for Finance". Is he correct  
12 there?

13 A. I think he is, yes.

14 Q. 269 And do you agree this information could only be obtained from you?

11:48:41 15 A. That's correct, yes.

16 Q. 270 In "In order to establish credibility for the stadium project it was  
17 necessary for the project to be seen as a viable workable project which  
18 would have the support of a the government, the FAI and other sporting  
19 organisations who may use the project. Considerable work was done in this  
11:48:56 20 regard and consultants employed to ensure that the project was presented  
21 in the best possible light as a credible project for the site."  
22  
23 Then it goes on to detail the full planning application, isn't that right?

24 A. Yes.

11:49:05 25 Q. 271 Do you agree that in dealing with the history of the stadium and the  
26 purposes of it and the steps that had been taken in relation to the  
27 stadium, Mr. Deane is factually accurate in what he is telling the bank?

28 A. Most of it actually, the position -- the paragraph there, where he  
29 mentioned the introduction of the financiers made by the Taoiseach Albert  
11:49:27 30 Reynolds to me, I was never certain of a 100 per cent if that was made

- 11:49:29 1 directly or through Liam Lawlor I'm not sure so his paragraph there is not  
2 100 per cent correct.
- 3 Q. 272 Right. But do you agree that in substance Mr. Deane is correct?
- 4 A. In substance, yeah and obviously the stadium project, in substance with  
11:49:44 5 one proviso he probably played the stadium down quite a bit more than was  
6 factual actually because the banks never supported the stadium.
- 7 Q. 273 The argument that Mr. Deane is making -- this is an argument to persuade  
8 the bank that the money that Mr. Deane was telling the bank had been  
9 expended on the stadium was indirectly for the benefit of Quarryvale,  
11:50:07 10 isn't that right?
- 11 A. Yes, very much so.
- 12 Q. 274 But insofar as Mr. Deane's factual information is concerned as is recorded  
13 at 9242, that information is information if he wasn't directly involved in  
14 the matter himself he had to get from somebody, isn't that right?
- 11:50:23 15 A. Yes.
- 16 Q. 275 And if he wasn't directly involved in the introduction of Albert Reynolds  
17 he could only have got that information from somebody else,  
18 Mr. O'Callaghan, is that right?
- 19 A. From me.
- 11:50:31 20 Q. 276 Yes. And that was my point, that the balance of the information that's  
21 contained after Mr. Deane deals with the financial matters, relates to  
22 information which, if he wasn't directly involved in the stadium in Dublin  
23 himself, he could only have got from you, isn't that right?
- 24 A. That's right.
- 11:50:47 25 Q. 277 And therefore I am going suggest to you it's likely, Mr. O'Callaghan,  
26 because you were the person who provided the factual information in  
27 relation to the stadium to Mr. Deane, you are similarly likely to have  
28 been the person who provided the figure of 400,000 pound and the breakdown  
29 to Mr. Deane.
- 11:51:06 30 A. No, that's a difference I'm afraid.

11:51:08 1 Q. 278 You don't agree?

2 A. No I don't agree.

3

4 MS. DILLON: Do you want to take a break, sir?

11:51:48 5

6 CHAIRMAN: Very well.

7

8 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**

9 **AND RESUMED AGAIN AS FOLLOWS:**

11:51:54 10

11 Q. 279 MS. DILLON: Mr. O'Callaghan.

12 Now, I think on the same day, on the 10th February 1993 at 9244 arising

13 out of the meetings with the bank Mr. Deane also wrote in relation to

14 Barkhill, isn't that right?

12:10:19 15 A. Yes.

16 Q. 280 And at 9246 the following page, under paragraph 4, he sets out what he

17 understood the current facility being sought by Barkhill to be, which was

18 the existing loan of 15.5 million?

19 A. Yes.

12:10:35 20 Q. 281 The roll up of interest, and outstanding accounts and fees which were set

21 out by Mr. Deane to include Ove Arup, Deloitte & Touche, repair and

22 security of the site, the injunction proceedings, enclosing of the entire

23 site, the planning application and provision for O'Donaghue Cottage?

24 A. Yes.

12:10:54 25 Q. 282 There is no provision there for Mr. Dunlop, isn't that right?

26 A. No.

27 Q. 283 And in the next paragraph the following is recorded:

28

29 "As you are aware, there is an outstanding sum of 810,000 due to the

12:11:05 30 Council. This has not been paid to the council solely because the council

12:11:09 1 have not requested payment on foot of the contract. Owen is extremely  
2 confident that in the event of payment being requested within the next 12  
3 months he will be able to make an arrangement with the County Manager  
4 whereby the payment is postponed until the end of the 12 month period."

12:11:30 5  
6 That again refers back to the purchase of the County Council lands, isn't  
7 that right?

8 A. Yes.

9 Q. 284 And were you confident you would be able to come to an arrangement with  
10 the County Manager who was Mr. Fitzgerald, is that right?

11 A. Yes.

12 Q. 285 Right. And that was your belief at the time that you wouldn't have had  
13 any difficulty pushing out the purchase of the County Council lands, is  
14 that right?

12:11:41 15 A. Yes.

16 Q. 286 Right. Now, it would be fair to say, at that time, Mr. O'Callaghan, there  
17 wouldn't have been an awful lot of people buying land at that particular  
18 point in time, is that right, from the council?

19 A. '93, no, that is correct, yes.

12:11:56 20 Q. 287 Yes. Now, I think moving on then, I think you paid, on the 17th February,  
21 '93 at 9273 Mr. Dunlop through Shefran the 25,000 pounds on foot of the  
22 December invoice, isn't that right?

23 A. Yes.

24 Q. 288 9723, I think it's the last cheque?

12:12:22 25 A. Yes.

26 Q. 289 Sorry 9273, sorry, Mr. O'Callaghan, 9273, the last cheque was paid on the  
27 17th February, isn't that right, on foot of Mr. Dunlop's invoice of the  
28 18th December, 1992, isn't that the position?

29 A. Yes, that's it, yes.

12:12:39 30 Q. 290 And I think we have looked at that before and I think we'll be looking



12:12:43 1 briefly at some of the audit treatment in relation to that.  
2  
3 I think that moving on into February after Mr. Gilmartin hadn't attended  
4 an attempt was made to have another meeting in March, isn't that right?

12:12:55 5 A. Yes.  
6 Q. 291 Of 1993, isn't that the position?  
7 A. Yes.  
8 Q. 292 And can I ask you something, Mr. O'Callaghan, that I asked Mr. Dunlop in  
9 relation to a cash lodgement of 3,900, to Mr. Dunlop's Irish Nationwide  
12:13:11 10 account. On the 3rd March '93, Mr. Dunlop lodges three -- 5,000 pounds to  
11 his Irish Nationwide Building Society, and on the 3rd March at 9293, while  
12 you are not recorded in Mr. Dunlop's diary as being in Dublin, if you look  
13 at 9296 at 5.35 you are recorded as driving up to Dublin late on the 2nd  
14 March and being in Dublin between 11 and 12 o'clock in the night, of the  
12:13:48 15 2nd, would you agree that you were in Dublin on the 3rd March '93?  
16 A. Must have been.  
17 Q. 293 You must have been. Even though it's not recorded in Mr. Dunlop's diary  
18 but you are recorded as telephoning him on the evening of the 2nd March  
19 '93 to tell him that you would be in Dublin the following day, effectively  
12:14:05 20 the following day because you are coming up late that night, isn't that  
21 right?  
22 A. Yeah.  
23 Q. 294 Can I ask you, Mr. O'Callaghan, did you make a cash payment to Mr. Dunlop  
24 on the 3rd March 1993?  
12:14:15 25 A. A cash payment.  
26 Q. 295 Yes.  
27 A. No.  
28 Q. 296 Or a cheque, or did you give him a cheque on the 3rd March?  
29 A. Is it recorded?  
12:14:22 30 Q. 297 No, there is no cheque recorded?

- 12:14:24 1 A. No unless it's recorded -- unless it's in my discovery.
- 2 Q. 298 But there is no discovery, Mr. O'Callaghan, from you in relation to any
- 3 payment to Mr. Dunlop at this time. I am asking you, because I had asked
- 4 him previously, whether in view of the fact that you had telephoned him
- 12:14:41 5 and told him you would be up on the 3rd, effectively on the 3rd March
- 6 whether there was any connection between the lodgement of 5,000 pounds and
- 7 him meeting with you on the 3rd March?
- 8 A. No, if it was not in my discovery I did not make any payment to him.
- 9 Q. 299 You will be aware of the fact that Mr. Dunlop says he can't recollect the
- 12:14:59 10 source of the 5,000 pounds cash that he lodged on the 3rd March 1993?
- 11 A. I don't know anything about that.
- 12 Q. 300 Now, I think on the 3rd and the 10th March 1993 -- 9298 please, this is a
- 13 composite memorandum by the bank, Mr. O'Callaghan, which relates to two
- 14 meetings which were held on the 3rd March and the 10th March, and which
- 12:15:23 15 arose also following telephone conversations, the bank had with you on the
- 16 24th and the 26th February and phone conversations with Mr. Deane on the
- 17 4th March and the 9th March, you see that recorded in the first paragraph
- 18 please?
- 19 A. Yes.
- 12:15:38 20 Q. 301 Now, yesterday I put to you that these meetings were meetings to try and
- 21 make the peace between yourself and Mr. Deane on one hand and the bank on
- 22 the other, you hadn't agreed with that, is that right?
- 23 A. Myself and Mr. Gilmartin.
- 24 Q. 302 Yourself and Mr. Deane on one hand?
- 12:15:54 25 A. Oh sorry and the bank.
- 26 Q. 303 And you hadn't agreed with that?
- 27 A. There was always peace between the bank and ourselves, you know -- but I
- 28 wouldn't say there was any great difficulty.
- 29 Q. 304 I put that to you because Mr. Deane on day 880 at question 375 up to
- 12:16:11 30 question 393 had said that these meetings were "This was the making of the

12:16:16 1 peace meeting, we'd had a very rough meeting with the bank in January and  
2 these series of telephone calls were designed to put that relationship  
3 back on an even keel. So we wanted the bank that point to decide look we  
4 are where we are, do you want to run with this for the long term or do you  
12:16:32 5 want to cut and run at this stage." Do you agree with Mr. Deane, that it  
6 was the events in January and February that led up to these, what I had  
7 described to you as "Make the peace meetings" in March?  
8 A. I would, I wouldn't call it anything as strong as that, but yes, at that  
9 stage I think the banks -- we had to clear up, decide exactly where we  
12:16:51 10 were going, we wanted to go ahead and develop this project, the banks I  
11 think there was a hint from the bank that they might want to sell the  
12 land, we weren't in favour of that.  
13 Q. 305 The first matter that was discussed then was the overall strategy  
14 vis-a-vis Quarryvale, is that right?  
12:17:09 15 A. Yes.  
16 Q. 306 In the second and third paragraph, under the heading overall strategy, two  
17 options are set out, the first was to sell the property and the second was  
18 to run with the development, in other words move forward to planning?  
19 A. Yes.  
12:17:21 20 Q. 307 But that if you did that ultimately you'd have to get a development  
21 partner, isn't that right?  
22 A. The problems with the bank, the peace with the bank John Deane is talking  
23 about, is it was always nearly impossible to get money from the bank,  
24 that's the problem, with any bank.  
12:17:36 25 Q. 308 But in particular you were dealing with your bank and one of the  
26 difficulties that was outlined by Mr. Deane to the Tribunal was an  
27 inability to persuade the bank in relation to the payment of fees?  
28 A. Yes.  
29 Q. 309 Now on the following page at 9299 at the bottom of the first paragraph, it  
12:17:54 30 says "customers indicated that we all recognised that we are in this

12:17:58 1 together but they want to seek assurance that if we do go forward it is  
2 not on a grudging basis and they are not put under undue pressure by the  
3 bank" and do you agree with that?

4 A. Yes, I would.

12:18:10 5 Q. 310 So effectively you and the bank have the same objective, isn't that right,  
6 Mr. O'Callaghan?

7 A. Us probably more so than the bank, we wanted to develop the project. The  
8 bank agreed more or less with that, but I'd say if they got an opportunity  
9 of selling it and getting their money back they probably would have gone  
10 for that.

12:18:29 11 Q. 311 But there was more to the relationship, Mr. O'Callaghan, than banker  
12 customer, isn't that right?

13 A. Oh yes, there was.

14 Q. 312 They were your partner in this endeavour and had been your partner up to  
15 December '92 in seeking the zoning?

12:18:38 16 A. If you can call a bank a partner, yes.

17 Q. 313 Isn't that right?

18 A. Yes.

19 Q. 314 As indeed was Mr. Gilmartin on the other side?

12:18:46 20 A. Yes.

21 Q. 315 Right. And then the document goes on to record the meeting with the  
22 County Manager which I dealt with yesterday and I don't propose to deal  
23 with that, and then at 9300, there is an acknowledgement that the 810,000  
24 by, due to the County Council at the end of the year, and a discussion  
12:19:05 25 about anchors, isn't that right?

26 A. Yes.

27 Q. 316 And then in relation to Tom Gilmartin it says "John Deane has completed  
28 minutes of the meeting of the 9th February 1993. It was agreed that Owen  
29 O'Callaghan would send these to Tom Gilmartin together with an update  
12:19:18 30 report along the lines of John Deane's letter to us of the 10th February

- 12:19:22 1 1993". Did that happen?
- 2 A. Yes, it did.
- 3 Q. 317 You sent him a letter in relation to the Barkhill letter that was sent in
- 4 to the bank?
- 12:19:30 5 A. I think so yes, but I sent him some plans.
- 6 Q. 318 Yes I am just asking you now, Mr. O'Callaghan, if you look at this, do you
- 7 say that you sent an update report to Mr. Gilmartin along the lines of
- 8 Mr. Deane's letter to the bank of the 10th February?
- 9 A. Yes.
- 12:19:44 10 Q. 319 And then there was a -- an issue about Riga's support for additional funds
- 11 and it records there "At our meeting of the 9th February we had raised the
- 12 possibility of Riga providing a guarantee in respect of the additional
- 13 funds required in Barkhill. That was around half a million pounds, the
- 14 bank indicated -- sorry you indicated would you consider this and you
- 12:20:05 15 would prefer not to provide any guarantee, but if it made a difference
- 16 would you meet them halfway". Isn't that right?
- 17 A. Yes.
- 18 Q. 320 Now, I think Mr. Deane agreed with Mr. Quinn that an additional 1.4
- 19 million was sought, bringing the loan exposure on Barkhill to 13.47
- 12:20:19 20 million, do you agree with that?
- 21 A. Yes.
- 22 Q. 321 Yes. And that that was ultimately sanctioned on the 25th May 1993 and on
- 23 the 18th June '93 a facility letter was sent out?
- 24 A. Yes.
- 12:20:32 25 Q. 322 So did that you did obtain June 1993 additional funding, isn't that right?
- 26 A. Yes.
- 27 Q. 323 And I think part of that funding was designed to deal with the acquisition
- 28 of the council lands also, isn't that right?
- 29 A. Yes, yes.
- 12:20:50 30 Q. 324 Now, I think that on the 12th March '93, at 9341, Mr. Deane wrote to

12:20:50 1 Mr. Maguire in relation to the meeting that Mr. Gilmartin hadn't attended,  
2 and asked him to call a board meeting for the 24th March, isn't that  
3 right?  
4 A. Yes.

12:21:01 5 Q. 325 And again I think it was hoped that Mr. Gilmartin would attend that  
6 meeting, isn't that the position?  
7 A. Yes.

8 Q. 326 Now, I think a meeting took place, 9364, at 9364, Mr. O'Callaghan,  
9 Mr. McGrath wrote to Mr. Gilmartin on the 23rd March 1993 and referring in  
10 effect to two meetings, one that a board meet had gone been called for  
11 Wednesday 24th and that in addition the company might want to have a  
12 discussion with the bank, isn't that right?  
13 A. Yes.

14 Q. 327 Then he says "Tom you will recall my comments to you when we last met"  
15 that must have been in December '92. "It is vital for you that you attend  
16 this board meeting, I sincerely hope that you will use this opportunity to  
17 have yourself brought up to date with the developments within the  
18 company". Isn't that right?  
19 A. Yes.

12:21:57 20 Q. 328 Again Mr. Gilmartin is clearly on notice there of the upcoming meeting,  
21 isn't that right?  
22 A. Yes.

23 Q. 329 Also that there will be a separate customer/bank meeting that will take  
24 place also?  
12:22:06 25 A. Yes.

26 Q. 330 Now, I think at 9367 that a meeting did take place on the 24th March  
27 attended by Mr. Pitcher and yourself, isn't that right?  
28 A. Yes.

29 Q. 331 This was one of the first meetings if not the first attended by Mr. Barry  
12:22:20 30 Pitcher?

- 12:22:21 1 A. I think so. Yes.
- 2 Q. 332 It would have been necessary I think to have two directors present?
- 3 A. Yes.
- 4 Q. 333 This is a board meetings of Barkhill, isn't that right?
- 12:22:27 5 A. Yes.
- 6 Q. 334 But would it be fair to say, Mr. O'Callaghan, there wasn't a great  
7 distinction between meetings with the bank and board meetings?
- 8 A. Yes, yes that's correct, yes.
- 9 Q. 335 There was -- a reasonably casual approach between the customers that is  
10 yourself, Mr. Gilmartin, Mr. Deane on the one hand and the bank on the  
11 other, would that be fair to say, in relation to these meetings?
- 12 A. Probably would, yes.
- 13 Q. 336 And that people could describe something as a board meeting that was in  
14 fact as Mr. Deane described it, a banker/customer meeting?
- 12:23:00 15 A. Yes but the board meetings that were held were official board meetings.
- 16 Q. 337 Yes but for example in February it was intended to have a board meeting,  
17 Mr. Gilmartin didn't attend, so what happened was a meeting between the  
18 bank and the customer, isn't that right?
- 19 A. That is correct.
- 12:23:13 20 Q. 338 But if Mr. Gilmartin or Mr. Pitcher attended on the 9th February it would  
21 have been a board meeting, isn't that right?
- 22 A. Yes.
- 23 Q. 339 So at 9367 at this meeting, Mr. Maguire and Mr. Farrell and Mr. Deane were  
24 invited to attend the meeting. There was a discussion about the County  
12:23:30 25 Council lands, the planning permission, isn't that right?
- 26 A. Yes.
- 27 Q. 340 And on the following page a discussion about the finance of the company at  
28 paragraph six and "it was recognised that arrangements now had to be made  
29 with the company's bankers to continue the facilities and to grant further  
12:23:48 30 facilities."

- 12:23:49 1 A. Yes.
- 2 Q. 341 Right? And that proposals would have to be put forward, isn't that right?
- 3 A. Yes.
- 4 Q. 342 At item 7 under the heading "company matters: Serious concerns were
- 12:23:58 5 expressed on the question of the completion of the accounts and the filing
- 6 of the returns to the Companies Office."
- 7 A. Yes.
- 8 Q. 343 Mr. Deane has told the Tribunal that that is correct. Do you agree those
- 9 concerns were expressed?
- 12:24:08 10 A. Yes they were.
- 11 Q. 344 And what was holding up the finalisation can you remember,
- 12 Mr. O'Callaghan, of the completion of the accounts at this stage?
- 13 A. I can't recollect now, I'd say probably so much involved -- I think
- 14 Barkhill had been in quite a mess, trying to unravel it was the main
- 12:24:27 15 difficulty, I think and getting everybody -- there were so many people
- 16 involved in this, you had the banks, you had ourselves, you had
- 17 Merrygrove, you had Tom Gilmartin and the Gilmartin Trust and all these
- 18 things, Bank of Ireland the whole lot, it was difficult, they were
- 19 difficult accounts to get together.
- 12:24:58 20 Q. 345 Sorry excuse me, Mr. O'Callaghan. Insofar as this meeting was concerned,
- 21 which had, this meeting taking place in March of 1993, Mr. Gilmartin
- 22 hadn't attended any of the meetings to this point in time, in 1993, and at
- 23 paragraph 9, provision is being made to try and arrange another meeting
- 24 which it's hoped will take place later in the year with Mr. Gilmartin,
- 12:25:23 25 isn't that right?
- 26 A. Yes.
- 27 Q. 346 You would have been in receipt and Mr. Deane had been in receipt of the
- 28 correspondence from Deloitte & Touche, isn't that right?
- 29 A. Yes.
- 12:25:32 30 Q. 347 In relation to the December 1992 letter, isn't that right?



- 12:25:41 1 A. What letter is that?
- 2 Q. 348 The letter that, which identified all of the outstanding matters that had  
3 to be done for the audit, isn't that the position?
- 4 A. Yes, I had that, yes.
- 12:25:44 5 Q. 349 So at this board meeting which you are attending, Mr. O'Callaghan, the  
6 discussion takes place about the company matters and the completion of the  
7 accounts, isn't that right?
- 8 A. Yes.
- 9 Q. 350 And you are aware of a schedule of items one to ten on it, that have been  
12:25:57 10 identified by Mr. Fleming as being outstanding and for which invoices are  
11 sought, isn't that right?
- 12 A. Yes.
- 13 Q. 351 You had the answers to those queries, isn't that right?
- 14 A. To some of them some of them.
- 12:26:08 15 Q. 352 To some of them. Did you indicate at this meeting that you would be in a  
16 position to provide that information to Mr. Fleming?
- 17 A. I don't think so, I don't know it was actually discussed in detail, that's  
18 what I said to you the last time. The accounts were never treated very  
19 seriously, company matters were never treated all that seriously. And  
12:26:26 20 that particular letter you are talking about, I don't even remember it  
21 being discussed or tabled, maybe it was and I didn't take any great notice  
22 of it. It was something that was left on the long finger as we had so  
23 many other problems to solve and because things were complicated it didn't  
24 get the attention it should have got.
- 12:26:45 25 Q. 353 Yes. We will come to look at the rest of the meetings in '93,  
26 Mr. O'Callaghan, but is it your position that while the minutes of the  
27 meeting record serious concern about the completion of the accounts, it's  
28 your evidence to the Tribunal that such concerns were not in fact serious?
- 29 A. Well they were serious but there was no great notice taken, not an awful  
12:27:01 30 lot done about them.

- 12:27:02 1 Q. 354 Is it the position that you didn't have an awful lot of interest in them?  
2 A. I would say yes, to be quite frank, you know.
- 3 Q. 355 Now at 9391 I think, Mr. O'Callaghan, Mr. Gilmartin rang after the  
4 meeting, he wanted to find out the contents of the board meeting and  
12:27:20 5 Ms. Basquille spoke to him, was unable to provide any specific information  
6 and said that Mr. Maguire would be forwarding the minutes to the meeting?  
7 A. Yes.
- 8 Q. 356 The document records "Tom then launched into past grievances, complaining  
9 about blackmail and corrupt practices in relation to the putting in place  
10 of the shareholders agreement. He referred to the fact that Barkhill was  
11 and still should be his deal and expressed dissatisfaction at the fact  
12 that he is not being consulted into any decision taken by the company."  
13 Were you aware in March 1993 of these complaints by Mr. Gilmartin?  
14 A. Yes, after that I was, yes.
- 12:27:53 15 Q. 357 Did Ms. Basquille inform you of the nature of the complaints that had been  
16 made by Mr. Gilmartin?  
17 A. I don't think she did directly, but either Michael O'Farrell or Dave  
18 McGrath would have told me.
- 19 Q. 358 Insofar as the document records him launching into past grievances do you  
12:28:11 20 agree that by March 1993 the bank must have been in receipt of prior  
21 complaints by Mr. Gilmartin in order for them to refer to his reiteration  
22 of past grievances?  
23 A. I would say Mary Basquille was aware of this yes, from telephone calls  
24 from him.
- 12:28:26 25 Q. 359 And that Ms. Basquille or the bank must have been in receipt of complaints  
26 from Mr. Gilmartin prior to the 26th March '93?  
27 A. They must have been, yeah, phone calls I am sure that he would have made,  
28 yes.
- 29 Q. 360 Ms. Basquille in her evidence described her conversation with  
12:28:42 30 Mr. Gilmartin as a tirade and that there was no opportunity for her to ask

12:28:46 1 about what blackmail or corrupt practices he was referring to, that was  
2 her evidence to the Tribunal?  
3 A. Yes.  
4 Q. 361 But what is clear from the note she has taken is that he was complaining  
12:28:57 5 about blackmail and corrupt practices in relation to the shareholders  
6 agreement, is that right?  
7 A. Yes.  
8 Q. 362 Now was that a surprise to you, Mr. O'Callaghan, when you heard it for the  
9 first time?  
12:29:06 10 A. It was yeah, it certainly was, yeah. Certainly was.  
11 Q. 363 And did you go to Mr. Gilmartin to try and reassure him or find out what  
12 he meant when he was talking about blackmail?  
13 A. No, I didn't.  
14 Q. 364 Did you go to Mr. Gilmartin to try and meet with him to see what he meant  
12:29:21 15 about the corrupt practices?  
16 A. No.  
17 Q. 365 Did you seek from the bank any information about the previous grievances  
18 that had been outlined to the bank by Mr. Gilmartin in his telephone  
19 conversation?  
12:29:33 20 A. No.  
21 Q. 366 Did you do anything about this once you found out about it?  
22 A. No, I didn't.  
23 Q. 367 Did you consider it a matter of no significance?  
24 A. I did.  
12:29:42 25 Q. 368 Is that fair to say?  
26 A. Yes, in a nutshell, yes.  
27 Q. 369 If it had been a matter that you considered important you would have done  
28 something about it?  
29 A. Yes, we had numerous meetings, asked Tom Gilmartin to come to them to meet  
12:30:03 30 us and explain, talk to us face-to-face, man to man, wouldn't even turn

12:30:03 1 up, he spoke to Mary Basquille, didn't have the courage to seek to anybody  
2 else.

3 Q. 370 But insofar as you became aware shortly of Mr. Gilmartin's, the content of  
4 Mr. Gilmartin's conversation and that it involved allegations of blackmail  
12:30:12 5 and corrupt practices in relation to the shareholders agreement and that  
6 he must have made complaints of a similar nature prior to that to the  
7 bank, is it your position that you were able to disregard them, you didn't  
8 take them seriously and did you nothing about them?

9 A. That's correct.

12:30:25 10 Q. 371 Now, I think that on the 25th March at 9385, Mr. McGrath of Allied Irish  
11 Bank wrote again to Mr. Gilmartin expressing his disappointments at his  
12 non-attendance, isn't that right?

13 A. Yes.

14 Q. 372 And informing him that another meeting had been scheduled for the 28th  
12:30:45 15 April, isn't that right?

16 A. Yes.

17 Q. 373 And I think that meeting was attended by Mr. Gilmartin, isn't that right?

18 A. I think he came to that one, yes.

19 Q. 374 I will correct myself, he came to part of that meeting, isn't that right?

12:30:56 20 A. Yes, I think so.

21 Q. 375 I think also on the same day at 9372, in relation to the Barkhill audit,  
22 Ms. Basquille sent to Mr. Deane again a copy, at 9373, of the letter of  
23 the 15th December '92, isn't that right?

24 A. Yes.

12:31:19 25 Q. 376 And we know, and we have seen it on numerous occasions at 9381, the  
26 schedule of outstanding queries that was attached to that letter, isn't  
27 that right?

28 A. Yes.

29 Q. 377 Now, you will be aware because I have shown it to you this morning, that  
12:31:33 30 Mr. Lucey who was your account had sent that back, the same letter,

12:31:37 1 effectively, and the same queries, back to Mr. Fleming, in earlier in  
2 February, isn't that right, because he said the information was with the  
3 bank, isn't that right?  
4 A. Yes.

12:31:46 5 Q. 378 Now in March of '93 you have the bank sending the same letter and the same  
6 queries back to Mr. Deane, isn't that right?  
7 A. Back to Mr. Deane is it, yes.  
8 Q. 379 Isn't that right, if you look at 9372?  
9 A. Yes, yes.

12:31:58 10 Q. 380 Okay. Now I think we have seen -- I will just get it for you,  
11 Mr. O'Callaghan, yes the 8th February at 9195, your accountant sends the  
12 letter of the 15th December '92, together with a list of outstanding  
13 queries back to Mr. Fleming and says go to AIB because they might -- they  
14 paid out items one to ten, isn't that right?

12:32:26 15 A. Yes.

16 Q. 381 We dealt with that this morning and whether or not you had spoken to  
17 Mr. Lucey, isn't that right?  
18 A. Yes.

19 Q. 382 By the 24th March '93 at 9372 back come the same letter from Mr. Fleming  
12:32:41 20 of Deloitte & Touche together with the same queries, isn't that right,  
21 back to Mr. Deane, your partner?  
22 A. Yes.

23 Q. 383 So obviously the ball is now firmly in Mr. Deane's court to obtain the  
24 information in relation to the outstanding queries, isn't that right?

12:32:56 25 A. Yes.

26 Q. 384 And isn't it likely, that this is happening because of the queries that  
27 had been raised at the meeting that had just taken place, and the concern  
28 that had been expressed about the completion of the audit?  
29 A. Yes.

12:33:07 30 Q. 385 And isn't that something you would have been aware of, Mr. O'Callaghan?

- 12:33:11 1 A. Not really. Not, I would not have been involved very much in that.
- 2 Q. 386 And on the 25th March 1993, at 9386, Mr. Deane writes to Mr. Fleming,
- 3 isn't that right?
- 4 A. Yes.
- 12:33:28 5 Q. 387 And he asks him to have a note of any items which are preventing him
- 6 completing the audit, isn't that right?
- 7 A. Yes.
- 8 Q. 388 Now, Mr. Deane has, because he has got it from Ms. Basquille, the letter
- 9 of December '92, setting out the matters that have to be attended so to so
- 12:33:44 10 the audit can be completed, isn't that right?
- 11 A. Yes, yes.
- 12 Q. 389 Has a list of the outstanding queries including Shefran payments and
- 13 sundry items, is that right?
- 14 A. Yes.
- 12:33:52 15 Q. 390 He writes to Mr. Fleming asking him what are the matters that are
- 16 preventing completion of the audit, is that right?
- 17 A. Mm-hmm.
- 18 Q. 391 Why did he do that, do you know?
- 19 A. I don't know why he did that.
- 12:34:02 20 Q. 392 All right. Is it because Mr. Deane didn't have available to him the
- 21 information that would have enabled him to provide the information that
- 22 Mr. Fleming sought in his letter of the 15th December?
- 23 A. I can't answer that, I don't know.
- 24 Q. 393 You don't know. Did he come to you about it?
- 12:34:16 25 A. No, wouldn't have come to me.
- 26 Q. 394 He wouldn't have come to you?
- 27 A. No.
- 28 Q. 395 Even though you are the person who is in charge of the Dublin development?
- 29 A. Yeah. He would have come to Aidan Lucey before he come to me.
- 12:34:37 30 Q. 396 We know Mr. Lucey didn't have them, isn't that right, because he had

- 12:34:37 1 already sent them back, isn't that the position, in his letter of the 8th  
2 February 1993?
- 3 A. Yes.
- 4 Q. 397 So if Mr. Deane had gone to Mr. Lucey he'd have found himself in the  
12:34:42 5 position at that Mr. Lucey couldn't help him, isn't that right?
- 6 A. Yes.
- 7 Q. 398 And if Mr. Lucey couldn't help him and he had the prime books of records  
8 then Ms. Cowhig couldn't help him because she was going to rely on  
9 Mr. Lucey's documents, isn't that right?
- 12:34:55 10 A. Yes.
- 11 Q. 399 So if Mr. Lucey couldn't help him and Ms. Cowhig couldn't help, who is the  
12 person that could help him, Mr. O'callaghan?
- 13 A. The one at the end of the line, that's me but nobody came to me.
- 14 Q. 400 Nobody came to you. Though you were the man with all the answers, isn't  
12:35:07 15 that right?
- 16 A. I wouldn't be too sure if I had the answers to those questions but I  
17 wasn't approached.
- 18 Q. 401 Well, if your evidence to the Tribunal is correct about the three Shefran  
19 payments in 1991 you had the answer to that?
- 12:35:18 20 A. I had the answer to that of course.
- 21 Q. 402 If in so far as the two items of the sundry payments of 10,000?
- 22 A. I had that as well.
- 23 Q. 403 You had the answers to that because you knew who you paid, isn't that  
24 right?
- 12:35:27 25 A. Yes.
- 26 Q. 404 But notwithstanding all of this and the fact that it is clear by February  
27 of '93 that Mr. Lucey couldn't help Mr. Fleming, isn't that right, because  
28 he sent back the information and told him to go to the bank?
- 29 A. Mm-hmm.
- 12:35:40 30 Q. 405 The bank sent the information back to Mr. Deane?

12:35:43 1 A. Yes.

2 Q. 406 Obviously because they didn't have the information, isn't that right?

3 A. Yes.

4 Q. 407 Right. And Mr. Deane then writes to Mr. Fleming, isn't that right?

12:35:52 5 A. Yes.

6 Q. 408 In the letter that we see on screen on the 25th March and he asks for a

7 list of what's outstanding?

8 A. Yes.

9 Q. 409 In all of this nobody approached you, Mr. O'Callaghan, as the person who

12:36:02 10 was central to the Dublin development to say do you know anything about

11 this list of expenses, is that right?

12 A. Well with the exception of, I'm not sure when this happened, with the

13 exception of the notations on that list of queries.

14 Q. 410 Yes, I think that we'll see that you had to have discussed that list of

12:36:21 15 queries at a particular point in time by mid 1993 I think it is, Mr. -- I

16 think it's a date in June I think 1993, but in any event when all of this

17 documentation is circulating, Mr. O'Callaghan, between Mr. Deane, the

18 bank, Mr. Lucey and Mr. Fleming, it circulates around you, is that fair to

19 say?

12:36:41 20 A. Yes.

21 Q. 411 And nobody stops the circulation to say we'll give this to Mr. O'Callaghan

22 because he has to have the answer, is that fair?

23 A. That would be fair to say.

24 Q. 412 Does that accord with your recollection?

12:36:53 25 A. Yes.

26 Q. 413 Right. Now, I think moving on into April, the bank had written to

27 Mr. Gilmartin and had been anxious to set up a meeting and I think a board

28 meeting took place on the 28th April, 1968 please, an agenda for that

29 meeting is sent to Mr. Maguire, isn't that right, for circulation to

12:37:16 30 Mr. Gilmartin, yourself and Mr. Pitcher, isn't that the position?



- 12:37:19 1 A. Yes, yes.
- 2 Q. 414 And at 9481 Mr. Gilmartin, on the 28th April confirmed that he would  
3 attend the Barkhill board meeting, is that right?
- 4 A. Yes.
- 12:37:31 5 Q. 415 And he also advised he had received a High Court writ from the Corporation  
6 claiming interest?
- 7 A. Yes.
- 8 Q. 416 And he identifies a matter of concern to him, isn't that right?
- 9 A. Yes.
- 12:37:40 10 Q. 417 He inquired from the bank the following "He inquired as to whether AIB was  
11 aware of what matters needed to be attended to in order to finalise the  
12 audit. I replied that Deloitte & Touche correspondence in December '92  
13 was the last we had received, which indicated a need to discuss issues  
14 with Barkhill's directors.
- 12:37:59 15 Tom was concerned that delays could lead to the striking off of the  
16 company, however I reassured him that Barkhill did not feature on the last  
17 strike off notice. He also mentioned the situation of O'Callaghan  
18 Properties reclaiming VAT of approximately 10,000 pounds on invoices paid  
19 by Barkhill as being a matter to be addressed in finalising the audit".
- 12:38:17 20 Isn't that right?
- 21 A. Yes.
- 22 Q. 418 It's clear from that note taken by Ms. Basquille that the matters that she  
23 identified to Mr. Gilmartin on foot of his query was the letter of  
24 December 1992 from Mr. Fleming, isn't that right?
- 12:38:30 25 A. Yes.
- 26 Q. 419 And that is the letter that has attached to it the schedule of unexplained  
27 items, isn't that right?
- 28 A. Yes.
- 29 Q. 420 Now, I think that 22543 please, a writ was issued against Mr. Gilmartin by  
12:38:45 30 the Corporation in relation to outstanding interest for the acquisition of

- 12:38:58 1 the Corporation lands, isn't that right?
- 2 A. Yes.
- 3 Q. 421 And that was a matter that came to be discussed at that board meeting and
- 4 subsequent bank customer meetings, isn't that right?
- 12:38:59 5 A. Yes.
- 6 Q. 422 And also a claim made by Connell Wilson, isn't that right?
- 7 A. Yes.
- 8 Q. 423 Who had previously been retained by Mr. Gilmartin but who were at this
- 9 stage no longer being retained, isn't that right?
- 12:39:12 10 A. Yes.
- 11 Q. 424 Now I think on the 28th April, Mr. O'Callaghan, at 9508, a board meeting
- 12 of the Barkhill took place, and Mr. Pitcher and yourself are recorded as
- 13 being present, and Mr. Gilmartin for part of the meeting?
- 14 A. Yes.
- 12:39:30 15 Q. 425 Now, the first item one refers to the fact that Mr. Maguire, Mr. O'Farrell
- 16 and Mr. Deane were invited to attend the meeting and contribute to it,
- 17 isn't that right?
- 18 A. Yes.
- 19 Q. 426 Barry Pitcher requested that you chair the meeting and 3 deals with site
- 12:39:44 20 matters, and the completion of the sale from the council and the issue in
- 21 relation to the itinerants and making the site secure, isn't that right?
- 22 A. Yes.
- 23 Q. 427 That's referring to the Quarryvale site, isn't that the position?
- 24 A. Very much so. Yes.
- 12:39:58 25 Q. 428 Item four is the planning permission and it was hoped to lodge it in May,
- 26 isn't that right?
- 27 A. Yes.
- 28 Q. 429 I think it was lodged later on, isn't that the position?
- 29 A. Later on in May.
- 12:40:06 30 Q. 430 Yes. At this stage Tom Gilmartin joined the meeting, Owen O'Callaghan

12:40:10 1 gave a resume of the meeting to that point, Tom Gilmartin requested a copy  
2 of the of the site layout and Owen O'Callaghan undertook to furnish same  
3 immediately.

4  
12:40:20 5 Then there was a report of the interest of anchors and under item 6,  
6 finance, isn't that right?

7 A. Yes.

8 Q. 431 "A report was given to the board on the current financial position of the  
9 company and it was hoped an application for finance would be made on the  
12:40:32 10 6th May '93. Mr. Gilmartin raised the issue of outstanding creditors and  
11 these were explained by Owen O'Callaghan."

12  
13 What outstanding creditors was Mr. Gilmartin concerned about?

14 A. Probably the design team that he had himself, they were not paid, his  
12:40:57 15 planning consultant particularly Ove Arup.

16 Q. 432 And Taggarts?

17 A. And Taggarts.

18 Q. 433 And these were consultant who is had been retained by Mr. Gilmartin in the  
19 early stages of the project?

12:41:07 20 A. That's right.

21 Q. 434 And who in effect had been replaced by Mr. Ambrose Kelly?

22 A. And others.

23 Q. 435 And others. And would it be fair to say that Mr. Gilmartin took umbrage  
24 or was upset by the fact that his experts had been replaced by as he saw  
12:41:21 25 it, your experts?

26 A. Yes.

27 Q. 436 And that, did Mr. Gilmartin have a complaint that your experts were being  
28 paid within the context of the Quarryvale development but that his experts  
29 who had been on the job longer were not being paid?

12:41:34 30 A. Well yes, he had a complaint, but I wouldn't say his experts were on the

- 12:41:38 1 job longer, his experts fleeced him number one and number two we couldn't  
2 afford to pay them at the time and they were of no great benefit to the  
3 scheme at that particular stage.
- 4 Q. 437 Right. The issue discussed of outstanding creditors isn't that likely to  
12:41:53 5 have been outstanding creditors of you or was it outstanding creditors of  
6 Mr. Gilmartin?  
7 A. Of Mr. Gilmartin.
- 8 Q. 438 Right. Under item 7 company matters "Serious concern was expressed on the  
9 question of the completion of the accounts and the filing of the returns  
10 in the Companies Office. John Deane reported that he had written twice to  
11 Leo Fleming for a list of outstanding items, he would continue to pursue  
12 this as a matter of urgency."  
13  
14 I think we have seen Mr. Deane received from the bank a letter of queries  
15 in it from Mr. Fleming and followed that up by writing to Mr. Fleming  
16 seeking a list of outstanding matters, isn't that right?  
17 A. Yes.
- 18 Q. 439 Now Mr. Deane has told the Tribunal that he was taking it upon himself to  
19 ensure that all the outstanding matters would be addressed?  
12:42:33 20 A. Yes.
- 21 Q. 440 And would you agree with that?  
22 A. Yes.
- 23 Q. 441 Right. Now, Mr. Gilmartin handed over a writ from the Corporation at that  
24 meeting and I think that is the writ that I have shown you, isn't that  
12:42:43 25 right?  
26 A. Yes.
- 27 Q. 442 Now, can you remember whether there was any discussion at that meeting  
28 about Blanchardstown or the opposing development?  
29 A. That's it, none whatsoever.
- 12:42:53 30 Q. 443 Right. I think Mr. Deane agreed with Mr. Quinn that the question of

12:42:56 1 Blanchardstown was something that was regularly mentioned or discussed  
2 only insofar as it was a competing development, a rival development, is  
3 that right?  
4 A. Oh, yes.

12:43:05 5 Q. 444 Would you agree with that?  
6 A. Yes of course.  
7 Q. 445 And would it be fair to say that in 1992 you had kept a fairly close eye  
8 on Blanchardstown, insofar as it was involved in a campaign against  
9 Quarryvale?  
12:43:21 10 A. Oh, yes, indeed.  
11 Q. 446 And would you also agree that you yourself were involved in a campaign  
12 against Blanchardstown?  
13 A. Yes.  
14 Q. 447 Right. And that you had your opposing generals, Mr. Corcoran had  
12:43:27 15 Mr. Keating and you had Mr. Dunlop?  
16 A. And others.  
17 Q. 448 And others, isn't that the position?  
18 A. Yes.  
19 Q. 449 So you would have been alert to Blanchardstown from the beginning from a  
12:43:36 20 development point of view, Mr. O'Callaghan, because of Mr. Corcoran's  
21 claim in 1991, that Quarryvale was allowed to proceed he would not go  
22 ahead with his development, isn't that right?  
23 A. That's correct.  
24 Q. 450 And he had put an argument to the people of Clondalkin that if you were  
12:43:53 25 allowed to proceed with your development it would kill off his  
26 development, isn't that right?  
27 A. Yes.  
28 Q. 451 Would it be fair to say you kept a weather eye on Mr. Corcoran and on  
29 Green Property in Blanchardstown?  
12:44:06 30 A. Very much so, yes.

- 12:44:06 1 Q. 452 But is it your position that if Blanchardstown had been mentioned or  
2 discussed at this meeting on the 28th April 1993, it ought to be reflected  
3 in the minutes?  
4 A. Yes.
- 12:44:15 5 Q. 453 Right. Do you agree that the minutes always reflect what was discussed,  
6 Mr. O'Callaghan, at them?  
7 A. Yes, I think they were, I think so yes, think they were pretty accurate,  
8 yes.
- 12:44:31 9 Q. 454 If I could turn to deal now, Mr. O'Callaghan, with the planning that  
10 occurred in 1993, and I think that a motion was brought in April of 1993  
11 at 9479 please, which was lodged on the 27th April with the council, isn't  
12 that right?  
13 A. Yes.
- 12:44:52 14 Q. 455 Now, just to assist you, paragraph 5.4.9 of the written statement had  
15 incorporated a statement following on the decision of December 1992, isn't  
16 that right?  
17 A. Yes.
- 18 Q. 456 And what was being brought here was a motion that would alter the written  
19 statement insofar as it referred to the cap, isn't that right?  
12:45:07 20 A. Yes, yes.
- 21 Q. 457 And the main change that was being promoted was the introduction of the  
22 words "Town" beside "District" and then "Shall be in the order of 250,000  
23 square feet" isn't that right?  
24 A. Yes.
- 12:45:23 25 Q. 458 I think the manager's report had said that it should be "not greater than  
26 250,000 square feet".  
27 A. Yes, yes.
- 28 Q. 459 If I can summarise the position; Mr. Dunlop has told the Tribunal that  
29 Mr. Lawlor is likely to have been the person who came up with the idea of  
12:45:41 30 amending the written statement so that the development would have more

12:45:44 1 flexibility, do you agree with that?

2 A. I would not. Absolutely incorrect.

3 Q. 460 So Mr. Dunlop when he tells the Tribunal that is incorrect, who was the

4 genesis or the author of this motion?

12:45:55 5 A. I was.

6 Q. 461 You were?

7 A. Yes.

8 Q. 462 And what had you, what were you seeking to achieve with that motion,

9 Mr. O'Callaghan?

12:46:01 10 A. Very simple, two very small points actually, one was that I was hoping

11 that the, we would have the word "town" district centre instead of

12 "district" centre, very small help it meant nothing really, but from a

13 perception point of view, at some stage we might be able to get a town

14 centre there, meant nothing else planning wise and legally it didn't mean

12:46:23 15 anything at all actually, I just wanted to get that in.

16

17 Secondly the most important one, not that it meant an awful lot either,

18 you to "in the order of" than rather than "not greater" than 250,000

19 square feet, quite simply meant that if we ended up, it's a very, very

12:46:41 20 small thing, at the end of the day with retailer who wanted to take a shop

21 of 5,000 square feet and we only had 3,000 left in our 250,000 square

22 feet, if we had in the order of, we could actually place that shop, in

23 other words we could go 2,000 square feet over the 250,000. It caused a

24 lot of hassle in the council, in trying to get it though but in the end it

12:47:06 25 was worthless really because the cap had a flexible of 10 per cent each

26 way but I wasn't aware of that.

27 Q. 463 In any event this was your motion, Mr. O'callaghan, is that right?

28 A. Oh.

29 Q. 464 Who drafted it for you?

12:47:16 30 A. I did.

- 12:47:18 1 Q. 465 You drafted that yourself?
- 2 A. Yes.
- 3 Q. 466 Who obtained the signatures on it?
- 4 A. I did.
- 12:47:22 5 Q. 467 These were again, the four local councillors -- same four councillors,  
6 isn't that right?
- 7 A. Yes, the same four --
- 8 Q. 468 Did you have any assistance from Mr. Dunlop in relation to getting those  
9 signatures?
- 12:47:28 10 A. No.
- 11 Q. 469 Did you have any assistance or involvement of Mr. Lawlor in relation to  
12 this matter?
- 13 A. Nothing at all to do with that, absolutely nothing.
- 14 Q. 470 Right. This is a matter that you, a view you came to yourself, is that  
15 right?
- 12:47:38 16 A. Yes.
- 17 Q. 471 Now, I think the matter on the 3rd June at 9665, this matter came before  
18 the council on the 1st occasion and I think that at a prefers meeting,  
19 Mr. O'Callaghan, of the 1st June 1993 the council had agreed that they  
12:48:08 20 would adopt the manager's report subject to the passing of subsequent  
21 motions?
- 22 A. Yes.
- 23 Q. 472 Right. And your motion then came before the council on the 3rd June 1993  
24 at 9666, and at the bottom of the page you can see the motion, and the  
12:48:20 25 names of Councillor O'Halloran, Ridge, McGrath and Tyndall, proposed by  
26 Councillor O'Halloran and seconded by Councillor McGrath, isn't that  
27 right?
- 28 A. Yes.
- 29 Q. 473 And at 9667, the manager's report was considered and it said that the  
12:48:34 30 motion was in conflict with the motion that had been passed in December,



- 12:48:37 1 isn't that right?
- 2 A. That is correct, yes.
- 3 Q. 474 And he said that the manager's report at paragraph 5.4.9 accurately or
- 4 correctly reflected the motion passed, isn't that right?
- 12:48:47 5 A. Yes.
- 6 Q. 475 Right. And he recommended no change, isn't that the position?
- 7 A. Yes.
- 8 Q. 476 Now, I think that on the following page, 9668 an amendment was proposed by
- 9 Councillor Terry and seconded by Councillor Quinn, and another amendment
- 12:49:04 10 was proposed by Councillor Tyndall and seconded by Councillor Gilbride,
- 11 isn't that right?
- 12 A. Yes.
- 13 Q. 477 And the matter was adjourned without reaching a decision?
- 14 A. Yes.
- 12:49:13 15 Q. 478 Were you there that day?
- 16 A. Yes.
- 17 Q. 479 Right. Would it be fair to say that the matter seems to be getting
- 18 somewhat confused at this stage?
- 19 A. Absolutely.
- 12:49:20 20 Q. 480 And that the people were arguing whether you will put words, "but not
- 21 exceeding" after the words "In the order of"?
- 22 A. Yes, it wasn't worth the bother, absolutely.
- 23 Q. 481 Right. On the 4th June I think at 9669 the matter came back before the
- 24 council and at 9670 the motion of the taken up, isn't that right?
- 12:49:42 25 A. Yes.
- 26 Q. 482 And various at 9671, amendments were proposed by various councillors
- 27 including Councillor Tyndall and Councillor Gilbride, isn't that right?
- 28 A. Yes.
- 29 Q. 483 I think the earlier motions that had been brought by Councillor Terry was
- 12:49:55 30 withdrawn, isn't that right?

- 12:49:57 1 A. Yes.
- 2 Q. 484 Now, the amendment that was ultimately agreed is contained on page 9671 it  
3 reads "that the motion be amended by deleting the words "District town"  
4 and substituting the word "District town" with a capital letter." Isn't  
12:50:15 5 that right?
- 6 A. Yes.
- 7 Q. 485 Item 2, "Deleting the words retail floor space including retail shopping.  
8 3 including the words "not exceeding" after the words "in the order of" in  
9 line 9. This was passed unanimously at 9671 and 9672 the full version of  
12:50:34 10 the amended motion as passed is given, isn't that right?
- 11 A. Yes.
- 12 Q. 486 And following on that I think at 9851, the plan went on display, isn't  
13 that right, this is the second public display for a one month period, 9815  
14 please, I beg your pardon.
- 12:50:53 15 A. Yes.
- 16 Q. 487 And the map at 9816, Mr. O'Callaghan, and you will see outlined there, the  
17 Quarryvale lands, isn't that right, in the centre?
- 18 A. Yes.
- 19 Q. 488 And you will see that there is various numbers attributed to them, that is  
12:51:12 20 7A, 7B, isn't that right, you see?
- 21 A. Yes.
- 22 Q. 489 And if you go to the bottom then of the legend, at the bottom of the map,  
23 these and you will see the changes regarding the Quarryvale lands that are  
24 put on display, "7A, B and C were changes of zoning from E, D and E to a  
12:51:33 25 global C and E", isn't that right, that's giving effect to the December  
26 decision, isn't that the position?
- 27 A. That's correct.
- 28 Q. 490 Change 7 was to restrict the retail shopping to 23,500 square meters  
29 that's in accordance with the motion we just looked at, isn't that right?
- 12:51:48 30 A. Yes.

- 12:51:48 1 Q. 491 Change 41 to ensure the provision of a suitable centre to meet the overall  
2 needs of the area, that was part of the December '92 motion?  
3 A. Yes.  
4 Q. 492 Then the changes regarding the Neilstown lands were changes 18 and 38,  
12:51:59 5 isn't that right, change lands of Neilstown from E to D, that's to town  
6 centre and then an amendment to the written statement to encourage the  
7 development of specialised commercial and recreation and industrial uses  
8 in the area, isn't that right?  
9 A. At Neilstown. Yes.  
12:52:15 10 Q. 493 Isn't that the position?  
11 A. That's correct.  
12 Q. 494 Those amendments at map 16, page 9817 also form part of the written  
13 statement that went on display, isn't that right, you will see --  
14 A. Yes, yes.  
12:52:30 15 Q. 495 7 A, B and C?  
16 A. Yes.  
17 Q. 496 Again at 9818 the written statement, isn't that right, and they I think  
18 were the 1993 amendments, do you say, Mr. O'Callaghan, that Mr. Dunlop was  
19 completely wrong in the evidence he gave to the Tribunal about the genesis  
12:52:50 20 of that motion?  
21 A. Oh, yes.  
22 Q. 497 Right. Why do you --  
23 A. He didn't know anything that.  
24 Q. 498 He wouldn't know anything about that?  
12:53:07 25 A. He wouldn't understand what that was all about.  
26 Q. 499 Mr. Dunlop wouldn't have understood it?  
27 A. Neither would Mr. Lawlor.  
28 Q. 500 Do you say your knowledge of zoning requirements or criteria or your  
29 knowledge of the Development Plan was more extensive than that of  
12:53:13 30 Mr. Lawlor?

12:53:14 1 A. Planning matters, this was a planning matter really.

2 Q. 501 It is in effect a zoning matter, Mr. O'Callaghan, because it's being dealt  
3 with in the context of the special meeting in the Development Plan.

4 A. Yes but it was dealing with a planning matter.

12:53:24 5 Q. 502 Right. But it was your document and it was your creation, is that right?

6 A. It had nothing at all to do with this, any of the two of them.

7 Q. 503 Therefore when Mr. Dunlop gave that evidence to the Tribunal he was  
8 completely incorrect, is that right?

9 A. Yes.

12:53:36 10 Q. 504 You didn't seek through your legal team to challenge Mr. Dunlop's evidence  
11 in that regard?

12 A. No I did not, I did not, I wasn't aware of what he said actually in the  
13 Tribunal, at the time.

14 Q. 505 All right. Now, insofar as Councillor Tyndall promoted that motion on  
12:53:51 15 your behalf and insofar as you subsequently came to discuss the matter  
16 June of '93 with the bank, 9746, this is a record of a board meeting or a  
17 meeting at the bank, and there are a number of matters I want to ask you  
18 about, Mr. O'Callaghan, but in relation to the Tyndall motion at 9747,  
19 under the heading zoning, could that be increased please?

12:54:22 20

21 "The bank raised the issue of the recent rezoning decisions which had  
22 proved controversial in North County Dublin. Owen O'Callaghan indicated  
23 that he had been watching this closely and was happy that it would not  
24 affect the overall zoning process.

12:54:36 25

26 I queried the recent vote in relation to Quarryvale which had been  
27 reported in the paper, see attached extract" that I think is at 9683, I  
28 think that's the extract referred to, and at 9747 just to take up that  
29 matter "Owen O'Callaghan had indicated that this was not the case at all,  
12:55:01 30 he was in the chamber on the day of the vote, the whole purpose of which

12:55:04 1 had been to copper fasten the fact that the prefers decision had been for  
2 250,000 square feet net retail space". And is the word "net" important  
3 there, Mr. O'Callaghan?  
4 A. Very important.

12:55:15 5 Q. 506 Yes, is the point you were making there to the bank that what you were  
6 seeking to achieve in relation to the motion is that you would have  
7 available to you the 250,000 square feet for retail, solely for pure  
8 retail, is that right?  
9 A. Yes, yes, retail shopping, yes.

12:55:32 10 Q. 507 Now, the way the proposal had been perceived was an effort to lift the  
11 ceiling but in the event the proposal that "This district town centre  
12 shall be in the order of but not exceeding 250,000 square feet retail  
13 floor space" was accepted. This was put forward by Colm Tyndall PD who  
14 was one of the signatories of the original proposal and would be one of  
12:55:52 15 the people on Owen O'Callaghan's side in the council" was that correct?  
16 A. Yes.

17 Q. 508 Would you have regarded Mr. Tyndall as being in your stable as it were,  
18 Mr. O'Callaghan?  
19 A. Yes the main -- not just him, the councillors in North Clondalkin, in the  
12:56:04 20 Clondalkin ward were in favour of, with the exception of two, were all in  
21 favour of Quarryvale.

22 Q. 509 Yes. All I am asking you now is about the accuracy of the note?  
23 A. The note is correct.

24 Q. 510 The note is correct. And that that is how you would have recorded your  
12:56:22 25 perception of Councillor Tyndall as being a person who was on your side.  
26 A. On the side of Quarryvale.

27 Q. 511 The document simply records him as being on your side, isn't that correct?  
28 A. Okay that's what the document says.

29 Q. 512 Now "Accordingly he is very happy with this confirmation and as the matter  
12:56:35 30 has now been aired again with no great problem he anticipates no

12:56:38 1 difficulty when the result of the public display is considered by the  
2 councillors in a few months time. He also made the point that the  
3 proposal defined the district centre as a district town centre as distinct  
4 from a district centre, the latter could have implications regarding  
12:56:53 5 size".

6 A. Yes.

7 Q. 513 Does that accord with your recollection in relation to what you had  
8 achieved with this motion that you had drafted and obtained the signatures  
9 off and processed through the council?

12:57:04 10 A. Yes.

11 Q. 514 Now, under the heading planning, the document records that "The plans have  
12 been tabled with the county manager was happy with same, it will be lodged  
13 on the 1st July. I asked whether there was any danger that technically  
14 the county manager could be considered to be in breach of procedure if he  
12:57:20 15 was to accept and consider these which technically would have to be  
16 considered under the 1983 Development Plan. Owen O'Callaghan indicated  
17 that he had raised these points with John Fitzgerald who had take answer  
18 few days to check out the matter and reverted to Owen O'Callaghan that  
19 this would not cause a problem."

12:57:38 20

21 And was that something you raised with Mr. Fitzgerald and got the  
22 assurance you were seeking?

23 A. Yes.

24 Q. 515 Is that the position?

12:57:44 25 A. Yes.

26 Q. 516 Now, I think the matter went on public display and it did ultimately come  
27 back in before the council in October, is that right, of 1993?

28 A. Yes.

29 Q. 517 And while some motions had been lodged seeking to overturn what you had  
12:57:59 30 achieved, Mr. O'Callaghan, ultimately you were successful, or the project

12:58:09 1 was successful, isn't that right?

2 A. Yes.

3 Q. 518 If you just give me one moment, Mr. O'Callaghan, while I find the folder.

4

12:58:22 5 CHAIRMAN: It's nearly -- I don't know whether you want to stop now or --

6 it's nearly one o'clock.

7

8 Q. 519 MS. DILLON: I could complete the, very quickly hopefully, the planning.

9 I think the matter came back in before the council in October 1993, in

10 October 1993, Mr. O'Callaghan, isn't that correct?

11 A. Yes.

12 Q. 520 And while a number of motions were brought before the council, on the 19th

13 October the changes that had been put on public display were approved by

14 the council, isn't that right?

12:58:53 15 A. Yes.

16 Q. 521 And there was a subsequent meeting, that meeting which approved the

17 changes was the meeting of the 19th October at 1187 please and prior to

18 that meeting taking place, at 10277 you'd had a meeting on the 18th

19 October with Mr. Dunlop and Mr. Pat Rabbitte, isn't that right, if we --

12:59:29 20 A. Well, Mr. Dunlop definitely, I don't remember meeting Pat Rabbitte.

21 Q. 522 I had understood you --

22 A. At that stage.

23 Q. 523 Yes to tell the Tribunal yesterday, that you remembered a meeting with Mr.

24 Rabbitte?

12:59:45 25 A. When he was Chairman of the council.

26 Q. 524 Yes. And he was Chairman of the council.

27 A. Was he.

28 Q. 525 Yes.

29 A. Okay.

12:59:50 30 Q. 526 And it might assist you to see, Mr. O'Callaghan, a letter, there is a

13:00:03 1 letter that you wrote in relation to the decision of the 19th of October  
2 in which you outlined your understanding of what had happened and the  
3 motions that had been lodged, and again I am probably trying to truncate  
4 matters, Mr. O'Callaghan, but certain motions had been lodged by the  
13:00:21 5 Democratic Left which sought to overturn the rezoning?

6 A. Yes, that's correct.

7 Q. 527 But the effect of those motions being passed would have been to revert to  
8 the 1991 zoning of 500,000 square feet, is that right, it might be better  
9 if I --

13:00:37 10 A. No.

11 Q. 528 I don't want to be unfair to Mr. O'Callaghan in relation to these matters  
12 so I can take it, it won't take very long, I can deal with it in the  
13 morning.

13:00:44 15 CHAIRMAN: All right. We'll sit at half ten tomorrow.

16

17 MS. DILLON: May it please you, sir.

18

19 **THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,**

13:01:01 20 **THURSDAY 2ND OCTOBER 2008 AT 10.30 AM.**

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