

1 THE HEARING RESUMED ON THE 4TH OF FEBRUARY, 1999, AS
2 FOLLOWS:

3 .

4 CHAIRMAN: Good morning everyone.

5 .

6 MR. GALLAGHER: Mr. Gogarty please.

7 .

8 JAMES GOGARTY RETURNS TO THE WITNESS-BOX AND CONTINUES TO
9 BE EXAMINED BY MR. GALLAGHER AS FOLLOWS:

10 .

11 1 Q. MR. GALLAGHER: Good morning Mr. Gogarty. On the day

12 before yesterday, when you were giving evidence, I think we

13 concluded at a stage when you were giving evidence in

14 relation to some typewritten notes, with some handwritten

15 comments on the side of them. And my recollection is that

16 the Sole Member asked you to go away and to look at those

17 documents and to try to refresh your memory and to be in a

18 position to give evidence to the Tribunal this morning

19 about the contents of that document. Have you had a an

20 opportunity of looking at the document?

21 A. I looked at them, yeah.

22 2 Q. It is a document in the reference, in the reference

23 documents that were circulated. It commences at page 57 on

24 the bottom right-hand corner. Have you had an opportunity

25 of looking and considering that, Mr. Gogarty? Would you

26 tell the Tribunal what you wish to say, arising from your

27 examination of that document and the events that are

28 referred to in it?

29 A. Well, first of all, I recollect that it is a computer

30 print-out, and we had a computer at home and I was trying

31 to familiarise myself with it, but I didn't get very far.

32 It is a young man's job, but anyway, I was trying what they

1 call "processing", word processing.

2 3 Q. Word processing. Right?

3 A. So that is my own type, typing in. And basically it is a
4 summary of notes that I made at the time, in conversations
5 with different people; Gay Grehan, Jim Mitchell, and Tim
6 O'Keefe and Copsey and Tim Parker and other people in the
7 firm about events that were happening, and within a very
8 short period of time, between the 1st of July, roughly the
9 1st of July, 1989, and up to maybe August of that year, you
10 know?

11 4 Q. Well, we had reached a stage in your evidence where you
12 were on page 60 of that document?

13 A. Yes.

14 5 Q. And you were coming to a meeting that you had with Mr.
15 Copsey at Charter House on the 6th of July, of 1989,
16 regarding the sale of AGSE to JMSE Holding Company?

17 A. Yes.

18 6 Q. What did you say at that meeting to Mr. Copsey?

19 A. Well, at the meeting itself we just -- that it was a
20 proposal to sell all the shares in Lajos Holdings shares
21 and AGSE out of the Lajos Holdings Limited and out of the
22 Trust, the Irish Trust into a UK Trust; which I considered
23 was completely distancing AGSE then, from then on with
24 anything in the Lajos Holdings Group or the subsidiary
25 companies, and it was a concern of mine at that time, which
26 I discussed with Frankie; that at that time AGSE owed JMSE
27 1.8 million pounds, and through that mechanism, as a result
28 of that there was a row between us and Franky and Copsey,
29 because here was a situation where now AGSE, according to
30 Copsey, just stood as an unsecured debtor to JMSE, and they
31 were very worried about that; and that basically reflected
32 JMSE insolvent. But they were unsecured creditors.

1 7 Q. Now, to go back then to the meeting that you had with Mr.
2 Copsey and the memorandum that you wrote. You had
3 expressed some views about Joseph Murphy Senior and his
4 general approach?

5 A. Yes. I said I was very surprised and shocked and hurt with
6 what Senior's attitude was at the Board meeting and after
7 it, in the situation of threatening me to sign the accounts
8 and if I didn't do it my pension was at risk, and that even
9 though earlier on he had put reservations to me about the
10 accounts, he said that that was all history now. I said it
11 wasn't history as far as I was concerned. I couldn't
12 accept that, but at the same time I was trying to be
13 helpful, that if there was any mechanism whereby with the
14 solicitors on both sides, they could come to an arrangement
15 where they could satisfy me that if I signed the accounts I
16 wouldn't be on any risk down the line if the Murphy's were
17 sold.

18 8 Q. Was that the occasion you say that Mr. Copsey took you down
19 into the archives in his building?

20 A. That was the formal meeting, he took me down to the
21 archives, you see.

22 9 Q. Now, how did the position in relation to the accounts and
23 the signing of the accounts develop from then on, in as far
24 as you can recall?

25 A. Well, I believe that; you see, at that meeting I had
26 formally or informally resigned, which was confirmed by my
27 solicitors. And after that Franky still kept in touch with
28 me because we had an ongoing relationship, we were working
29 together, and it transpired that the companies were under
30 pressure from the banks to get out accounts, and my
31 recollection is that I think he told me that Senior and
32 Copsey had signed them accounts at the end of the day; is

1 that what you wanted to know?

2 10 Q. Well, we know that the accounts were, at least they were

3 authorised to sign the accounts in respect of the year

4 1988?

5 A. Yes.

6 11 Q. You were asked by Mr. Justice Flood on the last occasion to

7 try and decipher some of the handwritten notes you have on

8 page - on the first page of that document?

9 A. Page 57 on the right-hand side is: "NB: Rearrange the

10 paragraphs to sequence, to sequence the dates" - you know,

11 to bring them into a sequence, and I says there - "check

12 that the 3rd, 4th, 5th, 6th, 7th, 10th and 11th of July".

13 And then its noted that the August, from the end of July to

14 Monday -- and on the left-hand side I said - I made, I have

15 a note on the right-hand side there where I said "breaches

16 of import regulations". And then that is continued down on

17 the right-hand side, I said "RJC had plenty of evidence and

18 documentation. Bates was very prevaricative but never

19 admitted his audit relied heavily on information from

20 Downes and Marcus Sweeney and Liam Conroy and he accepted

21 their assurances". That was John Bates the auditor. Up at

22 the top then it says "include my queries on the slush

23 fund".

24 12 Q. I--

25 .

26 MR. COONEY: I can't hear him.

27 .

28 13 Q. MR. GALLAGHER: Sorry Mr. Gogarty, sorry, would you just

29 get the microphone moved a little closer to you?

30 A. Yes. It wasn't me that described these things as slush

31 funds you know, it was Franky that believed there was a

32 slush fund and had evidence to substantiate it, and he was

1 feeding me all that information and documentation. And
2 whether I was foolish or what I was drawn into it, maybe
3 later on, if I stood back -- anyway Copsey then admitted
4 about the slush fund when we were down in the archives, but
5 coming back to the notes, you see there were, you see they
6 were trying, Copsey was trying to -- he was putting the
7 ball back into my court, he was saying that there was a
8 report from Ernst Whinney. He was saying, Franky as well,
9 that there was a report from Ernst Whinney saying that they
10 had done some check and there was nothing wrong with the
11 accounts, but I don't believe that is true at all, because
12 they never produced that report. They were only using it
13 as a bloody lever and I never saw that report and it hasn't
14 been seen today. If it is I would eat it, but anyway. I
15 then talk about Brendan Devine, I don't want to be saying
16 too much about him. VAT and expenses and then we know that
17 I, seemingly I am referring to a cheque in cash of June '89
18 and my recollection is that that is the cash for £10,000
19 that was given to Ray Burke. That is my recollection.
20 .
21 Underneath that it says I said "date" or something, "Ray
22 Burke and RJC and £30,000 cash". Which I have already
23 sworn to that I believe that it was Copsey organised that
24 money, that the money came from Copsey from somewhere, from
25 somewhere.

26 14 Q. When did you say that the, when you say that money, "that
27 money" what amount are you talking about?

28 A. I am saying the £40,000 that went to Mr. Burke, made up of
29 £30,000 in cash and a £10,000 cheque.

30 15 Q. All right. When do you say you wrote these notes along the
31 side, in particular when did you write the note on the top
32 left-hand corner?

1 A. Well, I can only believe what, or say what I believe to be
2 true, that it was some place, sometime in that period
3 between the 1st of July and then the end of August, so
4 sometime around that time.

5 16 Q. The notes on the top left-hand corner appear to have been
6 written in a different pen to the other notes on the page
7 in question?

8 A. Oh I agree with that, yeah. Yeah.

9 17 Q. Doesn't that suggest that they were written at a different
10 time?

11 A. Oh yeah, a different day that was, sure I had three or four
12 pens in my pocket.

13 18 Q. Are you sure that they were written at the time that you
14 refer to, rather than being written at any other different
15 time?

16 A. I can't swear to it, I can only say to you what I
17 recollect, if it is shown to me to be different I would
18 accept that it was different.

19 19 Q. Would you accept that it was written sometime around the
20 summer or Autumn of 1989; is that your evidence?

21 A. You see, basically, the document itself, the typewritten
22 document - I think if you refer to the contemporaneous
23 notes they are a fair summary of what is in the, written in
24 my pen notes.

25 20 Q. Your handwritten notes?

26 A. I don't know whether you have them or not.

27 21 Q. You mentioned Franky earlier on and Franky discussing these
28 matters with you, who is Franky?

29 A. That is Franky Reynolds.

30 22 Q. Franky Reynolds. And he is now the Managing Director of
31 JMSE as I understand it?

32 A. Yes, he is.

1 23 Q. Did you have an ongoing friendship with Franky Reynolds so
2 far as you were concerned?

3 A. I had a very --

4 24 Q. At that time and subsequently?

5 A. A very good relationship up until, up until about December
6 or October 1990 when things came to a head. You see in 19
7 -- I think I was told I was out of order the other day, --
8 in April 1990 Copsey was still there. I was a consultant
9 now, he was in a fairly executive role, we both had very
10 serious reservations about working with Copsey. I was maybe
11 more independent because I had my pension now and of course
12 I was dispensable, but he was now in much the same
13 situation that I was before. He was locked into a
14 situation where his livelihood was there in Murphy's and I
15 don't blame him for that, but he still had reservations and
16 there is a fair amount of correspondence of that. And out
17 of the blue he gave me a document at the end of April 1990
18 and I had hoped that, just for the truth you know, that
19 that document would be read out, because it is extremely
20 relevant, extremely relevant.

21 .

22 I would like myself --

23 25 Q. We will see about that in due course, Mr. Gogarty?

24 A. Yes.

25 26 Q. Did you learn that the accounts had, in fact, been approved
26 for signature and that the 1988 accounts subsequently were
27 signed on the 24th --

28 A. I can't say that I was told that. But I understand they
29 were signed by Senior and by Copsey, I think that can be
30 checked sure.

31 27 Q. Well, the minutes of the meeting of the 24th of August, of
32 1989, in Book 4, page 978 would suggest that they were

1 authorised to sign the, to sign the accounts in question at
2 a meeting of the Board, which was attended by Mr. Copsey,
3 Mr. Grehan and Mr. Reynolds. At which they said they had
4 considered the report from Bates & Company and that the
5 Board unanimously resolved to approve the accounts to the
6 31st of May, of 1988, as tabled and to authorise RJ Copsey
7 and J Murphy to sign the accounts on behalf of the Board?

8 A. Oh, yes that is what I sought.

9 28 Q. And then I think that you referred to a sum of 1.8 million
10 pounds as being owed from AGSE? That is part of the total
11 amount owed to the company as appears in the document on
12 page 982 of Book 4.

13 A. Yes. £1,820,117 on the 31st of the 8th, 1989.

14 29 Q. Mr. Gogarty, Mr. Cooney has asked me to read out the entire
15 of the minutes of that meeting of the 24th of August, of
16 1989. And of course I will have to do so. I think you
17 will maybe notice that they are in context, it may be
18 necessary to go to the earlier Board meetings, but for the
19 moment I will read the Board minutes as set out on page 978
20 of Book 4.

21 .

22 "Minutes of a meeting of the Directors of Joseph Murphy
23 Structural Engineers Limited, held at the 24th of August,
24 of 1989, at Shanowen Road, Santry, Dublin 9.

25 .

26 Present RJ Copsey, Chairman, G Grehan, F Reynolds. In
27 attendance, P Parker.

28 .

29 There being a valid quorum the meeting commenced.

30 .

31 The accounts of the company for the year ended 31st of May,
32 1988, were tabled for approval. The following points were

1 noted:

2 .

3 (1) Mr. J Gogarty had expressed an opinion that the
4 accounts for the year ended the 31st May, 1987 were
5 incorrect in relation to stock.

6 .

7 (2) The Board had requested that Mr. Gogarty cooperate with
8 Bates & Company, chartered accountants, in investigating
9 the accounts for 1987 and the accounts for 1988.

10 .

11 (3) The Board had examined in detail a report from Bates &
12 Company which made the following points.

13 (A) the Audited accounts from 1987 showed a true and fair
14 view and the figure for stock was conservatively valued.

15 .

16 (B) The 1988 accounts presented to the Board for approval
17 showed a true and fair view and the figure for stock was
18 conservatively valued.

19 .

20 (C) The figure for stock in both sets of accounts included
21 claims and unpaid measurements.

22 .

23 (4) Having discussed the report in detail and having
24 referred to the results shown by management accounts to the
25 28th of February, 1989, the Board were of the opinion that
26 the accounts for 1987 were not incorrect, and therefore no
27 prior year adjustment was necessary in the 1988 accounts.

28 .

29 (5) The Board unanimously resolved to approve the accounts
30 to the 31st of May, 1988, as tabled and to authorise RJ
31 Copey and J Murphy to sign the accounts on behalf of the
32 Board.

1 .
2 The Secretary was instructed to record the fact that none
3 of the present Directors of the company were Executive
4 Directors for the period covered by the 1987 and 1988
5 accounts, and indeed several of the present Directors were
6 not with the company for the relevant period. They were
7 therefore relying on the report of Bates & Company and the
8 companies results shown by management accounts to 28th
9 February, 1989.

10 .
11 It was recommended that the format of future of audited
12 management accounts be changed to separately show unpaid
13 claims and unpaid measurements so as to avoid confusion
14 with physical stocks and work in progress. There being no
15 further business the meeting closed."

16 .
17 Were you consulted by Bates & Company in connection with
18 the preparation of the report that is referred to in that
19 document?

20 A. Well, at the 24th of August 1989 I wasn't a Director of the
21 company at all at that time.

22 30 Q. We are aware of that. Were you consulted by Bates &
23 Company. You had expressly expressed concerns about the
24 accounts?

25 A. I had. Actually I hadn't been consulted by Bates. I
26 consulted him because I was being directed to come back up
27 and substantiate what they already knew, but I tried and I
28 chased Bates. I think that is in a contemporaneous note.
29 They broke my heart. I was chasing him for stock accounts,
30 his own office, in Murphy's office, in the archives, the
31 whole bloody lot and you couldn't get, what I considered
32 were proper documentation, and he couldn't get them and

1 either could I, until Tim O'Keefe came back and told me
2 that they had all been destroyed on the instructions of
3 Marcus Sweeney.

4 31 Q. Are you saying that you didn't, in fact you weren't
5 consulted in relation to that Bates report?

6 A. Sorry, I didn't get satisfactory information from Bates to
7 help me to put any report to the Board. I think that is in
8 the notes as well.

9 32 Q. Well, in minutes of the meeting of directors of JMSE held
10 on the 27th of July, of 1989, which were signed by Mr.
11 Grehan on the 28th of the 7th and Mr. Reynolds on the 28th
12 of the 7th, there are two sets of minutes, and perhaps we
13 can draw attention to those. They are on page 929; page 929
14 and 949. They are two sets of minutes of the same meeting
15 of the 27th of July.

16 .
17 I have read one set of those minutes which were minutes
18 which would appear, we have to hear about it yet, but it
19 would appear to be prepared and signed by Mr. Grehan and
20 Mr. Reynolds and circulated by them to Mr. Copsey.

21 .
22 And then on page 950 actually, we have a copy of the
23 minutes of the same meeting prepared by Mr. Copsey which he
24 circulated to Mr. Grehan and Mr. Reynolds.

25 A. That's correct.

26 33 Q. Have you seen those?

27 A. I have seen those, yeah.

28 34 Q. I have read one of the minutes, those minutes prepared by
29 Messrs. Grehan and Reynolds. I don't think I read the
30 other, although -- I am told we have already in fact read
31 those into the record.

32 .

1 Now, just to conclude with the accounts, Mr. Gogarty; at
2 the time you resigned, ceased to have any association with
3 the company, as of August of 1989; were you satisfied about
4 the 1988 accounts?

5 A. No.

6 35 Q. Mr. Gogarty, I now want to turn to your dealings with Mr.
7 George Redmond. You have referred to Mr. Redmond in
8 paragraph 24 of your affidavit and in subsequent
9 paragraphs. Mr. Gogarty, will you please explain the
10 circumstances in which you first met Mr. Redmond? I know
11 you have given an indication earlier in your evidence, but
12 perhaps to remind the Sole Member and to, so that there
13 can't be any doubt as to what your recollection is of the
14 meeting, I want to - I want you to deal with it please?

15 A. I met him with Liam Conroy in 1994 at the Gaiety Theatre.

16 36 Q. And you are certain of that?

17 A. Oh I am certain of that, yes.

18 37 Q. Now, when did you subsequently --

19 .

20 CHAIRMAN: Mr. Gallagher, there would appear to be a
21 possibility that there is an error of date there. Is it
22 1984 or '94?

23 A. Sorry, '84.

24 38 Q. Sorry, 1984?

25 A. Yes.

26 39 Q. I am sorry. When did you next meet Mr. Redmond?

27 A. Well, my recollection of the next meeting with Mr. Redmond
28 was in late May or early June, late May early June 1988.

29 40 Q. And in what circumstances did you meet him?

30 A. Well, I met him as a result of what was happening at the
31 time, that Mr. Murphy was very concerned about his lands at
32 Forest Road, and there was a planning permission on Forest

1 Road which had been granted by the County Council,
2 seemingly away back in the early 80s; and it was appealed
3 because there was objections by residents and others
4 interested parties. And I think it was granted an appeal,
5 granted in 1983, and it was expiring in June, towards the
6 middle of June 1988 and he was very concerned about the
7 problems that would arise if it ran out.

8 .

9 There were a number of options open to him to take another,
10 another formal application for planning permission for the
11 lands. And he said that Liam Conroy had been dealing with
12 this over a while, he was up to that time, but relations
13 were now very strained now in this period. It was a period
14 where there was a complete conflict between Senior and me
15 and Frank Reynolds and a few others against the existing
16 management structure of Conroy, and they were threatening
17 injunctions and all that type of thing, and they had
18 issued, they had issued, called a meeting, a shareholding
19 meeting to get rid of me at a Board meeting, that was all
20 going on at this time.

21 .

22 But Senior was very involved and he was commuting fairly
23 quickly over between Dublin and London and Guernsey, but he
24 said that Copsey or Conroy had been dealing with Redmond on
25 these issues and he wanted to update himself to see what
26 the position was at that time. He said that there was a
27 builder called Michael Bailey that he knew from London, a
28 builder that something in London, or the UK and that he had
29 a good relationship with Redmond and that he could set up a
30 meeting with Redmond for me and that I should meet Redmond
31 and get the updated information on Conroy's negotiations
32 with him, how to approach the planning problem.

1 .
2 And he said that Redmond, that Bailey would be ringing me
3 and I would have a chat with him. And that's what
4 happened, Michael Bailey rang me and he, I met him in
5 Santry. I went to Santry and met him in Santry in Franky
6 Reynolds' office and we had a short discussion there, but
7 he said that he had talked to Redmond and that I could meet
8 Redmond. Redmond would meet me the following morning, or
9 the following or the day after, between 10 and 12 o'clock
10 in his offices in O'Connell Street.

11 41 Q. Now, what if anything was discussed? What else was
12 discussed between yourself and Mr. Bailey at that time, at
13 that meeting?

14 A. The lands.

15 42 Q. Pardon?

16 A. The lands. He was also interested in the land, apart from
17 the planning he was interested in the lands. He was
18 interested in buying the lands.

19 43 Q. Now, at this particular time you say that the lands in
20 question had planning permission. This planning permission
21 I believe had been granted in 1983?

22 A. On appeal by Bord Pleanala, yes.

23 44 Q. And the planning permission was due to expire on the 23rd
24 of June, of 1988?

25 A. Sometime around that time, yeah.

26 45 Q. And what was the concern of Mr. Murphy, or of the company,
27 in relation to that planning permission at that time?

28 A. He was concerned that if it ran out he was in trouble by
29 not having reapplied in time to get, to keep it active, and
30 he was also concerned about the possible increase in
31 service charges that would arise from a new permission. I
32 think that the service charges that had been levied in 1982

1 or '83 were £126,000, and was concerned that they could be
2 increased as well too. So he wanted an up-to-date position
3 on how best to deal with it and what Conroy, what stage it
4 was with Conroy and Redmond.

5 46 Q. I see. Now, following this meeting with -- Sorry, had any
6 development been carried out on the lands in question at
7 that time?

8 A. Not to my knowledge.

9 47 Q. Had any houses been built on it?

10 A. No, no, no.

11 48 Q. So, at the time of this meeting with Mr. Bailey you had a
12 planning permission which was about to expire?

13 A. Yes, very quickly.

14 49 Q. Where the levies had been fixed at something of the order
15 of £126,000?

16 A. That's to the best of my knowledge. Something around that.

17 50 Q. And no levies had been paid at that time; is that correct?

18 A. No, no.

19 51 Q. And no building had commenced on foot of the permission?

20 A. No, no. No.

21 52 Q. Now, you say that Mr. Bailey arranged a meeting with Mr.
22 Reynolds?

23 A. Mr. Redmond.

24 53 Q. Mr. Redmond sorry, on the following day. Did such a
25 meeting take place?

26 A. It did, yeah.

27 54 Q. Well, will you describe where it took place, who was
28 present and what happened?

29 A. It was present in the County Council office in O'Connell
30 Street, and I went in there and I was told to take the lift
31 up to such a floor. I don't know what it was and I spoke
32 to a receptionist there and she, whatever she did she

1 ushered me then eventually into Mr. Redmond's office, a big
2 office.

3 55 Q. Was there anybody with you?

4 A. No.

5 56 Q. Did you meet Mr. Redmond there?

6 A. Yes. We shook hands there. Yes, I introduced myself then
7 and he said he was expecting me, in that he had had a word
8 with Mr. Bailey and I told him then the situation; that I
9 was talking to him on instructions from Mr. Murphy to find
10 out had he any information on the Forest Road lands. That
11 Mr. Murphy understood that he had been talking to Mr.
12 Conroy about them and he says he had, and he says "what is
13 the situation as to Conroy?" , and I says "well, Mr. Conroy
14 is leaving the Group". "Oh" he says "why?". I said -- he
15 said that he had only been speaking to him quite recently,
16 and I says "well" I says, that there is a change in the
17 management structure and Mr. Murphy is coming in more
18 active into the Group", and that was that.

19 .

20 He said that, he then said that he would like to meet Mr.
21 Murphy. He said he never met him. He said he would like
22 to meet him to clarify his position because he understood
23 he had some agreement with Conroy, that he was taking early
24 retirement and that he was going to come into the Group as
25 a consultant. I said I didn't know anything about that.
26 But he said then that he had discussed the matter several
27 times with Liam Conroy and had devised, or some word like
28 "devised", a mechanism whereby he could overcome his
29 problems on the Forest Road lands by following his advice
30 and his -- he says that he had discussed this with Conroy
31 but he would like to take it up with Mr. Murphy and he
32 would meet him, you see?

1 .
2 So, a few other things, I think at that time he asked me
3 had we any painters that could do a bit of a job on his
4 house. I said "no" we didn't employ any painters direct.
5 But it only lasted about 20 minutes and I said I will talk
6 to Mr. Murphy about his wishes to meet him. And we would
7 take it from there. So that finished that meeting. He did
8 mention about Bailey's, that he would like to see them
9 getting them lands because they had a very good reputation
10 with the County Council on performance. And he could
11 highly recommend them.

12 57 Q. Was anything else said at the meeting?

13 A. That was that -- there could have been other things but I
14 just can't think of them at the moment. Basically that is
15 the gist of it. Only about 20 minutes.

16 58 Q. Well when --

17 A. I should say that he I didn't look at them but he did refer
18 to a file. He had a file in his drawer, you know. And he
19 looked at it, I don't know what was in the file.

20 59 Q. Well, what was the position then at the end of that
21 meeting? What, if anything, were you to do? And what, if
22 anything, was he to do?

23 A. He was to do nothing until I came back to him. I was going
24 to get in touch with Mr. Murphy and tell him that Mr.
25 Redmond would like to meet him and I was going to leave it
26 to Mr. Murphy to make whatever arrangements he wanted to.

27 60 Q. Right. What happened then after that meeting?

28 A. Well, I told Mr. Murphy about that and filled him in on it
29 and he said "leave that with me". And a few days after he
30 came back to me and told me that I should take up again
31 with Redmond and that he wouldn't go along, but he says
32 that he never met Redmond, but he said that Junior would

1 come along with me to the meeting.

2 .

3 So I made another arrangement with Redmond. I rang him and

4 he may have given me his number, and we met him shortly

5 after that, Junior and myself and he took up the same topic

6 with Junior and he produced then --

7 61 Q. Now, where was this meeting, approximately?

8 A. In the same office, in the same office.

9 62 Q. And had you made an appointment?

10 A. Yes.

11 63 Q. With Mr. Redmond?

12 A. Yes.

13 64 Q. Yes?

14 A. Yes.

15 65 Q. And you went to this meeting accompanied by Joseph Murphy

16 Junior you say?

17 A. Yes, Junior, yes.

18 66 Q. And when you went in to meet Mr. Redmond what was said?

19 A. I introduced Junior to him and they basically took,

20 continued the conversation and it developed along the same

21 lines as before, about the restructuring of the group and

22 that Mr. Conroy was leaving the Group and they were

23 becoming more active in it and they were concerned about

24 the Forest Road lands, they wanted to know what the

25 position was, and what was the - what the mechanism that

26 they could overcome the problems. He took out the file and

27 he said that he discussed it with Mr. Conroy, and in fact

28 had drafted a letter to send to the County Council by

29 Grafton Construction Company setting out, referring to the

30 permission that was about to run out and undertaking to pay

31 the levies as they were in 1982/83 and on that basis they

32 were asking, they asked the County Council to extend the

1 availability of the services for some extra time.
2 .
3 He gave that letter to Junior and general discussion, and
4 then we left and Junior gave the letter to me and he says
5 "give that to McArdle, Denis McArdle and take it from
6 there". And my recollection is that I met Mr. McArdle, who
7 I met regularly, and I gave him the letter, and told him
8 about the meeting and told him about the purposes of the
9 letter; and my recollection is that his girl typed a letter
10 on Grafton notepaper to the County Council, and that I
11 signed, I signed that letter; but I never took a copy of
12 it. I left the other copy, Redmond's draft with him. I
13 didn't take a copy of the letter I wrote.

14 .
15 It was basically the letter that Redmond, the draft letter,
16 and I recollect that it was McArdle's girl that posted it
17 as well in the ordinary course of their business, you
18 know? And I heard no more about it. I didn't take the
19 letter. I couldn't tell you what is in the letter to tell
20 the truth, today. I didn't keep a copy of it. And I heard
21 nothing more about it.

22 67 Q. Did you write but one letter to the County Council in
23 connection with that matter?

24 A. That was Redmond's letter. That was Redmond's draft, yes,
25 that was the one letter.

26 68 Q. Do you say that the letter that was typed up in, you
27 believe in Denis McArdle's office, was identical to the
28 draft letter that had been furnished to you by George
29 Redmond?

30 A. That is what I believe from recollection, yes.

31 69 Q. I am now going to show you a letter which is to be found in
32 the book of statements of Sinead Collins. It is page 13,

1 and it is document number 8. I am showing you the
2 original.

3 .

4 Mr. Gogarty, I have handed you the original County Council
5 file in relation to, the planning file in relation to the
6 Forest Road lands, including the planning file documents
7 relating to registrar reference WA 2342; Bord Plenala
8 reference PL6/5/61300.

9 A. I am only looking at the --

10 70 Q. You are only looking at?

11 A. At one letter.

12 71 Q. I am just identifying the file for the moment.

13 A. Yes. Yes.

14 72 Q. Now, I want you to look at a letter of the 10th of May, of
15 1988?

16 A. Yes.

17 73 Q. Do you have that? Do you have the original of that?

18 A. I do have it.

19 74 Q. You have it there in front of you?

20 A. Oh, yes. I recognise it but it is the first time I have
21 seen it now since 1988. It is the first time.

22 75 Q. Is your signature on the bottom of that?

23 A. That is my signature at the bottom of it as a Director of
24 Grafton.

25 76 Q. It is headed "The Grafton Construction Company Limited"?

26 A. Yes.

27 77 Q. And it is to the attention of Mr. M McNamara?

28 A. Yes.

29 78 Q. Did you know Mr. McNamara?

30 A. No, I don't know who he was at all.

31 79 Q. Do you know who he is?

32 A. No.

1 80 Q. Do you know where he works?

2 A. I don't honestly.

3 81 Q. Do you know anything about him?

4 A. No.

5 82 Q. Have you ever heard of him?

6 A. I could have, but it doesn't ring a bell, you know.

7 83 Q. So when you were writing this letter to Mr. McNamara does

8 it follow that you didn't know who he was when you were

9 marking the letter for the attention of Mr. McNamara? You

10 didn't know who he was or what role, if any, he played in

11 the Council?

12 A. That is because that is the letter that Mr. Redmond had

13 drafted.

14 84 Q. I understand that. I am just trying to establish whether

15 you knew anything about a Mr. McNamara good, bad or

16 indifferent?

17 A. No. Good, bad or indifferent, no.

18 85 Q. I see. Now, the letter is headed, as I said to Grafton

19 Construction Company Limited, care of Griffin Lynch &

20 Company, Stephen's Court, 18- 21 St. Stephen's Green,

21 Dublin 2. The telephone number is given. It is addressed

22 to Dublin County Council Planning Department, Irish Life

23 Centre, Lower Abbey Street, Dublin 1. Attention Mr. M

24 McNamara?

25 A. Yes.

26 86 Q. "Dear sirs, we wish to refer to the planning permission

27 granted by An Bord Pleanala following a third party appeal

28 on the 21st of June, 1983, for the housing development of a

29 site off Forest Road, Swords, County Dublin.

30 .

31 (1) The planning reference number is WA2342 and the appeal

32 reference PL6/5/61300. Condition No. 1 of the permission

1 reads as follows". Then there follows two columns, the page
2 is divided?

3 A. Sorry.

4 87 Q. That is all right, are you all right?

5 A. Not too bad.

6 88 Q. Column 1, it is the conditions. And underneath the heading
7 column one the conditions reads as follows:

8 .

9 "The developers shall pay a sum of money to the Dublin
10 County Council as a contribution towards the provision of a
11 public water supply and piped sewerage facilities in the
12 area and towards the cost of proposed improvements by the
13 Council of the public road system in the area which will
14 facilitate the proposed development. The amounts to be
15 paid and arrangements for payment shall be as agreed
16 between the developers and the said Council before the
17 development is commenced, or failing agreement, shall be as
18 determined by An Bord Pleanala".

19 .

20 And the reason for that condition was stated as follows:

21 "The provision of public water and sewerage services in the
22 area by the Council will facilitate the proposed
23 development. It is considered reasonable that developers
24 should contribute towards the cost of providing the
25 services. It is also considered reasonable that the
26 developers should contribute towards the cost of road
27 improvement works which the Council plan to undertake and
28 which will facilitate the proposed development. "

29 .

30 If I continue the quotation in the letter.

31 "The County Council determined the contribution as follows:

32 Water and drainage facilities: £87,440.

1 Road improvements: £35,020.

2 That is a total of: £122,460.

3 .

4 The company did not dispute the amount by referring the
5 matter to An Bord Pleanala. Due to a minor legal
6 technicality the company was unable to proceed with
7 development as early as wished. However, the outstanding
8 matter has now been resolved satisfactorily and it is hoped
9 to proceed in the near future.

10 .

11 In this connection it is noted that the current planning
12 permission will expire on the 21st June, 1988.

13 .

14 We are now considering paying the total financial
15 contribution of £122,460 now.

16 .

17 If we do make the necessary payment before the 21st of
18 June, 1988, please confirm:

19 .

20 (1) That when a fresh application is made for similar
21 residential development that no additional levy will be
22 imposed.

23 .

24 (2) That water and drainage services will be reserved for
25 the proposed development.

26 .

27 An early reply would be appreciated as time is short and
28 the payment to be made to the Council is very
29 considerable. "

30 .

31 Can you say what happened after that letter was sent by you
32 to the Council?

1 A. I am sorry to interrupt you, but I must say something that
2 was left out earlier in case anyone says I am omitting it
3 deliberately, that at the meeting with Mr. Redmond he
4 referred to this and he referred to the danger, the
5 possibility that in a new formal application that these
6 levies would be more than doubled. And that he also had an
7 agreement with Mr. Conroy that he would get 10% of the sale
8 between that sum and what would have been, he reckoned
9 would have been more than double, under a new form of
10 planning permission. I should mention that.

11 89 Q. When was that said?

12 A. At the meeting with Junior.

13 90 Q. Was that the first time that that had been mentioned to you
14 or in your presence?

15 A. That is the first time, yes.

16 91 Q. Are you clear that that was said?

17 A. I was 100 percent clear yes, that that was mentioned
18 because the initial meeting was only about 20 minutes.

19 92 Q. Sorry?

20 A. The initial meeting on my own with him was only about 20
21 minutes and he was anxious, very anxious to talk to Mr.
22 Murphy to develop it.

23 93 Q. And what was the response to the suggestion from Mr.
24 Redmond that he would get 10% of any sale that might, sales
25 that might accrue as a result of the monies, the £122,480
26 being paid at that time?

27 A. Junior said he would talk to his father about it.

28 .

29 MR. COONEY: I can't hear.

30 .

31 MR. GALLAGHER: He said, Junior said we talk to his
32 father. Would you just lean in.

1 A. Sorry.

2 94 Q. What was Mr. --

3 A. Junior said he would talk to his father about it.

4 95 Q. Yes.

5 A. That's it.

6 96 Q. Was there anything else said at that meeting about the
7 payment of monies, that you can recall?

8 A. No. That's all I can recall at the moment.

9 97 Q. Now, you said, just to be clear, when that meeting took
10 place, I understand you to say that it was the second
11 meeting that you had with Mr. Redmond?

12 A. Yes.

13 98 Q. That it was the meeting at which you were accompanied by
14 Joseph Murphy Junior and it was a meeting at which Mr.
15 Redmond gave Mr. Murphy a draft letter?

16 A. Yes.

17 99 Q. Which you subsequently had retyped and sent to the County
18 Council and which I have just read?

19 A. Yes, that's right, yes.

2 100 Q. So the meeting that you are referring to must have taken
21 place on or about the 10th of May, of 1988, this letter was
22 written on the 10th of May, of 1988?

23 A. It must have been. Yes, yes.

2 101 Q. Now, can you tell the Tribunal what happened after that?

25 A. After that?

2 102 Q. After that?

27 A. Actually I can't, except that I knew no more about that now
28 after that, and I don't know what transpired until I heard
29 recently, but I did know that Mr. McArdle told me sometime
30 later that they got a good response from the Council and it
31 was accepted that they were going to extend the services
32 for two years, I think it was; but I have no physical

1 knowledge of that because something happened, I believe,
2 later on, which will come out in the evidence I suppose,
3 you know? Somebody else took over, because I never saw a
4 reply from the Council of that letter. I never got a reply
5 to that letter, or I never saw that letter, but somebody
6 else took over.

103 Q. Well --

8 .

9 CHAIRMAN: Well, we seem to be about to change topic.

10 Given, I might give Mr. Gogarty a rest at this point for,
11 say 15 minutes not more.

12 A. I beg your pardon?

1 104 Q. The judge is going to rise for 15 minutes.

14 .

15 THE HEARING WAS THEN ADJOURNED FOR A SHORT RECESS AND
16 RESUMED AS FOLLOWS:

17 .

18 MR. GALLAGHER: Sir, before I resume the questioning of Mr.

19 Gogarty, I have been asked to obtain a ruling from you by
20 some journalists who are anxious to have made available to
21 them, documents that are opened in the course of evidence,
22 in the course of submissions in the Tribunal.

23 .

24 CHAIRMAN: In other words they want to know whether they
25 can see the actual document or see an appropriate copy?

26 .

27 MR. GALLAGHER: Yes. My understanding is that they are
28 looking for documents. Only that.

29 .

30 CHAIRMAN: They are the only documents which become
31 documents of public record, in that regard they are part of
32 the evidence which is on the record in this Tribunal. I

1 see no objection to that at all, but I think it would have
2 to be a managed situation, because I don't want a large
3 quantity of documents in the Tribunal floating around the
4 city.

5 .
6 The proper way to deal with it is that any person, any
7 journalist or persons who are appropriately authenticated
8 as a journalist or from the radio or anybody else of that
9 kind, any part of the media, can ask the Registrar or make
10 arrangements with the Registrar to inspect a particular
11 document and, presumably they do it after the hearing is
12 closed, they can certainly use my room, I don't think there
13 is any other room available in this building, certainly use
14 my room, or the room I use. I have no objection to that
15 being used in the world, for that purpose.

16 .
17 The document is produced, the reporter can read it. I
18 would prefer if copies were not circulated as such, but I
19 have no objection whatsoever to the document being clearly
20 read and considered by a reporter, and it is just that I
21 don't want a variety of bits and pieces of paper, which are
22 part of the record of this Tribunal floating around the
23 city, that's my objection. That's the only reservation I
24 have on that. I would hope that would meet -- if anybody
25 has any objection to that course of action do please let me
26 know.

27 .
28 MR. O'DONOGHUE: Can I ask for clarification of it? Can I
29 ask for clarification of what you rule to be a document
30 that is read into the record? Is it a document to which
31 reference has been made or is it a document which has been
32 read either by Mr. Gogarty or by Mr. Gallagher in toto?

1 .

2 CHAIRMAN: I mean a document which has been read into the
3 record and forms effectively, an exhibit in the
4 proceedings. It is not just a reference to a letter of the
5 19th of March and passed on from and just referred to. I
6 am talking about an actual document. As I understand it,
7 it is a document, for instance, which was read yesterday, I
8 think it was read-- the bank official's statement, for
9 instance, I think was read into the record, as far as I
10 know.

11 .

12 MR. ALLEN: Sorry, Mr. Chairman, no it was not.

13 .

14 CHAIRMAN: Perhaps I am choosing the wrong one.

15 .

16 MR. GALLAGHER: If, for example, the letter that was just
17 read by Mr. Gogarty on the 10th of May perhaps would be a
18 letter of --

19 .

20 CHAIRMAN: Yes, it must have been actually read onto the
21 record as such, not just merely referred to.

22 .

23 MR. LEONARD: Mr. Chairman, in a further point of
24 clarification, you will recollect from time to time that
25 portions of documents have been shown to Mr. Gogarty and
26 specific paragraphs read out, now in -- I remember in
27 particular one document that Mr. Cooney objected to
28 portions of it being read out and that document, in my
29 respectful submission, should most emphatically --

30 .

31 CHAIRMAN: Are you talking about the document in which a
32 portion was excised?

1 .

2 MR. LEONARD: That's the one. From time to time a
3 reference is made to a paragraph in minutes or portions of
4 a letter. Now, it would be wholly improper, in my
5 submission, if journalists were now to be allowed examine
6 the entirety of a document where a portion of same only has
7 been referred to

8 .

9 CHAIRMAN: That's not what I intend. What I intend is
10 that the evidential aspect of the document is opened to
11 being examined, in other words the paragraph that's
12 referred to, and the remainder is to be covered or
13 otherwise excised. Have you any difficulty with that?

14 .

15 MR. LEONARD: I don't, sir, no

16 .

17 CHAIRMAN: Mr. Cooney?

18 .

19 MR. COONEY: Obviously, Mr. Chairman, there are two
20 conflicting --

21 .

22 CHAIRMAN: Two what?

23 .

24 MR. COONEY: -- conflicting considerations. There is a
25 lot of documentation opened, Mr. Chairman, which is not
26 contentious, such as the correspondence between my
27 solicitors and Mr. Gogarty solicitors dealing with his
28 pension and so on. As a matter of convenience I would have
29 no objection to that correspondence being made available.
30 Then there is another category of documents containing
31 allegations, these are usually made by Mr. Gogarty for his
32 own purpose, we challenge the accuracy of those documents

1 or some of the objections. These are matters of
2 controversy and I don't think they should be specifically
3 disclosed, except insofar as they are referred to in
4 evidence and the reporters here noted it down.

5 .

6 CHAIRMAN: I am not covering those documents, they are the
7 memoirs Mr. Gogarty is using nominally to refresh his
8 memory, that's the basis they are being used or even
9 referred to. What I am talking about is an actual
10 document, a letter, a contract, a statement which in its
11 entirety is read into the record. If there is an
12 exclusion or an excision from that document it must be
13 excised before it is shown to the press.

14 .

15 MR. COONEY: I have no objection to non-controversial
16 matters being shown to them as matters of pure
17 convenience.

18 .

19 CHAIRMAN: What, as I say I want to facilitate the press,
20 but at the same time I don't want (A) documents floating
21 around and (B) as you say documents the entire of which has
22 not been opened to the Tribunal.

23 .

24 Is that acceptable to you?

25 .

26 MR. GALLAGHER: It is, but I suspect it may cause
27 difficulty for both the Registrar and the members of the
28 press who are present, because the difficulties may arise
29 in relation to what document is or is not to be admitted,
30 to be made available to them or indeed a document which is
31 or may be the subject of controversy. Can I suggest that
32 you reserve -- subject to any other submissions that may be

1 made, that you reserve to yourself the right to indicate
2 what documents should be made available by the Registrar at
3 the end of each sitting, so that the Registrar won't be
4 left in the position of having, releasing documents that
5 may be controversial or --

6 .

7 CHAIRMAN: Well, I take it that the Registrar is making a
8 note of the various documentation, and I suppose the only
9 way one can do that is that register, if I may call it, is
10 brought in to me and I indicate off the register the
11 following documents.

12 .

13 MR. GALLAGHER: Sorry, another alternative suggests itself
14 to me. If it can be taken that any document isn't objected
15 to or some legal representative here does not highlight or
16 object to its release, all other documents can be released;
17 in other words the onus will be on Counsel to the Tribunal
18 or counsel for parties who are represented here to say "I
19 think that is a document that should not be released to the
20 press for various reasons".

21 .

22 MR. COONEY: It is an onus I am prepared to accept to
23 convenience the press.

24 .

25 CHAIRMAN: Briefly please, we want to get on with the
26 hearing. What can I do for you? What helpful suggestion
27 have you to make, Mr. Allen?

28

29 MR. ALLEN: If I could be heard, sir?

30 .

31 CHAIRMAN: Mr. Allen, don't waste time inquiring if you
32 could be heard.

1 .

2 MR. ALLEN: Yes, I am not the one wasting time.

3 .

4 CHAIRMAN: Mr. Allen, there must be a degree of courtesy

5 to me.

6 .

7 MR. ALLEN: You are getting courtesy, sir.

8 .

9 CHAIRMAN: Not by that soto voce remark.

10 .

11 MR. ALLEN: It wasn't, I rose to my feet -- as soon as I

12 rise to my feet you re telling me to get on with it, if

13 that is your definition of courtesy, sir, it is not mine.

14 Courtesy is a two way street. I have extended courtesy to

15 you at all times, sir, as I intend to continue to do, sir.

16 .

17 CHAIRMAN: Can we get on with your application at the

18 moment.

19 .

20 MR. ALLEN: The point I wanted to make, sir, I can tell

21 you, sir, that you have sole -- I am actually struggling

22 for the word, you have made my position so difficult by the

23 manner which you have just treated me that I have just lost

24 the point and I will return to it.

25 .

26 I stood as a counsel to represent the interests of my

27 clients and to make a point and you immediately started

28 badgering me. I would ask you to cease this badgering.

29 .

30 CHAIRMAN: Right, Mr. Gallagher.

31

3 105 Q. MR. GALLAGHER: Mr. Gogarty, you earlier read a letter of

1 the 10th of May, of 1988, from Grafton Construction Company
2 Limited signed by you to Dublin County Council. I want to
3 put to you now, if I may please, a letter of the 13th of
4 June, of 1988. It is also on the County Council file?

5 A. Yes.

106 Q. Can you -- that document has been signed by G J Downes,
7 Grafton Construction Company Limited Company Secretary?

8 A. That appears to be the case, yes.

107 Q. That was a letter from Grafton Construction Company care of
10 Ernst and Whinny, Stephen's Court, Saint Stephen's Green,
11 Dublin 2, addressed to principal officer of Dublin County
12 Council, Planning Department Irish life Centre, Lower Abbey
13 Street, Dublin 1.

14 .

15 And it reads as follows:

16 .

17 "Dear sir, I refer to your letter of 31st of May, of
18 1988. Please find attached cheque for £122,460. Please
19 authorise receipt as soon as possible.

20 .

21 Yours faithfully G J Downes, Grafton Construction Company
22 Limited Secretary".

23 .

24 Perhaps for completeness I should draw your attention to
25 the preceding letter to the company from the Planning
26 Department, dated the 31st of May, of 1988, in response to
27 your letter of the 10th and it says,;

28 "Re: Planning application WA2342 proposed.

29 .

30 I wish to refer to your letter dated the 10th of May,
31 1988. If payment of the financial contribution for
32 £122,460 being the total contribution for the site is

1 received before the 21st of June, of 1988, the council will
2 not seek a further contribution in respect of water or
3 drainage services or road" --

4 A. It is not for my attention.

108 Q. It is to the company, Mr. Gogarty?

6 A. To the company, yeah. Yeah.

109 Q. "Will not seek a further contribution in respect of water
8 or drainage service or road improvements if further
9 planning permission is made for a similar residential
10 development on substantially the same site within two years
11 from the 21st June 1988.

12 .

13 I have been informed by the Deputy Chief Engineer of Dublin
14 County Council that water and drainage services would be
15 available in respect of any such permission granted within
16 the above two year period".

17 .

18 As I say that follows the letter of the 13th of June from
19 Mr. Downes enclosing the cheque for £122,460, and that,
20 receipt of that money was acknowledged by the Council by
21 its receipt of the 13th of June which is on that file?

22 A. This is the first I have seen of those letters.

2 110 Q. Yes, all right.

24 A. Yes.

2 111 Q. Now, you had told us earlier of your meeting with Mr.
26 Bailey on the first occasion?

27 A. That's right.

2 112 Q. And you said that on that occasion Mr. Bailey expressed an
29 interest in purchasing the Forest Road lands?

30 A. Yes.

3 113 Q. Did Mr.-- When approximately did that meeting take place?

32 A. Well sometime after that.

114 Q. All right, but -- we know that you wrote the letter to the
2 County Council on the 10th of May, you said that that was
3 -- that that was the date of the second meeting or at
4 least the second meeting had taken place on or before that
5 date?

6 A. Yeah.

115 Q. Now, can you try to fix when you met Mr. Bailey, by
8 reference to the 10th of May, roughly?

9 A. A short time afterwards, probably between -- it could be
10 anything within the next couple of months, you know?

116 Q. All right. As I understood your evidence first, and
12 perhaps I misunderstood it, that you initially met Mr.
13 Bailey and he arranged a meeting with Mr. Redmond?

14 A. That's right.

117 Q. Now, just so that we can't be in any doubt about this.

16 When did you first, first meet Mr. Bailey?

17 A. That was the time I first met Mr. Bailey, yeah.

118 Q. Before you had any meeting with Mr. Redmond; is that
19 correct?

20 A. Yes.

119 Q. Do you say that Mr. Bailey arranged the meeting with Mr.
22 Redmond for you?

23 A. That's what he told me, yeah.

120 Q. What other meetings did you have with Mr. Bailey around
25 that time, if any?

26 A. Well, later on there was a number of telephone
27 conversations and discussions about his interest in the
28 lands which I relayed to Senior.

121 Q. What was his interest in the lands?

30 A. To purchase them.

122 Q. Which lands are you referring to now?

32 A. These lands at Forest Road.

123 Q. You are saying Mr. Bailey was interested in purchasing
2 those lands?

3 A. Very interested in those lands, yeah. Yeah. And I
4 relayed that to Mr. Murphy, and he said "negotiate with
5 him", and we talked about a figure I think at the time, I
6 can't exactly put the figure on it.

7 .
8 Do you see, previously there was a row between Senior and
9 Conroy over the value of them. Conroy was, he told me
10 that Conroy was to consider selling them for about
11 £800,000, something like that, you know?

1 124 Q. Can you recall any of the conversations that you had, the
13 meetings or discussions you had with Mr. Bailey in
14 connection with the Forest Road lands and the purchase of
15 the lands?

16 A. Yes, I had, yes.

1 125 Q. Can you tell us about them? Can you remember any details
18 of them?

19 A. Well, he was very keen on, to buy the lands, very keen to
20 buy the lands.

21 .
22 I relayed that to Mr. Murphy and Mr. Murphy gave me
23 permission to negotiate with him on the purchase of the
24 lands.

25 .
26 I think there was a figure mentioned that Mr. Murphy would
27 be happy with, 1.3 million, at that time if they got the,
28 having got the permission or got the services.

2 126 Q. Get the extension, the two year extension?

30 A. The two year extension. You know? It was on that basis I
31 took up negotiations with him and discussed it with Mr.
32 McArdle, and I thought we had arrived at an agreement for

1 him to purchase them, and so did Mr. McArdle, and Mr.
2 McArdle took it from there and arranged about contracts, an
3 exchange of contracts.

4 .

5 McArdle was, as I too, that we were acting on Senior's
6 instructions. He arranged a meeting with Mr. Bailey's
7 solicitors -- Smith Foy and Partners -- not far from his
8 own place, around the corner there in Fitzwilliam Square I
9 think it is, yes and he asked me to go along.

10 .

11 I went along with him and we met some man there, I thought
12 it was Mr. Smith himself, but it mightn't have been, and
13 Mr. McArdle had a bundle of documents, including the maps
14 and that, you know? And the contract documents, and he
15 took up the conversation.

16 .

17 Mr. Bailey was there and this other solicitor, whether it
18 was Mr. Smith himself I am not sure of.

19 .

20 I thought they struck a deal, Mr. McArdle thinks they
21 struck a deal on the sale of the lands for that figure, it
22 is open to dispute, Mr. McArdle will probably give evidence
23 on this as well too, and we thought we had struck the deal,
24 and my recollection is this; that we stood up and Mr.
25 McArdle shook hands and I shook hands and we came back to
26 his office.

2 127 Q. Who did you shake hands with?

28 A. Mr. Bailey and whoever that solicitor was, do you know?

2 128 Q. Yes.

30 A. We came back to Mr. McArdle's office, and I said to Mr.

31 McArdle "you should now ring Roger Copsey and tell him",

32 because he was the financial controller, you see? And he

1 rang Copsey and Copsey went for him. And he said that he
2 had no authority to sell the lands, that he was also
3 negotiating and he was claiming that an auctioneer, I think
4 it was probably Derek Mulligan that was acting on behalf of
5 some client, had an interest as well too and in fact Osmond
6 Keane McGrath had some claim as acting or something like
7 that.

8 .

9 I was annoyed, I just said, used the expression, isn't it
10 in the paper now about Copsey? When I finished with him
11 about that time on that sale, it didn't go through on our
12 basis and Mr. McArdle was very worried, and he caused me to
13 worry too, because he felt that he honourably, he had
14 entered into a contract with the other solicitors, and now
15 he was in an invidious situation where he was on risk that
16 there could be a, a claim against him, and against me.

17 And I was worried too.

18 .

19 In fact I mentioned it to Gerry, to Seamus Howley what risk
20 I was on. He said it was McArdle who was the legal man
21 and he should know what the situation was, but I know it
22 soured relationships between myself and Mr. Bailey for a
23 while, although I thought that it was overcome later on,
24 but -- because he felt that we had done the dirty on him.

2 129 Q. When you were speaking with Mr. Bailey, can you say whether
26 or not there was a discussion about the planning situation
27 of the lands in question --

28 .

29 MR. COONEY: Sir, before Mr. Gallagher leaves this --

30

31 MR. GALLAGHER: I will come to it in a moment. I know
32 what Mr. Cooney wants, I am trying to establish it.

1 .

2 MR. COONEY: I want to know what date Mr. Gogarty says

3 this meeting took place in Mr. McArdle's office, Mr.

4 McArdle's representation as you know is not here.

5 .

6 CHAIRMAN: I agree. Fix the date as far as you can.

130 Q. MR. GALLAGHER: I will deal with it in due course?

8 A. I accept what Mr. McArdle says about the date.

131 Q. I understand, Mr. Gogarty, I will ask the question in a few

10 moments. The question I want you to deal with now is

11 whether or not in the course of the discussions you had

12 with Mr. Bailey, prior to the agreement to sell the lands,

13 there was any discussion about the planning situation?

14 A. No, not to my recollection. It was basically that there

15 was a sale agreed and that it would be taken from there by

16 the legal people.

1 132 Q. Did you become aware of the letter you have, that was made

18 by Smith Foy and Partners on behalf of Michael Bailey as

19 agent for the Forest Road lands on the 24th of June, of

20 1988?

21 A. I haven't seen that offer, no.

2 133 Q. I shall refer you to a letter of -- just for a moment --

23 the reference in this case is --

24 A. This is a letter to Denis McArdle.

2 134 Q. 5 JMSE, 12.1, Forest Road correspondence, and the page

26 number is 356. It is at the end of the book if anybody is

27 looking for it.

28 .

29 Were you made aware of the contents of that letter?

30 A. I can't remember being made aware of it now, honest to

31 God. It is really talking about the contract conditions.

3 135 Q. And the consideration that was being offered --

1 A. I know there was some talk, you know, about generally
2 what's there, the substance of it, the way it was being
3 phased or something, you know a phased payment or something
4 like that, you know.

136 Q. Well, in any event that was an offer as of the 24th of
6 June, of 1988, of 1.25 million pounds for the lands in
7 question?

8 A. Yes, something around that, I thought it was 1.3, something
9 around 1.3.

1 137 Q. Were the lands eventually sold to -- were they sold to a
11 company or to Mr. Bailey or to whom were they sold?

12 A. What I understood was that Mr. Copsey took it up then and
13 did the negotiations and reached some agreement with them
14 on a figure, and I came in later on, on the signing of the
15 contract, but from that on that it was Mr. Copsey who was
16 involved as far as I was concerned in -- in fact I remember
17 being told by Mr. -- if I am right in this, I hope I am
18 right in this -- I remember being told by Mr. McArdle that
19 he was surprised because, as I said earlier, all our
20 negotiations and understandings were with Mr. Bailey on
21 behalf of Bovale. Sorry?

2 138 Q. Sorry, Mr. Gogarty, go ahead?

23 A. On behalf of Bovale, and then out of -- Mr. McArdle told me
24 one day that out of the blue the contract was with Princess
25 Homes I think it was he said, and he was surprised because
26 he said that it was a completely different thing to what he
27 had understood earlier on that we were talking about
28 Bovale. And he mentioned in passing that he seemed
29 satisfied that Mr. Bailey was a Director of Princess Homes
30 and he had no equity in it or something to that effect,
31 that's as far as I could tell you now.

3 139 Q. So far as you are concerned then, the lands were sold by

1 Grafton Construction Company Limited to Princess Homes?

2 A. Well, I think there was two parties to the contract, there
3 would be Grafton and Reliable Construction, would I be
4 right in saying that?

140 Q. Yes.

6 A. What?

141 Q. Yes, I think that appears to be the situation. These
8 contracts were signed on the 24th of August, of 1988?

9 A. So I believe, yeah.

1 142 Q. I think we know from the, you may not know this, there was
11 a revised planning permission the following day submitted
12 to the County Council; did you know that?

13 A. No, I didn't bother me head with that.

14 .

15 MR. COONEY: I wonder would Mr. Gallagher establish who
16 signed the contracts on behalf of the vendors?

17 A. I think I said that I and Copsey signed the contract, I
18 think I said that.

19 .

20 MR. GALLAGHER: Miss Howard will get the contracts in just
21 a moment.

22 .

23 CHAIRMAN: Yes, take your time.

24 .

2 143 Q. MR. GALLAGHER: Can I leave that for a moment, I will come
26 back to it as soon as the contracts are located.

27 .

28 Mr. Gogarty, I just then want to summarise my understanding
29 of the events as you have outlined them here today, and
30 then I want to put some other matters to you that relate to
31 those events.

32 .

1 Correct me if I am wrong in my summary, but this is what I
2 understand; that planning permission in respect of the
3 Forest Road lands was due to expire on the 21st of June, of
4 1988?

5 A. That's correct.

144 Q. That the contribution in respect of drainage, in respect of
7 water and the other services had been fixed at £122,460 or
8 thereabouts, something over £122,000?

9 A. Yeah, that appears to be the case, yeah.

1 145 Q. That that contribution had not been paid in respect of that
11 planning permission in question?

12 A. Not to my knowledge.

1 146 Q. That no houses had been built on foot of the planning
14 permission in question?

15 A. That's correct.

1 147 Q. That Mr. Murphy Senior contacted you --

17 .

18 MR. COONEY: With respect, Mr. Chairman, Mr. Gallagher is
19 now giving the evidence. Counsel leading a witness in
20 direct examination is not entitled to summarise evidence
21 and say "is that right". A witness must give evidence
22 spontaneously in response to non-specific, non-leading
23 questions.

24 .

25 CHAIRMAN: Yes, Mr. Cooney, as I understand what Mr.
26 Gallagher is doing is, he is summarising a series of
27 answers which have been given to the Tribunal with in the
28 last half hour.

29 .

30 MR. COONEY: What's the point of that, Mr. Chairman?

31 .

32 CHAIRMAN: He is trying to draw the strands of a series of

1 documents together. It is perfectly true that he is
2 asking him to take a sequence of events as summarised, but
3 you have the transcript in front of you, you can check
4 whether he is right or not, he is simply trying to clarify
5 and have it neatly packaged.

6 .

7 MR. COONEY: With respect, Mr. Chairman, you know and Mr.
8 Gallagher knows that there is controversy about some of the
9 matters upon which Mr. Gogarty has given evidence. Now,
10 first of all he should not be lead at all on this evidence,
11 but secondly to summarise his evidence, Mr. Chairman, is
12 unheard of.

13 .

14 If Mr. Gallagher were making closing submissions to you
15 after all the evidence has been given, then he would give a
16 summary of the evidence given by the witness. He is not
17 entitled to select a series of facts, say to the witness
18 "is that right, is that right?". There is no need for a
19 summary, Mr. Chairman, first of all; and secondly, in any
20 event this is an attempt to introduce evidence in a manner
21 which is clearly in breach of fundamental rules of the law
22 of evidence.

23 .

24 CHAIRMAN: In the first instance I don't suggest or accept
25 that it is an attempt to introduce evidence, it is an
26 attempt to summarise evidence which has been given.

27 .

28 Now, I would hope that Mr. Gallagher would not depart from
29 the evidence which has been given, and I believe that he
30 will -- I see no real objection to that.

31 .

32 MR. COONEY: I am not suggesting for a moment that Mr.

1 Gallagher would depart from the evidence.

2 .

3 CHAIRMAN: What's the objection to putting it in

4 sequence.

5 .

6 MR. COONEY: The objection is that it is not counsel's job

7 when he is leading a witness through direct testimony to

8 pause in the middle of it and put a summary to him and say;

9 "is that correct?", that's not how direct evidence is

10 adduced before any Tribunal or any court in any form, Mr.

11 Chairman.

12 .

13 CHAIRMAN: But the evidence has been adduced, it can be

14 found by going through the transcript, picking it out,

15 underlining it with a red pencil or whatever you do to pick

16 it out. The evidence is given, and you can write them out

17 on a sheet of paper or I can do it in due course, or

18 alternatively they can be put together neatly, and is this

19 your understanding of what occurred?

20 .

21 MR. COONEY: Mr. Chairman, with great respect to an

22 experienced counsel, I am respectfully asking where is

23 there any rule in the law of evidence which permits counsel

24 who is leading a witness through his direct evidence to

25 pause and summarise his evidence and say "is that right, is

26 that right?"? It is not done. Because it kills the

27 spontaneity which should be a principle characteristic of

28 direct evidence. It is unnecessary and it is in

29 contravention of the rules of evidence, Mr. Chairman.

30 .

31 CHAIRMAN: Mr. Gallagher?

32 .

1 MR. GALLAGHER: I would say first of all the rules of
2 evidence do not apply to inquisitorial --

3 .

4 CHAIRMAN: Not strictly, don't strictly apply, let's not
5 go too wide.

6 .

7 MR. GALLAGHER: Strictly they don't apply, I am certainly
8 following them. I think there would very well be some
9 basis for Mr. Cooney's objection if I had started to
10 question this witness by summarising matters as I am now
11 summarising them, but what I am summarising is, as I
12 understand the evidence that has been given. It is
13 something that has been heard in every court in every day
14 throughout the land where counsel will say, "do I
15 understand you correctly to say", or "am I correct in
16 thinking it is your evidence that" -- and I have asked Mr.
17 Gogarty to confirm or to not confirm, as may be
18 appropriate, the -- my understanding of the summary of the
19 evidence that he has already given on oath, and it is open
20 to him to challenge that and say "you are misunderstanding
21 this", correct, and it is to facilitate you, sir, and to --
22 so that I can understand what the evidence is from this
23 witness that I am putting it in this way.

24 .

25 CHAIRMAN: Mr. Gallagher and Mr. Cooney both, this can be
26 done in one of two ways; it is quite manifest what the
27 purpose of it is, it is to establish whether or not the
28 planning permission had been, was X at a particular date by
29 virtue of the activities conducted on the ground. It is a
30 well-known situation in planning matters.

31 .

32 Now, it can be done in one of two ways; we can either

1 summarise the answers which were given or we can go through
2 de novo and ask the witness what activity took place on the
3 site prior to a certain date, to your knowledge? We will
4 spend the best part of half an hour doing it and it will
5 not get us any further, but I mean, far be it from me to
6 depart from the rules of evidence, that I have been
7 commented on by Mr. Cooney as having done it for some
8 deliberate purpose. Would you mind doing it that way?

9 .

10 MR. COONEY: Mr. Chairman, I am not asking Mr. Gallagher
11 to bring the witness through what he has already given, and
12 it is very unfair to make a ruling that suggests that
13 that's what I am doing. I am simply saying there is no
14 necessity to summarise evidence which he has already given,
15 particularly in the form of leading questions. If Mr.
16 Gallagher is in doubt about the accuracy of Mr. Gogarty's
17 evidence or the accuracy of his recollection, then he can
18 approach it in another way.

19 .

20 But, Mr. Chairman, I have to say with respect, and I object
21 to you ruling on my objection in such a way as to make me
22 appear obstructive, I am trying, Mr. Chairman, with your
23 assistance, to apply the ordinary rules of evidence,
24 because it is well established in the courts I practice in,
25 not apparently the ones Mr. Gallagher does, the purpose of
26 the rules of evidence is to ensure the best evidence is
27 given in a fair way.

28 .

29 MR. GALLAGHER: This is not a court, as I have repeated on
30 a number of occasions. I submit I am entitled to
31 summarise or ask the witness to summarise his evidence to
32 this extent so far, and I suggest it would be of assistance

1 to you, sir, when you come to evaluate this and other
2 evidence in due course.

3 .

4 CHAIRMAN: Mr. Gallagher, it appears to me that the
5 evidence has been given, certainly I have heard what I
6 would consider the necessary evidence in this regard, as to
7 what the situation was on the ground and what the situation
8 was that preceded the correspondence which has been
9 opened.

10 .

11 If Mr. Cooney wants to inquire into it in anyway he can
12 deal with it in cross-examination and I will take a note of
13 his cross-examination in this regard and resolve it as I
14 see appropriate.

15 .

16 I don't think we should go back. It is just a pointless
17 exercise, we are going to have a continual row without any
18 purpose.

19 .

2 148 Q. MR. GALLAGHER: Now, you were asked --

21 .

22 CHAIRMAN: Sorry, Mr. Redmond I think.

23 .

24 MR. REDMOND: Mr. Redmond would like to say something --

25 .

26 CHAIRMAN: Wait now, Mr. Redmond, I beg your pardon. I
27 will give you an audience at any time, but I don't want you
28 to start giving evidence to the Tribunal. If you have a
29 submission to make, I gather you have no legal
30 representation here today.

31 .

32 MR. REDMOND: I have a submission to make.

1 .

2 CHAIRMAN: Now, it must not be an attempt to give evidence
3 in anyway contradicting the evidence which has been
4 given. I will not hear that now.

5 .

6 MR. REDMOND: It is not a question of giving evidence.
7 Reference has been made in this case all the time to an
8 extent, in extant planning permission. The position in
9 this case in relation to the ministerial decision which was
10 extant, that the permission, there were certain conditions
11 in it which had to be fulfilled before the permission
12 became effective --

13 .

14 CHAIRMAN: Now, please you are going into evidence at this
15 point. I think -- Mr. Redmond, please. In due course of
16 time well, you will have an opportunity of giving your
17 version of the events in question, you will be given it in,
18 from you on both -- I think we are going to have to wait
19 for that moment before we can take your intervention and
20 compare it with the evidence that has been tendered to
21 date, and to date with such other evidence as Mr. Cooney
22 may well either tender or establish in cross-examination.
23 But I don't want to get the sequence of events and I
24 certainly don't want interruptions while the matter is in
25 progression. Thank you very much.

26 .

27 MR. REDMOND: I have no intention to be disrespectful, the
28 submission I just made is that the permission was not
29 extant.

30 .

31 CHAIRMAN: I appreciate that. Thank you very much.

32 .

1 Sorry, Mr. Gallagher.

2 .

149 Q. MR. GALLAGHER: Mr. Gogarty, I want to put to you copies of
4 two contracts dated the 24th of August. The first contract
5 is a contract, a memorandum of agreement of 24th of August,
6 of 1988, between Reliable Construction (Dublin) Limited,
7 having its registered office at 18/21 St. Stephen's Green,
8 Dublin 2. And Michael Bailey, as Agent of, care of 59
9 Fitzwilliam Square, Dublin 2, purchaser.

10 .

11 The purchase price is stated to be £950,000 and the closing
12 date was the 30th of November of 1988, and the interest
13 rate was 20 percent per annum. Can you identify the
14 signatures on that contract, Mr. Gogarty?

15 A. I identify my signature, yes.

1 150 Q. Your signature is on it?

17 A. Yes.

1 151 Q. And who else signed it on behalf of the vendor?

19 A. Well, Roger Copsey.

2 152 Q. Yes.

21 A. And Denis McArdle, witness.

2 153 Q. And I think --

23 A. Michael Bailey for the purchaser.

2 154 Q. And I think Thomas K Smith signed it?

25 A. I beg your pardon?

2 155 Q. Mr. Smith witnessed it on behalf of the purchaser?

27 A. Yes, yeah.

2 156 Q. And the second memorandum of agreement also dated the 24th
29 of August, of 1988, between the Grafton Construction
30 Company limited, vendor, and Michael Bailey as agent care
31 of, 59 Fitzwilliam Square, Dublin 2. The purchase price is
32 £377,540, the same closing date. A deposit of £45,000 and

1 the balance is £332,540. Did you also sign that?

2 A. Yes.

157 Q. And did Mr. Copey sign it on behalf of the vendor?

4 A. Yes.

158 Q. On the 1st of September did McArdle & Company write to

6 Smith Foy and Partners in the following terms; "Re: Grafton

7 Construction/ Reliable to Princess Homes.

8 .

9 Dear sirs, we write to confirm the arrangement in relation

10 to the financial contribution of £122,460 referred to in

11 the planning permission as follows:

12

13 1. On closing your client will refund this amount to our

14 client by means of a bank draft.

15 2. Our client will assign the benefit of the above payment

16 to your client absolutely.

17 3. Our client will also assign to your client the benefit

18 of the letter from Dublin County Council, dated 31st of

19 May, of 1988, which deals with the payment of financial

20 contributions.

21 .

22 Yours faithfully, McArdle & Company" .

23 .

24 The reference I say is JMSE 12.1, page 308.

25 .

26 To the best of your knowledge was that amount refunded can

27 you recall, can you assist the Tribunal?

28 A. Well, I never saw that letter until now first of all, and

29 secondly, I couldn't swear about what happened, you know.

3 159 Q. I see. Now, you have given evidence, Mr. Gogarty, as to

31 the circumstances in which you first met Mr. Redmond. Mr.

32 Redmond has furnished a statement to the Tribunal, and has

1 indicated that your evidence that he was introduced to you
2 by Liam Conroy was untrue. What do you say to that?

3 A. I don't accept that at all, I don't accept that at all. I
4 clearly remember it because after showing him, Mr. Conroy
5 showing him over the Gaiety Theatre we adjourned to the
6 Westbury Hotel where there was a discussion.

160 Q. He says that he was introduced to you by Pat O'Shea?

8 A. I don't accept that. I am referring to the first time I
9 met Mr. Redmond.

1 161 Q. Yes. Sorry, he says that he first met you sometime in
11 1987, Pat O'Shea had informed him of certain things, you
12 had expressed a wish to meet Mr. Reynolds or Mr. Redmond in
13 relation to the Murphy lands in North County Dublin and
14 you, he agreed to meet you and Mr. O'Shea and yourself went
15 to his office?

16 A. I don't recollect that at all, whatsoever.

1 162 Q. So far as you are concerned did that happen to the best of
18 your recollection?

19 A. To the best of my recollection that didn't happen
20 whatsoever.

2 163 Q. Now, he says that he did not know Joseph Murphy Senior, had
22 never met him in his life, never spoken to him or
23 corresponded with him and the same applied to Joseph Murphy
24 Junior?

25 A. That's what he says. I never said that he knew Joseph
26 Murphy Junior before that.

2 164 Q. He said that the same applies in the person of, named as
28 Joseph Murphy Junior, "while I was aware of the existence
29 of Joseph Murphy I was not aware of Joseph Murphy Junior
30 until recently". What do you say to that?

31 A. I don't know what he means, all I am saying is I accept as
32 far as I am concerned Mr. Murphy's word that he never met

1 him, he probably didn't know him but he knew the Chief
2 Executive, Liam Conroy.

165 Q. What do you say to the --

4 A. I accept Junior's word that he hadn't met him before
5 either.

166 Q. No, but Mr. Redmond appears to be suggesting that he was
7 not aware that there was such a person even as Joseph
8 Murphy until recent events?

9 A. What do you mean recent events?

1 167 Q. I don't know what is meant by "recent events", they were
11 the words used, but --

12 A. I don't know either.

1 168 Q. If by recent events it means the setting up of the Tribunal
14 or the events immediately preceding the Tribunal what do
15 you say?

16 A. He would be incorrect.

1 169 Q. He would be incorrect?

18 A. Yeah.

1 170 Q. Why would he be incorrect?

20 A. Because it is not correct.

2 171 Q. Why is it not correct?

22 A. What?

2 172 Q. Why do you say it is not correct?

24 A. Because I am saying, I have sworn that I met him with Liam
25 Conroy in the Gaiety Theatre in 1984 and in the Westbury
26 Hotel afterwards.

2 173 Q. Yeah, but are you saying that you met him or that he met
28 Joseph Murphy Junior on a previous occasion?

29 A. I didn't say that.

3 174 Q. No, I understood your evidence to be that you had met Mr.
31 Redmond in the company of Joseph Murphy Junior?

32 A. Yes, that's after, the second meeting after meeting him on

1 his own, yeah, yeah.

175 Q. Well, if Mr. Redmond is suggesting that he didn't know of a

3 Mr. Murphy until recent events, and if by recent events he

4 means the setting up of the Tribunal, then do I take it

5 that you would disagree with that?

6 A. I disagree entirely with that, entirely with that.

176 Q. Now, Mr. Redmond admits that you came to his office, says

8 that you came with Mr. Batt Murphy, Batt O'Shea and that

9 your purpose in so doing was to discuss the position in

10 relation to services of the Murphy lands in North County

11 Dublin, I am obviously -- what do you say to that?

12 A. What does he mean by "the Murphy lands in North County

13 Dublin", Forest Road.

1 177 Q. Pardon? No, the -- "his purpose in wishing to see me was

15 to establish on behalf of his company" -- sorry, "Mr.

16 Gogarty thanked me for seeing him, he made me aware that

17 the Murphy's were the owners of several parcels of land at

18 Finglas, Poppintree, Balgriffin and Portmarnock.

19 .

20 His purpose in wishing to see me was to establish on behalf

21 of his company the precise position in relation to drainage

22 and water services, roads, proposals etc. insofar as Dublin

23 County Council were concerned. It was at this juncture I

24 first became aware of the fact that the Murphy's were the

25 owners of Finglas Industrial Estates Limited lands" .

26 .

27 Mr. Gogarty, do you understand that?

28 A. I don't understand that because I am saying, I had no

29 interest in all those other lands at all. I was acting on

30 Senior's instructions to discuss the Forest Road lands, the

31 permission for which was running out shortly after that and

32 that Mr. Murphy had said that Liam Conroy had an ongoing

1 discussion with Mr. Redmond on that matter and he wanted it
2 know what that situation was at that time because Conroy
3 was being ousted out of the company, Mr. Murphy was
4 becoming involved, he was concerned about the planning
5 permission running out and the effect it would have on the
6 services, on fees and all that type of thing, in relation
7 to those lands. I only spent 20 minutes with the plan at
8 that time. What he is talking about, he is talking about
9 the whole 313 acres, I have no interest, I was only doing
10 my job.

1 178 Q. He has also said that you contacted him and asked him to
12 meet Mr. Conroy, the Chief Executive of the company, who
13 wished to meet you, and he says that you introduced Mr.
14 Conroy to him and that you had lunch together, what do you
15 say to that?

16 A. In what year?

1 179 Q. There is no year actually stated, but it is the only time
18 he says he met Mr. Conroy?

19 A. Well, that's his version of it, I am only just giving my
20 version on oath. All I am saying is this, if he is
21 referring to 1988, I was a hundred miles away from Conroy
22 because we were at daggers end, I wouldn't touch him in a
23 hundred years at that time.

2 180 Q. This was only, the very -- according to Mr. Redmond, the
25 only time he met Mr. Conroy?

26 A. Well, that's not correct and that's all I have to say.

2 181 Q. Now, in relation to the Forest Road lands, he confirms that
28 he agreed to meet you in relation to the Forest Road lands
29 and he says that he had acquainted himself with the Grafton
30 permission, and that he said that in view of his companies,
31 he is speaking of you, he said that you said to him that in
32 view of your company's experience in the late, in the

1 matter of the Finglas Industrial Estate land they wished to
2 know what course they should take. He says that he
3 explained to you that the phasing of limitations on the
4 duration of planning permission --

5 A. I beg your pardon. First of all, what's the first thing
6 you said there?

182 Q. I am quoting from what Mr. Redmond said.

8 A. Yeah.

183 Q. He said --

10 A. Could I have a copy of it or something?

1 184 Q. Well this --

12 .

13 MR. COONEY: Hang on a second, Mr. Chairman, what is Mr.

14 Gallagher doing? Does he intend to put the entire of Mr.

15 Redmond's evidence to this witness or just selected

16 portions of it? I don't follow this.

17 .

18 MR. GALLAGHER: I am dealing with --

19 .

20 MR. COONEY: Because I respectfully submit if he intends

21 to do that he should read out the entire of Mr. Redmond's

22 statement to the witness and then ask him questions on

23 whatever portion he thinks are relevant at this stage,

24 because Mr. Redmond has made a very long statement, Mr.

25 Chairman, in which he takes strong issue with Mr. Gogarty

26 on most of his evidence, Mr. Chairman, and in which Mr.

27 Redmond says he never met Joseph Murphy Junior, and I can

28 tell you that will be Mr. Murphy Junior's evidence as

29 well. It seems to me extraordinary that Mr. Gallagher is

30 selecting extracts from Mr. Redmond's statement. I don't

31 know what he is doing at this stage except to set him up to

32 be knocked down by Mr. Gogarty. Mr. Redmond is no longer

1 represented by lawyers, as you know. He has no lawyer
2 here today. It seems to be a bit unfair to him.

3

4 MR. GALLAGHER: I am dealing with the, I am dealing the
5 Forest Road Lands, the events surrounding it, the version
6 given by Mr. Gogarty and the version that will be given by
7 Mr. Redmond. My references and quotations, the questions
8 I have put relate back to the Forest Road lands, and I
9 think Mr. Cooney, as I recall, was complaining last week
10 that I wasn't putting questions that he felt I should be
11 putting to various witnesses. I am now putting questions
12 showing that there is a different version of events given
13 by another witness, and I am putting it to this witness,
14 and Mr. Cooney is complaining about that also.

15 .

16 CHAIRMAN: Just a moment.

17 .

18 MR. COONEY: I am not complaining about him putting it, I
19 said if he put it in full.

20 .

21 CHAIRMAN: Just a moment, first of all I take it that you
22 are operating off that portion of Mr. Redmond's statement
23 which occurs on the No. 3 at the bottom of the page. There
24 are two pages actually, page 04 which is actually a fax
25 number.

26

27 MR. GALLAGHER: Starting at the --

28 .

29 CHAIRMAN: "My recollection is the first time I met Mr.
30 Gogarty" -- from there on. The earlier portion is, in
31 fact, a historical matter in relation to his functions as

32 --

1 .

2 MR. GALLAGHER: As City Manager and Assistant City
3 Manager. I am now dealing with the Forest Road aspect of
4 that statement, which is to be found on page nine, the
5 bottom of, the pagination is at the bottom of the page.

6 .

7 CHAIRMAN: Well, Mr. Gallagher, there is substance in what
8 Mr. Cooney is saying to this extent; that I think you are
9 going to have to put to him, not necessarily the entire of
10 the statement for obvious reasons, but the entire of the
11 propositions which are relative, which is contrary to your
12 version or to the version Mr. Gogarty is giving and I don't
13 know whether -- I suppose the best way to do it is to
14 isolate particular paragraphs, tell Mr. Cooney in advance
15 that you are now about to deal with paragraph, for instance
16 the one I have been looking at at the moment, "It is my
17 recollection the first meeting", that's the third paragraph
18 of page three, and in other words, try to keep us informed
19 of what you are challenging, or what Mr. Cooney is
20 challenging of his evidence, isn't that what you want to
21 do?

22 .

23 MR. COONEY: That's it, Mr. Chairman, but I think the
24 introduction of Mr. Redmond's statement is important
25 because he sets out precisely what functions he performed
26 during the course of his employment with the County
27 Council, and he sets out effectively saying that he had
28 nothing to do with planning, and I think that this should
29 be brought out as well, really this cherry picking passages
30 from statements is not satisfactory.

31 .

32 CHAIRMAN: Surely, Mr. Cooney, all that he is required is

1 to point out that Mr. Redmond, in relation to evidence this
2 witness is giving, is going to give a different version,
3 isn't that the essence of what a challenge should be?
4 .

5 MR. COONEY: If it is left at that, fine, Mr. Chairman, if
6 it is left at that.
7 .

8 CHAIRMAN: Now, he is not obliged to present Mr. Redmond's
9 version of his theme, as it were, in this instance.
10 .

11 MR. COONEY: What's the purpose of asking him, Mr.
12 Chairman, if it is not to challenge the account which is
13 already given?
14 .

15 CHAIRMAN: Now, he is being asked does he accept, does he
16 realise that Mr. Redmond is giving a different version of,
17 for instance the one I have in front of me, the
18 circumstances on which he met -- he has denied that that is
19 true, that that version is true. He says his version was
20 true. No doubt Mr. Redmond will in due course say this
21 version I have in my hand is the true version, I have not
22 made my mind up, and he is going to be challenged in turn
23 that he met him in particular circumstances. What's the
24 problem?
25 .

26 MR. COONEY: The problem is this, Mr. Chairman; I will
27 explain it once and now I have to do it again. Mr. Redmond
28 denies particular statements of fact made by Mr. Gogarty.
29 In support of the truth of his denial he sets out what his
30 functions and duties were when he was employed by the
31 County Council, thereby implying that he could not have
32 done what he is alleged to have done. He didn't have the

1 functional authority to do it. It seems to me, Mr.
2 Chairman, again I may be wrong about this, and perhaps I am
3 being dense and don't see the point, but if something is
4 alleged against somebody, something corrupt and he states
5 that he was not in a position to carry it out, it seems a
6 matter of fundamental common sense that that fact must be
7 introduced in evidence as well. However, Mr. Chairman, I
8 may be dense about this and I may be missing the point.

9 .

10 MR. CALLANAN: Firstly it seems to me what Mr. Gallagher
11 is doing is entirely normal and acceptable for a counsel
12 taking a witness through what is effectively
13 evidence-in-chief to identify salient areas of factual
14 conflict. There is, of course, an immense conflict between
15 what Mr. Gogarty said and what Mr. Redmond set forth in his
16 statement, but secondly, Mr. Cooney is in an extraordinary
17 on this position, he objected to Mr. Gogarty's affidavit
18 being opened, to that, he did that at the outset. While
19 he doesn't appear for Mr. Redmond he is now suggesting Mr.
20 Redmond's statement be opened in its entirety, that's a
21 statement made in response to an affidavit made by Mr.
22 Gogarty to the opening of which Mr. Cooney already
23 objected.

24 .

25 CHAIRMAN: It appears to me the situation is this; that
26 Mr. Cooney is correct in saying that the alternate version
27 which is in the Redmond statement should be put to Mr.
28 Gogarty, and Mr. Gallagher has been doing that.

29 .

30 His second proposition is that the entire of the opening of
31 the statement which outlines his functions during his
32 career as Assistant County Manager should also be opened,

1 and he says the reason why that should be done is that it
2 illustrates he did not have any function in regard to
3 planning matters, that's as I understand Mr. Cooney's
4 objection.

5 .

6 My view of the matter is the aspect of Mr. Redmond's
7 career, in relation to his functions is essentially
8 collateral and no doubt will be given by Mr. Redmond on the
9 basis that I did not and had no function and could not
10 achieve it, but it doesn't in anyway reflect the situation
11 which Mr. Gallagher is attempting to achieve, i.e. to put
12 this, put to this witness the alternate view or version of
13 his statements.

14 .

15 And accordingly I think he should proceed with what he is
16 doing, in due course of time no doubt Mr. Redmond will tell
17 us all about his functions and the reasons why collateral
18 to and supportive of his premises that he did not carry out
19 the alleged improper acts.

20 .

21 That's my opinion.

22 .

23 MR. COONEY: Very well, Mr. Chairman. It seems to me Mr.
24 Redmond is being set up in advance by selective pieces of
25 evidence being put to a witness who is going to deny it, I
26 don't see the point of it, other than to discredit Mr.
27 Redmond.

28 .

29 CHAIRMAN: This is one version, Mr. Redmond has a
30 second. We are here to find out everybody's version of
31 the -- who are participants in this entire transaction to
32 understand what each says and try and look and say as a

1 matter of probability the truth and the facts actually
2 lie. I can't cherry pick, as you suggest, at this stage.
3 It is you, you will be complaining if this was not done
4 that we were cherry picking and only presenting one part of
5 this witness' evidence.

6 .

7 MR. COONEY: That's precisely Mr. Chairman, precisely my
8 point. First of all I have to say just before I lose the
9 point, Mr. Callanan seems to become more obtuse with each
10 passing day.

11 .

12 CHAIRMAN: That's just being rude to Mr. Callanan. I
13 don't think it is necessary to make your point.

14 .

15 MR. COONEY: It is completely correct. But why is Mr.
16 Gallagher picking pieces out of Mr. Redmond's statement
17 which is 10 to 18 pages long and putting those pieces to
18 this witness? It can only be for the purpose of allowing
19 this witness an opportunity to rely -- please let me finish
20 -- then surely, Mr. Chairman, it is for Mr. Redmond or his
21 lawyer to cross-examine in these matters with a view to
22 establishing that what he says is correct.

23 .

24 It is absurd, Mr. Chairman, where Mr. Gallagher is picking
25 one witness whom he feels takes a contrary view to Mr.
26 Gogarty, and provides Mr. Gogarty with an opportunity to
27 deny particular passages in his evidence. I can't say the
28 point in that, it is not fair and it is quite different,
29 quite a different matter from that which arose when Mr.
30 Gogarty was giving evidence about the Garda Siochana the
31 other day, quite a different matter.

32

1 CHAIRMAN: My opinion, I have correctly ruled. Mr.
2 Redmond I see you there, would you mind addressing the
3 microphone light there.

4 .

5 MR. REDMOND: May I sit down?

6 .

7 CHAIRMAN: You may of course. If you draw the microphone
8 down to you, it will bend over towards you.

9 .

10 MR. REDMOND: I think it is particularly important that the
11 entire of my statement should be read.

12 .

13 The first portion of my statement deals with my status at
14 the time of the events, and it was necessary for me to make
15 that statement, in view of a statement made in Mr.
16 Gogarty's statement. As I recall Mr. Gogarty described me
17 as the County Manager, by so doing implied that there
18 reserved in me at that stage all the executive functions of
19 the County Council. So that his impression, it would seem
20 from that statement that I had all the powers, that I had
21 planning powers and all the relating powers. I think in my
22 statement I clarify my position.

23 .

24 It would appear to me that Mr. Gallagher was not touching
25 on that section. Mr. Gogarty says I am the County Manager
26 with planning powers, that's implied.

27 .

28 What I say in my statement, I was not that at that stage, I
29 had limited powers and they did not include planning.

30 .

31 Thank you Your Worship.

32 .

1 CHAIRMAN: Thank you. Thank you very much, you are very
2 kind.
3 .

185 Q. MR. GALLAGHER: Can I just clarify something. I will in
5 due course or one of my colleagues will in due course, will
6 read all of Mr. Redmond's statement, will bring him through
7 all of his statement, will explore everything he has said.
8 We will give him a full opportunity of explaining his
9 version of events. I am simply putting to this witness a
10 contrary view, contrary to what he has sworn to enable him
11 to comment on it. I think it is entirely appropriate and
12 no doubt Mr. Cooney and others will cross-examine on any
13 aspect of the evidence that they wish to cross-examine
14 on. I am simply highlighting a number of matters that Mr.
15 Redmond, for example in relation to this particular aspect
16 of the evidence has taken, which he has taken issue.
17 .
18 Mr. Redmond has said to you, has said, Mr. Gogarty, that
19 you telephoned him and asked to meet him and that he agreed
20 to meet you in relation to the Forest Road lands, and that
21 before he met you he had looked at the relevant file. He
22 said; "Prior to his coming", that's your coming, "I
23 acquainted myself with the planning history of the lands
24 which comprise some 22 acres. Dublin County Council had
25 decided to grant planning permission for 206 houses to
26 Grafton Construction Company Limited in September of 1982".
27 He sets out what he had learned from the planning file and
28 he later at page 11 says, having noted the relevant
29 material said;
30 .
31 "With the foregoing in mind I met with Mr. Gogarty. I
32 told him I acquainted myself with Grafton's permission,

1 which clearly would run out on 23rd of June, of 1983. He
2 said in view of the companies experience ... Phasing of
3 limitations on its duration of planning permissions
4 resulting from amendments of the original 1993 Planning and
5 Development Act of 1976 and 1982, the legal position was
6 absolutely clear. If the permission expired, then in
7 order to carry out development a new permission would have
8 to be obtained and this would involve an entirely new
9 application. I suppressed the fact that in the event of a
10 new application there was simply no guarantee that fresh
11 permission would be granted."

12 .

13 He went on to point out in the event of such an application
14 it was conceivable that traffic hazard was a possible
15 ground for refusal.

16 .

17 He goes on to say; "I told him that it seemed to me that
18 even the slightest risk in winding up with a refusal in the
19 event of a new application, it was clearly in his company's
20 interest to seek an extension of the permission of the
21 first instance from the council. I then set about
22 explaining to him the requirements of the regulations.

23 The two main stipulations were:

24 .

25 1. The application could not be made earlier than one year
26 of the date of expiry of the permission.

27 .

28 2. Substantial works would have to be carried out prior to
29 the application for extension."

30 .

31 He then later goes on and said; "I explained before making
32 an application for extension his company would require to

1 do the following before the 21st of June.
2 .
3 1. Agree the amount of the financial contributions with
4 the Council and the manner of its payment.
5 2. Fulfill the bond condition.
6 3. Carry out some works. Works would have to start
7 immediately if his company did not wish to dispute the
8 amount of £122,000 sought by the council. They should
9 inform the council accordingly. Phase payments could also
10 be proposed for contribution by the council. "

11 .

12 Do you recall that happening and if so what evidence can
13 you give in relation to it?

14 A. Well, with all respect to everybody here, I say that's all
15 gobbly gook, for want of a better word. If you allow me
16 just to help you out to come down to earth.

17 .

18 The circumstances were very special, I have already
19 described them. If, here in a situation where I was
20 acting on the instructions of an employer under
21 questionable circumstances, if I was a free agent, as an
22 engineer representing a client, builder, whoever he was, I
23 wouldn't go to the County Manager or the Assistant County
24 Manager, I would go to the Planning Department and to the
25 sewerage department and drainage department, and I would
26 get all that information. If Mr. Redmond was acting within
27 his functions he would tell me to go there and not be
28 bothering him, but it was a special case, by others I don't
29 know, it can be explained, but that's my version of it. I
30 was in a situation where I was asked by Mr. Murphy in
31 unusual circumstances to do his bidding, which I did,
32 rightly or wrongly or properly, but if I was a free agent I

1 would have gone directly to the planning departments, which
2 I have done when I was in Higginbotham and Stafford and I
3 would go to the sewerage department and get all the
4 relevant information from them that would help me to make
5 projections on any potential in land.

186 Q. What do you say in relation to the truth or otherwise of
7 what I have put to you as the statement of Mr. Redmond?

8 A. I said it is incorrect, it is gobbly gook. That's all I
9 am saying. I didn't want the law read to me about what
10 his functions were or what. He was --
11 .

12 CHAIRMAN: We will clarify that when we get Mr. Redmond in
13 the witness-box. That is your version.

14 A. To me Mr. Murphy was The assistant County manager or County
15 Manager, some very powerful thing. If he wanted to not be
16 involved the man should have told me, "look, you should go
17 to the planning department and the drainage department, the
18 roads department and the sewerage department", and we
19 wouldn't be here today, we wouldn't be here today
20 .

21 CHAIRMAN: We have reached one o'clock. We will take a
22 break for the day.

23 .

24 MR. ALLEN: Chairman, just before you rise, it is nothing
25 to do with the evidence. I have sufficiently gained my
26 composure to ask you for the clarification which I had
27 intended seeking from you. It arose from the discussion as
28 to what may or may not be granted to, what is distributed
29 but may or may not now be seen by journalists. The
30 particular point of clarification that I wished to have
31 from you sir, and it relates to the daily transcripts of
32 the proceedings of this Tribunal. As I understand it those

1 transcripts are in the public domain, and as I further
2 understand it, journalists have access to those
3 transcripts.

4 .

5 I wanted to seek clarification from you, sir, that that was
6 your understanding of the situation?

7 .

8 CHAIRMAN: Well, I understand that anybody can order a
9 transcript from the stenographers and pay for it.

10 .

11 I also believe that as a matter of practice that if they
12 want to check their note that facilities are afforded to
13 them from the transcript if they have it, to check a
14 particular statement, I don't think there is anything --

15 .

16 MR. ALLEN: No.

17 .

18 CHAIRMAN: I don't think there is any ruling to that
19 effect. It is just a courtesy. That is as I understand
20 the situation in fact, I stand subject to correction on
21 both statements.

22 .

23 MR. ALLEN: Yes. I want to make it clear that that is my
24 understanding of the situation in relation to the
25 transcripts and that that's all I wanted to be clear
26 about.

27 .

28 CHAIRMAN: As I say, I don't know at what point in time
29 they get the transcript, whether they work off what's
30 called the dirty copy which is available immediately which
31 you can get actually within a matter of 10, 15 minutes of
32 us stopping or whether they get a clean transcript. All I

1 do know is that it is a courtesy afforded, if they want to
2 check a particular statement they get it, there is no
3 ruling that has been made one way or the other.

4 .

5 MR. ALLEN: I wasn't suggesting for a moment --

6 .

7 CHAIRMAN: As far as I know any member of the public who
8 wants to buy the transcript can get it.

9 .

10 MR. ALLEN: I wanted to be sure if it is entirely
11 legitimate for journalists to check the transcript.

12 .

13 CHAIRMAN: As far as I know.

14 .

15 MR. ALLEN: Thank you, Chairman.

16 .

17 CHAIRMAN: Very good. Thank you very much. The next day
18 which Mr. Gogarty will be attending will be Monday; is that
19 correct? At 10 o'clock?

20 .

21 THE HEARING WAS THEN ADJOURNED UNTIL FRIDAY 5TH OF
22 FEBRUARY, 1999.

23

24

25

26

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