

LOT 5.

PARAGRAPH A.1.

IDENTIFICATION AND OWNERSHIP

250 acres (approx.) at Balgriffin.

Identification as of the 8th of June 1989

Lot 5 comprised both registered and unregistered lands, as follows: -

Registered lands; Folio 3212

Lands comprised in Folio 3212 of the Register County of Dublin, which said lands are situate in the Townland of Balgriffin Park, Barony of Coolock and County of Dublin, comprising 61.735 hectares or 152.5472 acres.

Unregistered lands

The balance consists of unregistered lands as identified in a Deed of Conveyance dated the 30th of December 1967 comprising 50 acres or 122 acres approx.

ALL THAT AND THOSE that part of the lands of Balgriffin now known as St. Doolagh's and Snuborough containing eighty acres, one rood and twenty-four perches Statute Measure and situate in the Parish of Balgriffin, Barony of Coolock and County of Dublin and shown on a map endorsed on an earlier Conveyance dated the 23rd of July 1945 and thereon coloured green, and

ALL THAT AND THOSE part of the lands of Balgriffin otherwise known as the Pier Field containing fourteen acres, three roods and thirty perches Statute Measure or thereabouts situate in the Barony of Coolock and County of Dublin, which said lands were shown on the map endorsed on the same earlier Conveyance and thereon coloured blue, and

ALL THAT AND THOSE part of the town and lands of Balgriffin, otherwise St. Doolagh's, in the Parish of Balgriffin, Barony of Coolock and County of Dublin, containing seven acres, three roods and twenty-one perches and shown on the map annexed to the same earlier Conveyance and thereon coloured brown.

Beneficial ownership as of 8th June 1989

Folio 3212 of the Register County of Dublin.

The Grafton Construction Company Limited, having its registered office at 26 Lower Baggot Street, in the City of Dublin, was registered as owner of these lands on the 25th of January 1968, and was so registered as of 8th June 1989. The land certificate had been issued to James Marshall, Solicitor, of 2 Gardiner Row, Dublin 1, on the 26th of March 1968. There is nothing on the folio by way of caution or inhibition as of 8th June 1989.

Unregistered lands

By Deed of Conveyance dated the 30th of December 1967 and made between **R. AND W. SCOTT (FARMS) LIMITED** (as vendor) of the one part and **THE GRAFTON CONSTRUCTION COMPANY LIMITED** (as purchaser) of the other part, the unregistered lands described above were conveyed to The Grafton Construction Company Limited for all the estate, right, title and interest of R.W. Scott (Farms) Limited therein, and were in the ownership of the Grafton Construction Company Limited as of the 8th of June 1989.

Changes in beneficial ownership since the 8th of June 1989 and prior to their development

On foot of the Composite Indenture, the lands comprised in Folio 3212 of the Register County of Dublin were also assured to Bovale Developments Limited, which continues to be the registered owner. On the 12th of September 1991, by the Composite Indenture, the unregistered lands in Lot 5 described above were assured to Bovale Developments Limited in whose ownership they remain to date. The Grafton Construction Company Limited was a party to the Composite Indenture by way of sub-sale. The Tribunal understands that there has been no development of the lands comprised in Lot 5.

PARAGRAPH A.2. PLANNING HISTORY

Part of the lands contained in the Folio are now in the functional area of Fingal County Council and part are within the functional area of Dublin Corporation. The boundary between the two areas is shown by a thick black line on the map. The area now in the functional area of Dublin Corporation was transferred into the functional area of Dublin Corporation under the Local Government Boundary Changes of 1985. The unregistered land lies north of the Drumnigh/Balgriffin Road between the Malahide Road to the west and the Hole-in-the-Wall Road to the east. The Tribunal considers it expedient to deal with the planning history of Lot 5 in two parts: -

- (i) Lands in the functional area of Fingal County Council;
- (ii) Lands in the functional area of Dublin Corporation.

(I) LANDS IN THE FUNCTIONAL AREA OF FINGAL COUNTY COUNCIL

Paragraph A.2 9(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 8th of June 1989

These lands were zoned "P" in the 1972 Development Plan i.e. "to provide for the further development of Agriculture." These lands were zoned "B" in the 1983 Development Plan i.e. "to protect and provide for the development of agriculture." These lands were zoned "B" on the 8th June 1989.

In the 1990 Draft Development Plan, the Lands were proposed to be zoned "B" to protect and provide for the development of agriculture. In the 1991 Draft Development Plan, the lands were proposed to be zoned "B" to protect and provide for the development of agriculture. These lands were zoned "B" in the 1993 Development Plan i.e. "to protect and provide for the development of agriculture."

In the 1998 Fingal Draft Development Plan, it was proposed that the lands north of Drumnigh Road would be zoned "H" (*green belt*) and the lands south of Drumnigh Road were proposed to be zoned mainly "A" (*residential*) and a small portion was proposed to be zoned "H" (*green belt*).

In the 1999 Fingal County Development Plan, the land north of Drumnigh Road was zoned "H" (*green belt*) and the land south of Drumnigh Road was mainly zoned "A" (*residential*) and a small portion was zoned "H" (*green belt*).

Paragraph A.2. (b) of the Terms of Reference. The position with regard to the servicing of the land for development as of the 8th of June 1989

The following is the position in relation to the servicing of the lands in the functional area of Fingal County Council measuring approximately 65 hectares or 162 acres: -

Foul sewer

There were no foul sewers available to serve the designated lands within the Dublin County Council administrative area. The only facilities were those, which served Balgriffin cottages, a County Council housing estate. These consisted of a small treatment plant discharging treated effluent to the Santry River. This plant was totally committed to the existing development and could not accept any additional flows.

Surface water

There were a number of streams draining from west to east across the site. Development of this site would have required extensive study of the impact on the down stream catchment, in particular, its effect on the flood plain north of Baldoyle in the area of the racecourse.

Water supply

A water supply would have been available from a 300mm cast iron main located in the Malahide Road.

Paragraph A.2(c)(i) of the Terms of Reference. Changes made or proposed to be made to the 8th of 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

Officials made no such proposals to the elected members of the Council until 1998. In the 1998 Draft Development Plan for Fingal County which was prepared by the Manager, part of the site south of Drumnigh Road was proposed to be zoned residential and the remainder green belt. This zoning was confirmed in the 1999 Fingal Development Plan.

Paragraph A.2. (c)(ii) of the Terms of Reference. Changes made or proposed to be made to the 8th of June 1989 planning status of the lands by way of motions by elected members of the Dublin Local Authorities proposing re-zoning.

No such changes were made or proposed by the elected members.

Material contraventions

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

Planning permissions

For a full understanding of the Planning status of the lands, 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 2620

Outline permission was refused for residential development at Balgriffin Park, Balgriffin, Dublin 5 (townlands of St. Doolagh's and Snugborough) by Order P 339/76, dated the 5th February 1976 for the following four reasons: -

- "1. The site is located in an unserviced rural area zoned as an objective of the County Development Plan, for primarily agricultural use. The proposal is in serious conflict with this objective and is contrary to the proper and planning and development of the area.
2. The proposed development would be premature by reference to the existing deficiencies in the provision of water supply and sewerage facilities and the period within which such deficiencies may reasonably be expected to be made good.
3. The proposed development would be premature because a road layout for the area or part thereof has not been indicated in the Development Plan or has not been approved of by the planning authority or by the Minister on appeal.
4. The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users."

McCabe, Delany & Associates, on behalf of O'Shea & Shanahan Limited, made the application. A first party appeal was withdrawn.

Planning application register Ref. 86A/1342

On the 22nd of September 1986, an application for planning permission for "*proposed Manor House Hotel & Sheltered Cottages*" at St. Doolagh's Park, Malahide Road, Kinsealy, for Doolagh's Manor Limited, by Raymond F. McDonnell, architect was submitted to Dublin County Council. The permission sought was for provision of a manor house-type hotel having 12 bedrooms and a caretaker's room with facilities for disabled persons, 8 no. 1 bed roomed units overlooking the ornamental garden, 27 No. A type 1 bed roomed units in the walled garden and 2 no. 2 bed roomed units in the walled garden making a total of 52 bed units with 109 car parking spaces.

By a decision Order No. P500/87 of the 16th February 1987, the Council decided to grant permission for the proposed development subject to 18 conditions. This decision was the subject of an appeal by the Applicants to An Bord Pleanála. By Order PL6/5/73478 of the 21st of July 1987, An Bord Pleanála decided to grant permission for the proposed development subject to 11 conditions.

The Board decided to grant permission for the reason set out in the First Schedule to the decision which was in the following terms: -

“Having regard to the communal residential nature of the established land use on this site, it is considered that on the scale which is proposed, the proposed development would constitute an appropriate land use which, subject to compliance with the conditions set out in the Second Schedule hereto, would accord with the proper and planning and development of the area.”

Paragraph A.3. Resolutions, applications or requests. Paragraph A.3. (a)-(g) of the Terms of Reference. Whether the lands in Lot 5 at Balgriffin the functional area of Fingal County Council were the subject of any of the resolutions, applications or requests referred to in paragraph A.3.(a)-(g) of the Terms of Reference

A.3. (a) whether the lands were subject to re-zoning resolutions

The Tribunal has dealt with this matter 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

The Tribunal has dealt with this matter 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.

The Tribunal has dealt with this matter 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

Foul sewer

By agreement with the Dublin Corporation in 1995, a scheme was prepared to drain the equivalent of 40 dwellings. This included existing premises in the area of St. Doolagh's and the system serving Balgriffin Cottages. The scheme had no implication for these lands comprised in Lot 5 since the capacity of the scheme was extremely limited and was designed simply to relieve difficulties created by the existing septic tanks and the existing treatment plant in the area of St. Doolagh's and Balgriffin Cottages. This scheme has yet to be implemented.

Surface water

No changes were requested or made with respect to surface water.

Water supply

No changes were requested or made with respect to water supply.”

Paragraph A.3. (f)- Whether the lands were the subject of applications for building bye law approval in respect of buildings constructed on the lands

There are no records available.

Paragraph A.3.(g) – Whether the lands were the subject of applications for fire safety certificates

There were no applications for fire safety certificates on or after the 20th June 1985.

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 8th 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 8th June 1989 as defined in the Tribunals interpretation of its terms of reference on the 21st 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.

LANDS IN LOT 5 WITHIN THE FUNCTIONAL AREA OF DUBLIN CORPORATION

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 8th of June 1989:

In the 1972 Dublin County Development Plan, these lands were zoned "P" (to provide for the further development of agriculture). In the 1983 Dublin county Development Plan, the lands were zoned "B" (to protect and provide for the development of agriculture). On the 8th of June 1989, the lands were zoned "B" (to protect and provide for the development of agriculture). In the 1991 Dublin City Development Plan the lands were zoned "L" ("agriculture.") In the 1999 Dublin City Development Plan, the bulk of the site is zoned "Z16" (to be developed in accordance with approved residential action area plans). The remainder of the site is zoned "Z10" ("to be developed in accordance with mixed use action area plans.")

Paragraph A.2 (b) of the Terms of Reference. The position with regard to the servicing of the lands for development as of the 8th of June 1989.

No services were provided by the Water Division to this site. There appears to be no written correspondence in relation to the Poppintree site. The lands in question fall outside the area currently drained by the north Dublin drainage area. Furthermore, no additional capacity exists in the Corporation drainage system. Any proposed development of this site, or indeed, any lands in the north fringe area, would be dependent on the provision of new sewerage infrastructure.

Paragraph A.2. (c)(i) of the Terms of Reference. Changes made or proposed to be made on the 8th 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

Officials made no such proposals to the elected members of the Council until 1998. However, in the 1998 Draft Development Plan for the city which was prepared by the Manager, part of the site within the administrative area of Dublin Corporation was proposed to be zoned "Z16" (to be developed in accordance with approved residential action area plans) and part of the site is zoned "Z10" (to be developed in

accordance with mixed use action area plans). This zoning was confirmed in the 1999 City Development Plan.

Paragraph A.2. (c)(ii) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of motions by elected members of the Dublin Local Authorities proposing re-zoning

No such changes were made or proposed.

Paragraph A.2.(c)(iii) of the Terms of Reference. Changes made or proposed to be made to the 8th 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 contravention

No planning permission was granted in respect of these lands, which materially contravened their zoning while they were within the functional area of Dublin County Council. No planning permission has been granted in respect of these lands, which materially contravened their zoning since they were transferred to the functional area of Dublin Corporation.

Planning permissions

The Tribunal sets out hereunder, details of planning applications as disclosed in the Planning Register of all planning applications which have been made in respect of that part of the lands in Lot 5 in the functional area of Dublin Corporation.

Planning application register Ref. 86A/0373

On the 24th of March 1986, an application for outline planning permission for construction of 40 semi-detached houses at Hole-in-the-Wall Road, Balgriffin, County Dublin, was submitted to Dublin County Council by Conroy, Manahan & Associates on behalf of Grafton Construction Company Limited. On the 22nd of May 1986, Dublin Corporation decided to refuse permission for the following three reasons: -

- “1. The proposed site is located in an area zoned “B” in the Development Plan with the objective “to protect and provide for the development of agriculture.” The proposed development would materially contravene this objective of the Development Plan.
2. The proposed site is located in an area where there are no public sewerage facilities available. The proposed development would be premature by reason of the said deficiency and the time within which it may reasonably be expected to be made good and would be contrary to the proper and planning and development of the area.
3. The proposed development would by reason of the additional traffic on a substandard Road network endanger public safety by reason of a traffic hazard.”

No other planning applications were made since the site was transferred to the functional area of Dublin Corporation.

Paragraph A.3. Resolutions, applications or requests. Paragraph A.3. (a)-(g) of the Terms of Reference. Whether the lands in Lot 5 in the functional area of Dublin Corporation were the subject of any of the resolutions, applications or requests referred to in paragraph A.3.(a)-(g) of the Terms of Reference.

A.3. (a) whether the lands were subject to re-zoning resolutions

The Tribunal has already been dealt with at paragraph A.2.(c)(ii) above and no such changes were made or proposed.

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

The Tribunal has already been dealt with 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 of applications for planning permission

The Tribunal has already dealt with this at paragraph A.2.(c)(iii) above.

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

The Tribunal has already dealt with this at A.2(b) above.

A.3.(f) Whether the lands were subject to applications for building bye-law approval in respect of buildings constructed on the lands

There are no records available.

A.3.(g) Whether the lands were the subject of applications for fire safety certificates

There were no applications for fire safety certificates on or after the 20th June 1985.

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 8th 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 8th June 1989 as defined in the Tribunals interpretation of its terms of reference on the 21st 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.