

## LOT 2.

### PARAGRAPH A. 1.

#### IDENTIFICATION AND OWNERSHIP

12 acres (approx.) at Jamestown Road, Finglas

##### *Identification as of 8<sup>th</sup> June 1989*

(a) Lands comprised in Folio 18462 of the Register County of Dublin situate in the Townland of Jamestown Little, Barony of Castleknock and County of Dublin, comprising 0.827 hectares or 2.043517 acres.

(b) Lands comprised in Folio 6952 of the Register County of Dublin situate in the Townland of Jamestown Little, Barony of Castleknock and Barony of Dublin, comprising 5.418 hectares or 13.38788 acres.

##### *Beneficial ownership as of 8<sup>th</sup> June 1989*

###### **Folio 18462 of the Register County of Dublin**

The full registered owner of the lands comprised in Folio 18462 of the Register County of Dublin was Grafton Construction Company Limited, having its registered office at Stephen Court, 18-21 St. Stephen's Green, in the City of Dublin. There was nothing on the folio by way of inhibition or caution.

###### **Folio 6952 of the Register County of Dublin**

The full registered owner of the lands comprised in Folio 6952 of the Register County of Dublin is Grafton Construction Company Limited, having its registered office at Stephen Court, 18-21 St. Stephen's Green, in the City of Dublin. There was nothing on the folio by way of inhibition or caution.

##### *Changes in Beneficial Ownership since the 8<sup>th</sup> June 1989 up to date of Development*

The Grafton Construction Company Limited was a party to the Composite Indenture referred to above (i.e. it had agreed on 15<sup>th</sup> December 1989 to sell the land to its parent Lajos and assured the land by sub-sale to Bovale in the Indenture of 12<sup>th</sup> September 1991) Bovale Developments Limited acquired the lands comprised in Folios 18462 and 6952 of the Register County of Dublin on foot of the Composite Indenture. There has been no change in the ownership in the lands comprised in Folios 18462 and 6952 of the Register County of Dublin since the said lands were acquired by Bovale Developments Limited, up to the date of their development. On the 26<sup>th</sup> of February 1992, the full registered owner of the lands comprised in Folio 18462 of the Register County of Dublin was Bovale Developments Limited, having its registered office at 59 Fitzwilliam Square, in the City of Dublin, subject only to a collateral charge in favour of the Governor and Company of the Bank of Ireland referred to at Lot 1 above. That charge, insofar as it affected Folio 18462, was cancelled on 26<sup>th</sup> November 1997. On the 26<sup>th</sup> of February 1992, the full registered owner of the lands comprised in Folio 6952 of the Register County of Dublin was Bovale Developments Limited, having its registered office at 59 Fitzwilliam Square, in the City of Dublin, subject only to a collateral charge in favour of the Governor and Company of the Bank of Ireland referred to at Lot 1 above. This charge insofar as it affected Folio 6952 was also cancelled on 26<sup>th</sup> November 1997. An examination of the folios for the period after the acquisition of same by Bovale Developments Limited does not reveal any caution or inhibition. A development known as "Mygan Business Park" has taken place on Lot 2.

## PARAGRAPH A.2.

### PLANNING HISTORY

The lands are comprised in two folios 18462 and 6952 and have a total area of 6.25 ha or 15.4 acres approximately. The lands are rectangular in shape and the only road frontage, in 1989, was onto Jamestown Road, Finglas.

#### ***Paragraph A.2 (a) of the Terms of Reference namely the planning status of these lands in the Development Plan of the Dublin Local Authorities current at the 8<sup>th</sup> June 1989***

The Development Plan current as of the 8<sup>th</sup> June 1989 was the 1983 Development Plan for the County of Dublin wherein these lands were zoned "B" "to protect and provide for the development of agriculture." In the 1972 County Development Plan, the lands in this Folio were zoned "P" - that is "to provide for the further development of agriculture." In the proposed 1990 Draft Development Plan (as proposed by Manager), it was proposed that the lands would retain "B" zoning - that is "to protect and provide for the development of agriculture."

In the 1991 Draft Development Plan which was approved by the elected members and put on public display for three months, the lands were shown with a proposed "E" zoning - that is "to provide for industry and related uses." In the 1993 Development Plan which was adopted by the elected members in December 1993, the lands were zoned "E" - that is "to provide for industrial and related uses." In the 1999 Fingal County Development Plan, the lands are zoned "E" - that is "to facilitate opportunities for general industrial employment and related uses in established industrial areas"

#### ***Paragraph A.2 (b) of Terms of Reference. The position with regard to the servicing of the Jamestown Road lands for development as at the 8<sup>th</sup> June 1989***

##### **Foul sewer**

There were no foul sewers available within the Dublin County Council Area, this land would only drain to the Dublin Corporation system for which there was no agreement. In the absence of any agreement between a prospective developer and the Corporation, any proposal to develop this land would have been given a recommendation for refusal.

##### **Surface water**

This land lies within the catchment of a stream discharging into the Corporation area, no development could take place within these lands pending a favourable report from the Drainage Division of Dublin Corporation stipulating that Authorities requirements.

##### **Water supply**

A limited water supply sourced from the Dublin Corporation system and subject to any condition imposed by that Authority would be available.

#### ***Paragraph A.2(c)(i) of Terms of Reference. Changes made or proposed to be made to the 8<sup>th</sup> June 1989 planning status of the lands by way of proposals put forward by Dublin Local Authority officials pursuant to a review of Development Plans or otherwise***

There were no proposals put forward by Dublin Local Authority Officials to change the 8<sup>th</sup> June 1989 planning status of the lands.

#### ***Paragraph A.2(c)(ii) of Terms of Reference. Changes made or proposed to be made to the 8<sup>th</sup> of June 1989 planning status of the lands by way of Motions by elected Members of the Dublin Local Authorities proposing re-zoning***

In January 1991 Garth May, a planning consultant, made an application to Dublin County Council for the re-zoning of lands at Finglas/Poppintree on behalf of Bovale Developments Limited ("Bovale"). This application related to three parcels of land - one being east of the North Road at Charlestown, Finglas, the

second at Jamestown Road and the third located south of the revised route for the Northern Cross Motorway at Poppintree. This application was given the number 000166. Three plans accompanied the application (plan 1, plan 2 and plan 3) the location of the three sites being shown on plan/drg. No. 76/03 entitled "application for re-zoning Finglas/Poppintree for Bovale Developments."

On the map Mr. May indicated that approximately 20 acres of Bovale lands were affected by the Northern Cross Motorway and that the land, the subject of the application for re-zoning, was approximately 75 acres. By letter dated 18<sup>th</sup> November 1991 Mr. May on behalf of Bovale, requested that his submission made in January 1991 be accepted as an objection/representation to the 1991 Draft Development Plan (then on public display) together with supplemental information contained in his letter of 18<sup>th</sup> November. This representation was given the Ref. No. 000166. At a meeting of Dublin County Council held on 21<sup>st</sup> March 1991, the following motion was proposed by Councillor Cyril Gallagher and seconded by Councillor John Gilbride:

*"That Dublin County Council hereby resolves that the lands at Meakstown, Charlestown and Jamestown in the townland of Jamestown Little coloured in Red and Green on the attached map comprising about 90 acres and which has been signed for identification purposes by the proposer and seconder of this motion, be zoned for residential A1 and industrial E in the draft review of the County Dublin Development Plan (ref. N8)."*

The map in question which had been prepared by Kieran O'Malley & Co. Limited, Civil Engineering and Town Planning Consultants and bore the reference drawing no. 89.1.420.3. The 90 acres referred to in the motion included lands at Meakstown and a small triangle north of the proposed Northern Cross Motorway Route which would be severed by the route – and later acquired by the Council. The following report by the Manager was read at the meeting:

"There is a considerable amount of agricultural zoned land between the City Boundary and the Northern Cross Route Motorway between Santry and North Road, Finglas. There are no drainage facilities available to serve these lands and there are no proposals in hand to provide services due to the limitations in the sewerage network along the North City fringe.

It is accepted that these lands would be appropriate for development if services were available. It is therefore proposed that it be indicated in the Development Plan that planning permission would be forthcoming in principle for these lands if services can be provided. For the time being it is recommended that the zoning remain agricultural. Zoning for development would impose on the Council the obligation to service the lands and in the circumstances such a commitment could not be justified. This Review has established that there is a more than adequate amount of zoned serviced lands both residential and industrial to meet the needs of the County for the foreseeable future.

It is proposed to include the following paragraph in the Written Statement.

"It is agreed in principle that the lands north of the City Boundary and between it and the Northern Cross Motorway from Santry (Swords Road) to Finglas (North Road) should be made available for development, if and when the necessary drainage services are provided. At that stage the lands will be the subject of an Area Action Plan and/or variation to the Development Plan to determine the zoning and the nature of development in the area."

Following discussion the motion was put and on a division the voting resulted as follows:

**For:** 24 (twenty-four)

**Against:** 6 (six)

**Abstention:** 1 (one)

**For:** Councillors J. Barry, C. Boland, T. Boland, S. Brock, L. Creaven, J. Daly, A. Devitt, P. Dunne, C. Gallagher, J. Gilbride, O. Hammond, F. Hanrahan, W. J. Harvey, P. Hickey, G. Kieran, J. Larkin, L. Lawlor, M. McGennis, C. McGrath, L. Mulvihill, J. Murphy, A. Ormonde, S. Riney and N. Ryan. (24)

**Against:** Councillors F. Buckley, B. Cass, E. Fitzgerald, J. Maher, M. Muldoon and M. Sheehan. (6)

**Abstentions:** Councillor S. Laing. (1)

The Chairman then declared the motion carried. The officials of the Council had proposed that the lands at Jamestown Road – Lot 2 – would continue to be zoned “B” – that is “to protect and provide for the development of agriculture.” However, the effect of the Council passing the motion in question at the meeting on the 21<sup>st</sup> March 1991 was to change the proposed zoning of the lands – Lot 2 - to “E” (to provide for industrial and related uses) and the lands were shown as zoned for industrial use in the 1991 Draft Development Plan which was subsequently put on public display. At a special meeting of Dublin County Council on the 19<sup>th</sup> March 1993, the following motion signed by Cllrs. Cyril Gallagher, John Gilbride and Ann Devitt was proposed by Cllr. Gallagher, seconded by Cllr. Devitt and was passed by 37 votes in favour with 13 votes against: -

“Dublin County Council hereby resolves that the lands at Jamestown Little, Finglas outlined in red on the attached map comprising about 16.27 acres and which has been signed for identification purposes by the proposer and seconder of this motion, be zoned for Industrial (E) in the draft review of the County Dublin Development Plan.”

**For:** Councillors S. Barrett, S. Brock, L. Butler, B. Cass, R. Conroy, L. T. Cosgrave, M. J. Cosgrave, A. Devitt, M. Elliott, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, T. Hand, F. Hanrahan, C. Keane, M. Kennedy, J. Larkin, L. Lohan, D. Lydon, M. McGennis C. McGrath, D. Marren, T. Matthews, O. Mitchell, T. Morrissey, M. Muldoon, C. O'Connor, J. O'Halloran, A. Ormonde, N. Owen C. Quinn, T. Ridge, N. Ryan, S. Terry, C. Tyndall; G.V. Wright.

**Against:** Councillors M. Billane, F. Buckley, L. Gordon, D. Healy J. Higgins, T. Kelleher, S. Laing, S. Misteil, D. O'Callaghan, G. O'Connell, S. Ryan, D. Tipping, E. Walsh.

The effect of this vote was to confirm the zoning for industry and the Lot 2 site was so zoned in the 1993 Development Plan.

***Paragraph 2.A(c)(iii) of the Terms of Reference. Changes made or proposed to be made to the 8<sup>th</sup> of June 1989 planning status of the lands by way of applications for planning permission (including any involving a material contravention of the Development Plan)***

#### **Material contraventions**

No planning permission was granted which materially contravened the zoning of these lands.

#### **Planning permission**

In order for a full understanding of the planning applications which were made in respect of the lands at Lot 2, the Tribunal sets out hereunder details of all planning applications as disclosed on the planning register and the results of each such application.

#### ***Planning Application Register Ref. H 94***

A decision to refuse Outline Permission to Lyon Group Ireland Limited was made by Order P.714/75 on the 13<sup>th</sup> March, 1975 for a warehouse at Jamestown Little, to the west of Jamestown Road, for the following four reasons:-

“The proposed development is contrary to the proper planning and development of the area as it is in conflict with the zoning objective incorporated in the County Development Plan for the area, i.e. “to provide for the further development of agriculture.” It is considered important to preserve this area for agricultural use only to ensure that the value of the public investment undertaken or to be undertaken in the provision of roads and services in those areas designated for industrial or commercial development is not reduced or vitiated by such development in nearby rural unserved areas.

The existing road is inadequate to serve the industrial traffic, which would be generated by the proposed development. The proposed development would therefore endanger public safety by reason of traffic hazard.

There are no public piped sewerage services in the area and the proposed development is not acceptable as inadequate information has been provided concerning the proposed sewage treatment plant.

The proposed development would be premature by reason of the said existing deficiency in the provision of sewerage facilities and the period within which such deficiency may reasonably be expected to be made good."

Outline Permission was refused by the Minister on appeal.

***Planning Application Register Ref. F95A/0964***

On the 22<sup>nd</sup> December 1995, a planning application was lodged seeking permission for development described as "5 No. Industrial Dry Goods Warehouse Units, with associated offices comprising 4 No. 4, 645 sq. m. and 1 No. 4, 181 sq. m. each of which are capable of being sub-divided with new access onto Jamestown Road, associated drainage works and demolition of existing inhabitable buildings." The application was submitted on behalf of Bovale Developments Limited, Coolcommon, Batterstown, Co. Meath by The Ambrose Kelly Group, (trading as Project Architects) Fleming Court, Fleming's Place, Dublin 4. By letter dated 13<sup>th</sup> February, 1996, the Architects in question withdrew the application.

***Planning Application Register Ref. F96A/0072***

On the 13<sup>th</sup> of February 1996, Project Architects, Fleming Court, Fleming Place, Ballsbridge applied for development on the lands described as Lot 2. The development was described as "5 No. Industrial Dry Goods Warehouse Units, with associated offices comprising 4 No. 4, 555 sq. m. and 1 No. 2, 775 sq. m. each of which is capable to be sub-divided with a new access onto Jamestown Road, and associated drainage works." The application was made on behalf of Bovale Developments Limited A decision to grant Permission subject to 14 conditions was made on the 31<sup>st</sup> July 1996 by Sean Carey, Principal Officer of Fingal County Council to whom the appropriate powers had been delegated. Condition 11 of the decision in question required the omission of Unit 1 from the development in order to protect the residential amenity of the adjoining house. This condition was the subject of an appeal to An Bord Pleanála by Bovale Limited on the 26<sup>th</sup> August 1996. There was no appeal against the decision of Fingal County Council to grant the permission sought. On the 24<sup>th</sup> December 1996, An Bord Pleanála (who signed the decision) exercised the powers conferred on it by sub-Section 1 of Section 15 of the Local Government (Planning & Development) 1992 and directed Fingal County Council to amend condition 11 so that it should be as follows for the reason set out hereunder: -

***"Schedule***

Block number one shall be constructed and located in accordance with revised plans S241-001A, S241-002A, S241-008A and S241-007A received by An Bord Pleanála on the 29<sup>th</sup> day of August, 1996. The planted buffer strip shall maintain a depth of 15 metres around the entire boundary to the bungalow.

Reason: In the interest of the amenities of the adjoining bungalow."

The grant of Planning Permission incorporating the amended Condition No. 11 issued on the 11th day of August 1997.

***Planning Application Register Ref. F97A/1045***

This was an application by Project Architects, on behalf of Bovale Developments Limited for permission for an electrical substation. The application was lodged on the 5<sup>th</sup> December 1997 and permission was granted on the 7<sup>th</sup> April 1998 subject to two conditions.

***Planning Application Register Ref. F98A/0546***

This was an application on behalf of "Thomas Curry & Sons Limited" for permission for the erection of two no. advertising signs to a previously approved warehouse unit (F96A/0072) Permission was granted on the 10<sup>th</sup> September 1998.

***Planning Application Register Ref. F98A/0690***

An application on behalf of Bovale Developments Limited was made by Project Architects for retention of alterations to layouts and elevation treatment previously approved under grant of permission 96A/0072. Permission was granted on 17<sup>th</sup> November 1998.

***Planning Application Register Ref. F98A/1189***

Application on behalf of Bovale Developments Limited by Project Architects for retention of alterations to previously approved block 4 and 5 (F96A/0072). The application was received on the 18<sup>th</sup> November 1998 and permission was granted on the 24<sup>th</sup> February 1999. The foregoing represents the position in the Planning Register maintained by Fingal County Council up to the 1<sup>st</sup> February 2000.

***Paragraph A.3. Resolutions, Application or Requests. Paragraph A.3 (a) – (g) of the Terms of Reference. Whether these lands at Jamestown Road Finglas referred to in the letter dated the 8<sup>th</sup> June, 1989 were the subject of the following matters as set out in paragraph A.3 (a)-(g) of the Terms of Reference***

***A.3. (a) whether the lands were subject to rezoning resolutions***

This has already been dealt with same at paragraph A.2.(c)(ii) above.

***A.3(b) whether the lands were the subject of resolutions for material contravention of the relevant Development Plan***

This has already been dealt with same at paragraph A.2. (c)(iii) above.

***A.3(c) whether the lands were the subject of an application for special tax designation status***

This site was not the subject of any special tax designation status pursuant to the Finance Acts.

***A.3(d) whether the lands were the subject matter of applications for planning permission***

This has already been dealt with this at paragraph A.2.(c)(iii) above.

***A.3(e) whether the lands were subject to changes made or requested to be made with regard to the servicing of the lands for development***

No changes were made or requested to be made in respect of this site.

***A.3(f) whether the lands were subject to applications for building byelaw approval in respect of buildings constructed on the lands***

There were no such applications.

***A.3(g) whether the lands were subject to applications for fire safety certificates***

Application Ref. 97/4178 – Block 1, Jamestown Road. Industrial Unit with ancillary Office accommodation.

Fire Safety Certificate granted to Bovale Limited on the 2<sup>nd</sup> September 1997.

Application Ref. 97/4182 – Block 2, Jamestown Road. Industrial Unit with ancillary office accommodation.

Fire Safety Certificate granted to Bovale Limited on the 24<sup>th</sup> September 1997.

Application Ref. 97/4186 – Block 3, Jamestown Road. Industrial Unit with ancillary office accommodation.

Fire Safety Certificate granted to Bovale Limited on the 24<sup>th</sup> September 1997.

Application Ref. 98/4241 – Block 4, Mygan Industrial Park by Project Architects for Bovale Limited.

Fire Safety Certificate granted to Bovale Limited on 22<sup>nd</sup> December 1998.

Application Ref. 98/4242 – Block 5, Mygan Industrial Park by Project Architects for Bovale Limited

Fire Safety Certificate granted to Bovale Limited on the 24<sup>th</sup> September 1997.

***Paragraph A.3.(i). of the Amended Terms of Reference namely to ascertain the identity of any persons or companies ( and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;***

The identity of the Beneficial Owners of the property as of 8<sup>th</sup> June 1989 together with changes in the Beneficial Ownership between then and the development of the lands has been established at paragraph

A.1. above. The Beneficial Ownership as of the 8<sup>th</sup> June 1989 as defined in the Tribunals interpretation of its terms of reference on the 21<sup>st</sup> October 1998 rested with Mr. Joseph Murphy Senior.

***Paragraph A. 3. (ii) of the Amended Terms of Reference namely to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above***

Other than the members of the Oireachtas and the Local Authorities referred to above the Tribunal at this time is unable to pronounce further on this term of reference.

***Paragraph A. 3. (iv) of the Amended Terms of Reference namely to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority;***

The outcome of all applications, resolutions and votes are detailed above under paragraph A. 2 (c) (i) to (iii) inclusive and A 3 (a) to (g) inclusive.