

TRIBUNAL OF INQUIRY
INTO
CERTAIN PLANNING MATTERS AND PAYMENTS

AMENDED TERMS OF REFERENCE

(Appointed by Instrument of The Minister for the Environment and Local Government dated the 4th day of November 1997 and as amended by Instruments dated the 15th day of July 1998, 24th day of October 2002, 7th day of July 2003 and 3rd day of December 2004)

“That Dáil Éireann resolves

- A. That it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Act, 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, to inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it see fit, in relation to the following definite matters of urgent public importance:
1. The identification of the lands stated to be 726 acres in extent, referred to in the letter dated 8th June, 1989 from Mr. Michael Bailey to Mr. James Gogarty (reproduced in the schedule herewith) and the establishment of the beneficial ownership of the lands at that date and changes in the beneficial ownership of the lands since the 8th June, 1989 prior to their development;
 2. The planning history of the lands including:-
 - (a) their planning status in the Development Plan of the Dublin local authorities current at the 8th June, 1989;
 - (b) the position with regard to the servicing of the lands for development as at the 8th June, 1989;
 - (c) changes made or proposed to be made to the 8th June, 1989 planning status of the lands by way of:-
 - (i) proposals put forward by Dublin local authority officials pursuant to the review of Development Plans or otherwise;
 - (ii) motions by elected members of the Dublin local authorities proposing re-zoning;
 - (iii) applications for planning permission (including any involving a material contravention of the Development Plan);
 3. Whether the lands referred to in the letter dated 8th June, 1989 were the subject of the following:-
 - (a) Re-zoning resolutions;
 - (b) Resolutions for material contravention of the relevant Development Plans;
 - (c) Applications for special tax designations status pursuant to the Finance Acts;
 - (d) Applications for planning permission;
 - (e) Changes made or requested to be made with regard to the servicing of the lands for development;
 - (f) Applications for the granting of building by-law approval in respect of buildings constructed on the lands;
 - (g) Applications for fire safety certificates;

on or after the 20th day of June 1985.

And

- (i) to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;
 - (ii) to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above.
 - (iii) to ascertain the identity of all public officials who considered, made recommendations or decisions on any such matters and to report on such considerations, recommendations and/or decisions;
 - (iv) to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority.
4. (a) The identity of all recipients of payments made to political parties or members of either House of the Oireachtas, past or present, or members or officials of a Dublin local authority or other public official by Mr. Gogarty or Mr. Bailey or a connected person or company within the meaning of the Ethics in Public Office Act, 1995, from 20th June 1985 to date, and the circumstances, considerations and motives relative to any such payment;
- (b) whether any of the persons referred to at sub-paragraphs 3(ii) and 3(iii) above were influenced directly or indirectly by the offer or receipt of any such payments or benefits.
5. In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process ~~committed on or after the 20th June, 1985~~^[1] which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvement of existing legislation governing corruption in the light of its inquiries.
6. And the Tribunal be requested to make recommendations in relation to such amendments to Planning, Local Government, Ethics in Public Office and any other relevant legislation as the Tribunal considers appropriate having regard to its findings.

“payment” includes money and any benefit in kind and the payment to any person includes a payment to a connected person within the meaning of the Ethics in Public Office Act, 1995.

- B. And that the Tribunal be requested to conduct its inquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979:-
- (i) to carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to any of the matters referred to above to warrant proceeding to a full public inquiry in relation to such matters,
 - (ii) to inquire fully into all matters referred to above in relation to which such evidence may be found to exist, dealing in the first instance with the acknowledged monetary donation
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debated in Dáil Eireann on the 10th September, 1997 Dáil Debates Columns 616-638 and to report to the Clerk of the Dáil thereupon,

- (iii) to seek discovery of all relevant documents, files and papers in the possession, power or procurement of said Mr. Michael Bailey, Mr. James Gogarty and Donnelly, Neary and Donnelly Solicitors,
- (iv) in relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil,
- (v) to report on an interim basis not later than one month from the date of establishment of the Tribunal or the tenth day of any oral hearing, whichever shall first occur, to the Clerk of the Dáil on the following matters:

the number of parties then represented before the Tribunal;

the progress which has been made in the hearing and the work of the Tribunal;

the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;

any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference).

C. And that the person or persons selected to conduct the Inquiry should be informed that it is the desire of the House that –

- (a) the Inquiry be completed in as economical a manner as possible and at the earliest date consistent with a fair examination of the matters referred to it, and, in respect to the matters referred to in paragraphs 1 to 4 above, if possible, not later than the 31st December, 1997, and
- (b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

D. And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt.

E. The Tribunal shall, in addition to the matters referred to in paragraphs A(1) to A(5) hereof, inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it sees fit, in relation to the following definite matters of urgent public importance:-

1. Whether any substantial payments were made or benefits provided, directly or indirectly, to Mr. Raphael Burke which may, in the opinion of the Sole Member of the Tribunal, amount to corruption or involve attempts to influence or compromise the disinterested performance of public duties or were made or provided in circumstances which may give rise to a reasonable inference that the motive for making or receiving such payments was improperly connected with any public office or position held by Mr. Raphael Burke, whether as Minister, Minister of State, or elected representative;
2. Whether, in return for or in connection with such payments or benefits, Mr. Raphael Burke did any act or made any decision while holding any such public office or position which was intended to confer any benefit on any person or entity making a payment or

providing a benefit referred to in paragraph 1 above, or any other person or entity, or procured or directed any other person to do such an act or make such a decision.

And that the Tribunal be requested to conduct its Inquiries in the following manner to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts 1921 to 1998:-

- (i) To carry out such preliminary investigations in private as it thinks fit (using all the powers conferred on it under the Acts), in order to determine whether sufficient evidence exists in relation to any of the matters referred to in paragraphs E1 and E2 above to warrant proceeding to a full public inquiry in relation to such matters;
- (ii) To inquire fully into all matters referred to in paragraphs E1 and E2 in relation to which such evidence may be found to exist;
- (iii) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a full public inquiry, to report that fact to the Clerk of the Dail and to Report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dail shall thereupon communicate the Tribunal's report in full to the Dail;
- (iv) To report on an interim basis to the Clerk of the Dail on the following matters:-
the number of parties then represented before the Tribunal;
the progress which has been made in the hearing and the work of the Tribunal;
the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;
any other matters which the Tribunal believes should be drawn to the attention of the clerk of the Dail at that stage (including any matter relating to the terms of reference);
and to furnish such further interim reports as the Tribunal may consider necessary.

F. And that the Sole Member of the Tribunal should be informed that it is the desire of the House that:-

- (a) The inquiry into the matters referred to in paragraph E hereof be completed in as economical a manner as possible and at the earlier date consistent with a fair examination of the said matters, and
- (b) All costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

G. And that the Clerk of the Dail shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt.

H. The Tribunal shall consist of not more than three Members as follows:

- (a) His Honour Judge Alan Mahon and Her Honour Judge Mary Faherty who were appointed by instrument made on the 24th October, 2002 by the Minister for the Environment and Local Government pursuant to the Tribunals of Inquiry (Evidence) Acts, 1921 to 2002, and
- (b) His Honour Judge Gerald Keys, from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 by the Minister for the Environment, Heritage and Local Government.

I. His Honour Judge Alan Mahon shall be the Chairperson of the Tribunal from a date to be specified by instrument made pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2002 by the Minister for the Environment, Heritage and Local Government.

J.

- (1) The Tribunal shall, subject to the exercise of its discretion pursuant to J(6) hereunder, proceed as it sees fit to conclude its inquiries into the matters specified below (and identified in the Fourth Interim Report of this Tribunal) and to set out its findings on each of these matters in an interim report or reports or in a final Report:
 - (a) The Carrickmines I Module;
 - (b) The Fox and Mahony Module;
 - (c) The St.Gerard`s Bray Module;
 - (d) The Carrickmines II Module and related Issues;
 - (e) The Arlington/Quarryvale I Module;
 - (f) The Quarryvale II Module;
 - (g) Those modules that are interlinked with the modules set out at paragraphs (a) to (f), and that are referred to in paragraph 3.04 of the Fourth Interim Report of the Tribunal.
- (2) The Tribunal shall, subject to the exercise of its discretion pursuant to paragraph J(6) hereunder, by 1 May 2005 or such earlier date as the Tribunal shall decide, consider and decide upon those additional matters (being matters in addition to those set forth at J(1)(a) to (g) above and in respect of which the Tribunal has conducted or is in the course of conducting a preliminary investigation as of the date of the decision) that shall be proceeding to a public hearing and shall record that decision in writing and shall duly notify all parties affected by that decision at such time or times as the Tribunal considers appropriate
- (3) The Tribunal may in the course of investigating any additional matter under paragraph J(2) or a matter being investigated under paragraph J(1) investigate any other matter of which it becomes aware when it is satisfied that such further investigation is necessary for the Tribunal to make findings on any such additional matter referred to in paragraph J(1) above.
- (4) Notwithstanding any other provision of these Terms of Reference the presentation to the Clerk of the Dáil of an interim report or reports, as the case may be, and of the Final Report on the matters identified at paragraphs J(1)(a)-(g), J(2) and, where applicable, J(3) shall constitute compliance by the Tribunal with all of its Terms Of Reference, as hereby amended, and no further investigation, or report shall be required of or from the Tribunal on any other matter.
- (5) Nothing in these amended Terms of Reference shall preclude the Tribunal from conducting hearings or investigations into any compliance or non-compliance by any person with the orders or directions of the Tribunal.
- (6) The Tribunal may in its sole discretion - in respect of any matter within paragraphs J(1), J(2) and J(3) of these amended Terms of Reference - decide:
 - (I) To carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to the matter to warrant proceeding to a public hearing if deemed necessary, or
 - (II) Not to initiate a preliminary investigation and/or a public hearing of evidence in relation to the matter notwithstanding that the matter falls within the Tribunal's Terms of Reference, or
 - (III) Having initiated a preliminary investigation in private (and whether or not same has been concluded) but prior to the commencement of any public hearing of

evidence in the matter, to discontinue or otherwise terminate its investigation notwithstanding that the matter falls within the Tribunal's Terms of Reference.

In exercising its discretion pursuant to this paragraph the Tribunal may have regard to one or more of the factors referred to below:

- (i) The age and/or state of health of one or more persons who are likely to be in a position to provide useful information (including, but not confined to, oral evidence to be given privately or publicly), including the age and/or likely state of health of any such person at such date in the future when that person or persons might be expected to be called upon to give oral evidence or to otherwise cooperate with the tribunal, and in particular the issue as to whether or not their age and/ or state of health is or is likely to be an impediment to such person being in a position to cooperate with the Tribunal or to give evidence to the Tribunal in private or in public;
 - (ii) The likely duration of the preliminary investigation or public hearing into any matter;
 - (iii) The likely cost (or other use of the resources of the Tribunal) of such investigation or any stage of the investigation into any matter;
 - (iv) Whether or not the investigation into the matter is likely to provide evidence to the Tribunal which would enable it to make findings of fact and conclusions and/or to make recommendations;
 - (v) Any other factors which in the opinion of the Tribunal would, or would be likely to, render an investigation, or the continued investigation into any matter inappropriate, unnecessary, wasteful of resources, unduly costly, unduly prolonged or which would be of limited or no probative value.
- (7) Subject to paragraph J(3) any matter not brought to the attention of the Tribunal or of which it is not aware by the 16th day of December 2004 shall not be the subject of any investigation by the Tribunal.

SCHEDULE

Kilinamonan House,
The Ward,
Co. Dublin.

8th June, 1989.

Dear Mr. Gogarty,

PROPOSALS FOR DISCUSSION

Re: Your lands at Finglas, Ballymun, Donabate, Balgraffin and Portmarnock, Co. Dublin.

I refer to our many discussions regarding your following six parcels of land:-

Lot 1: 100 acres (approx) at North Road, Finglas, including "Barrett's Land".

- Lot 2: 12 acres (approx) at Jamestown Road, Finglas.
 Lot 3: 100 acres (approx) at Poppintree, Ballymun.
 Lot 4: 255 acres (approx) at Donabate (Turvey House and Beaverton House).
 Lot 5: 250 acres (approx) at Balgriffin.
 Lot 6: 9 acres (approx) at Portmarnock.

I submit the following proposals for your consideration:-

PROPOSAL NO. 1 – Purchase Proposal

- Lots 1, 2 and 3 Purchase Price £4,000 per acre
 10% deposit payable on the signing of the contract
 Completion 1 year from date of contract.
- Lot 4 Purchase Price IR£1 Million
 Deposit 10% on contract
 Completion 2 years from date of contract.
- Lot 5 Purchase Price IR £750,000
 Deposit 10% on contract
 Completion 3 years from date of contract.
- Lot 6: Option to be granted for nominal consideration (£100.00) for a period of 2 years at a purchase price of £30,000.00 per acre.

PROPOSAL NO. 2 – Participation Proposal

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 As an alternative to the outright purchase proposal above I am prepared to deal with Lots 1 – 5 (inclusive) above on the basis that I would be given a 50% share in the ownership of the said lands in exchange for procuring Planning Permission and Building Bye Law Approval. The time span which I would require to be allowed to obtain the Permissions and Approval and my anticipated financial expenditure (apart from my time input) in respect of the different lots would be as follows:-

Lots 1, 2 and 3

-
 A period of 2 years within which to procure a buildable Planning Permission and Building Bye Laws Approval for mixed development including housing, industrial and commercial.

My financial expenditure up to a figure of £150,000 (to include Architect’s fees, Consulting Engineer’s fees, Planning and Bye Law charges etc.).

Lots 4 and 5

-
 Time requirement – 3 years.

Financial
 Expenditure - up to £150,000

In considering the above proposals the following points of information should be borne in mind by all parties:-

- From the point of view of obtaining Planning Permission the entire lands 1-6 inclusive) have the following shortcomings:-
 NO zoning for development purposes
 NO services.

NO proposal in current draft development plans (City and County) for the zoning of the lands or any part thereof for development purposes.

2. We face a very severe uphill battle to arrange for the availability of services and for the ultimate procurement of Planning Permission.
3. The steps to be taken on the way to procuring a buildable Planning Permission and Building Bye Laws Approval are notoriously difficult, time consuming and expensive. Material Contravention Orders must be obtained and this involves their procurement of a majority vote at 2 full Council Meetings at which 78 Council Members must be present and it also involves satisfactory compliance with extensive requirements and pre-conditions of the Planning Authority and the inevitable dealing with protracted Appeals to An Bord Pleanala.
4. It is essential that the Planning Application should be brought in the name of an active house building company which enjoys good standing and good working relationship with the Planners and the Council Members and in this regard I confirm that in the event of our reaching agreement regarding the within proposals that all Planning Applications would be made by one of my Companies which meets the said requirements.
5. In the case of all of the lands the applications will be highly sensitive and controversial and we can realistically expect strenuous opposition from private, political and planning sectors. One of my active companies will have to take the limelight in such applications and withstand the objections and protests which will inevitably confront it. Apart from the anticipated financial expenditure as outlined above it should be borne in mind that I will personally have to give extensively of my time and efforts over the entire period of the applications including the necessary preliminary negotiations in regard to services and zoning. It must be borne in mind that I will have to abandon other projects which would be open to myself and my companies in order to give proper attention to this project. If I am successful in changing your lands from their present status of agricultural lands with very limited potential even for agricultural use into highly valuable building lands I would have to be rewarded with a minimum 50% stake in the ownership of the lands. Our advisors would have to work out the details as to how this can be effected in the most tax efficient manner.

I look forward to hearing from you in relation to the above proposals. In the case of the first proposal which relates to the outright purchase of the lands (excluding Lot 6) I would not be adverse to a proposal which would involve the vendors retaining a participation stake of up to 20% in the purchasing company if you felt that an ongoing interest in the future development of the lands would be more acceptable to the present owners.

Yours sincerely,

MICHAEL BAILEY,

Mr. Jim Gogarty,
Clontarf,
Dublin 3.

[1] Deleted by resolution of Dail Eireann.
