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1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 10TH DECEMBER

2 2002 AT 10.30 AM:

3

4 CHAIRMAN: Good morning everyone.

5

6 MR. QUINN: Mr. Conway please.

7

8 CONTINUATION OF DIRECT EXAMINATION OF MR. ENDA CONWAY

9 BY MR. QUINN:

10

11 Q 1 Mr. Conway, I think I should explain at the outset, Mr. Chairman, that the
12 reason we didn't sit on Friday is Mr. Conway had a prior engagement which I
13 forgot to clear with the Tribunal before we rose on Friday.

14

15 Mr. Conway, on Friday we had been dealing with a series of maps, and in the
16 interim, additional maps have come into the possession of the Tribunal; and I
17 want to put these to you and ask your views in relation to them and to put the
18 maps into sequence. If I could have page 4167? This is a map which I
19 understand was prepared in November 1989.

20 A Yes.

21 Q 2 It's a black and white map, it's the only black and white map of the series.

22 You have a hard copy of that map, I think?

23 A I have a hard copy, yes.

24 Q 3 Now, that's a map that appears from the register which is to be found at 4161
25 to have been prepared by N Davin and drawn by PG, in November 1989 --

26 referenced 89/150 and entitled "Carrickmines Draft Structure Plan" and there's
27 the letter J in the register, so I presume that's a map that was drawn at the
28 behest of Mr. Davin, is that right?

29 A He was the planner dealing with that obviously, and the initials, Mr. Griffin
30 was the draughtsman who would have drawn up the actual --

1 Q 4 Mr. Davin would have given the draughtsman a draft and he would have prepared

2 this map on foot of that draft?

3 A That would be it, yes.

4 Q 5 Was Mr. Davin part of your team, can you recall, at this time? That's 1989.

5 A He was not part of the, he wasn't a full-time member of the Development Plan

6 team. He would have been dealing with the forward planning area.

7 Q 6 Who was in charge of that team?

8 A I don't fully recall, I think perhaps Mr. John Bird was.

9 Q 7 Yes. It would appear that if we look at that black and white map, it has a

10 number of features which I think we dealt with on Thursday in relation to the

11 line of, the proposed line of the motorway. I think at that time and as

12 appears on that map, there are two lines of the motorway, one which would bring

13 the motorway after the Carrickmines interchange out to meet, at possibly

14 Loughlinstown, the Bray Bypass, isn't that right?

15 A That's right, yes.

16 Q 8 And then there's an alternate line which appears to come more or less central

17 through the lands at Carrickmines and they adjoin much further south the Bray

18 by-pass, isn't that right?

19 A Yes, that is it, yes.

20 Q 9 That map also has a number of letters attached to it which would appear to

21 denote proposed zoning, isn't that right?

22 A Yes, the "E" would represent industrial zoning.

23 Q 10 Yes.

24 A The A1 would be residential, "F" would be open space.

25 Q 11 So could we conclude, do you think, that the forward planning section of the

26 Dublin County Council in November 1989 had reached a stage where they were

27 proposing that the zonings for this region would be E, A1, F, and A1; as we see

28 them on this map?

29 A Yes, I take it this is, at this stage, it is being suggested that the motorway

30 might follow more a straighter line.

1 Q 12 Than had been identified in the 1983 Development Plan?

2 A That's correct, yes, and then this appears to -- it does suggest certain
3 zonings over certain lands.

4 Q 13 So there are two changes really from the 1983 position, one the motorway line
5 has changed, and secondly, the proposed zonings have changed.

6 A They have, yes.

7 Q 14 For example, if we were to look at the Grimes' lands which are to the left of
8 the Carrickmines interchange, they appear now to have a proposed zoning of A,
9 isn't is that correct?

10 A That's correct, they are now zoned residential, they would have been industrial
11 in the 1983 map as I recall.

12 Q 15 Now there had been an earlier plan which the Tribunal has seen, it's to be
13 found at page 4223 and it appears to have been a plan of the 1983 position, I
14 don't know if you have a coloured copy of that map?

15 A Yes, I have a copy of that, yes.

16 Q 16 This is a plan which appears to have come into existence in October 1984.

17 A Yes.

18 Q 17 And -- that's 4223. I think this map identifies the 1983 proposed zonings and
19 it contains the line of the motorway as it would have been shown on the 1983
20 plan, I don't know if you have a --

21 A Yes.

22 Q 18 You have a hard copy of that.

23 A Yes.

24 Q 19 And I think that shows the Grimes' lands as zoned industrial, and it shows the
25 Carrickmines high amenity zoning for the Carrickmines Golf Course and then the
26 Jackson Way lands and the other lands zoned agriculture, isn't that right?

27 A Yes, this is described as a district map. It shows slightly more extensive
28 area than other maps, probably.

29 Q 20 Yes. So if we start with that map, that's the 1983 zonings, we have dealt just
30 now with map number at page 4167 which is the November 1989 map which shows the

1 first attempt at rezonings, or proposed rezonings on these lands, isn't that
2 right?

3 A Yes.

4 Q 21 And then if we move to a map at page 4222, we appear to have a map which has
5 written, possible long-term strategy -- appears to have been prepared by R
6 Goodbody, as a possible long-term strategy, and appears to have been prepared
7 in May 1990.

8 A Yes.

9 Q 22 You have the hard copy of that map?

10 A I have a hard copy, yes.

11 Q 23 Now this map appears to have been a map which used, as its base map, the
12 November 1989 map which we have just been looking at, namely the black and
13 white map.

14 A Yes, this appears to be an advancement, a follow up on the 1989 map.

15 Q 24 Yes, the 1989 map had, I think, drawing number 89/150?

16 A That is correct, yes.

17 Q 25 And as we said a moment ago, that had -- with the assistance of the alphabet,
18 only put in proposed zonings for these lands, isn't that right?

19 A Yes, that's right.

20 Q 26 Whereas this map, this is the map, the 1990 map which appears to have been
21 prepared by Mr. Goodbody, appears to put in or -- with the coloured line seems
22 to impose a series of proposed zonings, isn't that right?

23 A That's correct, yes.

24 Q 27 And these proposed zonings don't, in all cases, follow the zonings proposed in
25 the black and white map, the November '89 map. For example, if we look at the
26 Jackson Way lands, which are to the right of the interchange at Carrickmines,
27 we see that it is proposed, if one looks at the legend, that the industrial
28 lands will include not alone the industrial lands as set out in the earlier
29 map, but lands which have been proposed at A1 in the earlier map, isn't that
30 right?

1 A Yes, the base appears to be the same and in this case there is a solid blue
2 line which surrounds both the E zoning and the A zoning.

3 Q 28 Yes, we are dealing with this area here, in the '89 map, this area is zoned E,
4 whereas in this map it's proposed that this area, together with the area which
5 was zoned A in the '89 map would be zoned E, isn't that right (indicating)?

6 A That seems to be so, yes, yes.

7 Q 29 All the time retaining the area where Mr. Galvin's lands were high amenity zone
8 "F"?

9 A Yes, that's the F zoning in the centre, yes.

10 Q 30 Now, the next map which we have then is the map to be found at page 4165 of the
11 brief which appears to have been a coloured in version of the map which we have
12 been dealing with. In other words, the area we were looking at a moment ago is
13 this area here, isn't that right?

14 A Yes.

15 Q 31 But this time, the roadway is represented by the chain -- boxed chain, whereas
16 the lesser roads are identified and represented by the chain of circles or
17 rings, isn't that right?

18 A Yes, that's correct, yes.

19 Q 32 And the -- can I just ask you before I leave that, was Mr. Goodbody part of
20 your team, or was he part of the forward planning team?

21 A The forward planning set up, yes.

22 Q 33 He would have been in the same team as Mr. Davin?

23 A At that time. Can I just say there was a lot of interchanging going on between
24 teams, so it wasn't as clear cut as that. People from the forward planning
25 team might have been drafted in at stages to look at the Development Plan, and
26 vice versa.

27 Q 34 Can I just ask you, did you ask Mr. Davin in November 1989 to prepare this map,
28 that's map number DP/89/150 which is to be found at page 4167?

29 A I don't recollect because I don't recollect this map as such.

30 Q 35 You don't recollect seeing this map or discussing this map?

1 A I can't remember this map.

2 Q 36 OK. Do you recollect asking Mr. Goodbody in May 1990 to prepare this map,
3 that's the map to be found at page 4222?

4 A No, I don't recollect.

5 Q 37 Do you recollect seeing that map?

6 A I don't recollect seeing it.

7 Q 38 Do you recollect discussing with anybody the change of zonings, as appears from
8 the '89 map to the May, the November '89 map to the May '90 map?

9 A No, I don't -- I don't remember being involved in that, what I call the early
10 stages of these maps, they all seem to be progressive from November '89 until
11 we finally come up to the 123, so they seem to be progressive steps, and I
12 think the only input I would have had was the some input into 123.

13 Q 39 Can I just ask you, these maps that we are discussing here, were they maps that
14 were available to the public, or were they maps that were kept in-house?

15 A Oh, those would all be the in-house maps.

16 Q 40 Would a member of the public be entitled to a copy of those maps or entitled --

17 A Not normally would a member of the public be entitled to know the thinking, in
18 November 1989 of the proposed zonings.

19 Q 41 The fact that there was a proposal to have lands rezoned in itself, and also
20 the actual proposals?

21 A No, it wouldn't be normal that members of the public would know this. It would
22 be misleading because these are only ideas thrown around at the time, there's
23 nothing finalised about them.

24 Q 42 Would the council regard their working papers, if that's what we call these
25 maps, would they regard those working papers as being matters which should be
26 kept to the council and the council staff and not matters which should be
27 distributed?

28 A The working papers are published actually. They were available to the public.

29 Q 43 But were the maps available to the public at this time?

30 A Not those maps. There were some maps incorporated into the working papers, but

1 apart from those maps, there were no other maps available to the public.

2 Q 44 I am not talking about now the period October 1990, I am talking a year

3 earlier, November 1989. For example, what would the public know about November

4 1989?

5 A The working papers were available, were published and would be available to the

6 public, but that stage there were no specific maps available to the public.

7 Q 45 Yes. So if we move on then to the map which is to be found at page 4184, which

8 is on the screen. That map, I think was prepared in August 1990. And then I

9 think in September 1990 a map number 4185 is prepared.

10 A I'm sorry, I have maps in all -- 4165, 66, and 67 and 4223.

11 Q 46 Sorry, we have changed the page numbers just to confuse you, Mr. Conway and I

12 am looking at DP90/ -- you have -- that map DP 90/123? Although it's not the

13 actual map which was brought to the council in October 1990, a map which was

14 prepared, I think, in September 1990, isn't that right?

15 A Yes.

16 Q 47 And it seems to be a further refinement on the maps which I have just been

17 dealing with?

18 A Yes, it's a refinement or advancement on it, yes.

19 Q 48 Do you have any idea why the extent of industrially zoned lands as appears in

20 the 1989 map was increased in the May 1990 map, or why it was decreased in this

21 map, this September 1990 map in relation to the Jackson Way lands, or the

22 Paisley Park lands as they have --

23 A No. I think this map we are looking at now is coming towards the final map,

24 that would have had regard to the requirement to provide approximately 200

25 hectares of industrial land. 200 hectares would be the guiding point in the

26 preparation of this map at this stage.

27 Q 49 And that requirement for the 200 hectares, is that a requirement that was to be

28 found in the ERDO report?

29 A That is correct, the ERDO report had recommended that --

30 Q 50 So the ERDO report was the justification for this, is that right?

1 A Yes, it was, yes.

2 Q 51 Had you any involvement in the ERDO report?

3 A No. Personally I wasn't involved in it, in the ERDO report.

4 Q 52 You weren't involved its preparation?

5 A No.

6 Q 53 Who, within the council, would have been involved in the preparation of the
7 ERDO?

8 A Well, there was a working team working through the '80s and it was headed by
9 Len O'Reilly who was the deputy city and county planning officer, and he had a
10 staff from the various authorities.

11 Q 54 I think there were two ERDO reports, one published in 1985 which was an eastern
12 regional settlement strategy to the year 2011; and the other which was
13 published in May 1988, was an eastern regional settlement strategy to the year
14 2001.

15 A Yes, that was the final one, published in '88.

16 Q 55 And I think the proposal for this region was that there would be 27,000 people
17 settled in this region, isn't that right, in this area in Carrickmines?

18 A Yes, if I could just refer to that report, there's a synopsis of the original
19 settlement strategy in the appendix thereto, page two of the appendix of that
20 particular report.

21 Q 56 Which of the two reports are you referring to?

22 A I am referring to this one, the final report.

23 Q 57 Are you dealing -- just get out page 4236? We'll see under the heading --

24 A The Shanganagh, the third one down.

25 Q 58 The Dublin subregion, third one down under the subheading Shanganagh, "in area
26 to accommodate an additional population of 27,000 and provide for 200 hectares
27 of industrial land." That what you are referring to?

28 A That's what I am referring to, yes.

29 Q 59 Now we have agreed, I think, that the ERDO itself was not a statutory body, it
30 was a body set up --

1 A It was an ad hoc body set up by the Department of Local Government involving
2 the Dublin subregion and the Greater Dublin area.

3 Q 60 Of course the review of the Development Plan was a statutory obligation imposed
4 by the Acts on the local authorities?

5 A On the local authority, yes.

6 Q 61 Page 4254. This shows the board members as at the 1st March 1985. Have you
7 got a copy of that? The chairman, Councillor Jack Fitzgerald, Vice Chairman,
8 Councillor Bernard J Durcan, TD; and then it gives the representation from the
9 local, the various local authorities. Dublin Corporation, Councillor Michael
10 Barrett, Councillor Alice Glen, Councillor Thomas McGiolla, Councillor William
11 Cummiskey, Alderman Michael Keating and Alderman Eugene Timmons; and then I
12 presume the additional people are --

13 A I presume that's coming from the earlier report. The report here gives the
14 membership as at the 1st January 1988, yes.

15 Q 62 I just put the 1985 membership up for these various bodies.

16 A Yes.

17 Q 63 I think the administrative staff appears to be Mr. Feeley, Dublin city and
18 County Manager, Mr. B Murray, Dublin Chief Engineer roads and Mr. E.G.
19 McCarron, Dublin planning officers. And for Dun Laoghaire Corporation,
20 Councillor Joseph C Hogan and Councillor Donal Marren and officials appear to
21 be Mr. Kevin O'Sullivan, Dublin assistant city and County Manager and
22 Mr. Brennan, borough engineer. And then from Dublin County Council,
23 representatives of the councillors appear to be Senator Brian Fleming,
24 Councillor Stanley Laing, Councillor Liam Lawlor and Councillor Frank Smith.
25 And then the officials from Dublin County Council appear to be Mr. George
26 Redmond, assistant city and County Manager, and Mr. KC O'Donnell, Dublin Chief
27 Engineer (sanitary services).

28 A Yes.

29 Q 64 Now the other representatives are outside Dublin and I don't propose to go into
30 those and list them, but the people I have listed appear to be responsible for

1 the Dublin region, for the Dublin portion of the report?

2 A Well, it was an all in --

3 Q 65 But they would have been the representatives from Dublin?

4 A From the -- yes, Dublin Authority, yes.

5 Q 66 I think the recommendation, or the conclusion, appears to have been that the

6 Shanganagh area was an area which was to accommodate an additional population

7 of 27,000 and to provide for 200 hectares of industrial land.

8 A That's right.

9 Q 67 Even though, from what you have told us last week, there was ample zoned, both

10 residential and industrially zoned lands in the county and indeed in the Dun

11 Laoghaire/Rathdown region.

12 A Yes. In that respect there was a divergence between the two reports.

13 Q 68 I dealt with the board membership as of 1985, you were going to refer to the

14 Dublin representation of the board as of 1988.

15 A Well in the report I am looking at, the 1988 version, the final page. The

16 membership is of the 1st January 1988.

17 Q 69 If we could have page 4239 please? I think Dublin Corporation was represented

18 by Alderman Michael Barrett, Councillor Joseph Burke, Alderman Ned Brennan,

19 Councillor Peter Burke, Councillor Sean D Dublin Bay Rockal Loftus, Councillor

20 Eoin Ryan. And the administration appears to have been Mr. Feeley, Dublin City

21 and County Manager. Mr. E.G. McCarron, Dublin planning officer and Mr. KC

22 O'Donnell, Dublin Chief Engineer. Dun Laoghaire Corporation, Councillor Jane

23 Dillon-Byrne, Councillor Richard Conroy, Mr. K. O'Sullivan Dublin Assistant

24 City and County Manager, and Mr. L Brassill, borough engineer. And Dublin

25 County Council appears to have been represented by Councillor Pat Down,

26 Councillor Liam Lawlor, TD chairman, Councillor Stanley Laing, Councillor Ned

27 Ryan. And the officials appear to have been represented by Mr. Redmond, Dublin

28 Assistant City and County Manager and Mr. P Kellerman, Dublin Chief Engineer,

29 (roads). And then we have the representations from the other adjoining

30 counties, that's Kildare County Council, Meath and Wicklow County Council

1 together with the representations from the various interested bodies, including
2 the Industrial Development Authority. Dublin and Eastern Regional Tourism
3 Organisation, Dublin Port and Docks Board, CIE and the Department of the
4 Environment.

5 A Yes.

6 Q 70 Thank you very much Mr. Conway.

7

8 CHAIRMAN: Anybody want to ask this witness any questions?

9

10 MR. FINLAY: With the permission of My Friend, and subject to the agreement of
11 the Tribunal, if I might just speak first, Chairman?

12

13 CHAIRMAN: Certainly, Mr. Finlay.

14

15 MR. FINLAY: Thank you very much.

16

17 Mr. Chairman, members of the Tribunal, before any cross-examination of
18 Mr. Conway proceeds, and I understand from informal conversations with my
19 colleagues, that there is some cross-examination anticipated by, possibly a
20 number of parties, of Mr. Conway. There is one point which I would just like
21 to raise with the Tribunal - with the members of the Tribunal by way of
22 clarification, and I raise it in this context.

23

24 First of all it's something that arises out of the proceedings last Thursday.
25 It's a new aspect, and secondly, it's a clarification which I seek, I believe,
26 in ease of all parties in this respect. It's a clarification which I believe
27 may have a material bearing on both the necessity for, the nature of, and the
28 duration of cross-examination, both of the present witness, and I anticipate,
29 some witnesses who are likely to be called in the near future.

30

1 So it's against that background that, with great respect, I seek a
2 clarification from the Tribunal; and with your permission, Mr. Chairman, Judge
3 Mahon, Judge Faherty and Judge Keys, if I may attempt to describe the point in
4 the following way. It will require a few moments and I would greatly
5 appreciate your indulgence.

6

7 As you are aware, in this Carrickmines phase of the Tribunal's workings, we
8 have come here on foot of the very comprehensive and detailed opening statement
9 which was made by Counsel for the Tribunal, and that statement is accompanied
10 by the statements, the other "statements" in the other sense of the word, the
11 witness statements which have been produced to the parties in the context of
12 that opening statement.

13

14 And unremarkably at this stage of the Tribunal's workings, it appears
15 throughout the opening statement that central to the Tribunal's concerns is the
16 issue of planning corruption. And the statement, the opening statement refers
17 to "allegations of planning corruption" which have been made, at page 61,
18 that's the reference for that statement, and there are similar references
19 throughout the opening statement.

20

21 And in particular, there are references to the councillors and whether there
22 would be evidence, whether there is evidence which would warrant the Tribunal
23 making findings in relation to the manner in which the councillors approached
24 the zoning process in relation to this module.

25

26 My remarks are, of course, solely confined to the present module at the moment,
27 I have no knowledge of what may arise in future modules.

28

29 And there's a reference on page 74 of the opening statement, very properly, to
30 the Acts, the Planning Acts and the purpose of those Acts and issues which may

1 arise for the Tribunal in this phase as to whether the councillors properly
2 bore in mind the relevant criteria in the Planning Acts.

3

4 And there's a similar reference to the page 77 where the members of the
5 council, in supporting certain changes, and in other ways were serving the
6 identified statutory interests of the common good.

7

8 And then towards the further part of the opening statement, there is a
9 reference in particular to the minutes of Dublin County Council in relation to
10 this module and issues as to whether the advices of the manager and his expert
11 officials were frequently rejected by the councillors. And that is also an
12 issue which we all anticipated would be dealt with.

13

14 And a reference to the fact that the Tribunal would have to consider, in the
15 context of this module, the fact that the advices of the council's experts were
16 not followed, and in many cases there was no countervailing expert opinion
17 available to the elected members.

18

19 And then at page 95, just before lunch on the 21st November, in fact I am
20 sorry, it was the close of proceedings on that day, Counsel for the Tribunal
21 concluded by identifying the issue for the Tribunal, "whether the evidence will
22 establish, or establishes, whether any acts associated with the planning
23 process amount to corruption or involved attempts to influence, by threats or
24 deception or inducement or otherwise compromised the disinterested performance
25 of public duties".

26

27 And if I may say, with great respect, having considered as we all have, the
28 Terms of Reference of this Tribunal and having some understanding and knowledge
29 of the proceedings of the Tribunal to date, both for the present and new
30 members of the Tribunal, that opening statement seems to fit very squarely and

1 very properly into the context of the Tribunal and its Terms of Reference.

2

3 The issue which arises first manifested itself, as I understand it, last
4 Thursday during the giving of evidence by Mr. Conway. Mr. Conway had been
5 taken through his, quite lengthy, statement by Counsel for the Tribunal. But
6 towards the latter part of his evidence on Thursday, as the transcript will
7 demonstrate, Mr. Conway was cross-examined by Counsel for the Tribunal
8 specifically in relation to aspects of the planning officials' advice and
9 recommendations to the members of the council in relation to what's the subject
10 of this module, the Carrickmines Valley process, starting with the documents
11 relating to October of 1990.

12

13 Now, against the background that I have just described, and the passages which
14 I have opened to the Tribunal, over the weekend, considering that
15 cross-examination and the context in which it arises, it seems to me that the
16 following question arises which would be, I believe, of immense benefit to
17 certainly myself, and I believe others in terms of understanding how we should
18 proceed with both this witness and witnesses who are pending.

19

20 It has not been, and I say so with temerity, in case I misunderstood, it has
21 not been my understanding to date, either of the Terms of Reference or of the
22 evidence produced to the parties in accordance with the Tribunal's rulings, or
23 of the opening statement made in relation to this module by Counsel for the
24 Tribunal. That this Tribunal is, in this phase, the only one I'm concerned
25 with at the moment, concerned with the propriety of the technical advice given
26 to councillors by the professionals, by the planning officials in the, of the
27 county council, in relation to the Carrickmines Valley. Until last Thursday, I
28 had never gleaned from any of the material to which I have referred, the
29 propriety of that advice. The soundness of that advice was an issue with which
30 the Tribunal was actively concerned.

1

2 Now, clearly if that were an issue which had been the subject of allegation, if
3 that were an issue which had been the subject of allegations of corruption, as
4 we have of course seen in relation to other allegations which were made in
5 relation to the councillors; one can readily understand why it might be pursued
6 in the way it was on Thursday. But until Thursday I had not anticipated, and I
7 had not identified that as an issue in respect of which the Tribunal might, or
8 proposed to envisage making adverse findings.

9

10 It appears to me that the line of inquiry which was pursued on Thursday would
11 be appropriate if one were, if the Tribunal were concerned with something
12 analogous to a judicial review, where one were examining the technical
13 background to a planning decision and reviewing it in the High Court. But of
14 course the Tribunal's remit is very different, it's concerned with corruption,
15 and in the absence of any evidence which I may have over looked, I apologise in
16 advance if I have missed some vital evidence of this; but in the absence of any
17 evidence, either from the statements or in the opening statement from Counsel
18 for the Tribunal, that the advice tendered to the officials by a body of
19 planning officials right up through the Planning Department in Dublin County
20 Council, that that advice, in itself, was suspect or questionable or subject to
21 some impropriety, is something until Thursday that was entirely new to me.

22

23 If that were something which the members of the Tribunal considered to be a
24 present and live issue before them, it obviously could have a material bearing
25 on how I believe, not necessarily only myself, but representatives for other
26 interested parties, might approach the cross-examination, certainly of the
27 professional witnesses from the County Council such as Mr. Conway and others,
28 and possibly other cross-examinations of other witnesses. I believe it would
29 have a material bearing on how all of that would go forward, and so with great
30 deference I merely raise this point seeking some guidance or assistance from

1 the Tribunal so that I, and possibly other counsel and lawyers may be in a
2 position to best judge how a approach the examination, and cross-examination,
3 of witnesses to come.

4

5 I hope I have explained the point reasonably clearly, but if there's any aspect
6 that I haven't identified sufficiently, I'd be glad to amplify it.

7

8 CHAIRMAN: Mr. Gallagher, or Mr. Quinn, I don't know which of you may wish to
9 take the matter, it's a matter for you to decide who is going to respond, and
10 after which we were going to rise to consider the application in detail.

11

12 But I think we should first hear your response before going any further, or if
13 you wish, I will certainly rise to give you an opportunity to discuss it with
14 your colleagues and to resume in, say a quarter of an hour or 20 minutes, it
15 would be your preference?

16

17 I think this is something which has come without notice, and perfectly properly
18 without notice, I am not suggesting it isn't, but you may wish to take 20
19 minutes to consider your response. If you wish that, I will certainly rise.

20

21 MR. GALLAGHER: I think perhaps it might be appropriate if you would do so.
22 There are references to the transcript, of the opening pages that I, first of
23 all wasn't aware that an application such as this was to be made, and
24 there's -- I'd like to an opportunity to read the transcript of, the relevant
25 portion of it.

26

27 CHAIRMAN: If you are going to have to get references to the transcript is 20
28 minutes adequate? It's now 25 past 11; might we sit again at 12 noon?

29

30 MR. GALLAGHER: It might not necessarily take that length, take quarter to 12.

1

2 CHAIRMAN: If you are ready to --

3

4 MR. FINLAY: Chairman, if I might say by way of apologies to my colleague as
5 well as the Tribunal, I hope it's clear that by its nature, this was an
6 application which I couldn't possibly have made before this morning. It's not
7 an application but --

8

9 CHAIRMAN: Mr. Finlay, no one is criticising you in the least.

10

11 MR. FINLAY: I am most obliged to you, Chairman.

12

13 CHAIRMAN: We'll rise until 12, or such shorter period as may be appropriate.

14

15 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

16 AND RESUMED AS FOLLOWS:

17

18 MR. GALLAGHER: Chairman, if I might be permitted, I would like to say just a
19 few words in response to Mr. Finlay's submissions.

20

21 First of all, I think it is appropriate that I should draw the attention of the
22 Tribunal to the fact that Mr. Finlay represents Mr. John Caldwell and Jackson
23 Way Properties Limited and does not represent any official here. His function
24 as I understand it is to assist the Tribunal by representing his particular
25 clients. He does not have a role and is not expected to and I am sure would
26 not want to take on responsibility for representing persons other than those
27 whom he is specifically instruct to represent.

28

29 The second thing I would point out is that this Tribunal is required to inquire
30 in public to matters set out in the Terms of Reference. It is an inquiry, a

1 public inquiry. Paragraph A (5) of the Tribunal's Terms of Reference are
2 particularly relevant to the inquiries that are being made here at present.

3 Paragraph A (5) reads as follows:

4

5 "In the event that the Tribunal in the course of its inquiries is made aware of
6 any acts associated with the planning process which may, in its opinion, amount
7 to corruption, or which involve attempts to influence by threats or deception
8 or inducement or otherwise to compromise the disinterested performance of
9 public duties, it shall report on such acts and should in particular make
10 recommendations as to the effectiveness and improvement of existing legislation
11 governing corruption in the light of its inquiries."

12

13 Now, in my opening, I did not seek to nor did I purport to identify all of the
14 various issues which the Tribunal will have to consider. I did, however, point
15 out that in considering all the evidence that the Tribunal would have to seek
16 to establish whether any of the matters referred to in Paragraph A (5) had been
17 established or not, as the case may be.

18

19 As the Tribunal is aware, where a statement of evidence is given by a witness
20 to the Tribunal, in advance of that witness giving evidence that statement is
21 circulated to interested parties, that is those parties whose interest may be
22 affected by the evidence to be given. Such statements are circulated without
23 comment with the intention that witnesses will be examined by Counsel for the
24 Tribunal and cross-examined by counsel for interested parties, that is those
25 parties whose interests are affected by the evidence given by the witness.

26

27 This, of course, means that any anomaly which appears to arise from the
28 evidence given, or any background material which may be relevant though the
29 matters being considered, may be put to a witness or to a number of witnesses
30 in order to assist the Tribunal in its inquiries and/or in order to assist the

1 Tribunal in understanding the background and circumstances which gave rise to
2 the particular event or events into which it is inquiring.

3

4 It frequently happens that evidence given by a witness may cause the Tribunal
5 to explore a new line of inquiry if only to satisfy it itself that it has
6 looked exhaustively and comprehensively at all matters and all surrounding
7 factors that may be material and that it has not overlooked any material
8 matter.

9

10 The Tribunal does not make any allegations, and I should say that all that
11 happened on Thursday last, which was the date which was referred to by my
12 friend, Mr. Finlay, which I should say I have not had an opportunity of reading
13 the transcript in detail but I was present on that occasion, all that happened
14 on that occasion was that Mr. Conway was asked to explain the apparent
15 contradiction between the material contained in relevant working papers and the
16 contents of two reports presented by the planners and the then manager to the
17 Councillors at the end of 1990, on 18th October 1990, and in December -- sorry
18 16th November 1990. I should stress that Mr. Quinn did not make any allegation
19 against any official, either in relation to the advices or recommendations
20 given to the members of the councillor otherwise. In particular, Mr. Quinn did
21 not make any allegation against any person who has given evidence or who will
22 be giving evidence.

23

24 Mr. Finlay has indicated to the Tribunal that he had a concern that the
25 Tribunal might be concerned about the propriety of the technical advice given
26 to councillors by the professionals, and that it was considered that he hadn't
27 understood would arise. I should say that new matters arise virtually on a
28 daily basis in the course of a Tribunal, new issues will be perhaps identified
29 or new material will emerge in public which may required to be looked into.
30 But if the Tribunal hears evidence which it considers not to be relevant or

1 which it considers should be excluded from its deliberations, then no doubt the
2 Tribunal will do so.

3

4 It seems to me that that if there is anything affecting Mr. Finlay's clients
5 which is contained in the evidence given by Mr. Conway, that he should of
6 course be entitled to examine Mr. Conway about that evidence, but otherwise he
7 should not and his clients need not concern themselves with any material
8 matter. If there is any assistance that Mr. Caldwell or indeed Jackson Way can
9 give to the Tribunal in relation to any of the matters that Mr. Conway has
10 given evidence about, of course it would be of assistance to the Tribunal. I
11 am sure the Tribunal would welcome that material. But otherwise it seems to me
12 that any other party, whether represent or not before this Tribunal, can ask
13 such questions as Mr -- of Mr. Conway as they consider necessary, and the
14 Tribunal will no doubt afford all persons whose interest may be affected an
15 opportunity of giving evidence as the case may be or asking questions as the
16 case may be.

17

18 CHAIRMAN: Thank you. I think it would be appropriate to take a short recess
19 to complete our decision, our ruling.

20

21 Mr. Finlay, before we do that, do you wish to any way elaborate on what you
22 said or do you wish to reply to Mr. Gallagher? You are not asked to reply, if
23 you wish as it a matter for you to do

24

25 MR. FINLAY: Thank you very much, Chairman, for affording me that opportunity.

26 If I might very briefly reply in the possible event that it might be of some
27 assistance to the Members of the Tribunal when they retire to consider the
28 matter.

29

30 First of all, I was reassured to see that at the beginning of his response

1 Mr. Gallagher chose to refer to the very aspect of the Terms of Reference to
2 which I had already referred, A (5), and he underlined, if I may say so, the
3 point I was attempting to make, perhaps not very successfully, which is that he
4 has confirmed that the Tribunal is concerned with corruption in the planning
5 process, and that of course had been my understanding until last Thursday.

6

7 I have, as of this minute, including having listened carefully to
8 Mr. Gallagher's response, still not understood that there is any issue before
9 the Tribunal or evidence before the Tribunal which would suggest that the
10 professional advice given by a body of professional planners, and other
11 departments professionally in the County Council, to the councillors at the
12 time we are concerned with in relation to the Carrickmines Valley is the
13 subject of any suggestion, inference or allegation that that advice was tainted
14 in any respect, was corruptly procured or was given under influence or on foot
15 of any threat or deception or inducement, and it is against that background
16 that I raise the point that I raised this morning.

17

18 While I have listened with interest to what Mr. Gallagher has said, I don't yet
19 hear the answer to the question that I raised, at least not from Mr. Gallagher.
20 He has certainly not confirmed that the integrity of the professional advice
21 given to the councillors in relation to Carrickmines Valley is the subject of
22 any allegation or suggestion of corruption before this Tribunal, and that being
23 so it was for that reason that I raised the issue that I did.

24

25 I also inferred, perhaps incorrectly, that Mr. Gallagher might in some way be
26 questioning my status and that obviously would be a matter of concern to me.
27 My clients, as the members are aware, have been granted representation
28 specifically for this module, that was applied for and granted by the Tribunal.
29 That, of course, is appreciated.

30

1 The cross-examination on Thursday, which gave rise to my query this morning,
2 was a cross-examination centrally related to the lands which are relevant to my
3 clients and to the planning history of those lands, and what was sought to be
4 done on Thursday, as I understood it and perhaps I misunderstood Mr. Quinn or
5 misread the transcript, what was sought to be done was to challenge Mr. Conway
6 and by inference the other planners up to and including the manager who adopted
7 the report and presented it to the councillors, to challenge that body of
8 professional men in Dublin County Council in relation to the validity or
9 integrity or countenance or basis of advice they gave to the councillors in
10 relation to these lands. In those circumstances, it seems to me with great
11 respect it is a matter in which I have a real interest.

12

13 One of the problems, with great respect members of the Tribunal, is this: For
14 so long as Counsel for the Tribunal does not clearly say what is and isn't in
15 issue it is very difficult for counsel representing other parties to know the
16 extent to which they are required to address possible issues. As I say, the
17 concept that planning advice from professionals was somehow a matter for query
18 in the Tribunal was unknown till Thursday. If it is, then that has a bearing,
19 in my view, on future examination and cross-examination of witnesses.

20

21 Thank you, Chairman, for affording me the opportunity to reply.

22

23 CHAIRMAN: We will rise for a short --

24

25 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

26 AND RESUMED AS FOLLOWS:

27

28 REGISTRAR: Ruling in relation to an application by Mr. Finlay on behalf of
29 Mr. Caldwell and Jackson Way Ltd.

30

1 CHAIRMAN: Mr. Finlay raises the issue as to whether or not the Tribunal as
2 part of its remit in considering not only allegations against councillors and
3 landowners or their representatives, but also the actions of Council and
4 planning officials, and the basis and source of any recommendations conveyed by
5 them to councillors.

6

7 Obviously it is prudent, it is a prudent matter to be raised by Mr. Finlay so
8 as to enable him to decide on the extent of his cross-examination of officials
9 such as Mr. Conway. Having regard to the Tribunal's Terms of Reference and in
10 particular Paragraph A(5) of the Terms of Reference, we are satisfied that its
11 remit is to consider all matters relating to the motivation, proceedings and
12 decisions of Council and planning officials, councillors and others, and the
13 advice and recommendations conveyed by them to councillors and others, and the
14 context in which such advice and recommendations were tendered, in particular,
15 and quoting Paragraph A (5), the Tribunal "In the event that in the course of
16 its inquiries is made aware of any acts associated with the planning process
17 which may in its opinion amount to corruption, or which involve attempts to
18 influence by threats or deception or induce or otherwise to compromise the
19 disinterested performance of public duties, it shall report on such acts and
20 make recommendations where appropriate. We should further point out that
21 witnesses can be recalled if necessary in the light of any matter arising in
22 the course of evidence given at any stage."

23

24 That is the ruling of the Tribunal.

25

26 When you are ready, Mr. Finlay.

27

28 MR. FINLAY: Thank you very much, Mr. Chairman.

29

30 Insofar as the cross-examination of Mr. Conway is concerned, subject of course

1 to the members of the Tribunal, counsel for parties here today have informally
2 discussed that, and subject to of course the Tribunal, it was agreed perhaps
3 one of my colleagues who represents one of the other parties might go first.

4

5 CHAIRMAN: That is a matter for arrangement within counsel. I have no
6 objection whatsoever.

7

8 MR. FINLAY: I am most obliged.

9

10 CHAIRMAN: Who wishes to proceed?

11

12 MR. O'DULACHAIN: Mr. Chairman, Members, if I might proceed first in relation
13 to various questions which I want to address with Mr. Conway.

14

15 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. O'DULACHAIN:

16

17 Q.71 MR. O'DULACHAIN: Mr. Conway, if we might start with where you finished,
18 which was effectively dealing with the ERDO report. I gather from the ERDO
19 report and from the membership we have seen, that that was the product of
20 deliberations by the various representatives and planners, statutory bodies
21 over a period of time?

22 A. That is correct.

23 Q.72 And that it resulted, I think, in two separate reports?

24 A. That's correct.

25 Q.73 And that those reports were adopted by those bodies as bodies?

26 A. I don't think that is correct.

27 Q.74 Well, in what way were they -- in what way did they come to the conclusions?

28 A. To my knowledge, the report was not adopted as policy, it wasn't adopted was
29 Government policy. I think it was noted by the local authorities. Dublin
30 County Council, if I recollect properly, noted the report.

- 1 Q.75 In terms of the publication of the report itself, the members of ERDO
2 collectively authorised the publication of those reports?
- 3 A. Oh I presume so, yes.
- 4 Q.76 And it appears from the extracts of the report that we have seen that it was a
5 collective overview, not alone of Dublin, but of developments in surrounding
6 counties?
- 7 A. That is correct, yes.
- 8 Q.77 And that it indicated in an overview various areas where development should be
9 focused and progressed?
- 10 A. Yes. They recommended areas where development should take place.
- 11 Q.78 And to the south of the city Shanganagh, which we take to mean
12 Shanganagh/Carrickmines, Bray and Greystones were identified?
- 13 A. That was identified as one location, yes.
- 14 Q.79 And from your knowledge of the remit of these Eastern Regional Development
15 Organisation, was it bound to take into account pre-existing zonings or could
16 it in its objective examination and consideration start effectively with a
17 blank sheet?
- 18 A. Well, I think it would naturally have regard to the existing zonings because of
19 the status of zoned lands in relation to the problem if one were to dezone.
- 20 Q.80 Right. So insofar as considering these plans, you think they had regard to the
21 extent to which there already existed zoned industrial and zoned residential
22 lands?
- 23 A. They would have regard to the 1983 Development Plan in relation to County
24 Dublin.
- 25 Q.81 That would be one of the factors they would have regard of?
- 26 A. Indeed, one factor, yes.
- 27 Q.82 Is it fair to say that their objective was to make proposals which would bring
28 about a rational development of the region?
- 29 A. Yes.
- 30 Q.83 And that would be their overriding criteria?

1 A. Yes, well there was set down terms of reference.

2 Q.84 If we progress then to the concept of zoned land, it has been put to you time

3 and time again that there was substantial industrially zoned land in the county

4 and substantial residential zoned land which had not been developed?

5 A. That is correct.

6 Q.85 And I think your own reports preceding the review of the Development Plan

7 highlighted very large quantities of zoned but undeveloped land?

8 A. That is correct, yes.

9 Q.86 Is it fair to say that there is a weakness in the planning model to the extent

10 that there is no direct relationship between land being zoned and it actually

11 being developed?

12 A. There is of course a relationship between land being zoned and developed

13 because all zoned lands are progressively being serviced by the local

14 authority. It is part of their responsibilities in the planning field.

15 Q.87 But in a specific sense the fact that land is zoned there is no compulsion on

16 the owner thereof to carry out any development?

17 A. That's correct.

18 Q.88 And there is no penalty if it is not developed?

19 A. No. Subject to the fact that under certain circumstances, the local authority

20 would have power to acquire the lands.

21 Q.89 And in terms of the compulsory purchase of the lands, that would in a

22 residential sense, first of all, depend on the housing budget of the local

23 authority?

24 A. Yes. The local authority have power to acquire lands compulsory for certain of

25 their statutory functions, including housing.

26 Q.90 In a general sense, is it not fair to say that the fact that land is zoned

27 doesn't give local authority any operative power to enforce its development?

28 A. No, generally that is so, yes.

29 Q.91 So when we are talking about a Development Plan emerging from a local

30 authority, the implementation of that plan requires action by independent

1 action by numerous individual persons and parties?

2 A. That is so, yes.

3 Q.92 So, is it fair to say that the Development Plan is a sketch of what might

4 happen or what might be allowed to happen?

5 A. It is a statement of what it is anticipated will happen and what will be

6 allowed to happen.

7 Q.93 And within that, within the context of a County Development Plan it can result

8 in a lack of balance in the way development, as a matter of fact, actually

9 takes place?

10 A. Yes. In some cases that can happen. Some areas can develop more rapidly than

11 others.

12 Q.94 In other words, you could zone a thousand hectares around in all for industrial

13 development and no-one might develop it?

14 A. Yes, in one sense, but in the other sense then it would be the responsibility

15 of the local authority to provide the service for that land which would almost

16 automatically ensure its development sometime in the future.

17 Q.95 In relation to this Development Plan under discussion, the one that was the

18 subject of 1991/1992, in relation to the preparation for that Development Plan,

19 was there any attempt to identify with owners how much of zoned land would be

20 developed over the next five-year period?

21 A. The County Council would have a reasonable knowledge of which lands might be

22 about to be developed. In the first case there would have been planning

23 applications and planning permissions granted for development, and there was

24 quite a lot of that. And there was probably enough at any one time to identify

25 what lands had permission for say the next five years so that progressively the

26 Council would know in what way the land was developed, but generally when

27 talking about new lands, individual ownerships do not become part of the

28 consideration generally.

29 Q.96 So the individual inclination or motives of parties are not matters of which

30 the local authority would have direct knowledge unless a planning application

1 existed?

2 A. Yes, also -- there may have been some communications between landowners and
3 developers and local authorities at various stages for different reasons.

4 Q.97 In relation to industrial land, much play was made on the question of the
5 vacancy rate in industrial premises.

6 A. That was referred to in Working Paper Number 4, yes.

7 Q.98 I think one of those working reports was prepared with the assistance, I think,
8 of Lisney auctioneers as advisors; is that correct?

9 A. Yes, I believe so, yes.

10 Q.99 In relation to industrial premises, was there any indication of what a
11 acceptable vacancy rate would be in commercial premises?

12 A. I beg your pardon?

13 Q.100What an acceptable vacancy rate would be?

14 A. Well normally one would expect and hope there would be almost 100 percent
15 occupation. In those days, the report said there was 10 percent of the entire
16 county area, which was quite a substantial amount.

17 Q.101If I might question you there, on what basis do you come to the conclusion that
18 10 percent is either abnormal or unacceptable?

19 A. From my general experience of the development business and the whole economy.

20 Q.102In any market what would be the acceptable rate?

21 A. Well in say the housing market we would be talking about two to three percent
22 at any one time.

23 Q.103In relation to the industrial market, I think your report highlighted the fact
24 that there was a significant quantity of property of the commercial nature
25 which was old and not suited for modern purposes?

26 A. That would be so. Some of them would not be suited for modern industry.

27 Q.104Your report didn't identify in relation to the vacancy rate whether the vacancy
28 rate was predominant in that type of industrial premises?

29 A. No, but there are various different grades of industry. Although a premises
30 might be suitable for first class industrial development, it would be suitable

1 for other types of industrial activities.

2 Q.105 Would you accept that it isn't the function of the local authority to create a
3 restrictive market or an artificial market in the supply of industrial
4 premises?

5 A. No, the function is simply to facility industrial development.

6 Q.106 And part of that is facilitated by having a competitive market in the
7 availability of industrial premises?

8 A. Yes, that would be achieved by there being sufficient lands zoned and by having
9 sufficient planning permission granted for planning development.

10 Q.107 In relation to the Carrickmines area, it had been identified, though there was
11 an absence of zoning there for industrial, that certainly the ERDO report
12 highlights this area as an area in which industrial zoning should be enlarged?

13 A. Yes. The ERDO report suggests there ought to be 200 hectares of industrial
14 land in that area.

15 Q.108 And the logic of that was there was exceptional reasons to focus on this part
16 of the county or special reasons to focus on development in this part or this
17 area of the county?

18 A. I am not quite sure what the logic was behind that recommendations by ERDO.

19 Q.109 But it was a recommendations that was pursued and presented in the plans, in
20 the 1990 plan drawings?

21 A. In the --

22 Q.110 For Carrickmines Valley?

23 A. Yes. In the plan 90/123 it did show industrial development, yes.

24 Q.111 And it was a plan that was presented to the councillors?

25 A. That's correct, yes.

26 Q.112 And at a meeting attended by county manager, planners, engineers, a whole array
27 of officials attended that meeting?

28 A. Yes, it was one of the special meetings to consider the Development Plan, yes.

29 Q.113 And in relation to that same area we had some years earlier, the development by
30 the IDA of an industrial site, a campus site?

1 A. There is an IDA site in Sandyford. I think that is one you are thinking of.

2 Q.114I am thinking of the one where development took place on land which hadn't been
3 zoned for industrial development?

4 A. No, the IDA had acquired land for their own purpose. When they acquired it, it
5 was not zoned for industrial development.

6 Q.115And they then proceeded to develop that, obtained planning permission?

7 A. They got permission, material contravention of the Development Plan for
8 permission to develop that land.

9 Q.116That was high quality development?

10 A. High quality parkland development.

11 Q.117In relation then to residential developments in this part of the county, I
12 think would it be fair to say that the reports, the working papers prepared are
13 based on a gathering of various factual information or statistical information
14 from various sources?

15 A. Oh yes, indeed, yes.

16 Q.118In relation to the demand for residential accommodation or new housing
17 accommodation, would you accept that the household formation statistics would
18 be far more important than population statistics?

19 A. Well, they are unrelated really. And there are other factors as well which all
20 put together establish the extent of the need and the rate of development that
21 might be anticipated for residential development in the county.

22 Q.119Do you think that councillors would, in addition to statistical evidence, be
23 exposed to considerable personal experience in terms of people coming to them
24 and raising concerns about the availability of housing?

25 A. I am sure the council had their own experience and knowledge of various things,
26 yes.

27 Q.120I think you resided close to Carrickmines yourself?

28 A. I beg your pardon?

29 Q.121You reside close to this area yourself, you would be familiar with Foxrock/Dun
30 Laoghaire area?

1 A. Yes.

2 Q.122And in terms of the actual experience of people of obtaining accommodation in
3 this area, would you accept that the real experience 1990, 1991, 1992 would
4 have been difficult -- great difficulty in obtaining new housing in this part
5 of the county?

6 A. Well, I think that was a factor to some extent behind the particular report
7 which referred to lands in the Ballyogan area which were zoned for residential
8 development, they were both local authority lands and private lands, were zoned
9 for development but could not be developed because the range of facilities had
10 not yet been provided, but other than that there would have been other areas
11 where houses would have been available for sale. I think the point was made
12 that perhaps if one looked at a county-wide situation, there perhaps might be
13 less quantum of development available in that general area than in other place
14 in the county, bearing in mind of course that the three western towns were up
15 and running in quite a big way at this stage.

16 Q.123But if we specifically talked to what was to become the Dun Laoghaire/Rathdown
17 county area and the area from Carrickmines towards Dun Laoghaire, is it fair to
18 say that there were no significant housing construction projects underway in
19 that area?

20 A. Well, I would have to refer to the various figures because the local authority
21 had figures for an annual house count carried out by the planning department
22 which identified all the houses structured in the previous 12 months, the
23 number of housing under construction and number of houses which permission had
24 been granted and they were surveyed by reference to different areas and that
25 was summarised in the various reports. You would have to go back to Paper
26 Number 6 for that.

27 Q.124I am sure, Mr. Conway, you had regularly reason to drive around this area?

28 A. Yes.

29 Q.125So in terms independent of statistics, you would be conscious of whether there
30 was any large scale housing programme of a public or private nature going on

1 in --

2 A. Yes, but there was always development going on in different places. As I said,

3 that would be quantified in the statistics and I would have to go to Working

4 Paper Number 6 to establish that. But there were figures published.

5 Q.126Mr. Conway, is it fair to say that there was no significant development

6 happening in the Killiney area?

7 A. Well the Killiney area was the borough of Dun Laoghaire, yes.

8 Q.127Or in the Ballybrack area?

9 A. In the Ballybrack --

10 Q.128Talking 1991, 1992?

11 A. There had been -- well, an amount of development going on there by the County

12 Council in the Ballybrack area.

13 Q.129That four concluded by 1990?

14 A. Part.

15 Q.130By 1990 Ballybrack had --

16 A. It may well have.

17 Q.131By 1990 Shankill was built other than a few infills?

18 A. Most of Shankill, yes.

19 Q.132In terms of the Cabinteely area, I think any development that was going on was

20 of what one would regard as exceptionally large houses?

21 A. Yes. There was quite a large number of large houses. I also remember in the

22 Corbawn Lane at that time there were a number of estates being developed.

23 Q.133In terms of Corbawn Lane then, I think there was one development there of about

24 30 houses?

25 A. Yes. Very difficult to pinpoint at that point in time.

26 Q.134You know this part of town well. Is it not true to say that during the '60s,

27 '70s and '80s you would be able to say and identify a large tract of land and

28 say the park in cab Cabinteely was built, that Clonkeen was built, that Watsons

29 Estate was built?

30 A. Yes.

1 Q.135 To come into the '90s is there anything like that happening in the Dun

2 Laoghaire area out to Foxrock/Carrickmines?

3 A. There may not have been any huge ones in the nature of say of McNerney

4 development at Cabinteely as such.

5 Q.136 Was there any indication of the councillors of any cost of housing or

6 affordability study in terms of that area of town? Was that a factor that was

7 highlighted in any way in the working papers presented to the councillors?

8 A. The cost of housing?

9 Q.137 The cost of housing.

10 A. Not to any great detail, no.

11 Q.138 And would you again accept that the affordability of housing in this part of

12 the county was a particular problem that councillors would be aware of?

13 A. It was always an area where housing would be more expensive than elsewhere. I

14 don't recollect affordability being the same sort of issue in 1990 as it is

15 today.

16 Q.139 Not in terms of the actual figures, but as an issue if one take £60,000 as a

17 baseline starter home in 1990 or 1991, were you aware of any developments in

18 that price range in this area?

19 A. The issue there was really that there would be a choice of housing available to

20 potential purchasers and that includes not just location but also associated

21 with that the price of housing, so this would be an area where the price of

22 house would generally be more expensive than other areas. That would be well

23 recognised by both councillors and staff.

24 Q.140 In terms again of your own experience, living in this area which you would be

25 familiar that the children of your neighbours were beginning to settle in terms

26 of where they had to go from areas such as Blackrock or Foxrock to obtain

27 housing?

28 A. Yes. It would be limited. There was some development, I think, at that stage

29 at Bray, for example.

30 Q.141 Would you accept that there was a large moment of people born or who had lived

1 in the Dun Laoghaire area out as far as Foxrock, Carrickmines, Cabinteely, that
2 effectively the second generation were moving to Wicklow towns, Bray,
3 Greystones?

4 A. Yes, I recall a study done in terms of road network and traffic and potential
5 increase in traffic from the Greystones and Bray area which would affect the
6 motorway figures and there was a figure there of 5 percent, I recall.

7

8 CHAIRMAN: Mr. O'Dulachain --

9 A. In traffic which does reflect people were moving out to that area.

10

11 CHAIRMAN: Mr. O' Dulachain, we might take a break at this time for lunch and
12 resume at quarter past two.

13

14 MR. FINLAY: Just before you rise, a matter out of respect I have a temporary
15 difficulty in the High Court at 2 o'clock, but I understand that in any event

16 Mr. O'Dulachain may be a little while --

17

18 CHAIRMAN: I think Mr. O'Dulachain will solve that problem for you.

19

20 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

21

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1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3 CHAIRMAN: Mr. O'Dulachain?

4

5 MR. O'DULACHAIN: Thank you. Mr. Conway, in relation to the effect of zoning
6 on land, would you be aware of the changes brought about by the 1990 Planning
7 Act?

8 A. I take it you are referring to the compensation provisions?

9 Q.142Effectively, yes.

10 A. Yes, yes.

11 Q.143And would you have regarded those as being very significant in terms of
12 affecting how councillors should approach the question of zoning?

13 A. They were significant, yes.

14 Q.144And I think they provided a number of methods whereby zoning didn't
15 automatically lead to an entitlement to planning permission; isn't that
16 correct?

17 A. There was significance in relation to the compensation issues, they didn't
18 change the basis on which the planning, the Development Plan is prepared.

19 Q.145Right. It did give the local authority power when a planning application did
20 come in in respect of a zoning, to refuse permission; in other words, if by way
21 of example, you were to take the Carrickmines land, the Paisley Park land, the
22 fact that they were zoned did not automatically lead to an entitlement to a
23 grant of planning permission?

24 A. No, but it didn't change the basic principle on which planning permission would
25 be granted or otherwise. It just would, it affected the subsequent position in
26 relation to compensation.

27 Q.146And I think the third schedule of that Act, which is the Local Government
28 Planning and Development Act 1990, set out reasons for the refusal of
29 permission which would exclude compensation?

30 A. That is correct, yes.

1 Q.147And if I might just read a portion of that schedule to you, "Development of the
2 kind proposed on the land would be premature by reference to any one or
3 combination of the following constraints and the period within which the
4 constraints involved may reasonably be expected to cease: Any existing
5 deficiency in the provision of water supplies or sewage facilities."

6

7 So --

8 A. Yes, that is effectively the same provision as in the 1963 Act.

9 Q.148So in respect of water or sewage facilities, land could be zoned but planning
10 permission would subsequently be depend and on when those services came on
11 line?

12 A. Yes.

13 Q.149And at E it goes on, "Any existing deficiency in the road network servicing the
14 area of the proposed development including consideration of capacity, width,
15 alignment or the surface or any structural condition of the pavement which
16 would render that network or any part of it unsuitable to carry the increased
17 road traffic likely to result from the development."

18

19 So effectively in relation to a local road network, you could still zone but
20 that would not mean that the land as zoned would be necessarily immediately
21 suitable for planning permission?

22 A. The point I would like to point out there is those two provisions you outlined
23 there are just further extensions perhaps or just a restatement of effectively
24 what were the provisions in relation to compensation under the 1963 Act. There
25 was really no substantial change in that situation.

26 Q.150But when we do come to the question of the development of Carrickmines,
27 planning permission and the suitability of the lands to proceed from zoning the
28 planning permission, would be dependent on water supply or sewage facilities,
29 the local road network, and I think at item two in the third schedule,
30 development of the planning proposed would be premature pending the

1 determination by the planning authority or the road authority of a road layout
2 for the area or any part thereof.

3

4 Would you accept that under the third schedule, the local authority had
5 significant powers when it came to the actual planning stage, whereby it
6 wouldn't be prejudiced by the grant of zoning?

7 A. Oh, yes, the planning authority had that control over the situation indeed.

8 And, in fact, it was always suggested in the report that accompanied that
9 suggested structure plan, that it would always have to be on a phased basis,
10 and also would have to await the finalisation of the motorway, the construction
11 of the motorway.

12 Q.151 And in addition, I think the fourth schedule of that act incorporated a
13 provision whereby conditions could be imposed on the granting of permission to
14 the granting of developed land and those conditions wouldn't create a ground
15 for compensation?

16 A. That is correct, yes.

17 Q.152 And similarly in relation to that, there are a whole wide range of criteria in
18 relation to restrictions or layouts of sites, grant of wayleaves, various
19 matters, I think in fact there are something in the region of 30 different
20 items specified under the fourth schedule?

21 A. Yes --

22 Q.153 Whereby the local authority in dealing with a planning application could impose
23 restrictive conditions?

24 A. That is correct, yes.

25 Q.154 So insofar as we are concerned with Carrickmines, the grant of zoning we're
26 really concerned with an objective decision as to whether the area is suitable
27 and when one comes down to the particular aspects, that proceeds then to the
28 question of whether planning permission should or should not be granted.

29 A. I think the -- it became clear here in the report and that as such, this was
30 seen as looking ahead to protect the eventual and ultimate development of the

1 Carrickmines Valley by producing a structure plan that would show what was the
2 overall intention for development and that would be subject to a time scale
3 obviously and was subject to the normal planning process which would include
4 conditions which would control various aspects of the development.

5 Q.155 Would you accept that the plan, as prepared in 1990, for a structured plan for
6 the entire Carrickmines Valley is more in keeping with the current trend for
7 planning, in other words it hasn't fallen out of vogue?

8 A. Well, it was a plan prepared very much on the basis that the motorway
9 reservation was on a particular alignment and as I said earlier in my evidence,
10 if the motorway alignment had changed, then it would be a different plan, so it
11 was very much dependant on the line of the motorway and that line has
12 subsequently been moved from that particular position.

13 Q.156 Would you accept that with hindsight, though the councillors rejected the 1990
14 map as the basis for proceeding to public display, that with hindsight, as an
15 overall area plan, it had a lot to commend itself in terms of developments that
16 have since occurred?

17 A. Well at that point in time it commended itself on the basis that this was a
18 very sensitive area, and that if the various objectives of the planning
19 authority were to be met, the best way was to do it in an orderly scale rather
20 than to have some sort of haphazard development taking place.

21 Q.157 And I think as matters transpired the local authority in December of 1990, I
22 think at its second meeting in considering the 1990 map, it decided to go to
23 public display on a more limited basis, restricting it to the eastern side of
24 the motorway line?

25 A. Sorry, the 1999?

26 Q.158 Sorry 1990, December of 1990?

27 A. December 1990, yes, that is correct, yes.

28 Q.159 Now, if I am correct there were two meetings the plan was first outlined in
29 November of 1990 at a meeting of the Council and then the discussion of it
30 continued on the 6th of December of 1990.

1 A. Correct, yes.

2 Q.160And would you accept that the minutes of what occurred at those meetings and of
3 subsequent meetings are what one would regard as short form minutes. They
4 formally record a proposal, they summarise the manager's observations and they
5 record the vote?

6 A. The minutes would normally record the full manager's report. It would not
7 record the subsequent discussions or questions and answers.

8 Q.161And insofar as the minutes go, they can not assist us in terms of setting out
9 or establishing the full nature of the discussion that took place, the
10 arguments advanced by councillors or the arguments advanced by officials?

11 A. No. The normal minutes say "Following discussions in which councillors A, B, C
12 and D took place, it was decided..." So forth.

13 Q.162So that in terms of the actual minutes themselves, they simply record the
14 formal position taken at the end of a debate?

15 A. Yes.

16 Q.163And I think the debate invariably the meeting would start at what time on a --
17 I think by way of 6th December, the meeting concluded at 5 o'clock in the
18 afternoon?

19 A. They would be afternoon meetings, yes.

20 Q.164So starting at 2 o'clock?

21 A. Normally half two to half five, three hours, yes.

22 Q.165So in relation to this first aspect the 1990 plan, there was one meeting at
23 which it was first illustrated what the plan was, and then it would appear that
24 somewhere in the region of two hours was spent in discussion on it, at the
25 second meeting?

26 A. Well at the first meeting there were questions raised by the councillors in
27 relation to it and at the subsequent meeting, the one in November meeting, the
28 report from the manager answered most of those points raised.

29 Q.166Now, once it proceeded to public display on the more limited approach as
30 adopted by the councillors, you then have the objections and submissions on

1 the, arising from the public display?

2 A. Correct, yes.

3 Q.167You numbered them and then each objection or representation has to be

4 considered by the Council; is that correct?

5 A. That's correct, yes.

6 Q.168And the officials as such don't present a revised official view other than

7 making a report on each of the objections?

8 A. In the first instance, copies of all those submissions are circulated to the

9 individual councillors. When the stage is reached when they are considered, in

10 some cases there may have been an oral hearing as well -- when they are

11 considered and presented to the Council subsequently, there is a report going

12 with them which synthesises the contents of the representation and concluding

13 with the recommendation thereon.

14 Q.169And therefore when we come to the later meeting at which Carrickmines is

15 considered, I think, on the 12th of June 1992, I think the it's page 443 of the

16 second book, that meeting on the 12th of June, the councillors have been

17 briefed with material relating to the objection, or the submission?

18 A. Oh, yes. They would have, each councillor had a full copy of all the

19 submissions.

20 Q.170And in relation to the Paisley Park, they would then have had the documentation

21 submitted I think by Grainne Mallon, town planner, and by engineers retained on

22 behalf of Paisley Park?

23 A. They would have, yes.

24 Q.171And I think there is then set out further on in the book a report prepared by

25 Grainne Mallon, planning consultants, setting out the overall nature of the

26 proposal being made by Paisley Park in support of their application for zoning?

27 A. Yes.

28 Q.172And that report, I think, indicates that it is a report for a self-contained

29 industrial high quality development, prepared, planned with a team of

30 professionals, and designed to the highest standard, isn't that the thrust?

1 A. I take it that's what it is, yes, yes.

2 Q.173And would you accept that the Paisley Park lands in terms of their, the size of
3 the lands available, could be regarded as a viable unit, development unit in
4 its own right?

5 A. No, not in the context of the valley, no.

6 Q.174Well in terms of the acreage involved, in terms of an industrial complex, I
7 think you earlier indicated that in the area of a hundred acres or thereabouts
8 would be a reasonable unit to regard in terms of developing an industrial
9 complex on?

10 A. No, from the point of view of the Planning Department, the planners, we saw the
11 Carrickmines Valley as a comprehensive unit that should be dealt within a
12 comprehensively -- and dealing with one individual ownership within that would
13 amount to nothing more than haphazard development.

14 Q.175Well, if we might come to the actual meeting itself, you do accept that there
15 is, that the councillors do have a report from Grainne Mallon, planning
16 consultant?

17 A. Oh, yes, they would have that, yes.

18 Q.176And they also have the report prepared by the officials following a meeting
19 between the officials and the engineers representing Paisley Park?

20 A. Whatever documentation was submitted by Paisley Park would be given in toto to
21 the councillors.

22 Q.177So would you accept that on one side the councillors going to that meeting have
23 proposals presented by respectable planning consultants and engineers and a
24 record of discussions held with local authority officials relating to that
25 proposal?

26 A. I am not quite sure about representations, discussions.

27 Q.178Doesn't it follow the oral presentation that would have been made on foot of
28 the submission?

29 A. The oral presentation, oh, yes.

30 Q.179The record of that oral presentation?

1 A. The record of that, yes, would be submitted also.

2 Q.180And great care is taken in noting that representation?

3 A. Oh, yes, yes.

4 Q.181And it's signed off, I think, by two Council officials?

5 A. Yes.

6 Q.182As a matter of form?

7 A. As a matter of form, yes.

8 Q.183So the councillors would have on one side that material available to them?

9 A. Yes.

10 Q.184And also on the other side they would have had, first of all, the former views

11 of the planning officials and indeed the manager and the other engineers

12 departments as presented in the 1990 map?

13 A. Yes, they would have had a comprehensive report from the planning authority.

14 Q.185And then they would have the current report presented at that meeting; isn't

15 that correct?

16 A. Yes.

17 Q.186And if I might just go through what, what's noted in relation to the manager's

18 report, "That the lands are located southwest of the motorway shown on the

19 Draft Plan. The only access is from the narrow cul-de-sac roadway leading to

20 Carrickmines Golf Course. To provide access for industrial development would

21 require a junction on the motorway and such a junction would not be warranted

22 in the circumstances. Even if direct access could be provided onto the

23 Glenamuck Road, it would be unacceptable in view of the substandard nature of

24 the Glenamuck Road and the amount of traffic generated by the proposed

25 development."

26

27 In relation to that, in one breath it is saying it needs access to the

28 motorway, in another breath it is then saying well if you get access on to

29 Glenamuck Road, that's substandard.

30

1 Isn't it there really there highlighting an issue more pertinent to the
2 planning permission stage, which is sufficient and appropriate means of access
3 to the site?

4 A. Yes, there was no suitable access to the site.

5 Q.187And that could be dealt with at the planning permission stage?

6 A. Clearly if there is an application for planning permission at that point in
7 time, that would be one of a number of reasons why permission would be probably
8 be refused.

9 Q.188Then proceeds, "The western portion of the site is unsuitable for industrial
10 development due to the steep contours and the exposed nature of that part of
11 the site."

12

13 Wouldn't it again be permissible within a planning permission to set aside part
14 of the site which wouldn't physically bear either a, an industrial structure or
15 carpark or roadway

16 A. Well that would depend on how the developers proposed to deal with that part of
17 the site, whether they were going to go into levelling the ground or such.

18 Q.189So that might be a layout issue?

19 A. It would be a layout issue, yes.

20 Q.190Then it proceeds, "In view of the isolated location of the land and difficulty
21 of access and having regard to decisions already taken by the Council relating
22 to adjoining lands, the site is not an appropriate location for industrial
23 development?"

24 A. Yes.

25 Q.191In terms of isolation, that could be argued, simply isolation at that time?

26 A. Sorry?

27 Q.192It was isolated in the sense described therein as of that particular time in
28 1992?

29 A. Oh, yes it was, yes.

30 Q.193June of 1992. And the -- on those grounds it was recommended that the motion

1 not be, be not passed. The recommendation doesn't take issue with the
2 availability of water or sewage, that didn't seem to ground any reason on the
3 manager's part for recommending --

4 A. Obviously not in that report.

5 Q.194And it took no issue with the question of defining the road line or the
6 motorway line?

7 A. I think in the earlier report of November 1990 it did refer to the water supply
8 situation as being --

9 Q.195But?

10 A. -- possible.

11 Q.196But in this particular recommendation, at this meeting the question of sewage
12 or water facilities or indeed the line of the motorway are not seen as issues
13 which impact on the zoning of the lands?

14 A. Well, clearly it wasn't referred to in that report.

15 Q.197No. It would impact obviously on the question of planning permission?

16 A. It would yes, it would.

17 Q.198But not necessarily on zoning?

18 A. Yes.

19 Q.199And I gather that again at that meeting on the 12th of June we don't know how
20 long was spent discussing that particular proposal?

21 A. No, that's not recorded.

22 Q.200No. And we don't know what discussion followed. We know that Councillors
23 Lydon, Hand, Breathnach, Fitzgerald, Gilmore, Barrett, Keogh, O'Callaghan,
24 Gordon, Healy, Cass, Smith and Butler contributed and that the manager replied
25 but we don't know what --

26 A. The detail is not recorded.

27 Q.201In relation to one point that was put to you, that's in relation to the, to the
28 sewage line, that was in fact completed within the period of the Development
29 Plan, was it in 1997?

30 A. I don't know when it was completed, yes.

1 Q.202Okay. In relation then to proceeding with a Development Plan, is there a
2 somewhat chicken and egg scenario that arises in relation to the layout of the
3 motorway? If the motorway is to service the lands through which it passes
4 surely the designer of the motorway must have some idea of the use to which
5 those lands are going to be put?

6 A. That's correct, yes.

7 Q.203Right. So in some ways advance decisions have to be made on which the motorway
8 planners then proceed to design not alone the line but junctions and such
9 matters?

10 A. Yes, well I think I did explain that the, the motorway line would have been
11 advancing independent of the zoning and development proposals for the county.
12 And that eventually at the stage when an Environmental Impact Statement was
13 prepared it would bring together the planning considerations or in relation to
14 the development of the land the alignment of the motorway and the junctions
15 thereto. And that at this stage was nowhere near happening.

16 Q.204Yes. In relation to this part of the M50 would you accept that there are
17 special factors that come into play when one is designing a ring road around a
18 city as opposed to a motorway traversing open country side?

19 A. Yes, there -- every area you go through presents different types of problems
20 for a motorway.

21 Q.205And the M50 ring road is effectively both that, both a motorway, but it is
22 effectively a ring road in a city environment?

23 A. In some cases it is, in other cases it forms a fringe of the development, but
24 it is a -- but by its nature an urban motorway really, yes.

25 Q.206From my -- if I might proceed, you make various general observations in your
26 statement in relation to the concerns of the Council officials. Are they just
27 general impressions you have formed?

28 A. I was expressing my own feelings and my own reactions, and they were also the
29 reactions that I was aware related to my colleagues working with me at the
30 time.

1 Q.207 All right. For the purpose of making your statement to this Tribunal have you
2 tried to conduct any research or do any empirical study to support that
3 contention?

4 A. I wrote that report in February 2000 and it was my recollection of the
5 situation that pertained at that time, and I did -- I was asked at the time to
6 confirm that with some of my colleagues and I spoke to at least one of my
7 former colleagues on that and two of my former colleagues who generally agreed
8 that what I was saying they would also more or less reflect their feelings at
9 the time.

10 Q.208 Right. In relation to page 30 of your statement you proceed, "I would express
11 concern of the staff in the following scenario: A landowner, developer or
12 agent approaches a councillor seeking zoning of agricultural holding to
13 development zoning. The councillor sponsors a motion which is discussed in the
14 Council chamber. The manager's report on the motion represents against the
15 proposal. The report includes the professional advice of planners, engineers
16 and managers all arguing against the proposal for specified reasons. On many
17 occasions the public opposed the proposal."

18

19 In relation to this particular proposal, was there any public opposition?

20 A. That statement related to the general process of the '93 Plan, it doesn't
21 specifically relate to this issue or this particular area. I am not, I don't
22 remember if there were -- in some cases people actually demonstrated outside
23 the Council chambers in respect of some developments, I am not clear if that
24 happened in this case. And also one would have to refer to the various
25 representations received from various people in relation to that.

26 Q.209 If I might break this down, do you think the very fact that landowners,
27 developers or agents approached councillors seeking to rezone of itself is a
28 cause for concern?

29 A. I beg your pardon.

30 Q.210 Do you think there is something offensive about a landowner, developer or agent

1 approaching a councillor seeking the zoning, rezoning from an agricultural to a
2 development zone?

3 A. No, not of itself, no problem with that.

4 Q.211 So to describe that as a concern --

5 A. My concern was the way the whole thing was dealt with --

6 Q.212 Well, have you any difficulty with councillors sponsoring motions to rezone?

7 A. No, my concern really is that the elected representatives are charged with
8 responsibility of making a Development Plan. The Act sets down that they have
9 had to have regard only to the proper planning and development of the area, and
10 all the information in relation to the proper planning and development of the
11 area was submitted to them, all the facts presented to them and all that, and
12 it appeared that on many occasions decisions were being taken by the
13 councillors in the Council chamber without any justification being presented
14 for them voting in the way they did.

15 Q.213 So your concern is really that the process doesn't allow for a clear
16 explanation as to why a decision is taken?

17 A. The process allows full consideration, full opportunity for all the pros and
18 cons of any development to be discussed fully and openly in the Council chamber
19 before a vote is taken.

20 Q.214 You indicate there the report includes the professional advice of planners,
21 engineers and manager -- all arguing against proposal for specified reasons?

22 A. Yes.

23 Q.215 Would it be fair to say that that, that on occasion there might be conflict
24 within the Council staff itself on a particular proposal?

25 A. No. For example, you could have a situation whereby the Roads Department would
26 have no problem with it or environmental services might, there might be
27 services available but other departments, Planning and Housing Department
28 whatever, might not. So the report would give the various reasons but it
29 would not obviously include a reason which might be otherwise okay.

30 Q.216 Isn't it -- I think on dealing with the meeting of, dealing with Paisley Park

1 in June of 1992 you have, you were present at that meeting, a large body of
2 councillors, do you not think that as a collective they are bringing to the
3 whole process a variety and range of skills and experience?

4 A. Yes, they are, yes.

5 Q.217That you have amongst the councillors people who have held ministerial office?

6 A. Yes.

7 Q.218People who have been involved in significant decision making processes?

8 A. Oh, yes.

9 Q.219And do you think that that doesn't permeate into the debate and the decision
10 making process?

11 A. It permeates to the extent that every member of the Council was open to make
12 his or her representation and to get involved in the discussions and all that,
13 so it did permeate into it, yes.

14 Q.220In relation to the Paisley lands, if we were to apply the next paragraph, which
15 reads on page 30, "Despite all this the councillors insist on pressing the
16 proposal", well that didn't occur with Paisley Park, the plan, the proposal
17 didn't achieve a majority.

18

19 But you then go on to say, "The result is a bad planning decision invariably
20 incurring unnecessary community costs".

21 A. Yes.

22 Q.221Now, if Paisley Park had proceeded, had the zoning been obtained, if planning
23 permission had been received on foot of that zoning, how were you to know that
24 the planning decision would be a bad planning decision?

25 A. I think what we were saying at the time was that if the development took place
26 in accordance with the, on the principle of the structure plan which was
27 presented, then there would be no additional community costs in that. That's
28 effectively what we are saying, as distinct from community costs that would be
29 associated with haphazard development of individual ownerships rather than the
30 comprehensive area.

1 Q.222But in relation to this matter, you, the local authority at planning stage

2 would have had in its planning permission been able to either delay actual

3 development until an infrastructure was there or otherwise impose conditions

4 that would result in there not being a community cost?

5 A. Effectively, if planning permission was made at that time I have no doubt that

6 the planning authority would refuse permission for quite a number of reasons.

7 Q.223But the result of zoning doesn't of itself result in a bad planning decision?

8 A. No. Except to the extent that zoning does, in my opinion, commit the planning

9 authority to provide the various services and infrastructure within a

10 reasonable period to permit development to take place.

11 Q.224And all of that, at some stage, was coming into the Carrickmines Valley?

12 A. Yes, that was the proposal effectively, in the -- 90/123 plan.

13 Q.225Is it fair to say that at that time capital budgets were decided on an annual

14 basis in terms of things such as road, drains, sewerage, infrastructural

15 matters?

16 A. Yes, generally, yes.

17 Q.226Would it be possible in those years at any particular time, in a development

18 process, to present a report to councillors saying the pipeline will be

19 completed by the 1st of January 1995, the motorway would be completed by the

20 1st of January 1996, the local roads will be improved by the 1st of January

21 1997?

22 A. Certainly there were reports to the Council giving that basic information in

23 relation to the drainage pipeline. I know there was a reply to a Council

24 question in January 1991. It was a question raised at the District Committee

25 meeting, the Rathdown Committee Meeting, and a question was raised by

26 councillors effectively; was there not another way we could arrange those

27 lands? He was referring to the lands upstream in Ballyogan. It was a

28 comprehensive report issued to the Council. That report, as I recollect, gave

29 a costing of the proposal, and it also made reference, as indeed did the report

30 in October, to the anticipated progress on that particular sewer.

1 Q.227But in the context of, I think at this stage you were 1992, into a Development
2 Plan, a schedule of meetings had been set out, it was clear the process was
3 taking some time. By 1992 you were certainly talking about a Development Plan
4 that would have effect up until 1998?

5 A. Yes, being it was a five year plan, yes.

6 Q.228And the historical experience was that the Development Plan might exist for a
7 few years thereafter before it would be replaced?

8 A. That is true, but I think it was also relevant that there was a very -- a great
9 concern that the plan ought to be completed before the break up of the Dublin
10 County Council which took place on the 1st of January 1994, and thereafter it
11 would be seen that because there were smaller areas, smaller authorities that
12 the length of time taken to do previous Development Plans would perhaps not be
13 quite as bad in the new authorities.

14 Q.229And if I might then just come to the question of the, you have identified the
15 pressures that were on in relation to this Development Plan. In relation to
16 councillors who -- I think what they received was attendance money for
17 attending meetings, isn't that their primary remuneration as councillors?

18 A. I beg your pardon, sorry.

19 Q.230The primary remuneration that councillors get is an allowance for attending
20 meetings?

21 A. It's different now than in those days, yes.

22 Q.231Well in 1990, 1992?

23 A. I am not quite sure what that was now, yes.

24 Q.232But in the context of the, of Dublin County Development Plan, you had unpaid
25 councillors, you had I think a series of 50 special meetings; is that correct?

26 A. Yes. We had huge numbers of meetings, yes.

27 Q.233You had, was it, 28 different mapping areas?

28 A. 30 different plans.

29 Q.234All right. There were how many objections again, or submissions?

30 A. 25,000 in one case, I think, and 23 in the second case.

1 Q.235And the councillors themselves, they didn't have offices in the Council
2 premises?

3 A. No, they had committee rooms.

4 Q.236And I think there were two committee rooms?

5 A. I don't recall exactly, but there were at least two, yes.

6 Q.237And they didn't have a secretariat or secretarial service available to them?

7 A. Not quite sure, they may have had one available to a few of them or something
8 like that.

9 Q.238And do you know from your discussion on the staff whether any consideration was
10 given to moving these meetings to a more appropriate premises, a larger hall,
11 better facilities?

12 A. Well, I suppose that was a matter for the councillors themselves. I mean they
13 could have raised the issue if they wanted to change or otherwise.

14 Q.239It didn't raise, it didn't strike the Council staff, as far as you are aware,
15 as being a matter that the staff itself should raise?

16 A. I don't know really. The situation was of course that the number of elected
17 councillors increased up to a figure of 78 and they were all accommodated in
18 the Council chamber that originally accommodated 36, it was clearly a tight
19 squeeze, the public gallery was very small and very confined.

20 Q.240And in -- then if we might move on, you have indicated that you have had
21 considerable experience over the years in terms of preparing Development Plans
22 and involvement with them. You are critical of some decisions being made or
23 the process within which those decisions were made. Are there any suggestions
24 you feel or are there any proposals to change that system that you think should
25 have been adopted?

26 A. Well, the Planning and Development Act 2000 has in fact made certain changes to
27 the process by way of curtailing the time scale, and that sets out a fairly
28 tight agenda. Effectively it means that the Development Plan process must be
29 begun and complete in a two year period.

30 Q.241But do you think the powers of the councillors should change in any material

1 way?

2 A. Well, I would think certain changes ought to be done, just a personal opinion,
3 in some of the features of the whole question.

4 Q.242 Well, do you think councillors should be entitled to come to a conclusion
5 different to the planning engineers and manager?

6 A. Oh, I do, and they are quite entitled to of course.

7 Q.243 Thank you.

8

9 CHAIRMAN: Mr. Finlay? Sorry, I beg your pardon, certainly. Mr. Burke.

10

11 MR. BURKE: It's agreed among Council that I should go next. And out of
12 courtesy I would just like to say now at the outset I anticipate I will be
13 approximately an hour.

14

15 CHAIRMAN: That would be a very appropriate time.

16

17 MR. BURKE: Indeed.

18

19 MR. CONWAY WAS THEN CROSS-EXAMINED AS FOLLOWS BY MR. BURKE:

20

21 Q.244 MR. BURKE: Mr. Conway, the Tribunal ruled earlier today that the motivation
22 of various people, including the councillors, is of interest to it, now I would
23 like to explore some of the issues which relate to the motivation of the
24 councillors with you in light of what you have said, and I would like to start
25 with the County Manager's report which was presented to the councillors at the
26 meeting in October and November of 1990, if I may?

27 A. Yes.

28 Q.245 Now, it seems to me that many of the questions that were put to you last
29 Thursday focused on what were perceived to be criticisms of that report. Now I
30 would, let me be Frank with you, I would like to look at that report again in a

1 more positive light, so let us begin.

2

3 That report stated that the existence of the plans for the Carrickmines sewer
4 enhanced the suitability of the valley for rezoning, and in fact you stated
5 that that made it an inevitability. Now, as briefly as you can, and in very
6 simple terms could you just explain again why you believe that that was an
7 inevitability?

8 A. Yes. The sewer, to bring the Ballyogan lands was to pass through the
9 Carrickmines Valley, that was probably the only available route for it. And
10 the situation persisted that when a sewer goes through lands the owner of the
11 land have a right to connection to the sewer. Now, this emanates from a High
12 Court case, Dublin County Council v. Nora Shortt, which established that
13 principle.

14

15 And that also established the fact that if a sewer goes through lands you
16 cannot, shall we say, reserve capacity in that sewer for lands further up.

17

18 So, because of that situation, once the sewer went through those lands if an
19 application came for development of the lands I think the local authority would
20 have very serious difficulty in trying to prevent development of the lands. It
21 is because of that reason that I made that statement.

22 Q.246 Thank you. Now, the 1990 reports stands up well in that respect, and by that I
23 mean nothing had happened by mid 1992 which altered that position; isn't that
24 so?

25 A. No.

26 Q.247 Thank you. Now, in fact, had the lands been rezoned in 1992 it would have
27 increased the opportunities for obtaining monies from landowners to construct
28 it, isn't that the case?

29 A. That is it, yes.

30 Q.248 Thank you. Now, the 1990 reports also stated, and I quote, "There are no major

1 constraints on the provision of water supply to this area".

2 A. Yes.

3 Q.249And in your evidence you said that those constraints could be dealt with in the

4 financial way, they were really just matters of cost, isn't that so?

5 A. Yes. That reference there would have come from the Environmental Services

6 Department who would have advised the manager and the Planning Department that

7 they didn't perceive any great problem with the provision of the water supply.

8 Q.250Yes, and again nothing had happened by mid 1992 which altered that position?

9 A. No.

10 Q.251Thank you. Now, as we all know the South Eastern Motorway was to pass through

11 the Carrickmines Valley and that made it a desirable location for industry.

12 Now your evidence last Thursday and, indeed, the 1990 reports indicate that

13 industry should be located adjacent to motorway exchanges, now isn't it self

14 evident that the 1990 report held up well by 1992 on that point also, nothing

15 had changed?

16 A. Well, that was effectively a planning design factor because in effect you had

17 the situation whereby the motorway was at that point in time anyhow scheduled

18 to go through the centre of the area to be developed, therefore, that was the

19 most practical and best way to deal with that situation, as distinct from a

20 situation where the motorway might be moved elsewhere.

21 Q.252What I am really getting at is this: There is nothing, nothing had happened in

22 the meantime, by that I mean 1992, which would have embarrassed the author of

23 the, authors of the 1990 reports, with respect?

24 A. No.

25 Q.253It stood up well?

26 A. Yes, in planning term it is stood up well, yes.

27 Q.254Yes. Now in fairness to you I am going to quote something, that is your

28 reference to haphazard development, here for the moment and for the purpose of

29 thoroughness, you also pointed out in your evidence by reference to the 1990

30 reports that, "Apart from this valley there are few options for the provision

1 of additional industrial land in South County Dublin, the Rathdown area is
2 poorly provided with still lands." Then you proceed a few sentences later to
3 say, "However, it is essential that an overall plan be put in place to prevent
4 haphazard development to ensure a rational disposition of lands uses etcetera."

5

6 Now, isn't that also a very neat summary of the position that pertained in mid
7 1992?

8 A. Yes, I think there was little or no difference between 1990 and 1992.

9 Q.255And isn't itself evidence that the reference to suitability of flat lands
10 obviously hadn't changed, couldn't have changed by mid 1992?

11 A. True, yes.

12 Q.256Now the report, the 1990 report spoke of the benefits of good advanced planning
13 for the area?

14 A. Yes.

15 Q.257I think it argued that the planners needed to move ahead of the rezoning, good
16 advance planning. Now, that position also pertained in mid 1992?

17 A. It would, yes.

18 Q.258Of course it did, yes. So on balance, I am not going to cherry pick anything
19 else from the reports, but on balance the 1990 reports combined are very good,
20 they stood up, there is nothing as I said, that would be an embarrassment to
21 the authors?

22 A. No. Except the fact that they had been rejected by the councillors and,
23 therefore, were no longer relevant.

24 Q.259Well, that of itself doesn't, that's not a damning critique, is it?

25 A. No, I am making the point of the situation, yes.

26 Q.260Yes, but you agree with me that would not be a damning critique?

27 A. Not on the basis of a planning report.

28 Q.261Okay. Now, the ERDO report of May 1990 -- sorry, May of 1988, which also
29 favoured rezoning, that was also a fine and persuasive document too, wasn't it?
30 It was a good document drawn from a wide body of experience?

1 A. I am just reflecting that it wasn't received too favourably generally.

2 Q.262 Objectively it is a fine report?

3 A. It's a --

4 Q.263 A person would be entitled to read it and form the view that it was a fine
5 report?

6 A. Indeed, yes, yes.

7 Q.264 So I suppose, in summary, it's fair to say that the Carrickmines Valley was the
8 exception to the general thrust of the working papers which addressed the issue
9 of the ample the abundant availability of zoned lands, if you bear the matters
10 we have discussed in mind?

11 A. Yes, it was and it was in the sense that the ERDO report specifically referred
12 to the development of that valley in the context of a population of 27,000
13 people and 200 hectares of industrial land by 2011.

14 Q.265 Now, isn't it a self-evident truth that a councillor could have agreed with the
15 views that you indeed have just expressed and bona fide could have been
16 affected by them in deciding how to vote, for example in 1992 and perhaps in
17 1997 also, the valid considerations?

18 A. In 1992 also, I cannot talk about 1997.

19 Q.266 Fair enough. Now, let me cut straight to the chase, 24 councillors voted in
20 favour of the rezoning in 1992. Not even Mr. Dunlop alleges that they were all
21 in his pay. All sides here agree that councillors against whom no allegations
22 of wrongdoing are being made voted in favour of the 1992 rezoning. They simply
23 had a different view to that of county management, which felt that the detail
24 of the 1992 motion was, to use your words, for the reasons you have explained,
25 haphazard. Do you agree with the logic of what I have said, that it was a bona
26 fide difference of opinion, that that was possible, would you even concede that
27 much?

28 A. I haven't made any reference or any allegation against any councillors in this
29 context. I merely say that they were quite entitled to come to whatever
30 decision they came to.

1 Q.267Thank you. Now, I take it like Mr. Richard Cremmins you would agree that

2 councillors act in a quasi-judicial manner when considering rezonings?

3 A. Yes, they do, yes.

4 Q.268Thank you. And that they listen to representations from constituents about

5 jobs, traffic congestion etcetera?

6 A. Yes.

7 Q.269Okay. And there is absolutely nothing improper in that?

8 A. No.

9 Q.270And such considerations are constituent elements of the common good?

10 A. They are, yes.

11 Q.271I would like you to be very frank with me, it's not a sin to agree with what I

12 am going to ask you next, but would you have preferred yourself a system where

13 the planners, the professional planners could have got on with the Development

14 Plan without any input from the councillors, would you have preferred that?

15 A. No, I wouldn't, no. I wouldn't agree with that.

16 Q.272Okay. So you agree then that there is a value in having the councillors in

17 place?

18 A. I think yes, it is a democratic process and --

19 Q.273Could you elaborate on the value of having the councillors available to

20 contribute to the debate and the formulation of plans?

21 A. Well, Development Plans are plans to accommodate the community, and I stress

22 the broader community are the objective. And the councillors are the elected

23 representatives of the community, therefore, it is right and proper that they

24 make decisions on behalf of the community. And it has been described as a

25 Development Plan, as a contract between the Council and the community, and in

26 that sense, I see, I have no problem at all about having the councillors making

27 those decisions.

28 Q.274Very good. And isn't it also the case that on occasions that the County

29 Manager and his staff were swayed during debates on motions and that they

30 accepted ideas and amendments put forward by councillors?

1 A. Yes, they would have, yes.

2 Q.275When there is a strain on the Council purse isn't it the councillors who bear
3 the brunt of public criticism and have to answer to the people on issues such
4 as those in the news headlines this morning; bin charges and increased parking
5 charges?

6 A. Indeed, yes.

7 Q.276And that's a reference to the city Council, I should add. Would you agree then
8 that in that context, a councillor might favour rezoning with a long term aim
9 of increasing income to the county in the long term?

10 A. Yes, but --

11 Q.277That would be a thought?

12 A. Yes, but I have to be careful here.

13 Q.278All I am asking is, would that be a valid thought for a councillor to have?

14 A. It's not a valid one. Pardon? Because the legislation sets down the criteria
15 which are to be considered by the Council in making a Development Plan, and
16 that would be an improper consideration in my opinion, to say we'll zone land
17 because of financial --

18 Q.279No, I am saying, would it not be a valid thought for a councillor to look to
19 increase the financial viability of a Council area, generally?

20 A. Generally, yes yes.

21 Q.280Thank you. Now, I doubt it, but would you concede the following point if I
22 were to tell that you Sandyford Industrial Estate is going to attract
23 approximately €7 million in revenue to the Council this year?

24 A. I don't know what the figure is but I am sure it will. It is quite a
25 successful undertaking by the County Council.

26 Q.281I concede that the Council has -- Mr. Cremmins described as a landlord
27 interest, but nonetheless there is considerable money coming in from commercial
28 rates?

29 A. Oh there would of course, yes.

30 Q.282And the same applies to Cherrywood, which is also going to have commercial

1 rates and indeed rent?

2 A. Yes.

3 Q.283Yes. And are you aware at all of the agreement that the Council entered into

4 on the 8th of August 1997 with Cradder Limited and Cherrywood Properties

5 Limited, they are companies in the Dunloe Ewart Group, to develop a site of 64

6 acres at Cherrywood? Have you any knowledge about that?

7 A. No, no. My association with that area ended in '93.

8 Q.284Very good. I will move on.

9

10 Now, other issues that could be considered when it comes to motivation, let's

11 move on to them. In the Dun Laoghaire/Rathdown county area people have ready

12 access to let's name them, Woodies DIY store, Atlantic Homecare, various carpet

13 and tile centres and a large computer super store, these people don't have to

14 travel all the way to the city centres.

15 A. Yes.

16 Q.285Wouldn't thoughts along those lines be valid matters that councillors could

17 take into consideration when deciding how to vote the provision of such

18 centres?

19 A. Oh, yes. In the sense that these are community facilities and indeed these

20 items were also covered by the various working papers, the question of retail

21 outlets in the area.

22 Q.286Would these type of issues, the type of issues now I have been discussing with

23 you over the last five or ten minutes or so, would these be issues which the

24 County Manager and his staff might not focus on perhaps as much as councillors,

25 perhaps because the councillors would be considering, would be more concerned

26 about the building of roads and the laying of pipes within a frame of a budget?

27 A. The -- all of those issues were raised by the Manager and planners in the

28 various working papers which formed part of the consideration of the

29 Development Plan. So these were raised and discussed. So the Council would be

30 well aware of all those implications.

1 Q.287Very good. Well, the important point I suppose, and I shouldn't stray from it,
2 is that these are valid matters for councillors to consider when thinking about
3 rezoning and how they will vote?

4 A. Yes.

5 Q.288Now, I think you would accept that entrepreneurs might not wish to build on
6 land simply because it is zoned, other factors come into play, you have more or
7 less conceded that with Mr. O'Dulachain, haven't you, factors such as location,
8 access to the motorways, financial health of the economy, business persons
9 financial health?

10 A. Yes, these are all factors, yes.

11 Q.289Yes. And they are not planning matters per se, sure they are not?

12 A. These are all factors that Planning Department have regard to. As a planner I
13 would have had regard to all those factors in making my recommendation.

14 Q.290They are external matters, not really matters you can control, you can't force
15 people to build on land?

16 A. Of course, but they are matters which would -- which one would consider, yes.

17 Q.291We'll move on, this point is already made. Could I focus for a moment on
18 Tallaght? Tallaght is a huge success with shopping centres and fine new roads
19 and a hospital, but it wasn't initially a success from a development point of
20 view?

21 A. No, it wasn't.

22 Q.292A significant part was because of the isolation, the private sector wasn't
23 prepared to invest in it for a long time?

24 A. For a while, yes.

25 Q.293Yes. So I think you will have to agree with me then simply because there is an
26 abundance of zoned land for industrial use, doesn't follow that factories will
27 be built, that is self-evident too, isn't it?

28 A. That's true, yes.

29 Q.294Would you agree, as indeed your colleague Mr. Cremmins did, from the point of
30 view of business and, in particular, forward business planning, it's all better

1 for a landowner to obtain an industrial zoning sooner rather than later?

2 A. Oh indeed, the sooner the better, yes.

3 Q.295And it would be reasonable for a councillor to share that view?

4 A. Yes.

5 Q.296Would you agree that it would also be reasonable for a councillor to hold the

6 following views; that it would be better for a county to be over zoned

7 industrially rather than under zoned, from the point of view of long term job

8 creation perhaps?

9 A. I don't think it is a good idea to be over zoned, we have to qualify that, but

10 over zoning, would put an --

11 Q.297No, no.

12 A. -- unreasonable burden.

13 Q.298I am sticking to a tight reign on this, would it be reasonable for a councillor

14 to have that view?

15 A. Perhaps so, yes.

16 Q.299It would be, not perhaps, it would be?

17 A. No. I think the councillor would be well aware of the implications of having

18 too much zoning in an area.

19 Q.300But a councillor bona fide could have the view that over zoning could be

20 better?

21 A. He could have that view, yes.

22 Q.301And that could be a bona fide view?

23 A. Yes.

24 Q.302He could have the view the more zoned land the better bargaining power for

25 people with business might be attracted to the county, or the more competition

26 the better, the rents they might be able to agree.

27 A. I don't think that's the case.

28 Q.303Well, you don't, you may not think that that's the case, but do you concede

29 that it would be a reasonable view for a councillor to hold, that's what I am

30 asking?

1 A. It may be a reasonable view for a councillor to hold, yes.

2 Q.304 Thank you. Now, suppose common sense policy of the IDA was still estates
3 should be located on larger land banks, in fact at page 18 of your statement
4 you point out that the IDA "indicated that the need for large fully developed
5 and marketable sites, 100 to 200 acres, to meet the IDA industrial programme".

6 A. Correct, yes.

7 Q.305 You also showed us a document entitled to table number 5, "Industrial Lands
8 1987 and 1990". I think that's Tribunal page 228. And in that you showed that
9 there were a large number of areas which had been zoned by 1983, but seven
10 years later they remained undeveloped. Now, again would you concede that a
11 Councillor would be entitled to form the view that such lands had failed as
12 vehicles to create employment?

13 A. No. I think the failure to create employment was due to a whole lot of other
14 factors, the whole economy, but the point we are making is there was sufficient
15 land zoned and available for development should the need arise, and it didn't
16 arise. The rate of development reduced to 12 hectares per annum in relation to
17 industrial lands.

18 Q.306 Sorry to have to remind you of this, at the outset I tried to make it very
19 clear that the Tribunal has said that it is interested in establishing the
20 motivation of the various parties to these processes, and I am merely asking
21 you do you agree, and I am trying to keep you on a tight lead here. Do you
22 agree that it would be reasonable for a councillor to have that view, that
23 these unzoned areas, under developed areas which were zoned, that they had
24 failed as vehicles to create employment, that was a reasonable view I am
25 suggesting to you, do you concede that?

26 A. No, I have to disagree with you on that one. Because working paper number 4
27 was presented to the councillors and there was very extensive discussion there
28 on, and all of those issues were raised, so I would think that the councillors
29 would be very well familiar with effectively all the implications of what is on
30 that map, for example, there.

1 Q.307So, your sworn evidence is as follows: It would be unreasonable for a
2 councillor to look at lands that were not developed after a minimum period of
3 years and conclude that they had failed as vehicles to produce factories which
4 would employ people, thereby creating employment, you feel that that is an
5 unreasonable view?

6 A. I think you are trying to get me to make a statement -- I am trying to help.

7 Q.308I am asking if you agree with a proposition?

8 A. I don't know how councillors think or what they might do. They can give that
9 evidence themselves. I am telling you that the situation is that the
10 councillors present at the meetings would have been fully au fait with all the
11 various implications of the situation at that time. The development, the
12 economic situation, the areas where development was taking place, the areas
13 where development was not taking place and the various reasons that were given
14 to them and discussed at that stage as to those causes.

15 Q.309Are you implying that it is unreasonable of councillors to --

16

17 CHAIRMAN: Mr. Burke, I think you are exceeding your remit. He has given you a
18 very consistent series of answers and they may not be acceptable to you but
19 they are his evidence.

20

21 MR. BURKE: Very good, Chairman.

22

23 Q.310Would it not also be reasonable for councillors to formulate the view that in
24 the fullness of time business could be attracted to Carrickmines which in the
25 fullness of time might go elsewhere if Carrickmines wasn't rezoned?

26 A. Oh, yes, I think Carrickmines would be a very attractive area for development,
27 yes.

28 Q.311Now, I want you to just to reflect for just a few seconds on the fact that 24
29 councillors voted in 1992 in favour of the Carrickmines rezoning, and I want
30 you to focus on the fact that Mr. Dunlop does not allege that he bribed all 24.

1 Now, taking everything you have stated today into consideration, wouldn't it be
2 ridiculous to suggest that someone who voted for the rezoning of Carrickmines
3 in 1992 must, and I stress the word must, must have been induced by corrupt
4 motives?

5 A. I have no comment to make on that.

6 Q.312Do you disagree with it as a proposition?

7 A. I have no comment to make on it.

8 Q.313Okay, very good. I will move on.

9

10 Now, I take it that you didn't have an open door policy for lobbyists and the
11 like, when you were working for the Council?

12 A. No, not -- not quite sure what you mean there but --

13 Q.314Lobbyists didn't come knocking on your door on a regular basis?

14 A. No, we didn't have such --

15 Q.315Nor did your colleagues, to your knowledge anyway? Isn't that the case?

16 A. I beg your pardon.

17 Q.316Isn't that the case, your colleagues wouldn't have had an open door policy to
18 them either.

19 A. No, we didn't have an open door policy.

20 Q.317No. As we know the Council had been in favour of rezoning Carrickmines in
21 1990, but changed its mind at some stage before mid 1992 for the reasons you
22 have stated. We have seen those. Now, arising from that observation my
23 question is this, did the County Manager or his staff to your knowledge,
24 canvass councillors to get them on to their side in the months leading up to
25 the 1992 vote? Did they change their mind about the rezoning? They were
26 against it because it was haphazard, did they canvass? Did they make efforts
27 to ascertain the views of the councillors and attempt to persuade them to come
28 around to their way of thinking?

29 A. From my part, as the planner directly concerned with that, neither I nor any of
30 my staff discussed these items with the councillors with a view, with any view,

1 certainly not a view to change their mind.

2 Q.318 Didn't that then give the lobbyists and their expert advisers something of a
3 free reign during the months leading up to the vote in mid 1992?

4 A. Our lobby, as you might recall, it was done in the open forum of the Council
5 chamber where all these items were discussed we had nothing more to say to the
6 councillors other than what was presented to them at the Council meetings.

7 Q.319 Other than that, these were reports that may be presented on the night. I am
8 speaking generally now. There was no policy of canvassing councillors to bring
9 them into line in thinking?

10 A. No, I -- to my knowledge, I never experienced that in my working with the
11 Council.

12 Q.320 Can I just ask you one or two questions then about the end of your statement?

13 The issues that have already been discussed with you by My Friend

14 Mr. O'Dulachain, you alleged there was a party whip system in operation; is
15 that correct?

16 A. Yes.

17 Q.321 You referred to a frenzy of external pressure, the acrimonious atmosphere at
18 times, the marshalling of party whips, could you identify by name who the party
19 whip for Fine Gael was in 1992?

20 A. No, I can't identify by name.

21

22 MR. QUINN: Sorry Mr. Conway, Mr. Chairman, at this stage I think that it's
23 unfair that Mr. Conway should be asked to identify by name any individual,
24 particularly a politician, at this stage in these proceedings.

25

26 MR. BURKE: I think I can help My Friend if I may --

27

28 CHAIRMAN: Just a moment, please.

29

30 The Tribunal agree that Mr. Quinn is correct; there should be no requirement on

1 a witness to identify any person by name at this point in time.

2

3 MR. BURKE: Very good, Chairman. The next question I had was, was he not
4 aware that Fine Gael did not have a whip?

5

6 CHAIRMAN: I don't think that's relevant either.

7

8 MR. BURKE: Well, it is in his statement and he has said "There was a frenzy
9 of extreme pressure and acrimonious atmosphere at times in the chamber, the
10 marshall of party whips". There was no Fine Gael whip.

11

12 CHAIRMAN: That's a matter of which no doubt in due course will be established
13 by evidence.

14

15 MR. BURKE: Very good, Sir, I will move on. Very good, indeed.

16

17 CHAIRMAN: If that be the case, I am not presuming it is by the way, one way
18 or the other.

19

20 MR. BURKE: It will be, it will be.

21

22 Q.322 Now, Sir, you also refer to the sole beneficiary of a land rezoning motion
23 being the landowner. Now, would you not concede if an industrial park were to
24 be built, such as Sandyford and Cherrywood, that hundreds of thousands if not
25 millions of Euros would reach the county purse eventually and that that would
26 be a financial benefit to someone other than the landowner?

27 A. Any industrial development would eventually result in income to the local
28 authority by way of rates.

29 Q.323 And also to the architects, engineers, labourers, electricians and painters who
30 would build the factories and industrial units. The whole industry would

1 benefit?

2 A. Yes.

3 Q.324So the sole beneficiary wouldn't simply be the landowner?

4 A. No.

5 Q.325Chairman, perhaps you can just bear with me for one moment?

6

7 CHAIRMAN: Certainly.

8

9 MR. BURKE: Sir, I don't want you to be offended, this is just a question no

10 doubt you will be able to give me the answer to, but I take it you did not

11 discuss your evidence with anybody before you came to this chamber, the

12 evidence you were about to give with any of your colleagues, would that be

13 correct, the statement you gave --

14 A. No, I had discussions with the Tribunal --

15 Q.326No, I mean other than the Tribunal?

16 A. Outside of that?

17 Q.327Outside of that.

18 A. No.

19 Q.328And you wouldn't have known, for example, what was in the statement of Sinead

20 Collins then?

21 A. I had a copy of Sinead Collins' statement.

22 Q.329Before you made your first statement?

23 A. My first statement was made in February 2000.

24 Q.330Yes, you hadn't seen Sinead Collins' statement?

25 A. No, I wasn't aware she was involved at all.

26 Q.331Now, you didn't bring up any details, you made no reference what so ever to the

27 meetings in October and November of 1990, whereas, for example, Ms. Collins

28 did. Now, those are relevant issues. I am curious to know why you didn't put

29 those in your first statement, why you only gave details of that in response to

30 a letter which was sent to you quite recently by the Tribunal?

1 A. My first statement related to the whole process of the view of the '83 Plan and
2 the making of the '93 Plan, and it just dealt comprehensively, it did not hone
3 in on any specific area as this module is doing so.

4 Q.332I think you will concede by now it has emerged as a very serious historical
5 part of this whole matter. You were aware of it when you were making your
6 first statement, why didn't you make any reference to it in that first
7 statement?

8 A. I was not aware at that stage, to the best of my knowledge, that the
9 Carrickmines Valley was an issue in front of the Tribunal. And I was asked to
10 do a comprehensive statement, which I did, and I wasn't asked to focus on it
11 and it wasn't an item which, looking at it in the comprehensive way, one ought
12 to have focused on either. So, I was given a global situation that persisted
13 throughout the county at the time.

14 Q.333When then did you first realise that this module was going to address the
15 Carrickmines Valley?

16 A. Sometime during this year I think, earlier on this year probably.

17 Q.334Am I correct in saying you said you drew up your statement in February of this
18 year?

19 A. I -- as I explained, my statement consists of two statements; one I made in
20 February 2000 and the second I prepared in August 2002. The August 2002 one
21 expanded the previous statement from back to 1972 and forward to 2001, and
22 again in a comprehensive way, and did not refer to any specific sites anywhere
23 in the county.

24 Q.335Again the question remains, when did you realise that this module was going to
25 concern Carrickmines?

26 A. I can't be sure about that. I had a number of meetings with the personnel of
27 the Tribunal at various stages.

28 Q.336Would it have been more than a month ago?

29 A. It would, yes.

30 Q.337Did it not occur to you that you should do a supplementary statement addressing

1 the 1990 matters?

2 A. No, unless I were asked to.

3 Q.338 Unless you were asked to. Okay, very good, Sir, thank you very much.

4

5 CHAIRMAN: Mr. Finlay?

6

7 MR. O'TOOLE: If I could ask a few questions? I appear for Senator Lydon,

8 instructed by Edge Manning & Company, Mr. Humphreys --

9 A few short questions to ask, if I may, Mr. Chairman, Judge Faherty, Mahon and

10 Keys?

11

12 CHAIRMAN: Certainly, carry on.

13

14 MR. CONWAY WAS THEN CROSS-EXAMINED BY MR. O'TOOLE AS FOLLOWS:

15

16 Q.339 I am going back to the meeting of the 18th of October 1990 and the meeting that

17 followed of the 16th November, involving map reference number DP 90/123?

18 A. Yes.

19 Q.340 Now, I think, and I will keep it as neat as I can given that you have already

20 answered the questions on this already, on the 18th of October 1990 the

21 councillors were approached by the County Manager with a full report and a map,

22 this particular map, seeking a rezoning in the area of Paisley Park/Jackson Way

23 lands; isn't that correct?

24 A. It was suggesting a structure on which the Development Plan ought to be based.

25 Q.341 Yes. But to clear up one thing in passing, you were talking this morning about

26 working papers and internal maps that wouldn't reach the public, this

27 particular map I take it was circulated to the councillors at the meeting of

28 the 18th of October 1990; is that correct?

29 A. I would think so, it certainly was displayed on the screen.

30 Q.342 Yes. And -- it was coloured as described in your examination by Mr. Quinn on

1 the 5th of December?

2 A. Yes, a colour map, yes.

3 Q.343 Yeah, there were purple and red and yellow and so on, the various colours. So

4 that at that stage all the councillors would have had possession of that

5 particular map and that particular proposal?

6 A. I think so, yes.

7 Q.344 Yes. And that was again repeated on the 16th November 1990, isn't that so?

8 A. Yes, yes.

9 Q.345 Yes. And then in December I think of that year the councillors voted against

10 that?

11 A. Yes, I think the 6th of December, meeting of the 6th of December, the Council

12 passed a resolution which effectively rejected that proposal.

13 Q.346 Yeah. And the, at the same time as that particular matter was going ahead,

14 the -- you used the word whenever the councillors proposed a motion of their

15 own for rezoning, I think the phrase you have used on a number of occasions in

16 your evidence is that the word "haphazard", that this lead to haphazard

17 development?

18 A. Yes, I referred to haphazard development, yes.

19 Q.347 Yes. Would any, I would just like to ask you this, would any resolution

20 carried by the councillors against the advice of the planning officials be

21 termed by you as haphazard?

22 A. Oh no, no.

23 Q.348 No. Well, what distinguishes one from the other then? The councillors come in

24 with a proposal for rezoning in 1992 which lies along the identical map that

25 the Councillors themselves had rejected in 1990 on the manager's proposal, how

26 could that lead to haphazard development in 1992?

27 A. The haphazard development was used in that report to Council on the basis that

28 the Carrickmines Valley was a particular area of land which ought to be

29 developed in a comprehensive way, and it was haphazard in the context of that

30 development that the report spoke about.

1 Q.349But the 1992 resolution, although limited to the first interchange you can see
2 on that map, it was strictly in line with what the manager himself had proposed
3 in 1990; is that correct?

4 A. Sorry, in 1990?

5 Q.350The 1992 resolution, June, was strictly in accordance with the part of the
6 rejected development proposal of the manager made in 1990, in October and
7 November?

8 A. I am not too clear now, the manager eventually recommended that the Council
9 should adopt one of the three various options.

10 Q.351Yes?

11 A. And the Council made the decision on that basis and that particular decision
12 was the decision carried forward into the public display in 1992.

13 Q.352Yes. I am coming to the public display in a moment. But essentially, wasn't
14 the idea if there was an -- any continuity in Council deliberations or among
15 councillors who could vote by a majority one day in a certain direction, vote
16 by a majority another way, that's their function, they can fluctuate in their
17 votes and in their approaches to things over time, but essentially isn't the
18 1992 motion for the redevelopment, isn't that in line and along the lines that
19 the manager himself had been proposed in 1990 before he changed his mind.

20 A. Sorry, I don't have that motion in front of me now, I am not sure what motion
21 we are talking about here?

22 Q.353We are talking, I think we are talking about the motion for the rezoning in
23 that area of the lands at the first interchange on that map, that's the -- it
24 would be the Paisley Park lands and maybe some of the
25 Kilcoyne/Darragh/O'Halloran lands. I am looking at the map, I'm looking at
26 number 90/123, October 1990.

27 A. As I recollect there were about 20 different motions relating to this area
28 discussed at that meeting, so I am not quite clear which particular -- sorry,
29 which motion you are talking about?

30 Q.354Yes, well I am talking about the one that was proposed by Councillors Hand and

1 Lydon.

2

3 MR. QUINN: In ease of My Friend, I think that motion might be found at brief
4 page 287.

5

6 CHAIRMAN: Just a moment until we get the document, please. Now, is that the
7 motion that's on the screen now before you.

8

9 MR. O'TOOLE: No, that's not it. That's a different proposal. 443 I believe
10 may be the relevant --

11

12 CHAIRMAN: Mr. O' Toole, would you be kind enough to advise us the page number
13 on your brief, the page number on it?

14

15 MR. QUINN: 387.

16

17 MR. O'TOOLE: Page number 205 is the map.

18

19 CHAIRMAN: Very good. Just a moment until we get that map up.

20

21 MR. O'TOOLE: And it's page number 443. I am grateful to Mr. O'Dulachain. I
22 wonder if Mr. Conway has sight of that?

23 A. Yes.

24 Q.355 Now, that motion set out there that "Dublin County Council hereby resolves the
25 land at Carrickmines outlined in red on the attached map, comprising about 108
26 acres and has been signed for identification purposes by the proposer and
27 seconder of this motion, be zoned E for Development Plan to provide a high
28 quality job creation base for South County Dublin."

29

30 The jist of my question is this, Mr. Conway: Didn't that proposal identify

1 lands which the County Manager himself had identified in October and November
2 of 1990?

3 A. This related to a portion of the Carrickmines Valley, 108 acres or such.

4 Q.356Yes.

5 A. And -- well, the particular map would have had an area identified, and I cannot
6 say at this moment whether that exactly coincides with what was contained in
7 123.

8 Q.357Yes, but you see the -- you are familiar with the location of the Paisley Park
9 lands?

10 A. Yes.

11 Q.358Well, if you look at the interchange to the right side of that map in the area,
12 next to the Carrickmines Golf Course?

13 A. Yes.

14 Q.359Is that the area of the Paisley Park lands, from your recollection?

15 A. Yes.

16 Q.360Yes?

17 A. Up towards the golf course.

18 Q.361And you see on that map then, you see the interchange and the industrial
19 estate?

20 A. Yes.

21 Q.362Coloured in purple around it?

22 A. Yes.

23 Q.363Yes. Well, what I am simply putting to you is that the 1992 motion that we
24 have identified there at page number 443, that deals with exactly the same
25 zoning that the manager had proposed in his proposal, slightly larger proposal
26 in 1990?

27 A. I don't know. I can't imagine that it coincided exactly with that area. I
28 think it was a different area altogether.

29 Q.364The difference might be one or two acres, it wouldn't be significant?

30 A. I want to be helpful, but I cannot say.

1 Q.365 Yes. But what I am asking about that is that you described that development, I
2 mean that motion was defeated, but had that motion succeeded, because it came
3 from councillors, would you describe it as haphazard?

4

5 CHAIRMAN: May I intervene for a moment, please? You are referring to lands in
6 a motion by the County Manager in 1990, can you give me the reference to the
7 motion and the page and let us compare the two plots of land and the two
8 motions?

9

10 MR. O'TOOLE: Yes, well I --

11

12 CHAIRMAN: Now, if you give us even the page number we'll take it from there.
13 There must be a map attached.

14

15 MR. O'TOOLE: Well, the page number I have here is page 443.

16

17 CHAIRMAN: That's the page you are dealing with at the moment. Now the
18 motion, the one that was dealt with in 1990 will have a similar number --

19

20 MR. O'TOOLE: That was the --

21

22 CHAIRMAN: Sorry, the manager's report in 1990. Can you give us back, can you
23 give us the reference to that?

24

25 MR. O'TOOLE: Well, I don't have -- it's contained in the manager's report
26 given in October 1990.

27

28 MR. QUINN: Page 200.

29

30 CHAIRMAN: Very good. Page 200 I am told.

1

2 MR. O'TOOLE: Yeah. Well, I have a reference to it here I think, it's page
3 number 1170, Tribunal reference Carrick 1, and it's headed Comhairle Contae
4 Atha Cliath, minutes of special meeting of the County Council held on 18th
5 October. That's the meeting I am referring to. This has been already
6 mentioned on a few occasions today. In relation to the manager's proposal and
7 of course the map, the map accompanied that proposal by the County Manager at
8 the time, that's the map reference 90/123.

9

10 CHAIRMAN: Just a moment, I want to clarify something. I am told that page 200
11 is what you are talking about, page 200 of the brief.

12

13 MR. O'TOOLE: I don't have that immediately in front of me here I'm afraid.
14 No, if I could -- if I could I will leave that for a moment because I haven't
15 got the page number here with me.

16

17 But I just -- I have another area that I might finish with Mr. Conway. I don't
18 want to be coming back, or having him come back tomorrow when he is free to go
19 otherwise.

20

21 Q.366 Now, the Draft Development Plan of 1991 that was circulated on the 31st of
22 January 1991, and a series of meetings were then held to consider that Draft
23 Development Plan and you have mentioned it already. Now, those meetings took
24 place, if I am correct, Mr. Conway, between April 1992 and June of 1993, is
25 that correct, or do you recollect that?

26 A. The Draft Development Plan was put on display in 19 -- summer of 1991.

27 Q.367 Yes.

28 A. And then in April or May of 1992 the consideration of the various
29 representations began and was processed.

30 Q.368 Yes. And 50 meetings were scheduled, 50 meetings of the Council were scheduled

1 to consider this. And those 50 meetings were to take place up to June of '93,
2 late June of '93, because the second statutory display was due I think in July
3 of '93?

4 A. Yes, yes.

5 Q.369So that in a 14 month period 50 meetings were scheduled of the Council?

6 A. Yes.

7 Q.370And would that be on top of other meetings of the Council?

8 A. Oh, yes.

9 Q.371Normal meetings?

10 A. Yes, these were special meetings of the Council.

11 Q.372So that the councillors would have a tremendous difficulty in attending all of
12 those meetings, any given councillor, would that be correct?

13 A. Busy times for them, yes.

14 Q.373And I think you described the result of that, I think, to Mr. Quinn on December

15 5th. I am looking at the transcript here, page 26 of the transcript that is of
16 December 5th, you said, I think you were saying in your report and in your
17 evidence, "Before and during the meetings the entrance lobby of the Council
18 offices were crowded with landowners, builders, agents, auctioneers and others
19 lobbying and seeking out councillors", and you refer to the "frenzy of external
20 pressure, the acrimonious atmosphere in chamber and the marshalling of the
21 party whips was very alien to what would reasonably be perceived as the
22 appropriate atmosphere in which the democratic statutory obligation of the
23 making of a development plan ought to be conducted. Many of the decisions were
24 --" I see here the word "logical", I take it to be illogical, "and totally
25 unjustified. The size and shape of plots voted on were indicated only by the
26 boundaries of the sponsorer or owner". That's your description and a very
27 accurate description of the scenes when you were trying to pack 78 councillors
28 into a chamber accommodation for 36 of them with probably 20 or 30 officials in
29 attendance; isn't that right?

30 A. Generally speaking, yes.

1 Q.374 Now, was that a fault of the councillors or was it a fault of the Council
2 itself, the organisation?

3 A. I don't know who you blame for that, it resulted from the fact that in the
4 Council elections of '91 it was anticipated that the three, that the three
5 local authorities would shortly be formed, that's why the numbers were
6 increased to 78 and there was a hold put on that, so you had a period while you
7 had 78 councillors in that particular Council chamber.

8 Q.375 Yeah, but you have to be sorry for the councillors who were condemned to that
9 regime between April of '92 and June of '93. I mean, the break up of the
10 Councils didn't follow until the 1st of January of '94?

11 A. That's correct, yes.

12 Q.376 Yes. So that whoever did that scheduling were fairly unrealistic in relation
13 to the effect on the councillors' consideration and deliberation of any plan
14 put forward by anybody, management or individuals?

15 A. Well, I think the scheduling of Council meetings is done in conjunction with
16 the Chairman of the Council and the membership.

17 Q.377 Yeah.

18 A. They had a special meeting to organise those things.

19 Q.378 And then if I could just finally just come back very briefly to that, because I
20 have listened to you as carefully as I could, and on various occasions you have
21 used the word haphazard, as I understood it, to describe any decision of the
22 councillors which was not in accord with the advice given?

23 A. No, that was not my -- I didn't refer to it as such in any of my statements.

24 Q.379 Yes. So, in other words, you accept and I think you have accepted already in
25 fairness, you do accept that the councillors had a role to play?

26 A. Yes, indeed.

27 Q.380 And you accept that if the councillors vote against the advice of the planning
28 officials that they are entitled to do that?

29 A. They are entitled to do that.

30 Q.381 Yes, thank you, Mr. Conway.

1

2 MR. FINLAY: Mr. Chairman.

3

4 CHAIRMAN: Mr. Finlay, what's your schedule?

5

6 MR. FINLAY: Thank you very much. My schedule insofar as I can identify it is
7 that I would have some questions for Mr. Conway, I would hope that it would not
8 be very lengthy but not being fully familiar with the Tribunal's timing
9 arrangements on a daily basis I can't guarantee that they would be concluded at
10 four, that's the only way I can put it.

11

12 CHAIRMAN: Do you think they would conclude in a total of half an hour from
13 now?

14

15 MR. FINLAY: Yes, I would hope so

16

17 CHAIRMAN: Because I don't want to bring the witness back. Within those
18 reasonable parameters, please.

19

20 MR. FINLAY: Thank you very much. I will proceed as rapidly as I can.

21

22 CHAIRMAN: Thank you.

23

24 MR. FINLAY: Thank you.

25

26 MR. CONWAY WAS THEN CROSS-EXAMINED, AS FOLLOWS, BY MR. FINLAY:

27

28 Q.382MR. FINLAY: Mr. Conway, if I could just ask you to listen to my present
29 understanding of the background to the 1990 zoning proposals for the
30 Carrickmines Valley? You gave very detailed and comprehensive evidence in your

1 examination-in-chief as to the overall county situation and there were certain
2 statistics and information which applied to the county as a whole, isn't that
3 correct, in relation to zoning?

4 A. That's correct.

5 Q.383And if you were to stand back from the county, and it's a large county, and
6 take an overview in relation to the situation on zoned land as it stood at the
7 time, from a global perspective, there was a good supply of zoned land in the
8 county as a whole; isn't that correct?

9 A. That's what the report said, yes.

10 Q.384And it was on that basis that the county wide report, if I can call it that,
11 was produced, isn't that so?

12 A. Yes.

13 Q.385And it was in order to give the Tribunal, and presumably other interested
14 parties, the benefit of that county wide overview that you prepared your first
15 statement, your first and longer statement; isn't that correct?

16 A. That's correct, yes.

17 Q.386Yes. When then, Mr. Conway, you were asked to focus on, for the first time, on
18 a particular section of the county, namely the Carrickmines Valley, you
19 produced your later and shorter statement in relation to the events
20 particularly of late 1990; isn't that correct?

21 A. I was asked to report on, I was asked questions about map 90/123.

22 Q.387Yes, which relate exclusively to the Carrickmines Valley?

23 A. To the Carrickmines Valley, yes.

24 Q.388Because in your initial statement you were only dealing with a county on a
25 global basis, if I put it that way, it didn't appear to be relevant at that
26 stage?

27 A. True, yes.

28 Q.389And given that understanding of the position, Mr. Conway, am I also right in
29 understanding that when you did have to consider this one specific section,
30 this one specific area of the county, you identified factors which were

1 specific and peculiar to that area which may not have applied to the county as
2 a whole; isn't that correct?

3 A. Yes, the reports to the Council related to several factors that pertained to
4 just this area of the county.

5 Q.390Yes, and do I also understand your evidence to be that in approaching the
6 advance land use planning for the Carrickmines Valley in 1990, and in that
7 period, you and your fellow officials in the County Council were aware of, and
8 took in account, the recommendations of the Eastern Regional Development
9 Organisation 1988 report, the ERDO report; isn't that correct?

10 A. Yes.

11 Q.391I wonder, I am not fully familiar with the wonderful technology of the
12 Tribunal, but is it possible to produce at this stage a page from that report
13 which hasn't yet been seen today? Is that particularly possible?

14

15 CHAIRMAN: Tell us what the page is and we'll find out.

16

17 MR. FINLAY: Yes, it's page 4204.

18

19 Q.392If we can see this page, Mr. Conway, I don't think it's been opened today and I
20 apologise in advance if it has already been.

21

22 CHAIRMAN: It's on the screen now, Mr. Finlay.

23

24 MR. FINLAY: My Lord.

25

26 CHAIRMAN: It's on the screen in front of you.

27

28 MR. FINLAY: Yes, indeed.

29

30 Q.393Do you see that page from the 1988 report, Mr. Conway?

1 A. I have it up here, yes.

2 Q.394I am reading from a hard copy, but are you in a position to see the slightly
3 fainter type off the screen?

4 A. I can see the type in front of me here.

5 Q.395Very good. And I think that this is the foreword to the Eastern Region
6 Settlement Strategy which was produced by the Eastern Regional Development
7 Organisation in 1988; isn't that correct?

8 A. Yes.

9 Q.396And we find there in the first paragraph the foreword, the statement that the
10 board of ERDO has adopted the settlement strategy for the eastern region to the
11 year 2001, which is set out in this report; isn't that correct?

12 A. Yes.

13 Q.397And then the foreword continues as follows: "The strategy entitled Eastern
14 Region year 2000, a choice is intended to provide a framework which will guide
15 the planning and investment decisions of the local authorities and other
16 investment agencies in the public and private sectors that will affect the
17 eastern region up to the turn of the century."

18 A. Yes.

19 Q.398If I just might pause there, Mr. Conway, you see there that it's expressly
20 stated that it was intended to provide a framework to guide the planning
21 decisions of local authorities, do you see that?

22 A. Yes, that's right.

23 Q.399Am I correct in understanding your earlier evidence that that is precisely how
24 you saw it, that document as a framework which would guide your planning
25 proposals when you came to consider the area in question in this module, namely
26 the Carrickmines Valley?

27 A. Yes. That was the Terms of Reference of that.

28 Q.400Exactly, that was my understanding, I just wanted to be clear that it was also
29 yours. And then the foreword, Mr. Conway, gives some account of the background
30 and activity of ERDO which lead to the production of the report and I quote as

1 follows: "It constitutes a review and updating of an earlier study which was
2 prepared for ERDO by a study team of experienced and highly qualified
3 professional personnel drawn mainly from its constituent bodies under the
4 leadership of LP O'Reilly, Deputy Dublin Planning Officer."

5 A. Yes.

6 Q.401 And did you, would you have inferred from that statement or do you infer from
7 that statement, Mr. Conway, that the -- that study was the work of
8 professionals rather than politicians, people on the technical side rather than
9 people on the political side, isn't that --

10 A. That was professional, yes it was, yes.

11 Q.402 Yes. And then if you go on to the second next paragraph, which is as follows:

12 "Planning techniques such as surface potential analysis, goal objective,
13 achievement, multi criteria evaluation and robustness assessment were used to
14 generate different options for future development of the eastern region and to
15 evaluate results. The skills developed in the course of the exercise will
16 continue to be available to the constituent bodies in ERDO, arising from the
17 return of the study team members to their former posts and this must be seen as
18 a positive spin-off from the project." Do you see that statement?

19 A. Yes.

20 Q.403 And then just for the present I just want to draw your attention to one other
21 passage in the second half of the following paragraph, starting with the
22 sentence: "It's answered that the strategy, that's the strategy in the ERDO
23 report, that the strategy now put forward will form an essential base for the
24 statutory reviews of the local authority Development Plans and for the national
25 programme of community interest for the Dublin area as recently announced by
26 the government in the context of EEC funding arrangements."

27

28 Now once again Mr. Conway, isn't it correct that at this time you were engaged
29 in that very process, you were engaged in a statutory review of your own Local
30 Authority Development Plans; isn't that so?

1 A. Correct, yes.

2 Q.404 And did you consider it in those circumstances entirely appropriate to take on
3 board the recommendation of ERDO insofar as it related to this particular area
4 with which we are concerned in the present module, namely the Carrickmines
5 Valley?

6 A. Yes.

7 Q.405 Coming on then to the adoption by you on foot of the ERDO report of it's
8 specific recommendation for the Shanganagh area, namely that this was an area
9 which was recommended to accommodate an additional population of 27 thousand
10 people and provide for an extra 200 hectares of industrial land, I understand
11 or do I understand correctly, that it was that recommendation which drove what
12 you have described as the advance land use planning proposals for the
13 Carrickmines Valley which we see in 990/123?

14 A. Yes.

15 Q.406 Yes. That's what I'm specifically concerned with, the 90/123 area and the
16 Carrickmines Valley, no other area at present, Mr. Conway.

17

18 For the avoidance of any doubt, am I right in understanding that that proposal,
19 as submitted to the Council members by the manager was the result of a process
20 in which a number of people on the professional and technical side in the
21 County Council had been involved.

22 A. Yes.

23 Q.407 And those professional and technical people involved, included not only
24 yourself, but members of the Roads Department; isn't that correct, Mr. Conway?

25 A. Yes, we would have liaised with the Roads Department and other departments on
26 that preparation of that plan.

27 Q.408 So the zoning proposals as represented graphically in the map 90/123 and as
28 described in the report accompanying that map from the manager to the
29 councillors, those zoning proposals had already had the input of the Roads
30 Department, is that correct?

1 A. Yes, certainly the line of the motorway as such, would have been the up-to-date
2 one which we would have received from the Roads Department. Yes.

3 Q.409The junctions?

4 A. The junctions -- they were probably, I say selected, and put in by the Planning
5 Department, but with the knowledge of the Roads Department who would know what
6 was happening.

7 Q.410Yes, but -- put at it's minimum, you are not aware that there was anything
8 other than a consensus by the time this plan was finally produced and went to
9 the councillors?

10 A. No, I don't recollect any disagreement about it at that time.

11 Q.411Yes; and when I am talking about disagreement you are aware, I think, and
12 please correct me if I have misrepresented it, I am concerned at the moment
13 exclusively with what I call the professional side, I am not interested in what
14 councillors were up to, I am solely concerned with you, your fellow
15 professionals, your planners and the Roads Department, and as far as you are
16 concerned, your recollection is, your best recollection today, 12 years later
17 is that the zoning proposals, as they went to councillors, were the result of a
18 consensus between the officials, the technical officials both on the planning
19 side and in the Roads Department; isn't that correct?

20 A. Yes.

21 Q.412Briefly turning to another aspect of your evidence, when you were being
22 questioned by Mr. Quinn on behalf of the Tribunal on Thursday, did I understand
23 you correctly when asked about categories of zoning, did I understand you to
24 say that at that time, 1990 or thereabouts, no specific date is relevant to
25 this question, you were of the view in the Council that as between residential
26 and industrial zoning, if you were looking at those two categories of zoning,
27 there was no material difference in terms of value?

28 A. No, in terms of speculative value, no.

29 Q.413Yes. The significant change in value came when you moved from agricultural
30 zoning upwards to one of those two categories; isn't that correct?

1 A. Of course, yes.

2 Q.414But as between them you didn't see that there was a material difference?

3 A. No, I would say that relative values fluctuated, but there was no great
4 difference between them.

5 Q.415But of course there was a significant increase in value once you were moved up
6 from agricultural zoning into one of those two values, namely residential or
7 industrial; isn't that correct?

8 A. Yes.

9 Q.416The consensus view of the planners and roads officials in Dublin County Council
10 in October 1990 involved substantial additional zoning for both residential and
11 industrial purpose of the Carrickmines Valley as we see in 90/123; isn't that
12 correct?

13 A. Yes.

14 Q.417If I can just ask you, I think the map is still on the screen, just ask you to
15 look at one section of the valley, one section of lands, there is a section of
16 lands outlined in red, bearing the legend JWP lands, do you see that section
17 there -- I am working from a very slightly different map, Chairman, I
18 apologise, I am working from the same map, but it is an extract from the Draft
19 Dublin County Development Plan 1990, and I thought that it was --

20

21 MR. QUINN: Perhaps My Friend would give the --

22

23 CHAIRMAN: Is the red area you are referring to, the left hand top of the map?

24

25 MR. FINLAY: Yes. If we can come back to the map, it was just on screen, thank
26 you very much, in any event, I think we can come back to this if necessary for
27 the purpose of identification, if Mr. Conway has any difficulty with the
28 question. Mr. Conway, can you recollect or do you know today from looking at
29 that map in front of you, your 1990 zoning proposals of October, can you
30 recollect the lands or the area of lands which were comprised in what were

1 known as the Paisley Park lands or Jackson Way lands, can you recollect which
2 ones they were?

3 A. I am familiar with the lands now from the various maps I have seen recently.

4 Q.418As I say, if you have any difficulty with this please tell me, and we can come
5 back to it, but all I wanted you to confirm was my understanding, which is as
6 follows, that the zoning proposals of October 1990, Mr. Conway, from the
7 planners and the Roads Department, envisaged that the entire of the Paisley
8 Park/Jackson Way lands would be rezoned, that's the first question; now if you
9 have any difficulty with that we can come back to the map, but I have a map
10 which outlines the boundary of the, of those lands on your 1990 map and that's
11 the basis of my question, I don't believe it's --

12 A. Yes, I think so. The southern boundary of the residential zoning would
13 correspond with the boundary of the property.

14 Q.419Yes, but my understanding of the map is as follows, Mr. Conway, that in your
15 1990 proposals, the indicated line of the South Eastern Motorway marked in
16 blue, went through a very tiny portion of the most northerly section of the
17 Jackson Way lands, do you recollect that?

18 A. Not that detail now.

19 Q.420I am so sorry.

20 A. I don't recollect that detail.

21

22 MR. QUINN: I don't wish to interrupt My Friend, but I wonder if he can give
23 the witness that map that he is referring to so the witness can actually see
24 what he is referring to?

25

26 CHAIRMAN: That sounds a reasonable proposition. And again Mr. Finlay, before
27 we go back to questioning, if you look at the map on the screen you see the
28 four blobs of purple, in fact, on the right hand half of the map, those are the
29 Jackson Way lands now?

30

1 MR. FINLAY: Well in fact my understanding, but it may be of relevance, to
2 avoid confusion, my understanding and it's the basis on which other matters
3 have proceeded Chairman, is that the Jackson Way lands on, insofar as this map
4 is concerned, lie almost entirely, only a fraction of the lands excepted, lie
5 almost entirely to the south of the blue motorway lands. Now, that's of some
6 importance. And only a tiny northern portion of the lands in the path of the
7 indicated motorway, the rest of the land lies below the motorway.

8

9 I have been very kindly furnished with a wonderful piece of technology, and I
10 don't know if I will be able to use it correctly -- in any event Chairman, my
11 understanding is that -- I will attempt to draw the northern boundary of the
12 Jackson Way lands, they start there and they came then to the south of the
13 motorway and came down here and came up to there. (Indicating) Therefore,
14 apart from a very tiny section --

15

16 CHAIRMAN: That's my understanding too, sorry, I was only in general terms
17 referring it to you.

18

19 MR. FINLAY: Of course if the Tribunal now has the map I am talking about, it
20 will show marked in heavy red outline, continuous red outline, what is legended
21 as the JWP land. Now do you have that map, Mr. Conway?

22 A. I have indeed, yes, I have a copy of 90/123 and on that map there is a JWP
23 lands and there is a heavy red line surrounding those lands.

24 Q.421 Yes. Perhaps we could proceed on this basis, Mr. Conway, if you wouldn't mind
25 for the purpose of this discussion, assuming that that heavy continuous
26 boundary line is correct, just assume that that is correct and it does
27 designate the boundary of the JWP lands, it's merely, I think, a question of
28 confirming what is clear from the map; is it not correct Mr. Conway, therefore
29 that as of October 1990 the proposals coming from the officials in Dublin
30 County envisaged, first of all the rezoning of all of those lands and secondly

1 within that rezoning, two categories of rezoning; an industrial zoning marked
2 in purple on the more northeasterly side of the lands and a residential zoning
3 marked in yellow on the corresponding southwesterly side; isn't that correct?

4 A. That is correct, yes.

5 Q.422And also I think, it is apparent from the map that you are now looking at,
6 assuming always that the boundary is correct, that the plan proposed by you --
7 and I don't of course mean you, individually, I mean by the Planning Department
8 and Roads Department, to the councillors, would have involved the taking of a
9 very small fraction only of the Jackson Way lands for the purposes of the
10 motorway, it only cut through the lands at the very top left hand corner; do
11 you see that, Mr. Conway?

12 A. It goes through the top left hand corner and touches the site on two other
13 occasions.

14 Q.423Touches the site, exactly. But contrast it with a later plan and map which
15 showed the motorway running right through, effectively bisecting the lands,
16 this would have taken a much smaller fraction of the Jackson Way lands; isn't
17 that correct?

18 A. Yes.

19 Q.424Yes. And so, the position is then, Mr. Conway, that if the consensus view of
20 the professionals, the planners and roads officials in the County Council as
21 proposed to the councillors in October 1990, had prevailed as I assume you
22 hoped that it might, if it had prevailed, if the councillors had accepted the
23 views and recommendations of the officials, the consequence would have been
24 that the entire of the Jackson Way lands would have been rezoned. That they
25 would have been rezoned in the proportions that we see there, both industrial
26 and residential in those marked proportions, and that that small portion of the
27 top northern section of the lands would have been dissected by the motorway and
28 the motorway would have touched the lands at two other points; isn't that
29 correct?

30 A. Well, the consequence would have been that this map would have been put on

1 public display showing what you described as development of these lands. After
2 that who knows.

3 Q.425 One was only at that stage, but all I am saying is if the councillors in the
4 first instance had gone with the consensus proposals of the officials, which in
5 turn found their source in the recommendation of the ERDO report, then you
6 would have seen going on display in the Draft Development Plan this map and
7 those would have been the zoning implication of that map, if it had gone
8 through, isn't that correct?

9 A. Effectively so.

10 Q.426 Yes. Mr. Chairman, it's quarter past four, I hope I haven't overrun. That
11 completes my questioning.

12

13 CHAIRMAN: Does that complete your questioning?

14

15 MR. FINLAY: It does.

16

17 CHAIRMAN: Very good. Before I, before the Tribunal come in, is there anybody
18 that wants to ask any other questions now, supplementary to what they have
19 asked already?

20

21 CHAIRMAN: No.

22

23 JUDGE MAHON: Just one particular question in relation to the maps that have
24 been produced. Were these, these were prepared, as I understand it, by
25 draughtsmen who were directly employed by the Council, is that right?

26 A. That's correct, yes.

27

28 JUDGE MAHON: And was that always the case?

29 A. Yes, that was always the case.

30

1 JUDGE MAHON: They were never produced by people outside the Council and then
2 adopted by the Council, to your knowledge?

3 A. No, all work on this particular exercise was done in-house.

4

5 JUDGE MAHON: And presumably there were sketches done and rough maps done
6 before the finished product was produced?

7 A. Yes, yes.

8

9 JUDGE MAHON: And where would those be, or are they available?

10 A. Well I think we discussed this morning three or four earlier versions
11 would appear to be earlier versions of that final map. As it was formulated
12 over the period.

13

14 JUDGE MAHON: And there was nothing done, not even rougher sketches than those
15 ones prepared?

16 A. There had before been many other sketches perhaps, I don't know.

17

18 JUDGE MAHON: And one particular map caught my attention particularly, this is
19 the map where the motorway, the proposed motorway route and the other roads
20 were shown in little squares and circles?

21 A. Yes.

22

23 JUDGE MAHON: Which seemed to be very much different to the way the roads and
24 the motorway is shown in other maps.

25 A. Yes.

26

27 JUDGE MAHON: Do you know who prepared that particular map and why it was done
28 using those symbols instead of the blue line?

29 A. The different symbols is really sort of, shall we say presentation format. In
30 the '83 plan the motorway was shown as a series of boxes, in subsequent maps we

1 actually put in a solid line rather than the series of boxes.

2

3 JUDGE MAHON: And is there, was that because different people were involved in

4 drafting, in preparing the map, or was there any other reason for it?

5 A. Yes, just a change in presentation, no further significance other than that.

6

7 JUDGE MAHON: All right. I have no further questions.

8

9 JUDGE FAHERTY: Just a general question, Mr. Conway, on Wednesday or Thursday

10 last, I think you gave evidence of a letter from the IDA, December 1990, I

11 think that letter set out the criteria as the IDA saw it, regarding the

12 suitability, or otherwise, of lands for development for industry?

13 A. That's right, yes.

14

15 JUDGE FAHERTY: And I think they mentioned large scale sites and good road

16 infrastructure and sewers and foul drainage and all of that.

17 A. Yes.

18

19 JUDGE FAHERTY: I Just wanted to ask you, to, in relation to the requirements

20 of the IDA regarding suitability of land for development, and the criteria they

21 set out, to what extent does that criteria apply to assessment of lands for

22 residential zonings? I imagine there would be some convergence?

23 A. It would be different criteria, it is in fact, it is easier to build

24 residential development than industrial stuff in terms of the slope of the

25 land. Industrial development is far more demanding, in the sense that it needs

26 a more level site. You have much larger, more extensive units than housing,

27 obviously, quite a difference in the two criteria.

28

29 JUDGE FAHERTY: That leads me onto the second part of my question, if there is

30 a divergence, if you like, in the requirements or criteria with regard to land

1 being promoted for rezoning, how feasible would it be, in your view, and I
2 accept you can only give your view, for options regarding rezoning to be
3 brought to the County Council chamber by way of representations or submissions,
4 where such options are seeking alternative rezonings for lands, for a specific
5 land?

6 A. Yes. Cases would arise where I think -- possibly this case where the request
7 for rezoning for either residential or industrial, and in assessing that we
8 would have dealt with that in our report. We would have considered whether the
9 land was suitable for either or both type of development.

10

11 JUDGE FAHERTY: And in your view, would the person or persons bringing forward
12 the alternative options have equally to be so informed about the requirements
13 or the suitability of the lands?

14 A. It would vary as to who might bring forward such a proposal, in many cases they
15 would have come through town planning consultants or engineering consultants
16 who would be familiar with the differences, shall we say.

17

18 JUDGE FAHERTY: My last question for you is, I think last week you also said
19 that this was in relation to the manager's report of the 18th October 1990,
20 where they were talking about the response to the pressure for rezoning, and
21 there was a number of things that it was suggested that the -- it's on page 200
22 that the various infrastructural elements like the development of the sewers,
23 roads upgrades and all of that, could be assisted by further rezoning, and you
24 said in response to Mr. Quinn that this would happen, if rezoning happened
25 there would be contributions from developers.

26 A. That's correct, yes.

27

28 JUDGE FAHERTY: And I think you responded equally to Mr. Burke today in that
29 regard. I take it though, that an application, or representations for rezoning
30 is not a commitment to develop in any regard?

1 A. No, it is not, no.

2

3 JUDGE FAHERTY: So that it could well be that the tables you referred to on
4 Wednesday last, where there was 118 hectares, 70 I think ready to go sites, I
5 think they were called, serviced, fully serviced, and that objective that was
6 sought in the manager's report, am I correct in saying that if the developed,
7 the serviced lands were developed, that objective could have been met in that
8 regard, that the money would have come from developers?

9 A. Oh, yes, it would yes.

10

11 JUDGE FAHERTY: So it wasn't dependant on making further rezonings,
12 necessarily?

13 A. No, except to explain that in this particular instance there was a fairly
14 lengthy sewer to go in from, I suppose three miles or so, and the cost per unit
15 of servicing the houses at the other end was quite high, so if you use the
16 sewer in between by another development and the cost per unit and the overall
17 cost and the method of funding by local authority would be eased, and that in
18 itself could hasten the development, because those things of that nature
19 requires to be approved by the Department of Environment, so it was a chicken
20 and egg type situation.

21

22 JUDGE FAHERTY: But the outside funding you are depending on from the
23 developing would come at the development stage and not any sooner.

24 A. No, no, at the development stage.

25

26 JUDGE FAHERTY: Thank you very much, Mr. Conway.

27

28 CHAIRMAN: Mr. Conway, in relation to maps, did I understand you earlier in the
29 day to say that each draughtsman put a legend of his draughtsmanship on the
30 map?

1 A. Yes, that would be the situation.

2

3 CHAIRMAN: That's the situation. So you can identify a particular map as
4 coming from members of, when I use the word "members" I mean various sections,
5 of your remit

6 A. Yes. Well some of these maps were identified as both the planner who would
7 have been responsible for them, and also the draughtsman who did the drafting.

8

9 CHAIRMAN: But somewhere along there is a legend to say this map is original?

10 A. I beg your pardon?

11

12 CHAIRMAN: There is somewhere along the line a legend, be it initials or
13 otherwise, to indicate that this map is official, it is an official map from
14 your file?

15 A. Yes. Normally the official map is in the way of a negative, stored away, and I
16 think we have only seen the prints of those here.

17

18 CHAIRMAN: I see. Thank you.

19

20 Any questions before we close down today? Very good. Tomorrow morning at
21 10.30. Thank you.

22

23 THE WITNESS THEN WITHDREW.

24

25 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
26 WEDNESDAY 11TH DECEMBER, 2002 AT 10.30 AM.

27

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