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1 THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 12TH DECEMBER 2002

2 AT 10.30 AM:

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5 CHAIRMAN: Good morning everyone. Before we start business today, may I just

6 simply remind parties that any person intending to make an application, or any

7 counsel intending to make an application of any kind, there's a ruling of the

8 Tribunal that a written notice should be given where possible in advance.

9

10 So that we know what the matters to be dealt with in the course of the day are.

11 Just to remind you of that, that ruling does exist.

12

13 Mr. Quinn, when you are ready?

14

15 MR. QUINN: Thank you, Mr. O' Sullivan.

16

17 MR. O'DULACHAIN: Chairman, members, if I might ask some questions of Mr.

18 O' Sullivan.

19

20 CHAIRMAN: Certainly.

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22

23 MR. O'SULLIVAN WAS CROSS-EXAMINED AS FOLLOWS BY MR. O'DULACHAIN

24

25 Q 1 MR. O'DULACHAIN: Mr. O'Sullivan, I think you have been in public life for a

26 considerable period of time as a public servant.

27 A Yes, I spent 22 years of my life in the local authority service at a senior

28 level, yes.

29 Q 2 And during your years in Dublin in particular, you would have had various

30 dealings with the late Tom Hand?

1 A I would, yes.

2 Q 3 And in particular in relation to the Dun Laoghaire area after the establishment
3 of the Dun Laoghaire and Rathdown County Council.

4 A I did, yes.

5 Q 4 And prior to that, over many years on various committees of the county council?

6 A I wouldn't have as close a working relationship with the late Tom prior to Dun
7 Laoghaire/Rathdown, prior to '91, but I would have had some contact with him,
8 yes.

9 Q 5 And from 1991 on, you did have a regular contact with Tom Hand?

10 A I did, yes.

11 Q 6 And you would have had been in a position to observe his dealings on the
12 council?

13 A I would, yes.

14 Q 7 And in the various stances he took on various issues relating to the
15 development of what was to become the new county and did become the new county?

16 A That's correct, yes.

17 Q 8 And could you assist the Inquiry in setting out your view of the approach he
18 took at those meetings, in a general sense, in relation to either the planning
19 or other matters affecting the county.

20 A It's a difficult to comment on an individual at this stage. I'd say Tom was
21 generally pro-development, concerned about the area.

22

23 If I, perhaps, would turn away all together from the Carrickmines Valley and
24 talk about the town of Dun Laoghaire, which Tom would not have been familiar
25 with in terms of his being a councillor until the new area committee came
26 along. He would have been extremely supportive in relation to the, some of the
27 developments which were taking place in the town of Dun Laoghaire, which were
28 an attempt, if you like, to try re-invigorate a town which was dying on its
29 feet.

30 Q 9 And that would have been in relation to the development of the port?

1 A It would have been in all development areas that were happening, yes. The
2 ports, the pavilion, the land fills, anything else he would have been extremely
3 supportive, yes.

4 Q 10 So, in a philosophical sense, his previous disposition was towards expansion of
5 development?

6 A I don't think there's any doubt about that.

7 Q 11 And in relation to your experience, first of all in Dublin City Council, you
8 were dealing with, I think, 78 councillors in the latter years?

9 A No, Dublin City Council, there was councillors.

10 Q 12 Dublin County Council?

11 A Dublin County Council was, yes, 78 councillors.

12 Q 13 And amongst those councillors you would have had a variety of skills and
13 experiences?

14 A Just as among all the officials, there were a variety of skills and experience
15 of different people.

16 Q 14 Right. In relation to Mr. Hand, I think he had retired in 1987 from his
17 employment, and would you accept that he was more or less full-time engaged in
18 local government as a public representative?

19 A I hadn't realised it was 1987 that he retired. He was retired and yes, it was
20 his life.

21 Q 15 And in terms of diligence at attending meetings, presentations, submissions,
22 briefings.

23 A Always there, usually first.

24 Q 16 If I might proceed then to the evidence you gave evidence in relation to
25 various aspects in relation to the planning process, the development of the
26 Development Plan. In relation to your perception of the Development Plan, the
27 act, as it was then, required the making of a Development Plan and then its
28 review after five years or the making of a new plan after five years.

29 A That's correct.

30 Q 17 Was it your view that the function of the council was simply to make a plan

1 which was limited to what developments would take place within a five-year
2 period, in other words, was it a five-year action plan or was it a broader plan
3 for the city and county which would be looked at every five years as it
4 progressed?

5 A Well, technically the plan was a five-year plan, but I think the experience of
6 plans, and this isn't just in Dublin, all over the country, would have been
7 that the lifetime of a plan would have been longer than five years.

8

9 There was also the fact, and this is a fact, that any significant development
10 planning permission would generally attract a 10-year permission rather than a
11 five-year permission.

12 Q 18 So, in terms of the approach taken to zoning, zoning itself didn't carry any
13 time limit, once an area was zoned, it wasn't zoned for five years at that
14 time?

15 A That's correct.

16 Q 19 And in zoning an area, one wasn't limited to having to be certain that that
17 area would be developed within five years?

18 A Well, once an area was zoned, it was zoned, yes, that's correct. It mightn't
19 in five years -- that's perfectly true.

20 Q 20 I don't want to put particular legal questions to you, but you would have a
21 good knowledge, working knowledge, of the relevant legislation?

22 A I'd have some knowledge, sir, but I certainly couldn't compete with the
23 knowledge that's in this room.

24 Q 21 Well maybe at the front table. In relation to -- would you accept from your
25 understanding that in setting out development objectives there was no statutory
26 requirement that that development objective be achievable within five years?

27 A There was no -- I believe that that is correct. There was a requirement, of
28 course, that the council itself, I mean, the council as a body corporate, would
29 have -- would attempt to achieve the infrastructure required for development
30 within that period.

1 Q 22 And in your own experience in terms of developing public programmes, whether
2 they be housing, sewage, roads, your own experience in terms of initiating
3 conceiving a plan and progressing a large scale development, is it your
4 experience that that could or couldn't as a matter of likelihood be achieved
5 within a five-year period?

6 A Perhaps I could answer with an example which doesn't concern the county at all
7 and say in that same period 1989 to 1991 I chaired a group of people who would
8 have been reviewing progress on the port tunnel and the port tunnel is only now
9 being built, so I think to answer the question that major development projects
10 take an inordinate amount of time to bring to fruition, yes.

11 Q 23 In terms of developments that may not be regarded as major in terms of public
12 utilities or roads but would be in terms of the development of shopping centres
13 or industrial estates. Would you have any view as to the timescale that those
14 type of projects might adopt?

15 A Depends. It depends again on the project, but projects by their nature take a
16 long time, major projects, and a shopping centre is a major project, takes a
17 long time to move from conception through to, through the process, the planning
18 process itself. Once you are beyond the Development Plan process I don't think
19 there's anyone who would believe that a planning permission now could be
20 obtained for anything really in less than two years. So, that in itself is
21 eating well into the period of the Development Plan.

22 Q 24 In terms of guidelines, were there any department of environment guidelines
23 which set out any guidelines to the approach to be adopted in selecting areas
24 for zoning?

25 A I believe there were guidelines. I recall guidelines, Development Plan
26 guidelines, but I really can't give you any -- there's nothing in my head on
27 that at all and I suspect there have been guidelines issued since that date as
28 well in relation to the making of a Development Plan.

29 Q 25 At this period in time, I think the word "zoning" was well in use but it wasn't
30 a statutory phrase until the 2000 act?

1 A I wouldn't be definite about that, I couldn't answer that definitely, sir.

2 Q 26 I think we were talking about development objectives primarily.

3 A Yes.

4 Q 27 In terms of the Dublin area where the city interfaced with rural areas, the
5 designation of the development objective of an area as agriculturally zoned,
6 was that more a decision arrived at by default than a positive decision that
7 any development on this land should be of an agricultural nature?

8 A At the time there was agriculturally zoned land in the city. Again I remember
9 a material contravention being moved and being passed by the city council for
10 housing an agricultural zoned land and that zoning was clearly out of kilter
11 with the zoning around it, yes.

12 Q 28 If I might, by illustration, take what were the Paisley Park lands, if the
13 development objective for those lands was agricultural, would one be certain
14 then of obtaining planning permission for a large scale piggery on such a site?

15 A I would have said there could be problems for a large scale piggery given the
16 drainage issues that arise from that, yes.

17 Q 29 If I were a farmer who was that close to the interface between what was
18 developed and what might develop, do you think it would influence the land
19 objectives of the land holder as to whether they saw there was any longer term
20 agricultural future in this land?

21 A I think inevitably it would influence the question of whether it was land that
22 could be found or not.

23 Q 30 Would you accept as a zoning then it was in some respects a default zoning in
24 the sense that it wasn't moved into industrial or residential?

25 A Not necessarily because there has to be a line somewhere where the development
26 ends and the other zoning begins and, you know, wherever you go and wherever
27 you move with zoning there's going to be other zoning which is alongside it.

28 Q 31 Can I bring you to the question of the motorway line because it seems that
29 certainly from the ERDO report this area of Carrickmines was highlighted as a
30 suitable area for development in a macro sense, looking at the city and county

1 and the surrounding counties in their entirety, what was the difficulty in
2 actually fixing on a motorway line?

3 A At the time?

4 Q 32 At the time.

5 A I don't remember the detail but I do remember when the final motorway line, if
6 you like, was dealt with and it was very substantial, a very substantial study
7 done, engineering and EIS study on the motorway. As to why the line was not
8 fixed, definitively fixed before, that I can't answer that.

9

10 There were changes being made in thinking in terms of the relationship of that
11 southeastern motorway to the other road proposals in the Dublin region. I
12 think at one stage there may well have been a suggestion that the C ring would
13 terminate into the N11. There was another suggestion again in relation to the
14 eastern by-pass and the link of the eastern by-pass into the southeastern
15 motorway running through Goatstown and there was a government decision made at
16 the time that that wouldn't happen and, therefore, that in itself would have
17 changed thinking in terms of the way in which the motorway link-up would have
18 been.

19

20 So, policy decisions or government decisions or other decisions were being made
21 and presumably planning decisions as well were being made which would have
22 influenced the line of the motorway. So, it wasn't until the motorway order
23 was made that the line became a definite line.

24 Q 33 Was there a sense of frustration in terms of trying to develop a Development
25 Plan around an uncertainty?

26 A I don't believe there was a sense of frustration at official level anyway. I
27 don't believe there was at that point.

28 Q 34 But the uncertainty about it didn't prevent proposals emerging in relation to
29 the zoning of areas in Carrickmines Valley?

30 A Well, obviously it didn't. There was a proposal made to -- for a zoning in

1 that area, yes.

2 Q 35 And that zoning was in some respects continual on what might ultimately be
3 decided with the motorway?

4 A It was conditional on what ultimately would be decided and indeed it's my
5 recollection again that would be the 1983 plan that was adopted, the line of
6 the motorway was shown for illustrative purposes only.

7 Q 36 In relation --

8 A 1993, I'm sorry, I said 1983.

9 Q 37 In relation to the public display, a very large figure has been thrown out in
10 relation to submissions, I think 24-25,000. In relation to that, I assume
11 there are, within that, there may be multiple submissions by hundreds of
12 residences from one area in relation to, effectively, the same issue?

13 A That certainly would have been becoming the trend in the '90s when people
14 began to have word processors and sending, rather than sending one letter with
15 a whole lot of names, you would get a whole lot of letters but answer is I
16 don't know the detail of that.

17 Q 38 But I assume you bundled the submissions together around issues or items?

18 A Well, the submissions were bundled together. How they were actually bundled
19 together, I don't know. They were bundled together within the bowels, if you
20 like, of the planning department and were put into volumes of some kind and
21 issued, I don't have copies of them, I don't recall.

22 Q 39 In relation to that, were you in a position to say when one reduces to

23 submissions down to what we might call issues, how many issues had to be
24 presented to the councillors over the 50 meetings?

25 A Well again, I can't answer that, I wasn't at -- I was only at the meetings
26 relating to Rathdown, but looking at the minutes for the Rathdown area at that
27 point you will see that there was a grouping of, a grouping of representations
28 under various headings. So --

29 Q 40 That was the practice to group them in any event?

30 A They were grouped, yes.

1 Q 41 You were asked yesterday in your evidence in relation to the Paisley lands and
2 you volunteered, I think, two additional observations which were beyond the
3 manager's report. One of those observations, if I might paraphrase it, that it
4 was inconsistent with the policy previously adopted by the councillors prior to
5 public display to now begin to support developments on the southern or western
6 line of the motorway?

7 A It was inconsistent with the policy that the council had expressed to us at the
8 time. Now, can I anticipate -- I mean there's absolutely no reason why the
9 council, as a council does in conscientious policy right up to the time of the
10 adoption of the plan obviously.

11 Q 42 And in relation to that, obviously the policy goes through a number of stages,
12 in other words, there's a policy that permeates and ends up as the maps and
13 proposals that go on the public display but the purpose of the public display
14 is to allow the public to --

15 A Absolutely.

16 Q 43 -- to effect the ultimate policy.

17 A Absolutely, and I said yesterday I became very impatient at the time it was
18 taking to go on public display and told the council at the time I was going to
19 put it on public display anyway.

20 Q 44 So, insofar as you are highlighting an inconsistency, there was a inconsistency
21 with a prior policy adopted by the majority of the councillors?

22 A Yes.

23 Q 45 And I think without necessarily going into the minutes, I think councillor Tom
24 Hand had been in favour of the 1990 proposal as advanced by the council
25 officials?

26 A I actually didn't look at the attendance of who voted for and who against and
27 that's the truth, but I presume Councillor Hand was, yes.

28 Q 46 Now, if I might take you through then the public display procedure.

29 There was a public combination and public display and there's a period in which
30 submissions have to be submitted and a cut-off date?

1 A Yes, and I believe that the cut-off date was sometime in December of 1991.

2 Q 47 And then there are publications and then parties can request the opportunity to
3 make an oral presentation.

4 A That's correct.

5 Q 48 And those oral presentations then take place within a period of time?

6 A They take place, I believe, as soon as, may be would be the expression.

7 Q 49 And following on that oral presentation a report is then prepared which deals
8 with the submission which ends up as what we see as the manager's report on the
9 minutes of the meeting.

10 A No, I think following an oral presentation, a report is prepared on that oral
11 presentation and my understanding would be that that report on the oral
12 presentation would be circulated to the council with the former manager's
13 report -- former manager's report?

14 Q 50 There are a number of documents the councillors would get?

15 A They get a great deal of documents.

16 Q 51 By way of example, Paisley Park, they would get a copy of the submission.

17 A Yes.

18 Q 52 Any supporting documentation with the submission?

19 A Yes.

20 Q 53 And the record -- the county council record of the oral presentation?

21 A That's correct.

22 Q 54 And they would get the manager's report on the, the manager's consideration of
23 that material?

24 A Yeah, they would then have got the synopsis and the views which were emerging,
25 if you like, from within the planning department, yes.

26 Q 55 In terms of a party who has made a submission, first of all, a party who has
27 made a submission but has not made any oral presentation --

28 A Yes.

29 Q 56 Would that party be sent a copy of the manager's report?

30 A I really don't know, sir. I don't think so, but I don't know.

1 Q 57 If we take it for the moment subject to correction --

2 A I don't think there's any legal obligation to do that and I don't know whether
3 the practice was to do so. I have no idea.

4 Q 58 If we take that position, first of all, for illustration, subject to any
5 correction of -- if a party makes a written submission, the submission and the
6 report on the submission is circulated to the councillors and are they
7 circulated in a way that gives the councillors sufficient time to put down a
8 motion arising from that submission?

9 A I believe the practice was and I would be most certain of the practice in Dun
10 Laoghaire/Rathdown, but I believe the practice was that the submissions were
11 delivered to the councillors as quickly as possible and that reports, the
12 manager's report was given to the council as quickly as possible. Then
13 subsequently to that the council was given the opportunity to put down motions.

14 Q 59 Right. And if a councillor didn't put down a motion, what would simply then
15 come into the meeting is item representation 000010 --

16 A Yes.

17 Q 60 -- manager's report.

18 A Yes.

19 Q 61 And that would either be, if there was -- there was no possibility then at that
20 meeting to propose a motion a relation to that item?

21 A I would have thought now that an individual councillor could propose an
22 amendment to the recommendation of the manager at that time.

23 Q 62 But if your recommendation was negative towards the submission --

24 A Yes.

25 Q 63 -- and no motion had been put down was that the end that submission?

26 A No, it went to the council and the council decided whether they accepted the
27 recommendation or not.

28 Q 64 So, the council could simply accept, without putting down a motion.

29 A That's correct.

30 Q 65 So either accept or reject the representation.

1 A Yes.

2 Q 66 So, effectively an amendment or variations to the draft could take place in
3 that manner?

4 A On the floor of the council?

5 Q 67 On the floor of the council.

6 A I believe it could have done, yes.

7 Q 68 As a matter of norm, would that have arisen?

8 A Generally not.

9 Q 69 In terms of a party who has a submission -- who has made a submission, has
10 conducted an oral representation, you are not sure that that party themselves
11 could obtain a copy of the manager's report?

12 A I am not at all sure, I'd have to say.

13 Q 70 And insofar as a party is anxious to advance their position in the council
14 chamber, if they are serious about their representation, does it not follow
15 that they will seek the support of somebody or body of councillors?

16 A I wouldn't have thought it was unusual that they would have circulated their
17 representation again to members of the council, yes, I wouldn't have thought
18 that's unusual.

19 Q 71 And sought to have a motion formulated around it?

20 A Well, I don't know whether it would be sought to have a motion or as strongly
21 as that, but yes, I presume the purpose of that would have been in the hope
22 that a councillor would accept their submission and would put down a motion in
23 support of it.

24 Q 72 In terms of your function then, in terms of this process of multiple and
25 voluminous submissions arising which all had to be considered, isn't it true
26 that not everyone of them could be considered in a detailed personal way by the
27 Chief Executive or the manager?

28 A Oh certainly not, no.

29 Q 73 As a matter of reality it had to be delegated?

30 A Well, it was, of course it was delegated.

1 Q 74 And your opportunity as the chief executive in this particular, say, on the Dun
2 Laoghaire related meetings, was simply to view this briefly in advance of a
3 meeting?

4 A If I was lucky, yes.

5 Q 75 If you were lucky. I am not saying this by way of criticism but --

6 A Well that's the reality.

7 Q 76 That's the reality. So, while today and in the past days we have been pouring
8 over the minutiae of the motions on Paisley Park, the opportunity, it wasn't
9 dealt with other than as one of a large number of submissions moving through
10 the process?

11 A Yes, the process, I think, at that point the process would have restarted from
12 the highest numbered map, which would have been on the Wicklow border and moved
13 backwards.

14 Q 77 In terms of reviewing the submissions then, were various local authority
15 officials given the responsibility for preparing the manager's report?

16 A The responsibility for preparing the manager's report rested with the deputy
17 county planning officer, but clearly the deputy county planning officer
18 couldn't himself because he was busy on various other things, including the
19 number of planning applications that were being received at the time and
20 enforcement notices, and all this sort of stuff, so he clearly would have
21 delegated that function.

22 Q 78 Was there any guidelines given to staff that were dealing with these
23 representations?

24 A I am not aware of the time of any guidelines.

25 Q 79 Was there a trend to more or less hold the line as per the draft plan?

26 A I think that would have been true, yes.

27 Q 80 So that, again it's not a criticism but there was an official predisposition to
28 try and firm up the draft that existed?

29 A I would have thought that was the case, yes, I couldn't disagree with that.

30 Q 81 And when one comes then to view the manager's report on any one item should one

1 keep that in regard, that predisposition?

2 A Yes, in fact, presumably I would have thought there was also a predisposition
3 on our part to reverse some of the zoning decisions which had been made prior
4 to the first draft that didn't succeed looking at the process in its entirety,
5 the volume of material it generated.

6 Q 82 Was there a sense of process fatigue amongst councillors in relation to the
7 process?

8 A Well, I suppose, I certainly would have found the meetings difficult and
9 lengthy and at times difficult to follow, so I'm sure that councillors
10 themselves would also have been in that position.

11 Q 83 If I move specifically to dealing with the Carrickmines motions. We had this
12 position whereby a detailed plan was presented in the 1990 drawing. The
13 council then decides to proceed by a majority vote presenting to the public
14 effectively the 1983 --

15 A Yeah, I think I used the expression yesterday that they turned the
16 recommendation on its head rather than put in a plan, they didn't put in a
17 plan.

18 Q 84 Would you have regarded that as somewhat of a cop out by the council?

19 A Not at the time it happened because at that stage, as I said yesterday, by the
20 time that it went on public display I would have been aware, it was very clear
21 that the government policy was such that the new county council's were going to
22 be set up as quickly as possible.

23

24 I didn't know at that stage I would be County Manager of Dun
25 Laoghaire/Rathdown, it was some time afterwards that that appointment was made.

26 But certainly in my own mind at the time I would have been sort of thinking
27 that, perhaps, this was something which was more suited to be dealt with in
28 the smaller and more local assembly rather than at large assembly. So, I
29 didn't think it was a cop out by the council at the time, is the answer.

30 Q 85 Was it on the basis that if it was wanting, it would be cured within a

1 reasonable period of time?

2 A It was on the basis that the new county would have been looking -- I believed
3 that the new county, I didn't know I was part of the new county, but I would
4 have believed the new county would have looked at the county as a county in its
5 entirety and would have revisited this area and maybe made different decisions
6 because after all the decision is a council decision.

7 Q 86 If I might go through some of the minutes of the meeting of the 5th June. Book
8 2, I think it's page 436. The purpose -- I simply want to highlight this.
9 This is the meeting which precedes the meeting of the 12th June which deals
10 with Paisley Park, but there was a process in which the meetings need to be
11 read together in the sense that there are a number of meetings, one which leads
12 on to another, is that correct?

13 A Oh yes, there was an agenda for the meeting that would have rolled from one
14 meeting with the other.

15 Q 87 And in terms of dealing with the Carrickmines area and issues impacting on it,
16 there was knowledge required from one meeting that would be carried on to the
17 following one.

18 A Absolutely, yes.

19 Q 88 And I think on page 438 of the brief, which is page 502 of the minutes, the
20 lower half, the final two paragraphs, there was a motion proposed by Councillor
21 Fox and Councillor Hand which was an attempt to fix a motorway line by
22 reference to, I think, the boundaries of what was the golf course lands, the
23 Galvin's lands?

24 A I don't specifically remember that motion but it's there, yes.

25 Q 89 But following on that, the final paragraph:

26 "Mr. W Murray, deputy Dublin planning officer showed with the aid of a slide
27 the various lines suggested for the southeastern motorway. Mr. Henry, senior
28 engineer roads department, then advised the meeting concerning the engineering
29 matters to be considered before making a recommendation in relation to any
30 proposed line for the motorway. The manager replied to queries raised by the

1 members and advised them that the various lines suggested all start and finish
2 at the same point at either end of the maps and only differ in the route
3 proposed to link these points. He recommended the line that is shown on the
4 1991 Draft Development Plan be retained as diagrammatical line with a note to
5 state that the finalisation of the line of the southeastern motorway will be
6 dependent on the outcome of the feasibility of the environmental impact study
7 and the line on the maps is diagrammatic and indicates an objective to
8 construct a motorway in the general area."

9 Would it be fair to say the councillors had a good briefing on what was
10 involved in relation to the motorway line and the uncertainties around it?

11 A Well, I would have believed that the councillors would have been aware, we were
12 all aware of that beforehand and I have already mentioned this issue of a
13 diagrammatical line.

14 Q 90 In relation to that discussion, do you have any recollection of whether
15 junctions were discussed and whether it was indicated that the junctions were
16 also diagrammatical?

17 A I have absolutely no recollection of that meeting.

18 Q 91 And on that same page, page 503 of the minutes, later on there is a proposal,
19 the lower half of that page:

20 "The proposal by Councillor O'Connor in relation to considering favourably the
21 submission on behalf of the O'Halloran, Kilcoyne and Darragh to designate the
22 lines outlined red on the attached map for A1 residential zoning."

23 That motion was withdrawn at the end of that meeting?

24 A That's what the record shows and we discussed that yesterday.

25 Q 92 We then proceeded to the meeting of the 12th June. Isn't it fair to say there
26 were a number of proposals before that meeting relating to the Glenamuck Road
27 area?

28 A Well, I'd have to look through the agenda or the notes for the meeting, but I
29 mean, I accept that if that's the case, that's the case, yes.

30 Q 93 And page 442 of the brief, first of all, sets out the Forkin application which

1 simply wasn't the subject matter of any motion and was simply noted.

2 A That's what the record shows, yes.

3 Q 94 You then proceed to page 443 of the brief. We come to the lands at

4 Carrickmines and the representation of Paisley Park Investments Limited.

5 If I might just take you through the manager's report in light of your previous

6 observations in relation to how these reports are prepared and the context of

7 them.

8 First of all, say these lands are located southwest of the motorway as shown on

9 the draft plan, the only access is through the narrow cul-de-sac roadway

10 leading from the Carrickmines golf course. To provide access for development

11 would require a junction on the motorway and such a junction would not be

12 warranted in the circumstances."

13

14 In relation to that proposal, I think in book 1, the various submissions in

15 relation to that proposal are contained, commencing at page 297 of book 1 and

16 particularly I think there are a number of maps in all, I think, there are four

17 maps that arise with that submission between the submission and the oral

18 presentation. If I might go to the map page 311 of book 1.

19

20 Just a note in relation to the Paisley Park lands are clearly indicated and you

21 are familiar with that at this stage. There is no suggestion from that map

22 that any reliance is being placed on any junction as set out in the 1990 map.

23 A That would appear to be the case, yes.

24 Q 95 And the map insofar as it shows any access to a junction, shows that at the

25 left-hand margin, which a link exiting from the land to an undefined junction.

26 A That's what's shown, yes.

27 Q 96 And would it be your understanding that the preparers of this proposal had in

28 mind there would be some junction at the end of the Glenamuck Road?

29 A Well, looking at the map now, that would be my understanding, yes.

30 Q 97 And if we go then to the next map on page 312, again there's no indication here

1 of how the lands would be accessed but again there's no reliance on any other,
2 on any particular junction such as on the 1990 map?

3 A That's correct.

4 Q 98 And I think the only junction is the joining of the round circles representing
5 the Glenamuck Road and the squares representing a proposed line for the
6 motorway?

7 A That would appear to be the Glenamuck Road, yes.

8 Q 99 And then I think a number of other maps were submitted at page 342 of the
9 brief. Again, this isn't indicative of any direct relationship to a junction,
10 save that there is a junction an inch or two to the left of the lands. Can you
11 see the junction that's marked there? It shows somewhat of a flyover further
12 north of Glenamuck junction?

13 A I can see something there, yes.

14 Q 100If the map could move slightly to the left, at a smaller scale.

15 A Yes.

16 Q 101Effectively in the centre of the map as it is now, further left again, sorry
17 Mr. Kavanagh, it can be seen there on the top left-hand corner?

18 A Yes, it can be seen.

19 Q 102You have no idea where that map comes from or --

20 A I have no idea.

21 Q 103And I think then there's a further map on page 343 and again, this seems to be
22 the land of the, the line of the motorway is somewhat indistinct, but it is
23 there coming from left to right and passing through the top end of the Paisley
24 Park lands and seems to be in line with two diagonal lines continuing on as
25 opposed to boxes, and in any event the boxes aren't clearly apparent on that
26 map.

27 A Yes.

28 Q 104But again there's no interrelationship there between the site and any
29 particular junction?

30 A Doesn't appear to be, no.

1 Q 105The proposal as advanced was on the basis of, wasn't advanced on the basis of
2 it having its own intersection with the motorway?

3 A That would appear to be the case, yes.

4 Q 106I think it's common knowledge that there was, at the time, a problem of
5 obtaining sufficient access to the Glenamuck Road. In any event, that would be
6 a matter of negotiation with other landowners. At the time the presentation
7 didn't show sufficient access on to Glenamuck Road?

8 A The presentation that was made by?

9 Q 107By Paisley Park.

10 A Yes, I don't know whether there was any discussion with landowners in Glenamuck
11 Road.

12 Q 108You then go on to say, "even if direct access could be provided on Glenamuck
13 Road, it would be unacceptable due to the substandard nature of the Glenamuck
14 Road and the amount of traffic proposed by the development." If I might ask
15 you there, there was to be development abutting the Glenamuck Road on the
16 Grimes land?

17 A There was, and this was a proposal, if I remember rightly, to run a road from
18 Glenamuck Road to Ballyogan through those lands.

19 Q 109And the Grimes land, I think, arises in the same meeting. If I might bring you
20 to page 446. Now I think the history of the Grimes land isn't very clear from
21 the manager's report, but if I might just go through the report on the Grimes
22 land.

23

24 "Having regard to the many representations in relation to these lands and the
25 motions relating thereto, it is considered that industrial developments on the
26 lands could be accommodated without undue detriment to the amenities of the
27 adjoining residential development." Is one to accept from the fact that there
28 were many representations and motions, that there was something contentious
29 about the proposal in relation to the industrial zoning of the Grimes land?

30 A The Grimes land was zoned industrial. It was then recommended to be

1 residential and then went back again to industrial and I think probably still
2 is industrial. Yes, there was. Yes, I think there was some contention, some
3 of the neighbours living on Glenamuck Road.

4 Q 110And --

5 A But that's memory now coming from the back of beyond almost, you know?

6 Q 111But in relation to that, here we have on effectively the same side of the

7 motorway, still no certainty about the junctions on the motorway, it is

8 acceptable to zone the Grimes lands for industrial?

9 A Grimes land was already zoned industrial.

10 Q 112Right. The proposal was residential but it was --

11 A It was already zoned land I think is the issue.

12 Q 113But this context, it was acceptable to maintain the industrial zoning?

13 A Well, it was acceptable to maintain a zoning on the land, yes.

14 Q 114Right.

15 A And industrial was the preference at that point.

16 Q 115And at that point in time, it was zoned industrial and its access was on to the

17 Glenamuck Road?

18 A Its access was onto the Glenamuck Road, but my memory, and I see it's referred

19 to in this report, there was a proposal which linked it through to the

20 Ballyogan Road.

21 Q 116But that again would be dependent on local road developments --

22 A No -- I would have thought --

23 Q 117It's uncertain --

24 A I don't know at this stage but I would have thought that that would have formed

25 any part of any grant of planning permission on the lands.

26 Q 118And in a similar way, would not the Paisley Park lands insofar as suitable

27 roads could be subject to similar condition --

28 A Yes, but of course there was the overriding issue in relation to the location

29 of those lands in terms of the development in the Carrickmines Valley.

30 Q 119Well, that was back to the 1990 --

1 A That was back, yes. That's correct, yes.

2 Q 120What I'm simply establishing is on the same side of the motorway the Grimes

3 land was zoned industrial, so that if approaching Paisley Park this was not

4 going to be the first industrial zoning on this side of the motorway?

5 A But it would have been the first industrial zoning on that side of the motorway

6 and on the other side, if you like, of Glenamuck Road.

7 Q 121Right. But not -- it wasn't the first breach of the motorway line?

8 A Oh good Lord, no. No, no.

9 Q 122And you then go on, "The western portion of the site is unsuitable for

10 industrial development due to steep contours and the exposed nature of that

11 part of the site."

12

13 I think again in book 1, there's a photograph of the site and I just wonder in

14 relation to this observation, whether it's, you know, a star point or whether

15 it's an argument point that gets 1 out of 10 or 8 out of 10. If we might look

16 at the photograph at page 341 of book 1. And if we might look at the boundary

17 of the Paisley Park lands, effectively comes from the right hand bottom corner

18 along the hedge as it is there, through the centre of the map, isn't that --

19 would that be your understanding?

20 A I don't know, I wouldn't know what the boundary of Paisley Park lands is other

21 than on a map so you'll have to take me through this photograph to show me.

22 Q 123Well, if we could look at this move in the context maybe of a map on page 342.

23 If you look at 342 first. You see starting at the bottom that there are a

24 series of one, and moving towards the left there's one, two, three, four, five

25 fields within the red dividing it in half. And I think -- are you able, from

26 the map on the screen, to correlate?

27 A I can see the fields, yes.

28 Q 124You can see the field structure, and the western portion of the site would be

29 down in the lower right hand corner of the photograph.

30 A Yes.

1 Q 125And I know that photographs can be deceptive?

2 A Very deceptive.

3 Q 126Can be very deceptive, but in relation to that wasn't the site, in terms of its

4 entirety, present as a reasonably level site?

5 A Yes. There's a clearly a falling of the site on the left-hand side of the

6 site, it's falling down. I can't get a full impression of the way it's falling

7 on the right-hand side from the photograph and the map, you can't see contours

8 on that map. But --

9 Q 127If we might go to -- would you generally accept that so far as the photograph

10 can show --

11

12 MR. QUINN: I don't wish to interrupt My Friend's examination of this witness,

13 but I'm not sure that this is an appropriate line of examination for the County

14 Manager as to whether or not on a photograph the lands appear level or

15 otherwise.

16

17 CHAIRMAN: I would agree with you.

18

19 MR. O'DULACHAIN: Well --

20

21 CHAIRMAN: I know the counsel is trying to illustrate a point but I think we

22 have got the message sometime ago.

23

24 MR. O'DULACHAIN: In relation to the point, would you accept that I think

25 there was a map on display yesterday which showed the zoning I think in the

26 1993 zoning on page 584 in relation to the Cherrywood science park? I think

27 that's the --

28 A Yes, OK, it's there now.

29 Q 128It's the grey and blue lined area. In relation to that site, would you accept

30 that that site has within it parts of the site that are extremely steep?

1 Within the zoning area?

2 A Were you looking at -- what portion of the zoning area, please?

3 Q 129Effectively to the right hand boundary.

4 A This is the edge of the Cherrywood site leading down on to Cherrywood road,
5 that area?

6 Q 130That would be the area and towards the Loughlinstown road.

7 A Yes. It was fairly steep all right, but it wouldn't have been as visible as
8 the other site.

9 Q 131In terms of that zoning, the fact that part of the site was steep didn't
10 prevent it being included within the zoned area?

11 A You are correct in that, yes.

12 Q 132Simply to come back to the Paisley Park report, would you have regarded the
13 observation there in terms of the steepness of the contours on the western
14 portion of that site as being a marginal issue or a major issue?

15 A To me?

16 Q 133To you.

17 A Well, I didn't go out and walk the site before this report was prepared. In
18 looking at the report and trying to be as objective as I can be at this point,
19 I would have said that it was an issue of one of a number of issues. I
20 wouldn't have said it was either major or minor, it was one of a number of
21 issues in the context of a proposal which the council, as far as we were
22 concerned at the time, had decided there was to be no development on that side
23 of the road.

24 Q 134But at this meeting, we, first of all, have the decision which is lost in
25 relation to Paisley Park which is --

26 A That's right.

27 Q 135And that's on a 24-26 vote with one abstention?

28 A Yes.

29 Q 136We then have an application in relation to the lands of Patrick Mooney, which
30 are partly again on this side of the motorway line.

1 A Yes.

2 Q 137And that motion is not passed. In fact, I think, if I might take the Patrick

3 Mooney motion, there were two parts to that motion and in fact the motion was

4 in fact passed, 40-13?

5 A The record shows it was passed, yes.

6 Q 138And part two of the motion was passed 39-15?

7 A Yes.

8 Q 139And that would have been a breach of the previous policy, the pre-publication

9 policy?

10 A Without seeing the map I can't say that, but I mean I am prepared to accept, if

11 that's -- if you are telling me that it did cross the map, I am prepared to

12 accept that.

13 Q 140And then in relation to the Grimes land, this was again, though previously

14 zoned and taking all that in account, there were 46 councillors in favour of

15 the proposal to reinstate the industrial zoning.

16 A Yes, that was in the context of it being residential or industrial and in the

17 context of it being on the other side of the Glenamuck Road.

18 Q 141But the Grimes -- and I think there were then submissions in relation to Eagles

19 Estate, but that's Murphystown Road, Viscount Securities was again a

20 different -- there were various proposals then at that meeting in an attempt to

21 fix the line of the southeastern motorway again, but I think all those were set

22 aside.

23 A It would be seen some of the motions, I am looking only looking at them now,

24 some were agreed and some were passed unanimously, I think at that stage

25 everybody was accepting that the EIS was being prepared.

26 Q 142And then at the next meeting on the 19th June, I think there were a range of

27 motions in relation to zoning on Glenamuck Road, and applications, most of

28 which failed, except there was a proposal in relation to the Leddy lands?

29 A That's right, I see it there.

30 Q 143And in relation to -- that's at page 588, and there were 42 councillors in

1 favour of a rezoning on the Glenamuck Road.

2 A There were, yes.

3 Q 144For residential.

4 A Yes.

5 Q 145So, if Paisley Park is seen in an overview in the context of motions, first of

6 all, as between different developments on or off Glenamuck Road, councillors

7 voted in different ways on different motions. There was no consistency in

8 terms of the numerical voting?

9 A There appears to have not been, and I have no difficulty with that, no

10 difficulty with the council deciding to vote in a particular way.

11 Q 146And what we are -- what I'm concerned to establish is that Mr. Hand's voting on

12 the Paisley Park wasn't an exceptional act in itself in relation to other

13 motions coming up in Glenamuck?

14 A That's correct.

15 Q 147And that a large number of councillors supported the Grimes -- in fact, all of

16 them bar one -- the Leddy lands on Glenamuck in terms of zoning for

17 residential, which was again a breach of the pre-publication policy, was

18 supported by 42 councillors?

19 A That's right.

20 Q 148So that as of the adoption of the plan, we do have as a matter of fact, some

21 industrial zoning and some additional residential zoning on the Glenamuck Road?

22 A That's correct.

23 Q 149As the plan is adopted.

24 A That's correct. I think at that point wasn't it, the plan was being

25 considered, the draft plan was being considered and then subsequently there

26 would have been further displays or a further display.

27 Q 150In terms of the motions and the records of the county council, it's fair to say

28 that the opinions of councillors aren't recorded?

29 A No, the motion -- the way in which the minutes are written just includes the

30 motion, it includes the report but it doesn't in any great, in any extent

1 include the arguments which would have been made at the time.

2 Q 151 And insofar as a councillor is seen to vote in the direction suggested by the
3 county council manager, there's no evidence that that's actually the reason why
4 the councillor votes that particular way?

5 A No, no evidence either way, in any way in this. Indeed, I mean there was 78
6 councillors there at a max. The number of councillors that may have
7 contributed to any one debate certainly wouldn't have been 78. I think that
8 would have been exceptional if 78 people spoke on the same --

9

10 CHAIRMAN: Mr. O'Dulachain, I don't want to interrupt your train of thought at
11 this moment but I think we'll rise for a few moments.

12

13 MR. O'DULACHAIN: I'll be finished in two or three minutes, if that would
14 assist --

15

16 CHAIRMAN: Oh well, by all means proceed without alacrity.

17

18 MR. O'DULACHAIN: Would you accept as a general proposition that in this
19 process of adopting a Development Plan, sometimes it is a choice between
20 options and alternatives, each of which may have a validity?

21 A There may be compromises and there may -- yes, I would agree with that.

22 Q 152 That it isn't in the nature of a judicial nature a decision between necessarily
23 right and wrong?

24 A There were very few black and white decisions, I would agree with that.

25 Q 153 And in terms of just your own experience specifically in relation to the
26 housing end of it and the development, the availability of housing, you took
27 over responsibility for Dun Laoghaire borough or Dun Laoghaire and Rathdown
28 County Council. Did the council itself, notwithstanding all the zoning
29 available, have difficulty in acquiring land for housing?

30 A Yes.

1 Q 154 And in terms of such steps as it did take such as the development, the zoning
2 of Cherrywood by way of example, has that land though zoned for housing back in
3 1993, has that land been developed to its full potential for housing?

4 A Well, I'd have to say that I'm four years retired and I have never once in that
5 period driven into the Cherrywood area. So as to what's happening on the
6 ground there, I can't answer that question.

7 Q 155 Well --

8 A I believe there is housing being developed but I assume it hasn't yet reached
9 its capacity.

10 Q 156 Thank you.

11

12 CHAIRMAN: I propose to rise for 20 minutes but I'd like to know what other
13 people are going -- what other counsel are going to seek an audience, to put it
14 that way.

15

16 MR. BURKE: Mr. Chairman, Members of the Tribunal, I estimate I'll be about
17 15 minutes with this witness after the break.

18

19 CHAIRMAN: Thank you.

20

21 MR. BURKE: Thank you.

22

23 CHAIRMAN: Very good, we'll sit again at about five past 12.

24

25 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

26 AND RESUMED AS FOLLOWS

27

28 CHAIRMAN: Now, Mr. Burke, this is your opportunity that prove that brevity is
29 the soul of wit.

30

1 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. BURKE:

2

3

4 Q 157MR. BURKE: Thank you, Chairman. Sir, I'd like to start which referring to
5 the answer you gave us yesterday in response to Mr. Quinn's 103rd question.

6 You told us about the IDA's reaction to the difficulty that they, the IDA were
7 encountering with the Motorola corporation.

8 Now, first of all, I think I'm correct in saying that was in or about the
9 summer of 1990 , is that correct?

10 A My memory of that particular issue was that it was yes, I believe that the
11 report on the material contravention would have gone to the council in either
12 September or October so the question of the advertisement under the statutory
13 procedure for the material contravention would have been during the summer
14 months, that's correct, of 1990.

15 Q 158This was at a time when we have been told there was an abundance of zoned land
16 in Dublin, isn't that also correct?

17 A That was at a time when?

18 Q 159Working paper number 4?

19 A The working paper would have shown there was an abundance of zoned industrial
20 land in Dublin, yes.

21 Q 160Can you recall even roughly the size of the site that the Motorola
22 corporation --

23 A I can't, sorry I can't. It was a fairly substantial site.

24 Q 161Yes. Well, perhaps, we could refer briefly to page 228 of the brief, that's
25 table number 5, suffices to say, without having to go through any of the areas
26 listed there, none of them were suitable, none of them were attractive to the
27 Motorola corporation, is that correct?

28 A None of them there or, indeed, none of them anywhere were seen as being
29 attractive by the IDA for Motorola.

30 Q 162What was it that led them to want to establish themselves in Swords, do you

1 remember?

2 A Well, I don't, but I suppose when one looks at the situation, they clearly
3 wanted to establish themselves near Dublin airport.

4 Q 163I would have thought so as well.

5 A I would have thought that was the reason.

6 Q 164Now, the Scottish equivalent to the IDA were actively seeking to attract them
7 to Scotland as well?

8 A I think I might have said if it doesn't go to Ireland it would go to Scotland,
9 I probably should have said Scotland as somewhere else. At the time I think
10 the Scottish, I think they were the IDA were extremely aggressive and would
11 have been seen, I believe, as the main competitor to Ireland in terms of the
12 incentives given to major inward investment, mainly from the states.

13 Q 165Now, the IDA, you explained, asked you to move a Section 4 motion, to use your
14 word "quickly"?

15 A They wouldn't ask me to move a Section 4 motion. Section 4 motions can only be
16 moved by a member of the council. What the IDA wanted was to get -- end up
17 naturally enough with a fairly swift planning decision and in order to get that
18 planning decision, because the land was not zoned for industry, that would have
19 required a material contravention, which was a procedure set down in the
20 Planning Acts which included a public advertisement and there was a period of
21 time set down in the Acts, I can't remember now, and then it would have come
22 back before the council. Like most planning decisions which can be made by the
23 manager and a decision which would materially contravene the Development Plan,
24 and I stress the word "materially contravene" the Development Plan, has to be
25 made by the elected council who act in that respect in a quasi judicial manner.

26 Q 166Yes, and what was the nature of the vote?

27 A It was certainly a very clear majority. I don't have anything before me but I
28 wouldn't be surprised if it was about 60-0 or something like that. It was a
29 very clear acceptance by the council of the need to proceed with this proposal.

30 Q 167Now, I take it, and clearly it goes without saying, that you never considered

1 referring Motorola to working paper number 4 and explaining to them that there
2 was an abundance of industrial zoned land if they want it, they should go
3 elsewhere?

4 A I think we did try to say with the IDA, and I don't remember any direct
5 dealings with Motorola, it was always the IDA, and we did try to persuade the
6 IDA to go elsewhere, to go into some other area where there was zoned land but
7 the answer was no, Motorola want to go in this location.

8 Q 168So, returning then to the 60 or 64 councillors who voted in favour of that,
9 they would have then had a real and actual experience of the necessity then to
10 reevaluate working paper number 4 insofar as it concerned the abundance and
11 surplus?

12 A Well, whatever number it was, it was an overwhelming number of councillors
13 anyway. I am not sure -- again, I have to say I don't have clarity on the
14 precise number, but yes there was a large number of the council who would have
15 been aware of this Motorola experience, yes.

16 Q 169Thank you. Now, at answer 131 yesterday you also made the following statement
17 in more general terms, we have moved away from Motorola. "There was no doubt"
18 you said "that there was an adequate supply of industrial zoned land based on
19 the demands at the time. Now whether that industrial zoned land was in the
20 position where industry wanted to go, that's the issue I suppose." Would you
21 elaborate a little bit on what you meant by that?

22 A Well, I suppose what I meant by that was reflecting what had happened in that
23 particular case in Swords, that despite all the zoned land that was there, in
24 this particular case industry didn't want to go on the zoned land, they wanted
25 to go somewhere else and that, I suppose, would have been a message that we
26 would have been getting from the IDA at the time.

27 Q 170Now, at page 50, there's a statement, Mr. Conway quotes from the Draft
28 Development Plan of 1991 and at paragraph 1112(iii), it's very brief: "Despite
29 the best efforts of the council in association with the industrial development
30 authority, unemployment levels continued to increase, emmigration has reached a

1 high level, though no firm figures are available, industrial activity in terms
2 of new development has declined and there is a considerable amount of vacant
3 floor space in the county."

4

5 Now, without meaning to be disrespectful, that was a somewhat gloomy, almost
6 defeatist attitude, that was beginning to change now, wasn't it, there were
7 other large corporations coming to Dublin?

8 A The 80s, one looks back at the '80s and my eyes were opened again when I read
9 some of those statements which reflect, accurately reflect at the time. The
10 '80s were extremely depressed in terms of economic activity, extremely
11 depressed in terms of the funding available to local authorities and indeed
12 things such as the IDA having to sell their land bank at the time was a fact of
13 life. It was a bad time, economically, in this country.

14 Q 171 What was the effect on the IDA of having to sell their land bank insofar as you
15 were aware from reactions from staff you talked to?

16 A The only effect that I would have been aware of on that was that the IDA were
17 desperate to get their hands on either local authority zoned land or privately
18 zoned land for industry in order to continue their efforts in attracting
19 investment.

20 Q 172 Yes. And yesterday you described a standing meeting you had with the IDA and
21 you recall, "and I very distinctly recall at one of those meetings the IDA
22 making the case for the industrial, additional industrial land to be zoned and
23 to be zoned strategically in relation to the motorway, to the C ring at the
24 time". And then at a later stage you say, "around motorway interchanges for
25 industrial purposes". Who in the IDA, can you recall, was advocating that?

26 A I can't remember, I'd have to see the minutes, which I presume do exist of
27 those meetings.

28 Q 173 Were they fairly senior people?

29 A Very senior.

30 Q 174 Very senior. Thank you. Now, you also said that there were discussions, and

1 you used the word that the IDA addressed issue of seeking advance zoning of
2 land as part of their forward thinking. How far forward was that thinking, can
3 you recollect?

4 A I can't, I'm sorry.

5 Q 175OK. Now, I think it's fair to say that the Development Plans generally,
6 historically, were not brought in on time, and for a variety of reasons they
7 lagged behind so, for example, in certain aspects -- so, for example, the 1993
8 Development Plan, perhaps, because of the time it had taken to come up with it
9 meant it was more or less rooted in the 1980s and not the Dublin that was about
10 to emerge now in the 1990s?

11 A Yes. The working papers that formed the strategic thinking in relation to the
12 plan would have been prepared. I think they were first discussed, my memory
13 now is 1988, so they would have been prepared probably in the two to three year
14 period prior to that, and they would have reflected trends which were in place
15 at the time, that's correct.

16 Q 176And if I can quote my learned Friend Mr. Quinn at question 106 of page 28, he
17 describes the 1983 as being "hopelessly out of date". Would you agree it was
18 in some respects "hopelessly out of date"?

19 A Well, at the time it was formally changed it was 10 years out of date.

20 Q 177Yes.

21 A Which is double the statutory period.

22 Q 178And at questions and answers 320, at sequelae, you explained that you seized
23 upon the Bacon Report in or about 1987 in response to the residential housing
24 shortage?

25 A I don't recall saying I seized upon the Bacon Report. I think what I said in
26 relation to that was that it was very apparent that there was a need for a
27 local authority to react to the housing shortage and that I would have been
28 aware that the government itself was concerned, and that Bacon was about to be
29 appointed, and that subsequently in three Bacon reports, they would have, those
30 Bacon reports would have referred to the particular lands in question.

1 Q 179 Yes, and at question 322 you were asked if that were the case, why not wait
2 until the next review period five years on and make the recommendation at that
3 stage and you answered, "and then what would happen, the services wouldn't come
4 on-stream because there would be nothing to pay for the services, anticipated
5 to pay for the services, and we would be there talking about a housing crisis
6 still as in fact we are".

7 A Yes.

8 Q 180 Now, couldn't the same logic apply for forward planning for business, for
9 rezoning of lands industrial?

10 A Yes, it could and in fact I suppose in a sense that was included in the report
11 that went to the council. It was a forward looking report. It was a report to
12 try and look forward. But the policy makers in the council did not accept that
13 report.

14 Q 181 Yes, we are talking about the October/November 1990 report.

15 A That's correct, they did not accept that report.

16 Q 182 I'm going to come to that in just a moment. Before I do, could I ask you to
17 elaborate why you were surprised that the ERDO report was not more central to
18 working paper number 4?

19 A Em, well I think you have to understand that I was not around at the time when
20 those working papers were either being prepared or being discussed. And when I
21 did look at the working papers recently in connection with preparing a
22 statement, I was at that point surprised that ERDO didn't appear in more detail
23 in the report. But, of course, I shouldn't have been surprised because those
24 working papers would have been prepared prior to the publication of the final
25 ERDO report in 1988. So they pre-dated that ERDO report and I think the
26 reference on the working papers would have been to the fact that the ERDO
27 report hadn't been completed or accepted, and, therefore, there was no
28 strategic guidance for the region as a whole if I recall properly within one of
29 the working papers.

30 Q 183 Yes, but the ERDO report, I would imagine in your opinion, would be of value

1 nonetheless?

2 A Oh, yes, absolutely. There was a lot of blood, sweat and tears would have been
3 put into the ERDO report by Len O'Reilly and his team.

4 Q 184 Thank you. Now, if we look at the October/November 1990 reports I want to
5 focus in particular on the size of the proposal for rezoning at that stage.

6 The IDA had recommended rezoning of sites between 100 to 200 acres and this
7 site, this suggestion here was for a rezoning, I think of 108 acres.

8 A The site you are talking about is which?

9 Q 185 The Paisley Park/Jackson Way/Carrickmines Valley, whatever you want to call it.

10 A The IDA hadn't directly recommended that there should be such a rezoning of
11 lands, but the IDA had given us the procedural strategic desire for
12 strategically placed industrially zoned lands and had given us at some point,
13 and it's in some of the papers that I would have seen, had given us their
14 requirements and I believe the requirements were lands of 100 to 200 acres in
15 extant, flat level lands.

16 Q 186 Yes, indeed. Thank you.

17

18 Now, the following month, that policy, the October/November policy, was
19 derailed, if you like, because --

20 A It was never policy. It was only --

21 Q 187 Well the recommendation.

22 A Yes, it was never policy. Just to be clear on this, the role of the manager in
23 relation to policy is to assist the council in formulating policy and once the
24 council do then decide policy, that's it.

25 Q 188 Oh, I think we all fully understand that.

26 A I am sorry, yes.

27 Q 189 I am trying to look at this in a historical perspective. Now, that motion had
28 the effect of limiting the zoning development to the eastern side of the
29 proposed motorway line and the area of industrial rezoning then was reduced by
30 approximately 76 hectares; isn't that right?

1 A That's the report, yes.

2 Q 190A sizeable reduction.

3 A It's in the report, yes.

4 Q 191Now, there were 21 councillors out of 78, roughly a quarter of council who
5 voted for that reduction, isn't that right?

6 A I would have to, would you tell me what the voting record is --

7 Q 19221 voted in favour of that motion and they were a majority at the time, and I
8 think there were eight abstentions, off the top of my head I can't remember how
9 many against it but it was only roughly a quarter of council who wanted to
10 alter the policy.

11 A Who are present at the time?

12 Q 193Yes.

13 A OK.

14 Q 194Now, the 1992 motion, the June motion, if it had been passed, it would have
15 re-established the October/November position in terms of size; is that correct?

16 A No, it wouldn't have established the October/ November position --

17 Q 195In terms of size?

18 A Because it would only have concentrated on one specific area of land so it was
19 different in that sense. It didn't take a comprehensive view of that
20 particular area.

21 Q 196I'm only focusing, and I signalled it at the outset, I'm only focusing here on
22 size.

23 A Yes, that's true.

24 Q 197In terms of size --

25 A That's correct. That's correct.

26 Q 198Now, we move on. You have confirmed that councillors were not, the word I
27 used, "canvassed" ahead of the 1992 or, indeed, the later 1997 vote. You said
28 that everything was done in the open. Now, as I understand it, you mean the
29 views of the county management team would be ventilated at the relevant
30 meetings by the provisions of reports.

1

2 Wasn't it often the case that councillors would put down a motion in advance to
3 ascertain the views of county management to trigger a report?

4 A I don't quite understand that question. I would have thought a councillor
5 would put down a motion, may have put down a motion to seek a report, yes.

6 Q 199That's what I mean, yes.

7 A That's possible.

8 Q 200And thereby learn what the thinking of county management was in relation to it?

9 A That's quite possible, yes, although I would say at that stage with the 28
10 member council all they had to do was ask the County Manager or the staff and
11 that would have been communicated to them. But it's true, there would on
12 occasions be motions which would be put down looking for a report which would,
13 I suppose, seek to sought out what kind of policy thinking they had.

14 Q 201And certainly in the old council, that was a fairly routine --

15 A Well, the old council was totally different. You couldn't operate with the 78
16 member council in the way that you can operate with a 28 member council.

17 Q 202But it was routine for councillors to ascertain the views by putting down a
18 motion which would trigger a report?

19 A I would have thought so, yes.

20 Q 203And that doesn't necessarily mean that they would necessarily support it
21 because a lot of these motions were then dropped, they withered on the vine
22 when the reports came back out?

23 A I assume that be the case, yes.

24 Q 204Now, you also spoke about seminars, was there a specific seminar to explain to
25 the councillors what the thinking of the county management was in respect of
26 Carrickmines Valley?

27 A No, there wasn't. No, the seminars that I referred to were -- you must
28 remember that the issue in Dun Laoghaire/Rathdown was that not only were there
29 councillors who would have had experience of the old borough but at least those
30 councillors would have also been members of the county council so they would

1 have understood the whole area.

2

3 But there was a marriage of staff at times fraught with different cultures and
4 the need to bring them together and so the seminar served a very useful purpose
5 in that there were seminars on a whole range of issues ranging from housing to
6 roads, environmental services and planning and whatever else was sought. Those
7 were seminars which were designed to explain to the council -- give the
8 councillors background knowledge of what is happening in a way that couldn't be
9 done in the council chamber because of the way in which business was then being
10 done and which also served, as far as I was concerned, as a method of informing
11 staff and of staff development in terms of being able to present things to a
12 meeting which they wouldn't normally be asked to do.

13 Q 205 No specific seminar in respect of Carrickmines Valley?

14 A I don't believe there was, no, I think we would have had a seminar about the
15 planning and development generally but I don't believe there was a seminar
16 specifically on the Carrickmines Valley.

17 Q 206 Very good. I want to move on then to the period after the 1997 vote. County
18 management raised or had raised a number of objections to that vote concerning
19 water, the motorway access, those type of things.

20 A This is the what could broadly be called the O'Halloran lands, is that correct?

21 Q 207 The matter Mr. Finlay brought up.

22 A That's right, yes.

23 Q 208 Now, the motion in January 1998, that, if you like, that patched up the
24 difficulty that the county management had and did have that difficulty?

25 A You see that land in policy terms was on the development side of the motorway
26 so in policy terms there was no issue. In immediate -- in terms of immediacy,
27 there was there were a number of points which were raised, which Mr. Finlay
28 spelled out in some detail yesterday, and I agreed that those were the points
29 that were in the report.

30 Q 209 And you were in favour of it, you recommended it? You say so at answer 438.

1 A No, I didn't recommend it.

2 Q 210 Well -- nothing much turns on that. I'll move on. However it was passed
3 unanimously, wasn't it?

4 A It was passed unanimously -- I didn't either recommend or disagree with it at
5 the time, if I remember the occasion. It was passed unanimously. They
6 emerged -- that motion emerged from a debate in the chamber. That wouldn't
7 have been an unusual occurrence at the time.

8 Q 211 Would you agree, finally then, with the following proposition, that simply
9 because the councillors in 1992 or 1997 voted against what were recommendations
10 coming from county management, that that of itself per se is indicative of
11 corruption?

12 A Absolutely not.

13 Q 212 That would be a ridiculous proposition, wouldn't it?

14 A Well, certainly at the time I certainly wouldn't have even considered that as a
15 possibility. The council is perfectly entitled to vote against any
16 recommendation made by the manager and over the years, that would have happened
17 to me on a number of occasions, I hope not too many, but on a number of
18 occasions.

19 Q 213 Thank you very much, Sir.

20

21 CHAIRMAN: Anybody else want to ask the witness any questions? Mr. Quinn?

22

23 JUDGE MAHON: Mr. O' Sullivan, just to bring you back to some of the evidence
24 that you gave yesterday, when you were talking about the map at 4166, September
25 1990, you were asked about the fact that the junction or interchange had been
26 moved as compared to previous maps and you were asked specifically had there
27 been any discussion in relation to the reasons for the move or as to the
28 necessity for the move or whatever, and I think the answer you gave was that
29 you couldn't recall any discussion?

30 A That's the position, Judge. I certainly wouldn't have remembered at this stage

1 any specific discussion with me. I'm sure discussion had taken place.

2

3 JUDGE MAHON: That's what I want to ask you -- when you said that you couldn't

4 remember, are you saying that there may have been but that you now can't

5 remember it or were you saying that you think there wasn't any discussion?

6 A Oh, perhaps to clarify that, Sir. I would be absolutely certain that there was

7 discussion about that. Now, as to whether I was in any way involved in the

8 discussion, I don't recall and I don't believe that I would have been involved

9 really in the detailed discussion in relation to a drawing or a map. That's

10 all, at that time.

11

12 JUDGE MAHON: Thank you very much.

13

14 JUDGE FAHERTY: Just one query, Mr. O' Sullivan. I think you responded to

15 Mr. Burke that it didn't surprise you that there was no mention of ERDO as such

16 in the working papers because ERDO, I think, the report was 1988; isn't that

17 correct?

18 A The report was in 1998, yes, that's correct.

19

20 JUDGE FAHERTY: I understood from Mr. Conway's evidence that when he was

21 working on the working papers, I think it was from '87 to '89, that was the

22 first, before there was any update, was there any mention of the working papers

23 and the work done mentioned in the ERDO report itself to your knowledge?

24 A Well first of all, I think that the, Mr. Conway's work on the working papers

25 which emerged I think in 1987 or 1988 would have been prior to that period.

26

27 JUDGE FAHERTY: Yes.

28 A I am not aware of anything in the ERDO report but I think you'll have to

29 understand, I don't have a copy of the ERDO report.

30

1 JUDGE FAHERTY: I accept that.

2 A I probably have never opened the ERDO report from 1988 onwards so I don't -- I
3 simply don't know. But I think the ERDO report was very independent of the
4 work that Mr. Conway would have been doing at the time. It was driven by a
5 team which was led by a man called Len O'Reilly who was the Deputy Dublin City
6 and County Planning Officer at the time. And he was seconded to the team in
7 order to do that work.

8

9 JUDGE FAHERTY: Right. I just -- just reading through it on a very superficial
10 basis, I have to say, because we got a copy of it, I just noticed in page, I
11 think it's 4244 of the brief, whatever page of ERDO that is, there's a
12 paragraph in the ERDO thing, "One of the main functions of ERDO as defined in
13 its constitution relates to the coordination of the development plans or draft
14 development plans prepared by local authorities ."

15 A Yes. The regional development organisations were I think set up in the late
16 '60s by government and ERDO would have been one of a number of them, the other
17 one I would have been familiar with through my previous work was called I think
18 Ivernia, which was Cork and Kerry. And they would have had a coordinating
19 brief, not too unlike the intention of the regional authorities which are in
20 place at the moment and presumably not too unlike the brief that the proposed
21 Dublin Mid-eastern Regional Authority will have, which is being proposed at
22 this stage.

23

24 JUDGE FAHERTY: Thanks very much, Mr. O' Sullivan.

25

26 THE WITNESS THEN WITHDREW

27

28 CHAIRMAN: Well that brings to an end, as I understand it, Mr. Quinn, your
29 evidence until two o'clock.

30

00041

1 MR. QUINN: That's correct, My Lord.

2

3 CHAIRMAN: We'll be sitting again at two o'clock sharp.

4

5 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3 REGISTRAR: Is there any appearance by or behalf of Mr. James Kennedy?

4

5 CHAIRMAN: Mr. Gallagher?

6

7 MR. GALLAGHER: Well, it appears that there is no appearance by or behalf of
8 Mr. Kennedy. Would the Tribunal wish me to read the correspondence we have had
9 with Mr. Kennedy's legal representatives?

10

11 CHAIRMAN: I think it would be desirable to read it in principle.

12

13 MR. GALLAGHER: I should say that the Tribunal had correspondence with
14 Mr. Kennedy through his then solicitor Brian Delahunt of Delahunt Solicitors,
15 First National Building, of 357 North Circular Road, Phibsboro. That
16 correspondence commenced in or about the year 2000. And on 19th June 2000, the
17 Tribunal wrote specifically in relation to Paisley Park Investments Limited
18 and/or Jackson Way Properties Limited in the following terms: "Re: Your
19 client, James Kennedy.

20 "Dear Sir, the Tribunal has received information to the effect that substantial
21 monies were paid to elected members of Dublin County Council by or on behalf of
22 Paisley Park Investments Limited and/or Jackson Way Properties Limited for the
23 purpose of securing the rezoning of lands at Carrickmines, being the lands
24 comprised folio 4940 County Dublin, prior to the making of the 1993 Dublin
25 County Development Plan and the current Dun Laoghaire/Rathdown County
26 Development Plan.

27

28 The Tribunal is inquiring into this matter pursuant to paragraph A5 of its
29 Terms of Reference.

30

1 The Tribunal has also received information which, if true, suggests that your
2 client was involved in negotiating the purchase of the lands in question from
3 the former owner, a Mr. Treacy.

4

5 Inquiries by the Tribunal shown that in August 1998 a caution was registered on
6 the folio on behalf of Paisley Park Investments Limited who are described as
7 "contractual purchasers" of folio 4940. That company was registered as full
8 owner on 8th December 1992. The company had been incorporated in the Isle of
9 Man in 1987 and the original holders of the share capital were as follows:-

- 10 1. Maskani Management of 12 Mount Havalock, Douglas.
- 11 2. Renzenbrinck Investment Inc. Via Espana, 112 Bank of Boston Building
12 Panama.
- 13 3. two Xenon Limited of Nabo Building, Tortolla, British Virgin Islands.

14

15 Paisley Park Investments Limited appointed a liquidator in March 1992 following
16 which Jackson Way Properties Limited US registered -- sorry, a UK-registered
17 company was registered as owner of the lands in question.

18

19 The Tribunal has reason to believe that a person or persons who had the
20 beneficial interest in Paisley Park Investments Limited may also have had
21 beneficial interest in Jackson Way Properties Limited.

22

23 The Tribunal is aware that consulting engineering and planning consultants were
24 engaged by or behalf of Jackson Way Properties Limited to forward submissions
25 to Dun Laoghaire/Rathdown County Council setting out reasons why the lands in
26 question should be rezoned. In addition, an architect recently made
27 submissions on behalf of Jackson Way Properties Limited to the council in
28 relation to the lands in question in the context of the Carrickmines Great
29 Action Plan.

30

1 The Tribunal is also aware that part of the lands comprised in folio 4940 has
2 been rezoned.

3

4 In order to assist the Tribunal in its investigations, the Sole Member has
5 asked me to write to you to inquire whether your client, James Kennedy has or
6 had a beneficial interest in:-

7 (a) The lands comprised in folio 4940, County Dublin and/or

8 (b) Paisley Park Investments Limited and/or

9 (c) Jackson Way Properties Limited and/or

10 (d) Maskani Management Limited and/or

11 (e) Renzenbrinck Investment Inc. and/or Xenon.

12

13 If the answer is in the affirmative in relation to all or any of the foregoing,
14 please state:

15 1. The nature of your client's interest in such land and/or company(ies).

16 2. The date when such interest was/were acquired..

17 3. If the interest has been disposed of, when and to whom was such interest(s)
18 disposed of.

19 4. Whether your client, directly or indirectly, and whether on his own behalf
20 and/or on behalf of any persons or person or legal entity gave or provided any
21 monies or benefits to or for an politician(s) and/or any official(s) and/or any
22 other person(s) in relation to the said land and whether in relation to
23 attempts to secure the rezoning thereof of otherwise.

24 5. If the answer to question four is in the affirmative, please furnish full
25 details of all such monies and/or benefits indicating, without prejudice to the
26 generality of this question the following:-

27 A: The name or names of all the parties concerned,

28 B: The money or monies provided and dates thereof,

29 C: The purchase for which such monies and/or benefits were provided,

30 D: The amount or amounts of monies and/or benefits paid of given.

1 I would appreciate if you let me have the information sought by 4 p.m. on 23rd
2 June 2000.

3 Yours faithfully

4 Máire Anne Howard"

5

6 That was replied to on 20th June 2000 by Delahunt Solicitors and they say "Re:
7 Our client, James Kennedy." They refer to other correspondence which doesn't
8 relate to the Carrick I matter. They say "we refer to previous correspondence
9 in relation to the above matter, in particular your letter of 13th June 2000,
10 together with our correspondence prior thereto.

11

12 It in this regard it is respectfully submitted that the matters referred to in
13 your aforementioned correspondence and the copy order enclosed therewith
14 (directed to Mr. McParland and Mr. Sexton of PJ Walsh & Co. Solicitors) Do not
15 come within the provisions of Paragraph A5 of the amended Terms of Reference."

16

17 I should that reply did not relate to Carrickmines lands. But it does indicate
18 that Messrs. Delahunt were acting for Kennedy at that time.

19

20 On 21st of June 2000 that letter was acknowledged by the Tribunal and on the
21 20th of June Messrs. Delahunt furnished a further letter. Their reference
22 BAD/MD to the Tribunal and enclosed a statement of Mr. Kennedy in connection
23 with another matter which is not being dealt with in this module and the letter
24 briefly said as follows:

25 "Without prejudice of our letter of even date herewith statement of James
26 Kennedy (which is furnished to you) also on a without prejudice." Messrs.
27 Delahunt continued to act for Mr. Kennedy at that time.

28

29 That letter was acknowledged.

30

1 On 23rd of June of 2000 Messrs. Delahunt again wrote to the Tribunal in
2 following terms:
3 "We refer to your 19th June 2000", that is the letter I wrote asking for
4 information about the various companies and the lands in Carrickmines and they
5 continued, and I quote:

6 "In this regard Mr. Kennedy has instructed that he neither had nor has a
7 beneficial interest in the lands or companies referred to in paragraphs A-F on
8 the second page of your aforementioned correspondence the matters raised at 1-5
9 thereafter are not applicable. Yours faithfully, Delahunt Solicitors ."

10

11 On 29th January then 2002 the Tribunal wrote to Mr. Brian Delahunt of Delahunt
12 Solicitors in following terms:

13 "Re: Your client James Kennedy.

14 As you are aware the Tribunal is at present carrying out certain confidential
15 preliminary inquiries under Clause A5 of the Terms of Reference (as amended).
16 The Sole Member of the Tribunal has directed me to write to you to request that
17 your client assists the Tribunal in its preliminary investigations in private.

18

19 The Tribunal has received information that your client may have knowledge of
20 substantial payments made to politicians in respect of lands in County Dublin,
21 including but not limited to (a) Lands at Ballyowen, Lucan, County Dublin,
22 arising from your client's statement received under cover of letter dated 9th
23 may, 2000, (b) lands at Carrickmines, Dublin 18 owned by Jackson Way Property.

24

25 The Sole Member is also anxious to receiver your client's assistance in
26 relation to any dealings, direct or indirect, your client may have had with any
27 of the following and/or any land, property, company, partnership or other
28 entity in which he may have had an interest, whether director or indirect ."

29

30 The letter then sets out the names of 18 individuals and one particular family

1 are mentioned in that. I don't propose to name them here because they are not
2 all concerned with the Carrickmines module that we are dealing with at the
3 moment.

4

5 "The Sole Member is anxious that your client would meet with members of the
6 Tribunal legal team at the earliest possible opportunity. Accordingly I have
7 been directed to request that your client attend at the Tribunal's office on
8 5th February 2000 at 2.30 p.m. to explore what assistance, if any, your client
9 may be in a position to give to the Tribunal.

10

11 I would appreciate if you would telephone me on receipt of this letter to
12 indicate whether your client is prepared to meet members of the Tribunal's
13 legal team for this confidential interview. your client may, of course, be
14 accompanied to the meeting by yourself or any other legal advisor(s) if so
15 desired."

16

17 then there is reference to confidentiality of the correspondence.

18

19 On 13th January 2002 Messrs. Delahunt confirmed they forwarded the
20 correspondence to Mr. Kennedy and on receipt of instructions would revert to
21 the Tribunal.

22

23 The Tribunal wrote a reminder on 1st February 2002 and on 5th February 2002
24 Messrs. Delahunt acknowledged receipt of that letter and said:

25 "As we do not have instructions we forwarded a copy of your correspondence
26 under reply to Kennedy. Upon receipt of our instructions we shall revert
27 further to you."

28

29 On 26th February then Triay; T-R-I-A-Y: Triay and Triay barristers/solicitors
30 of 28 Irish Town, Gibraltar wrote to the Tribunal in following terms:

1 "We have been instructed by James Kennedy who has received your letter of 29th
2 January requesting his assistance in the Tribunal's enquiries in certain
3 transactions set out in that letter. Mr. Kennedy has taken up residence in
4 Gibraltar and is no longer either resident or domiciled in Ireland. he has
5 renounced his Irish nationality. He has been suffering or ill health and for
6 this and other personal reasons, principally his desire to maintain privacy and
7 not to prejudice his own or family's personal security. He is, we regret,
8 unwilling to accede to your request that he attend at a meeting with the
9 Tribunal's legal team.

10

11 In any event, we are instructed Mr. Kennedy has no knowledge of the matters set
12 out in the letter of request and that he had no dealings, direct or indirect,
13 with any of the individuals cited therein involving any payments to any Irish
14 politicians or public officials.

15

16 We would have be grateful if you would direct any further correspondence to Mr.
17 Kennedy relating to the Tribunal's enquiries to ourselves."

18

19 I should say, perhaps, that among the individuals mentioned in that letter of
20 29th January 2000 were Mr. Liam Lawlor, John Caldwell, Robert Treacy, Martin
21 Bullock, Alan Holland, Rodney Peter Harker, Mr. Frank Dunlop, as well as a
22 number of others. Those individuals will be mentioned in the course of the
23 hearing of the evidence in relation to the Carrickmines lands.

24

25 On 6th March 2002 Delahunt Solicitors wrote to the Tribunal concerning
26 Mr. Kennedy and said as follows:

27 "We refer to previous correspondence in relation to the above. In this regard
28 Triay & Triay barristers/solicitors of 28 Irish Town, Gibraltar have notified
29 us that they are instructed by Mr. Kennedy in this matter and at their request
30 we furnish to them our file of papers."

1

2 Thereafter the Tribunal decided that Mr. Kennedy would be issued with a witness
3 summons requiring him to attend to give evidence to the Tribunal in public. On
4 31st July 2002 a summons was issued to Mr. Kennedy care of Triay & Triay a
5 barristers/solicitors 28 Irish Town, Gibraltar commanding him to attend before
6 the Tribunal in this building on Tuesday, 1st October 2002 at 10.30 in the
7 morning and from day-to-day thereafter until his evidence had been concluded.

8

9 That letter was sent to Triay -- sorry, that summons and letter was sent on
10 31st July 2002. They were asked to confirm that Mr. Kennedy would attend to
11 give evidence and on 17th September Triay & Triay replied:

12 "We have received your letter dated 31st July. Our client's position is as
13 stated in our letter to yourselves of 26th February this year.

14 In any event, the document enclosed with the letter has no extra
15 jurisdictional effect and has no legal consequence in this jurisdiction.

16 Mr. Kennedy will not attend to give evidence."

17

18 And it is, therefore, clear, in my submission, to the Tribunal that Mr. Kennedy
19 knew that the summons had been issued, that it had been received by his
20 solicitors, had considered whether or not he would attend to give evidence as
21 required by the summons and had decided that he would not attend and would, in
22 fact, instruct his solicitors to communicate to the Tribunal the fact that he
23 would not attend as requested. So, I therefore, would submit that Mr. Kennedy
24 clearly had notice of the issuing of the summons or the requirement for him to
25 attend and, as would appear in the correspondence to which I refer in due
26 course, he was kept informed on an ongoing basis of developments at the
27 Tribunal, was furnished with copies of the various documents that were
28 circulated to interested parties.

29

30 On 20th September 2002 the Tribunal wrote to Triay & Triay in the following

1 terms:

2 "We acknowledge receipt of your letter dated 17th September 2002, the contents
3 of which are noted. In early course the Tribunal will conduct an
4 investigation in public into matters affecting a number of persons, including
5 your client.

6 It is noted that he does not propose to attend the public hearing scheduled for
7 first October 2002 has been deferred at present, no date has been fixed for the
8 adjourned hearing. Yours faithfully, Maire Anne Howard. Solicitor for the
9 Tribunal."

10

11 That letter was faxed to Triay & Triay.

12

13 On 24th September 2002 they were again written to by the Tribunal:

14 "Re: Your client Mr. Kennedy" and the terms of the letter were as follows:

15 "I refer to previous correspondence. I note from yours that the 17th inst.

16 that your client will not attend to give evidence at the hearing of the

17 Tribunal notwithstanding the service of the witness summons dated 31st

18 July 2002. I enclose for your information and that of Mr. Kennedy, the

19 relevant legislation governing the establishment and work of this Tribunal.

20 I would draw attention in particular to the provisions of section 1(ii) as

21 inserted by Section 3 of the 1979 Act and I would also draw attention to the

22 Section 4 of the 1997 Act. Within the next six weeks or so, on a date to be

23 announced, the Tribunal will commence hearing evidence in relation to:

24 1: Some successful, some unsuccessful to rezone and/or develop and/or provide
25 services including foul and surface water sewers to lands in County Dublin.

26 2. Your client's dealings with various individuals and companies mentioned in
27 previous correspondence including those mentioned the Tribunal's letters of

28 19th June 2000 and 29th January 2000 to Mr. Kennedy's then solicitors, Delahunt

29 in Dublin. Copies of the letters in question are enclosed for your

30 convenience.

1

2 Among the witnesses who will be called to give evidence before the Tribunal in
3 relation, inter alia, to their dealings with your client and with companies and
4 other legal entities in which he had an interest will be the following.

5 1. John A Caldwell.

6 2. Sam Stanley.

7 3. Robert Treacy.

8 4. Liam Lawlor.

9 5. Frank Finnegan.

10 6. Gerald Charlton, solicitor.

11 7. Ronan O'Siochain, solicitor.

12 8. Patrick Russell, solicitor.

13 9. Brian O'Halloran

14 10. David Galbraith.

15 11. Anthony Monahan.

16 12. Frank Dunlop.

17 13. Sonia Rogers.

18 14. Harry Dobson.

19 15. Charles Duffy.

20 16. Malachy Skelly.

21 17. George Redmond.

22

23 Mr. Dunlop's evidence in relation to your client will include the following:

24 A: At the request of Mr. Caldwell, he met your client at his amusement arcade
25 in Westmoreland Street, Dublin, in January 1991.

26 B: That your client said that they were going to be proposing to rezone the
27 lands known as Paisley Park lands in Carrickmines.

28 C: That your clients said that Paisley Park Investments Limited was an Isle of
29 Man company and that he was beneficial owner thereof.

30 D: That your client said that he was aware that the rezoning of the lands

1 would cost money and that he had been through the process before and already an
2 involvement with Mr. Thomas Hand, a member of Dublin County Council.

3 E. That your client gave Mr. Dunlop £25,000 in cash and that this money was
4 given on the understanding that it would be used by Mr. Dunlop to pay
5 councillors to ensure their support for rezoning of the lands in request. And
6 Mr. Kennedy's instructions to him were to ensure a sufficient number of
7 councillors would vote to rezone the lands.

8 F: That in the event of the lands being rezoned Mr. Dunlop would receive a
9 success fee of £100,000.

10 G: That your client said that Mr. Liam Lawlor had directed Mr. Caldwell to
11 telephone Mr. Dunlop to set up initial meeting. Mr. Lawlor had been very
12 helpful to your client and would continue to be very helpful in the future and
13 that although the rezoning vote was going to be tight, with a bit of help from
14 Mr. Lawlor, they might succeed.

15 H: That your client informed Mr. Dunlop that Mr. Lawlor was involved in
16 Paisley Park and had an interest in it. That Mr. Lawlor also had an interest
17 in other matters, I don't wish to refer to them in public at this stage, and
18 that Mr. Lawlor's interested was registered abroad. That Mr. Kennedy had
19 advised Mr. Lawlor to establish in an offshore entity in which his interest in
20 these properties were registered and that he had told Mr. Lawlor how such an
21 entity could be formed.

22 I: That, in addition to having an interest in Paisley Park lands, Mr. Lawlor
23 had an interest in other matters.

24 G: That in the ensuing years, Mr. Dunlop had a number of meetings with your
25 client in basement offices in Westmoreland Street in Temple Bar Hotel.

26 K: That your client had -- and in the Temple Bar hotel.

27 K: That your client had discussed with Mr. Dunlop a strategy concerning the
28 line of proposed motorway cross lands at Carrickmines.

29 L: That the motion to rezone the lands which had been organised in on your
30 client's behalf was defeated in 1992 and that Mr. Lawlor had been advising and

1 assisting in relation to the strategy and in relation to motion to fix the
2 line of the motorway.

3 M: That the sum of £25,000 received -- that of the sum of £25,000 received
4 from Mr. Kennedy, Mr. Dunlop gave £15,000 to nine councillors for support in
5 the Paisley Park motion.

6 N: That in 1997, Mr. Dunlop entered a new arrangement with your client to
7 endeavour to secure the rezoning of the lands in Carrickmines. Your client
8 agreed Mr. Dunlop pay a success fee of £250,000. It was subsequently agreed
9 by your client commercially zoned land as a success fee.

10 O: That he, Mr. Dunlop, subsequently paid to councillors £10,000 in order to
11 obtain rezoning of part of the Carrickmines lands beneficially owned by your
12 client and others.

13

14 It follows that among the matters to be enquired into in public by the Tribunal
15 would be whether or not your client was involved in bribing or attempting to
16 bribe elected councillors in an effort to secure the rezoning of the
17 Carrickmines lands. Evidence in relation to all these matters will be heard by
18 the Tribunal in public whether your client attends or not. It is obviously in
19 his own interest to attend and to be represented so that he can hear the
20 evidence of the various witnesses, can have an opportunity of cross-examining
21 them in relation to any evidence they may give in relating to him or with any
22 company which he was or is a associate or to give any evidence which he may be
23 able to give to assist the Tribunal in their enquiries.

24

25 If your client persists in his refusal to attend at the Tribunal to give
26 evidence and if he does not apply for limited representation before the
27 Tribunal, the Tribunal will assume that he has no interest in the proceedings
28 and will not include him in the list of persons to be circulated in advance
29 with statements of evidence and documents to be tendered in evidence to the
30 Tribunal at its public sittings.

1

2 Mr. Justice Flood has directed me to request you, in the strongest possible
3 terms, to urge your client to attend to give evidence before the Tribunal.

4

5 Every reasonable effort will be made to facility him to assist and cooperate in
6 the Tribunal in the giving of its evidence and otherwise -- his evidence and
7 otherwise.

8

9 The fact that this letter has been written to you is warning about
10 confidentiality and the amended Terms of Reference of the Tribunal were
11 enclosed. I look forward to hearing from your at your convenience, Marian
12 Howard solicitor to the Tribunal."

13

14 I should say that notwithstanding the warning concerned in that letter, the
15 threat, if you like, that the Tribunal would not continue to furnish documents
16 to Mr. Kennedy unless he applied for representation or give an indication that
17 he would turn up, the Tribunal after the writing of that letter decided to
18 continue to furnish him with material and that will be apparent from the
19 letters I am about to open.

20

21 On 25th September 2002 Triay & Triay wrote to the Tribunal in the following
22 terms: "Thank you for your faxed letter of 24th September in relation to which
23 we will take our client's instructions. Please note that you failed to attach
24 either the legislations referred to in the third paragraph of your letter or
25 correspondence referred to in paragraph number 2. Can we assume that they will
26 be enclosed with the hard copy of your letter?" They were, in fact, enclosed
27 with hard copy of the letter which was sent by DHL to their office in
28 Gibraltar.

29

30 And on one -- sorry, 30th September those attachments were sent, that is the

1 Section 3 of the 1979 Act, Section 4 of the 1997 Act, correspondence to
2 Delahunt Solicitors dated 19th June 2000 and correspondence to the same
3 solicitors of 29th January 2000.

4

5 And on first October, Triay & Triay wrote to Tribunal in following terms: "With
6 reference to your letter dated 24th September 2000, in particular paragraph 1
7 thereof, we repeat the points stated in our letter dated 17th September 2002
8 which was noted by your in your letter dated 20th September 2002. We are
9 instructed that the allegations contained in your letter do not dignify a
10 response."

11

12 On 7th October, the Tribunal wrote to Triay & Triay as follows: "As your
13 client is aware, the Tribunal is inquiring into whether monies were paid or any
14 benefits provided to elected representatives and/or public representatives by
15 any person(s) and, if so, whether such elected representatives and/or officials
16 may have been influenced thereby in the discharge of their duties. These
17 inquiries are conducted pursuant to paragraph A5 of the Terms of Reference of
18 the Tribunal (as amended). You will recently have received a copy of the said
19 Terms of Reference.

20

21 Your client is further aware that the Tribunal has received information
22 regarding two adjoining parcels of land in Carrickmines Great, County Dublin.
23 You will recently have received a copy of map of said lands.

24

25 The Sole Member would now be obliged if your client would provide to Tribunal a
26 narrative statements setting out details of any involvement, direct or
27 indirect, on his own behalf or any behalf of any person had with these lands.

28 In addition, the Sole Member would require that your client provide details of
29 any benefit made at any time to A any elected representative and B any public
30 officials."

1

2 Then there is the usual warning about confidentiality.

3

4 On 23rd October, the Tribunal wrote to Triay & Triay to tell them that the
5 Tribunal would sit on Wednesday 30th October 2002 to hear applications for
6 legal representation and advising them that if they wish to apply for such
7 representation, they should attend at 10.30 a.m. in this building on that date.

8

9 On 1st November 2002, the Tribunal forwarded to Triay & Triay a CD-Rom
10 containing a brief of the documents in respect of the Carrickmines Module 1.
11 And also informing them that the statements were furnished to the Tribunal at
12 the request of Tribunal members and drawing their attention to various tabs and
13 other matters in the letter. "Your client is free at all times to make an
14 application for legal representation at a public hearing of the Tribunal at the
15 Print Works, Dublin Castle, Dublin 2.

16

17 Please note that it is anticipated that the hearing of evidence in this module
18 will commence on a date to be fixed or in or around the second week in
19 November." And a warning about the confidentiality follows.

20

21 On 6th November 2002, Ms. Maire Anne Howard wrote on behalf the Tribunal to
22 Triay & Triay informing them that public hearings to investigate the
23 Carrickmines 1 matter would commence on Wednesday, 20th November 2002. And she
24 continued: "As I have explained in previous correspondence, the Carrickmines 1
25 investigation is the first in a series of investigations into decisions to
26 rezone lands in or around Dublin. Therefore prior to the calling of evidence,
27 Counsel to the Tribunal will deliver an opening statement relating to the
28 rezoning enquiry generally following by an opening statement relating to
29 Carrickmines 1 enquiry.

30

1 I will let you have a schedule of witnesses showing the order of which it is
2 proposed to call witness as soon as possible. I can confirm at this time that
3 the first witnesses to be called will be Ms. Sinead Collins, Mr. Richard
4 Cremmins, and Mr. Enda Conway."

5

6 On 7th November 2000, the Tribunal then wrote and enclosed further
7 documentation for inclusion in the brief. Again, it wrote on 11th and on 14th
8 September -- sorry, November enclosing additional material for the brief.
9 Further material was furnished to Triay & Triay on 15th November 2000 and on
10 same day, the 15th November 2002, the Tribunal wrote in the following terms:
11 "Re: Your client Mr. James Kennedy. Enclosed is a proposed schedule of
12 witnesses for the first four weeks of the Carrickmines 1 public enquiry
13 commencing on Wednesday, the 20th November 2002.

14

15 As the Tribunal is unable to predict with accuracy the duration of evidence of
16 any witness, (particularly those who will be subject to cross-examination
17 and/or re-examination by their own legal representatives), the attached is an
18 indication on the date in which the Tribunal anticipates a witness will
19 commence and finish his or her evidence. I will write to you further if there
20 is any indication of any change in the attached schedule. I will also be
21 writing to you when the next part of the schedule or Carrickmines 1 enquiry is
22 available."

23

24 That schedule of witnesses showed that Mr. Frank Dunlop and Mr. James Kennedy
25 were to be called to give evidence on today, Thursday, 12th December 2002.

26

27 On 18th November 2002, the 19th November 2002, 21st November 2002, the Tribunal
28 wrote and enclosed further material for inclusion in the brief.

29

30 On 21st November 2002, an additional letter enclosing documentation numbered 3731

1 and 3784 comprising folder 9 of the brief, the Tribunal also forwarded on that
2 a further witness schedule showing Mr. Dunlop and Mr. Kennedy were listed to
3 give evidence to the Tribunal today.

4

5 A further witness schedule was forwarded to Triay & Triay on behalf of
6 Mr. Kennedy on 22nd November 2002 showing Mr. Dunlop and Mr. Kennedy were to
7 give evidence on today's date. That was sent both by fax and by courier.

8

9 A further witness schedule was furnished to Triay & Triay on 27th November 2002
10 and that updated witness schedule showed that Mr. Kennedy, the taking of
11 Mr. Kennedy's evidence had been specially fixed for 2 p.m. today.

12

13 On 26th November, further material was furnished to Triay & Triay for inclusion
14 in the brief and was faxed to that firm. Further correspondence on 26 and 27th
15 November from the Tribunal to Triay & Triay and on the 29th November an updated
16 schedule showing that the taking of Mr. Kennedy's evidence had been specially
17 fixed for 2 p.m. today was forwarded, together with a copy of the statement of
18 the evidence of Mr. O'Sullivan and Mr. Drumgoole.

19

20 Further material was furnished on third December 2002 by the Tribunal to Triay
21 & Triay for inclusion in the brief. And further material was furnished on 4th
22 December, two letters, 5th December, one letter -- sorry, two letters.

23

24 That is all the correspondence to date with those solicitors. The Tribunal has
25 not had any communication from the solicitors since 1st October 2002, but it
26 is, in my respectful submission to the Tribunal, clear that Mr. Kennedy had
27 knowledge of the issuing of the witness summons, had taken a decision not to
28 attend here today. He has been kept informed at all times of what is happening
29 at the Tribunal, has been furnished with the documents which are being issued
30 to witnesses and interested parties on an almost daily basis, and yet he has

1 not attended as he was required to do by the summons. He did, of course,
2 contend that the summons had no jurisdiction. That is a matter the Tribunal
3 will have to consider and decide whether it wishes to take any further legal
4 steps or not. It may be that the Tribunal would wish to take some time to
5 consider the position that has now arisen and what steps it should take in
6 relation to Mr. Kennedy arising from his non-attendance today.

7

8 I would remind the Tribunal that in dealing with witnesses relating to an
9 earlier module, the Tribunal did apply to the High Court for relief and for
10 orders which were, in fact, made. Whether the Tribunal wishes to do so in the
11 circumstances of this case of course is a matter entirely for the Tribunal.

12

13 CHAIRMAN: Mr. Gallagher, the situation is that it is manifestly clear that
14 there is no cooperation or intent to cooperate with the Tribunal. Every
15 information has been forwarded to this man. I think the only thing we can do
16 now is consider what further, if any, steps we are going to take. He is
17 clearly not cooperating with the Tribunal and is in breach of all the statutes
18 so far as they relate to this country. We will have to think about matters,
19 how we will take further steps as to whether there is anything to be obtained
20 by taking those steps.

21

22 I will adjourn the matter to further mention sometime next week.

23

24 MR. GALLAGHER: Thank you. Would you say 10.30 in the morning?

25

26 CHAIRMAN: 10.30 tomorrow morning.

27

28 MR. GALLAGHER: Mrs. Kennedy is to give evidence at 10.30 tomorrow morning.

29

30 CHAIRMAN: 10.30 tomorrow morning.

1

2 MR. GALLAGHER: Thank you.

3

4 CHAIRMAN: There is no other witness today?

5

6 MR. GALLAGHER: No.

7

8 CHAIRMAN: 10.30 tomorrow morning.

9

10 MR. GALLAGHER: Clearly we didn't know whether Mr. Kennedy was going to turn

11 up or not, if he did his evidence almost certainly would not have concluded to

12 the -- it would have gone into tomorrow.

13

14 CHAIRMAN: So be it.

15

16 MR. GALLAGHER: Thank you.

17

18 CHAIRMAN: Thank you.

19

20 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

21 FRIDAY, 13TH DECEMBER 2002 AT 10.30AM.

22

23

24

25

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