

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 10.30 AM ON TUESDAY,
2 14TH OCTOBER, 2003:

3

4 CHAIRMAN: Morning Mr. Gallagher.

5

6 MR. GALLAGHER: Morning Sir.

7 A. Morning Mr. Gallagher.

8

9 MR. GALLAGHER: Mr. Caldwell on Friday last, I read into the record your
10 narrative statement, dated the 20th of November, 2002 and whilst you didn't in
11 any way take issue with anything that was contained in that and by that, I
12 assume, you agree and didn't want to correct anything other than you might have
13 corrected on Friday last. I would ask you if you can formally confirm that
14 this is the evidence on oath which you wish to give to the Tribunal in relation
15 to the matters contained in that statement

16 A. Yes. In relation to the matters contained in the statement, the statement was
17 prepared based on recollections at the time and also based on documents that
18 were available at that time. Insofar as some additional documents may have
19 come into my possession since then, there may be some elaboration that can be
20 made to the statement, but otherwise the core of the statement is correct.

21 Q.1 I am aware of that, for example, a declaration executed by Mr. Bullock in the
22 fairly recent past, within the last year or so, has since come to hand and was
23 faxed to the Tribunal's office yesterday and I will formally put it to you very
24 shortly.

25 A. Yes.

26 Q.2 Just for -- completeness.

27

28 You have explained in your statement and indeed in the letter of the 30th of
29 January of 2002 from Miley & Miley to the Tribunal, how you became involved
30 with Mr. Kennedy in the Carrickmines lands and you have spoken there and indeed

1 you have given evidence about the funding of those -- purchase of those lands.

2 A. Yes I have.

3 Q.3 And I don't intend at this stage to get into the, that issue in any greater
4 detail, but I think it is fair to say that this was on your evidence, a 50/50
5 enterprise with yourself and Mr. Kennedy, where certain structures were set-up,
6 corporate structures, whatever one wishes to call them, beneficial holdings,
7 trusts, call them what one will, established involving Mr. Bullock and
8 Mr. Harker and others, Mr. Holland indeed, in order to hold those lands at
9 various times?

10 A. That's correct, Mr. Gallagher. The two people that, two people who would have
11 ultimate economic interest in the property are Mr. Kennedy and myself, through
12 the plethora of structures.

13 Q.4 And that is a 50/50 interest which arises from the fact that you funded the
14 acquisition of this land equally?

15 A. That's correct.

16 Q.5 And it follows I take it that, at the end of the day, whenever that is, both
17 yourself and Mr. Kennedy will benefit equally from the net proceeds of the
18 disposal of any of those lands, and the net proceeds of any compensation claim,
19 etcetera, is that correct?

20 A. I share your sentiments in whatever that day is, but that's correct it will be
21 divided 50/50.

22 Q.6 Yes. Did you visit those lands before they had been purchased?

23 A. Yes, I would have gone out to the lands and seen the lands.

24 Q.7 So you would have literally walked the lands?

25 A. Yes, I -- well I don't specifically have a recollection of that Mr. Gallagher
26 but I would be certain it would be a thing I would have expected myself to do,
27 would be to go and have a look at them, yes.

28 Q.8 So you would have known the location, boundaries, the access or lack of it, the
29 contours generally speaking of the lands, the general area, all salient
30 features of the land?

1 A. I would have looked at it yes, certainly over the years I would have gone out
2 to the land and walked the boundaries of the land at various stages. It may
3 have been just to see whether the trees were cut and something needed to be
4 done in relation to it or whether someone had put cattle on the land and
5 hadn't been authorised to do it.

6 Q.9 Were you aware from the outset, for example, that there was a problem about
7 access?

8 A. In terms -- I was aware that the access into the lands was the golf course lane
9 access into the lands.

10 Q.10 Yes, that was the only access?

11 A. And that was the only access into the land? Yes I was.

12 Q.11 And that in turn connected to Glenamuck Road and that indeed itself was a
13 substandard road?

14 A. I was aware that Glenamuck Road is largely a country road, it is not a major
15 distributor road and that the golf course lane joins that road and I often muse
16 on the possibility of whether or not the cottages which were on the left-hand
17 side of golf course lane leading down to the Glenamuck Road, if they came
18 available for purchase, that they should be purchased to assist in widening the
19 access into the lands at some date in the future.

20 Q.12 But without the acquisition of the lands on the southern side of golf course
21 lane there was, both sides perhaps of golf course lane, there was little
22 prospect of those lands being developed for the foreseeable future?

23 A. Yes, in terms of having a full scale access into them, it was going to be
24 necessary to get a better road in than the existing road that was there and
25 that may have required speaking to the gentleman that owned Inchinogue or it
26 may have been a question of speaking to the owners of the cottages but at some
27 point in time that would have had to be confronted.

28 Q.13 Did you ever do that, speak to those people and ask them to sell you on land so
29 that you could widen Golf Lane and hopefully gain, have a better access to the
30 lands?

1 A. I think in relation to, I think it was Mr. Sands who was Inchinogue, I have no
2 recollection of ever speaking to him about it, but the feeling I had originally
3 from conversations I had with him at some stages in relation to his own
4 interest in the lands, was that he personally wanted to come out of his house
5 in a box, he was not interested in any disposal of his property and was
6 resentful of the fact that the road was interfering with it. On the other side
7 of the road, I may be wrong in this, but I thought that Mr. Mooney may have
8 been the owner of those and I do have a recollection of a conversation with
9 Mr. Mooney or that Mr. Kennedy may have told me he had a conversation with
10 Mr. Mooney, I am not sure on that.

11 Q.14 In any event, no lands were acquired and the position in relation to access
12 remains as of this day, as it was when you first saw the lands in 1988?

13 A. Yes it does, it remains as an agricultural access, yes. Access along golf
14 course lane which is a narrow lane.

15 Q.15 We have seen that on video so we know, it is a lane capable of carrying one
16 vehicle. It's a one vehicle lane of approximately 11 feet wide or thereabouts.

17 A. Yes it is, you have to stop to let other cars pass.

18 Q.16 I take it you knew or established what the position was in relation to water
19 supply onto the lands?

20 A. Well at the -- I was certainly told about the water supply on the lands.

21 Q.17 Who told you about it?

22 A. I think Mr. Kennedy told me.

23 Q.18 What did he tell you?

24 A. That there was a mains water supply running across the lands. As I recollect
25 there was a large Corporation pipe.

26 Q.19 This was the pipe serving Dublin City?

27 A. Yes I believe that's right.

28 Q.20 Did he tell you there was no way the Corporation would permit anybody to
29 connect or tap into that pipe of such importance to the city supply?

30 A. That was not his view in relation to it, that he thought it was possible to tap

1 into it, he may well be wrong in relation to that, but that was his view.

2 Q.21 Did he tell what you inquiries he made that lead him to believe that he would
3 be permitted to tap into that supply?

4 A. No he did not.

5 Q.22 But he believe that had he would be permitted to tap into that supply?

6 A. Yes.

7 Q.23 And I take it as a result of that you believed that you could tap into that
8 supply?

9 A. Yes I -- I wasn't off double checking.

10 Q.24 I take it that in purchasing these lands you anticipated that they were going
11 to be rezoned and they would be capable of being developed and you would sell
12 them on in the manner that has been described in the memo which was referred to
13 last week, that was the memo, the ten year memo, which provided for the sale of
14 it after ten years?

15 A. Yes, the intention of acquiring the lands was to have the lands rezoned or have
16 planning permission obtained for the lands and ultimately to dispose of the
17 lands. It was a property acquisition with a view to realising a gain from it.

18 Q.25 And of course if you succeeded in having the lands rezoned or and/or obtaining
19 planning permission there would be a very substantial gain?

20 A. Yes there would be.

21 Q.26 And as of last week we talked about the possibility of, the possible range of
22 value of the land you, I think you disagreed with me, but it is many many
23 multiples of what was paid for the land?

24 A. As circumstances now stand. At that time I don't think anyone in Ireland would
25 have envisaged the rises in property prices and value of land that has taken
26 place.

27 Q.27 And if we take, just as I said to you last week, if we take the asking price,
28 or anticipated sale price of the adjoining 22 acres owned by Darragh Kilcoyne
29 and Mr. O'Halloran, then the value of your lands could be up to a hundred
30 million Euro?

1 A. I think that's very very much at the top end of the scale, but certainly many
2 multiples of ten million, yes.

3 Q.28 All right. Now, did you know the position in relation to surface water sewage,
4 surface water piping or surface water drainage on the land at that time?

5 A. Well there was a stream at one end of the land and it was, the notion was, that
6 the water would drain into the stream.

7 Q.29 But did you have any engineering advice on that or did you ask any appropriate
8 specialist to advise on the capacity of the stream and the likelihood of the
9 council approving this stream as a method of draining the lands, the surface
10 water from the lands?

11 A. I have no recollection of asking, other than Mr. Finnegan was involved to the
12 extent he was involved. And he had experience at planning and whatever.

13 Q.30 I have to say, subject to correction in that, but I have no recollection of
14 Mr. Finnegan giving evidence that he was asked to advise on the drainage of the
15 land?

16 A. I think you are correct. There is no evidence to that effect.

17 Q.31 So the question I asked you is do you recall consulting any engineer or
18 specialist to advise on the possibility of these lands being drained by surface
19 water sewage, so as to enable the lands to be developed, whether for industrial
20 or residential development or otherwise?

21 A. No I have no recollection of that.

22 Q.32 What was the position in relation to foul sewage drainage on the land in
23 question?

24 A. Mr. Kennedy had said that the foul sewage could initially be dealt with through
25 the Ballyogan Road and that subsequently the Carrickmines Valley sewer would
26 service the lands.

27 Q.33 How did Mr. Kennedy know that the lands could be drained through the Ballyogan
28 sewer?

29 A. I don't know how he knew that, or whether he was correct in that view. But
30 that was his view.

1 Q.34 And what was your knowledge of the council's plans in relation to the
2 Carrickmines Valley sewer?

3 A. I don't believe any more than that, the sewer was planned for the area and that
4 at some stage it was going to cross in that general area. In 19 - when the
5 transaction was going on for the completion of the lands, Mr. Tracey was served
6 with a way leave notice in relation to the construction of the Carrickmines
7 Valley sewer, and that showed the line of the sewer at the time as it affected
8 the lands, to -- in terms of the detail of that, I suppose, in recollection, my
9 recollection would be that that was probably the first time that I had
10 something concrete in relation to that sewer.

11 Q.35 Well before you had something concrete, did Mr. Kennedy tell you that the
12 Carrickmines sewer was to be built and would be laid in a line which would be
13 through or contiguous to the lands in question?

14 A. I can't recollect specific conversation where he said that the sewer was going
15 to run through the lands, but certainly the sewer was going to service the
16 lands, yes.

17 Q.36 Well 'contiguous to' would suggest that the lands could be served by the sewer?

18 A. Yes.

19 Q.37 So I take it that the answer is yes, that you did believe that Mr. Kennedy did
20 tell you that the Carrickmines sewer would be laid through or contiguous to the
21 lands?

22 A. Yes it would be there to service the lands, yes.

23 Q.38 And this of course was a time long before the Carrickmines sewer design was
24 completed and before work actually started on it?

25 A. I don't know when the design was completed Mr. Gallagher. I know that the work
26 was long anticipated and was many years before it actually did start.

27 Q.39 And can you tell the Tribunal what your state of knowledge was in relation to
28 the proposed road network or proposed improvement of the road network in the
29 area at that time?

30 A. Well at the time of acquisition of the property the, my understanding of the

1 road network, in terms of the motorway, was that the motorway was at the
2 northern tip of the lands and to a large extent didn't effect the lands. That
3 clearly changed over the period of ownership of the lands as the motorway line
4 was moved through the various discussions that took place between the various
5 interested parties and the council's own planners and designers. They moved
6 the line of the motorway from that northern tip into the lands itself.

7 Q.40 Well at the time we are talking about, 1988, I have to suggest to you that the
8 Southern Cross motorway line had not been finalised and that there was
9 significant debate, ongoing debate, about the line of the Southern Cross
10 section, that is the section from Tallaght to Marley Grange and perhaps to
11 Leopardstown, to the top of Leopardstown Road, at the ESB lands at the top of
12 Leopardstown Road, do you know where I am talking about?

13 A. I know where you are talking about yes.

14 Q.41 So that line had not been fixed at that stage and indeed, again I am subject to
15 correction, the public inquiry in relation to the South Eastern motorway did
16 not take place -- sorry the public inquiry in relation to the Southern Cross
17 motorway did not take place until 1992. Do you accept that?

18 A. Well what was happening with the Southern Cross motorway was not something I
19 would have any particular recollection of.

20 Q.42 Yes. But the Southern Cross motorway clearly had to be put in place before the
21 South Eastern motorway could be constructed or could be used to service your
22 lands or any other lands in the Carrickmines Valley?

23 A. Well in -- I presume that's correct, in that the notion that has prevailed is
24 that there was to be a ring road around Dublin and the ring road was being done
25 in sections.

26 Q.43 Yes.

27 A. And each section was being presumably designed and lead out as self contained
28 sections. So I presume that was just part of the organisation of such a large
29 engineering task.

30 Q.44 So the Southern Cross was the penultimate section, and your South Eastern

1 Motorway which is at present being constructed, was the final section?

2 A. Yes.

3 Q.45 Now, when you purchased the lands and were contemplating perhaps the purchase
4 of the lands in 1988, what was your intention, that is when I say your
5 intention I mean your intention and Mr. Kennedy's intention in relation to the
6 lands?

7 A. The lands was being bought as I suppose as a speculative purchase. The land
8 was -- I thought at the time, good value, at the price that existed for it, I
9 thought that it was a long term project and the -- I thought that over time the
10 land would open up, because the city was developing and moving out. I thought
11 that given where it lay there was an opportunity over time to obtain the
12 rezoning of the land and obtain planning permission on it. I knew there were
13 difficulties with it, I knew there were difficulties with it in terms of
14 access. I knew there was difficulties with it in terms of covenant that
15 affects the land. It was a long term, it was an investment that with work and
16 effort and the movement of events might turn to fruition. Something actually
17 as I think of that Mr. Gallagher, to answer your question on it, I think back
18 to - when the land was purchased the part of the notion that was there at the
19 time -- was that the sort of area that existed in that Carrickmines area was
20 one of fairly large houses on large plots of an acre, an acre and a half or
21 whatever, and I do recollect having discussion with Mr. Kennedy about the
22 number of such large plots that could be got on the site and if obviously, if
23 planning permission could be obtained from them.

24 Q.46 It appears that in November 1988 Mr. Kennedy told Mr. O'Halloran and
25 Mr. Kilcoyne that he had instructed his architects to prepare designs for a
26 residential development on Tracey's lands, may I have page 593 of -- 593 of the
27 Caldwell brief please?

28

29

30 A. Is there a hard copy here Mr. Gallagher?

1 Q.47 There should be, yes. You should find it -- it's also in Carrick 1, 4261.

2 A. Is it one of the sections?

3 Q.48 I have a reference for it, page 593 on the brief that you have. And I can -- I
4 am reluctant to give you a tab for it because I may have changed the tabs, I am
5 sorry.

6 A. Okay that's fine.

7 Q.49 You have received the document?

8 A. Yes I have been given a copy.

9 Q.50 And you have seen it before?

10 A. Yes in the main brief that you provided, yes.

11 Q.51 Yes. This is a point of the meeting Kennedy confirmed that he had purchased
12 the Tracey land for 5,000 pounds an acre for approximately 108 acres and had
13 taken him many years of persistent chasing to achieve the sale.

14
15 "During that time Tracey's father Jack had become an obstacle to Kennedy
16 closing that sale. Kennedy will immediately seek to change the present zoning
17 which is agricultural to residential. The Dublin County development plan is
18 due to revision in March 1999 by which deadline any representation to change
19 the existing zoning must be made. If the dead line is missed, zoning changes
20 will then have to follow the difficult material contravention route, Kennedy
21 wants to avoid that.

22
23 Kennedy therefore has instructed his architect to prepare designs for a
24 residential development on Tracey's farm. He confirmed that the density per
25 acre would be 6.5 houses. It is his intention to make a submission for
26 planning permission as soon as the plan will be completed"

27
28 Were you aware and did you discuss with Mr. Kennedy the submission of a
29 planning application for that density of 6.5 houses per acre?

30 A. Well I certainly discussed with him the preparation of the planning application

1 for it and some layouts for it, he was looking after that. I don't
2 specifically recollect 6.5 houses per acre.

3 Q.52 But you recall that there was to be a planning application for a substantial
4 number of houses on the land?

5 A. Yes, Mr. Kennedy went through various phases of what he thought would be the
6 way to deal with this on a residential basis. As I indicated a moment ago, at
7 one stage he was talking about large houses on acre and a half plots on it, at
8 other stages he was talking about a higher density, more traditional, mass
9 density housing type development.

10 Q.53 May I have page 422 please? My page reference is 422 perhaps if you don't have
11 it on that, you might try the Carrick Brief 3420?

12

13 This is a housing layout for a very substantial number of houses that is --
14 appears to have been prepared prior, in or prior to May of 1989, it shows
15 housing layout on the lands in question, can you say who prepared that housing
16 layout?

17 A. I recollect seeing that before. I thought that Mr. Finnegan had an input into
18 that.

19 Q.54 Mr. Finnegan says that he, that that is not his design and he didn't have
20 anything to do with that?

21 A. Well if that's the situation -- that he says, but I have no information in
22 relation to anyone else preparing it. It's a classic housing estate design
23 that I saw 20 times in relation to developments, high density developments like
24 that that were being done all around the city at the time.

25 Q.55 Nonetheless it is a detailed design which shows a very substantial number of
26 houses on those lands and it also includes the O'Halloran Darragh Kilcoyne
27 lands on the, I suppose northern section of that, close to the South Eastern
28 Motorway reservation?

29 A. Yes. That's right. His land is just to the top left hand corner.

30 Q.56 Can you assist the Tribunal in telling, in saying how this map drawing came to

1 be and at whose request?

2 A. Well I was -- the map was there in the context of a joint, Mr. Kennedy trying
3 to obtain the consent and permission of Mr. O'Halloran and his partners, to
4 moving forward on the joint basis in relation to the Tracey land and the
5 O'Halloran land. Mr. Kennedy would have had this prepared to see just what you
6 might get on the two plots of land.

7 Q.57 Yes, but I take it that you spoke to Mr. Kennedy about this and you discussed
8 the, this was something that you were in agreement with?

9 A. Well -- I have no expressed recollection of discussing it with him
10 Mr. Gallagher, but it's probable that he would have discussed with me.

11 Q.58 I take it that you had unusual interest in either rezoning or developing the
12 lands, which ever could be achieved, most quickly?

13 A. The interest was yes, in getting the land, in changing the land for
14 agricultural into some other zoning of it, yes.

15 Q.59 It occurs to me that Mr. Galbraithe was involved as an engineer with
16 Mr. Kennedy at the time, would Mr. Galbraithe have been a possible author of
17 this design?

18 A. He may well have been. I didn't go to meetings with Mr. Kennedy in relation to
19 these sorts of matters. I wouldn't go to a design meeting with him when he was
20 meeting an architect or engineer in relation to the preparation of plans.
21 The -- he would, he dealt with all of that sort of stuff himself. I mean I --
22 I was then an extremely busy practitioner and had a lot of things to do and
23 this isn't my area of expertise.

24 Q.60 You were meeting with Mr. Kennedy on a very frequent basis in 1989 and I
25 suggest to you that your diary for that year shows approximately 15 entries
26 between the 9th of January and 31st of October 1989?

27 A. Absolutely Mr. Gallagher. As I said to you the other day, there may have been
28 other meetings as well with him during that time period. Because he may have
29 just dropped into me as well as being in the diary, there were a lot of
30 meetings with him, a lot of things happening. A lot of things happening in, on

1 several fronts at that time.

2 Q.61 Can you tell the Tribunal why a decision was taken not to proceed with the
3 planning application along the lines that we have seen in the drawing on the
4 screen, but to seek to have the lands rezoned?

5 A. Well Mr. Kennedy went hot and cold over the time as to what way to approach
6 dealing with the lands. Sometimes he would think of it in terms of a rezoning
7 in relation to it, sometimes he would think of it in terms of the Development
8 Plan is in hand, put submissions in the Development Plan. In other cases he
9 would think of it in terms of putting in a planning application and going for
10 section 4. It's, it was a continual on-off process that he had. And that, I
11 suspect, was partly driven as well in terms of dealing with Mr. O'Halloran as
12 well, in that he wasn't always clear whether he was going to manage to achieve
13 some sort of deal with Mr. O'Halloran where the other land was, became part of
14 it or there would be run as separate applications and -- it was a changing tide
15 of views.

16 Q.62 There was a problem that you have already referred to in relation to those
17 lands, which was the covenant?

18 A. Yes indeed.

19 Q.63 And that covenant, if it continued to exist, was one which prevented or
20 precluded the building of any houses on the land in question, one house I
21 think --

22 A. Yes indeed.

23 Q.64 Only one house could be built on the lands?

24 A. Only one house could be built on the land. I would have regarded that as a
25 fairly serious commercial risk associated with this venture. The lands were
26 the subject to the covenant in favour of the owner of Priorsland which is land
27 on the, to the north I think it is Mr. Gallagher.

28 Q.65 Yes.

29 A. And his surrounding lands and the O'Halloran Kilcoyne lands were part of those
30 lands, the title having been conveyed on to them sometime in the 70s and the

1 covenant was a covenant against building, with one exception which was to build
2 one house on it. That covenant -- I took advice in relation to that from
3 several counsel and I had my own views in relation to it as well. And I think
4 everybody, certainly Mr. O'Halloran had his views in relation to it, and the
5 owner of Priorsland had his views in relation to it. But the land was
6 purchased with the covenant on it and --

7 Q.66 Yes, but this drawing that we see on screen was one which included the
8 O'Halloran, Darragh, Kilcoyne lands?

9 A. Yes it did.

10 Q.67 And it was going to be obviously a joint application?

11 A. Yes.

12 Q.68 For it --?

13 A. Yes.

14 Q.69 Can you recall the agreement that was reached in relation to that joint
15 application?

16 A. Well I am not -- I can't recollect whether or not there was specifically an
17 agreement on the joint application as such, I think it varied from time to time
18 during the time -- but if I had a look at Mr. O'Halloran's notes I might be
19 able to help on that, but the objective from Paisley Park's point of view in
20 relation to this and in dealing with Mr. O'Halloran and Mr. Kilcoyne, was to
21 reach a commercial accommodation with them where -- circumstances that were
22 part of that commercial arrangement would be that the covenant could be valued
23 or a way of removing the covenant could be obtained. They had their own
24 difficulties as well because as you have rightly described Golf Course lane was
25 a narrow lane and that caused access problems for these lands, but in terms of
26 their lands, they had additional access problems to those in that they only had
27 a very narrow right-of-way for driving cattle and so on into their lands. So
28 they had an access issue that they had to solve with the Tracey lands.

29 Q.70 What lead Mr. Kennedy to, and you, to believe that it would be possible to
30 obtain planning permission for a housing development such as we have, as we see

1 on screen in the layout, which would have involved the construction of
2 something of the order of seven hundred houses?

3 A. Well obtaining planning permission on the lands was a high risk possibility. I
4 mean there was absolutely no certainty that that was going to be obtained in
5 relation to it. There were considerable difficulties both from a legal and
6 from an infrastructure point of view. The obtaining of the planning permission
7 from the local authority, if the land is zoned properly then they can apply and
8 give you planning permission, it is up to you to solve your own problems as to
9 whether you can build or not after that, in terms of covenant.

10 Q.71 But it seems the initial intention was to apply for planning permission before
11 the rezoning submission and that, to that end a layout, a detailed layout which
12 presumably costs money and cost the company money, cost you money, was
13 prepared?

14 A. Well I think that the purpose and detailed layout was specifically to show
15 Mr. O'Halloran and his partners the benefits that could arise in a joint
16 venture into relation to the lands. It clearly cost money to prepare this, but
17 this is a very rough layout, I mean this is not a very sophisticated --

18 Q.72 I suggest it is not all that rough Mr. Caldwell it is -- it shows various
19 contours, it shows a detailed layout design, it shows open spaces, it shows
20 boundaries, it shows proposed temporary roads, it shows roundabouts, etcetera.
21 This was a detailed design and I suggest to you that it's highly unlikely it
22 was prepared for the reason that you suggest, given that you were dealing with
23 Mr. Brian O'Halloran, who is widely recognised as a very experienced architect,
24 and who wouldn't need to have spelt out for him in steps one, two, three, what
25 the potential of those lands might be, for a housing development?

26 A. It's always easier in dealing -- I find in dealing with anyone, that to put
27 things down in diagrammatic form it's easier to advise all of them whether you
28 are Mr. O'Halloran or not. Mr. O'Halloran I recollect, when I read his
29 evidence, was not very flattering about this particular layout.

30 Q.73 Indeed he was not. Therefore, I suggest to you that it wasn't for the purpose

1 of convincing Mr. O'Halloran that this was a feasible way of developing the
2 lands but it was intended by Mr. Kennedy and by you, as, was a proposal by
3 Mr. Kennedy and by you, to develop these lands for housing as he indicated at
4 his meeting with Mr. O'Halloran and Mr. Kilcoyne in 1988, the minutes of which
5 meeting I have just read to you?

6 A. Yes. Well the rational explanation for this is as I have said, as I recollect
7 it was to see what could be done on the ground and given the sort of layout
8 patterns that prevailed at that point in time and to see whether it worked,
9 having the Tracey land and the O'Halloran land joined together. It was -- I
10 mean it was to keep commercial discussions going on with Mr. O'Halloran as
11 well, because Mr. Kennedy was keen to move those discussions on, at a
12 commercial level, to get to the end objective so far as he was concerned and
13 indeed so far as I was concerned, to get agreement in relation to the covenant
14 with them, which was ultimately succeeded in doing and particularly Mr. Kennedy
15 succeeded in doing because he did the negotiations in relation to this.

16 Q.74 You were negotiating and dealing with Mr. Gore Grimes at this time?

17 A. Yes I was.

18 Q.75 And you were communicating as Mr. Kennedy's partner, in effect?

19 A. Well so far as Mr. O'Halloran and his partners were concerned insofar as
20 Mr. Gore Grimes was concerned. I was communicating as a solicitor for Paisley
21 Park but the reality, as we know, was that I was there as the, as co-owner.

22 Q.76 You were negotiating and dealing with them as Mr. Kennedy's partner, as a joint
23 owner of these lands, although though he -- you didn't disclose that fact to
24 them, isn't that correct?

25 A. That's correct -- that's correct, it was not known to them.

26 Q.77 I think in September 7th 1989, page 360 please, you wrote to Mr. Gore Grimes
27 asking him to confirm that -- I am sorry the photocopy we have is a poor
28 photocopy, asking them to confirm that your clients would consent to their
29 lands being included in a submission for the rezoning of their lands and your
30 lands?

1 A. Yes that's my signature, yes. I think they wrote back and said that they
2 weren't prepared to do that.

3 Q.78 Sorry, it's Carrick 1, 3635. That again as I say is a very poor photocopy but
4 it is clearly a letter written by you to Mr. Anthony Gore Grimes, a solicitor,
5 who was acting for Mr. O'Halloran and Dr. Darragh and Mr. Kilcoyne, isn't that
6 right?

7 A. Yes, that's correct Mr. Gallagher.

8 Q.79 And I think that following that meeting you, we know from the evidence of
9 Mr. Kilcoyne, that there was a discussion between Mr. Kilcoyne and Mr. Gore
10 Grimes in relation to that letter and in that you -- may I have 3636 please?
11 In that minute which was prepared by Mr. O'Halloran, who was obviously at the
12 meeting, the background to the meeting was it was called to discuss a reply to
13 your letter of the 7th of September 1989.

14 And the second point in that letter was in the following terms:

15 "The 7th September letter from John Caldwell of Binchy & Partners on behalf of
16 Jim Kennedy, made reference to Kennedy making a submission for rezoning of
17 Tracey lands. This therefore is quite a different approach to that earlier
18 indicated by Kennedy who wanted to make an application for housing development
19 following a material contravention route" then the following action was that
20 Mr. Gore Grimes was to contact you it's --

21
22 There was a subsequent letter from Mr. Gore Grimes to Mr. O'Halloran page 3637?
23 And he confirmed in that letter, having made an arrangement with you to meet at
24 your offices to discuss matters. "John Caldwell tells me that the discussion
25 with the County Council is proceeding at quite a speed and there is a meeting
26 of the council on the 20th of October. We'll discuss this matter further with
27 Kennedy when we meet"

28
29 And on the 5th of October 1989, there was a meeting attended by yourself, by
30 Mr. Kennedy, Mr. Mr. Anthony Gore Grimes and Mr. O'Halloran, may I have page

1 3638 please?

2 It is page 363 in the Caldwell brief.

3 A. I have it here.

4 Q.80 "The purpose of the meeting was to meet Jim Kennedy and John Caldwell in order
5 to discuss a response to JC's September 7th letter to Anthony Gore Grimes in
6 which he asked if we were agreeable to include our land in a submission that JK
7 would make in the near future for the rezoning of Bob Tracey's farm.

8

9 Whilst at the meeting John Caldwell confirmed that the High Court hearing of
10 the action taken by James Kennedy against Bob Tracey is unlikely to be heard
11 until early 1990" and a number of other matters were discussed and on the
12 following page, page 3639, it notes that "John Caldwell confirmed that he had
13 not been in contact with Kevin Smith of Priorsland in recent times". And later
14 on that page it records as follows

15

16 "Since our earlier discussions and in view of the timing of the revised County
17 Council Development Plan, JK has decided to seek permission for a residential
18 development over two phases as follows.

19

20 1. To first seek permission for rezoning of the land from it's present usage,
21 agricultural, to residential.

22

23 This application was to be made very soon by his architects it would comprise
24 mainly written documents with back up substantiation about drainage capacity in
25 the area when the Carrickmines Valley sewer will have been constructed in the
26 long term. Also in the short-term JK is aware that the Ballyogan Road pumping
27 station has adequate additional capacity to provide for residential development
28 of Bob Tracey's farm, together with our land.

29

30 2. Hopefully having obtained a rezoning permission JK would then apply for a

1 planning permission and building by-laws approval for Bob Tracey's farm or for
2 our lands and the design of that layout would follow the layout drawing which
3 he gave me at our June meeting"

4
5 And then the following page, 3640, a brief discussion took place on the draft
6 of our agreement which we might sign with Jim Kennedy and as follows

7 1. John Caldwell would not agree to the recognition of the covenant which was
8 put forward by Anthony Gore Grimes.

9
10 2. Jim Kennedy will want the time scale of the agreement extended by a further
11 nine months in view of the delays at the beginning of the year in completing
12 it.

13
14 John Caldwell and Jim Kennedy stressed the time urgency in making a rezoning
15 application and suggested that we should now deliberate our intentions and
16 inform them as soon as possible.

17
18 John Caldwell and Jim Kennedy then left the meeting."

19
20 Following that meeting Mr. Gore Grimes wrote to you on the 10th of October and
21 conveyed their client's views, page 3643 please.

22 "Our client had a meeting and discussed the matter further. They have
23 instructed me to let you know the following.

24
25 1. They are not agreeable to their lands being included in the submission
26 being made for rezoning.

27 2. They do not agree to any alteration in the suggested clause relating to the
28 covenant.

29 3. They believed that the land values have more than doubled since the
30 negotiation commenced, which is exactly one year ago, before our clients decide

1 to sell, they feel that their interest is worth 2 million pounds." then he
2 denies any contract existed.

3

4 Now, did those discussions lead to the execution of an agreement between Austin
5 Darragh and his, Mr. Kilcoyne and Mr. O'Halloran and their respective spouses
6 and Paisley Park in relation to the lands and the covenant?

7 A. Yes.

8 Q.81 May I have page, page number 11 on the John Caldwell brief please?

9 A. I think there were a series of, more discussions about this, being on the 5th
10 of October, for several months after that in fact dealing with the situation in
11 relation to the covenant and access and these culminated in, I think, it was
12 two agreements Mr. Gallagher.

13 Q.82 Yes, perhaps I can have 1135 of the Carrick brief? This I think is the
14 right-of-way agreement, is that correct, which you -- which was executed to
15 give Messrs O'Halloran, Darragh and Kilcoyne a right-of-way over the Paisley
16 Park lands, as it were then?

17 A. Yes it was, that's correct, and gave some rights, if I am correct, of access --

18 Q.83 What was your consideration for that?

19 A. May I have a copy please? It was a document executed under seal, in
20 consideration of it's own, of the presence contained in it which were mutual
21 rights of access here and some rights to connect to services and bill some
22 services as well.

23 Q.84 Page 1142 "The grantees and the owners agree they will develop the grantees
24 lands and the lands so described through the vehicle and any access rights to
25 the owners and the grantee for the lands and the grantees lands respectively to
26 any distributor or other roads and footpaths developed by the owner on the
27 lands or by the grantee."

28

29 And I think that --

30 A. Sorry I missed the paragraph reference.

1 Q.85 Sorry paragraph 1.3 on page 8, 1142 -- you will see at the bottom of the page
2 on screen -- I don't think anything much turns on this, do you accept that it
3 was provided that they would, there would be development of the grantee's
4 lands, that is the lands of Paisley Park, to give access to the O'Halloran,
5 Darragh, Kilcoyne lands?

6 A. The intention of that clause was to give access and to avoid either of us being
7 land locked again.

8 Q.86 Yes. And there was a further agreement I suggest to you, that involved and
9 which you helped to negotiate which is, may I have 3054 please of the Carrick
10 brief? Which is an agreement between the O'Halloran, Darragh, Kilcoyne
11 interests and Insigni Limited?

12 A. Insigni is how I pronounce it.

13 Q.87 All right. 31st of May 1990 -- would you tell the Tribunal who Insigni was
14 owned by or who the beneficial owners were?

15 A. Yes. At that time Insigni was an Isle of Man company that Mr. Bullock was a
16 director of. Can I see who signed this? I don't recognise the signature. He
17 wasn't actually a director of it.

18 Q.88 If you look -- look on page 3051?

19 A. No, he is not a director.

20 Q.89 Can you say who the directors were?

21 A. I don't recognise the signature,s, Mr. Gallagher.

22 Q.90 All right. Was it a company that was --

23 A. It was a company, special purpose company specifically acquired for purposes of
24 taking the covenant, taking this interest in the covenant. And the reason that
25 I did that and that was of my creation, was again with a notion of the
26 possibility of some tax planning in relation to it, at a future date, was to
27 park the covenant, with the value of that covenant was unsure, it may have been
28 worth a substantial amount, it may not, and it may have been something that I
29 could use for a tax planning point of view later on. Insigni -- I think
30 subsequent to the, the agreement effectively expired at some stage, would have

1 reverted to Mr. Bullock because I have a notion that that something is, or was
2 his company, I can only figure in Carrickmines for this purpose.

3 Q.91 The agreement in any event provided that and it recited that O'Halloran,
4 Darragh and Kilcoyne were the owners of a covenant, and that Paisley Park was
5 to apply for the rezoning of the Jackson Way lands and the Paisley Park lands
6 and the Darragh, Kilcoyne, O'Halloran lands , isn't that right?

7 A. I haven't re-read it but if that's what it says that's --

8 Q.92 Well if I can look at paragraph 3 on page 3045 "It is proposed that Paisley
9 Park for rezoning to enable the owners (Messrs. O'Halloran, Darragh and
10 Kilcoyne) to implement a scheme for either residential or commercial buildings
11 for the lands hereinafter called the building scheme" and there was a separate
12 agreement between the owners and Paisley of the even date to grant mutual
13 access in connection rights over the lands and Paisley lands and further
14 Paisley agreed right of way over the land to the land to the owners?

15 A. That's correct.

16 Q.93 The agreement went on to recite if the, I am summarising it, if the land were
17 rezoned within two and a half years, then the covenant would be released
18 without any payment?

19 A. Yes that's correct.

20 Q.94 And it further went on then that if rezoning was not obtained within two and a
21 half years of the agreement that 300,000 pounds would be paid to the owners for
22 the release of the covenant?

23 A. Yes, that's correct.

24 Q.95 And you again were involved in and in fact you have confirmed I think, that
25 this was something done by you for the purpose of tax planning and in order to
26 advance your dealings with Messrs O'Halloran, Darragh and Kilcoyne and to
27 facilitate the rezoning of the lands in question?

28 A. Yes, it was to create, from a tax point of view, to create a separate entity
29 that would hold the covenant, it was also designed to create a value in
30 relation to the covenant as well because the figure that was put on it by them

1 as the value that they were prepared to receive to give up the covenant in
2 circumstances where the land was unzoned.

3 Q.96 At what, by what date had a decision been taken not to proceed with this
4 submission of an application for planning permission, rather to proceed to have
5 the land and the adjoining land rezoned?

6 A. Certainly through from, this memo here is October 1989, the O'Halloran one,
7 subsequent to that the notion that was there was that a planning application
8 was going to be made and the notion was that it was going to be a residential
9 planning application. That moved forward I think into early 1990 and the -- I
10 can't really recollect when, if it was some specific point in time when
11 rezoning came to the fore again as opposed to applying for planning
12 application. I suppose to an extent it's not that relevant because if you
13 apply for planning permission and got the planning permission the land would be
14 rezoned as a result of that occurring, so it's -- the statement in terms of
15 rezoning something not necessarily a reflection of the fact that you were going
16 to go for rezoning, the -- it's merely a statement of the result of one of two
17 processes, one of which could be a planning application which had the effect of
18 rezoning the land or one could have been a rezoning submission which had the
19 effect of rezoning the land.

20 Q.97 The grant of permission would have a de facto effect of rezoning the lands?

21 A. Yes it would, that's right.

22 Q.98 But it would not have, it was a different procedure than the procedure for
23 seeking rezoning as part of the view of the Development Plan?

24 A. Indeed Mr. Gallagher a different procedure was involved, yes.

25 Q.99 Now, so you say that the, that from in or about October 1989 there had been a
26 change of mind and it was decided to proceed with a rezoning proposal, that is
27 by seeking to have the Development Plan reflect the rezoning of the lands in
28 question?

29 A. Sorry, I don't think it was then. I think that the notion of a planning
30 application still prevailed for some time after that and I think that that --

1 that prevailed into the early 1990's -- because I do recollect seeing among the
2 papers in the brief some memos of Mr. O'Halloran's where he is talking about
3 Mr. Kennedy meeting him with his latest planning application and unless I am
4 mistaken, I think that's January of 1990 that is, that they are occurring in.

5 Q.100Am I correct in thinking that there was no planning application submitted in
6 respect of the Paisley Park lands, at any time?

7 A. There was no planning application made, that's right.

8 Q.101Who prepared the drawings for the planning application to which you have just
9 referred, the proposed planning application which you have just referred?

10 A. I think that the only -- that I can think, that would have prepared them would
11 have been Mr. Finnegan and the, I am not aware that Mr. Galbraithe was
12 preparing any plans at that time and I do recollect that I met Mr. Finnegan
13 about preparing a planning application and -- but I think as I may have said, I
14 dropped out of the loop to a significant extent in relation to the detail of
15 what was going on in terms of preparing planning applications or not preparing
16 planning applications or what was going on them.

17 Q.102Mr. Finnegan told the Tribunal that he did not prepare any drawings for the
18 submission of a planning application?

19 A. Well I don't know whether he is correct or he is incorrect in relation to that
20 but I know from the minutes that are there, that Mr. Kennedy was certainly
21 talking to Mr. O'Halloran about a planning application. The only person that I
22 am aware of who was physically on the ground to prepare a planning application
23 was Mr. Finnegan, so Mr. Finnegan may be incorrect in his recollection.

24 Q.103Well --

25 A. But he may not be. I just can't say Mr. Gallagher.

26 Q.104Mr. Finnegan has told the Tribunal that he was asked to prepare a planning
27 application for the lands in question and he has told the Tribunal that he
28 handed over a map which he had received from Mr. Gerry Carroll of Dublin County
29 Council to Mr. Kennedy, may I have 4165 please?

30 A. Do you have a hard copy of that?

1 Q.105I will endeavour to get you a hard copy of that, just a moment.

2

3 It is a coloured map of the Carrickmines area, it is headed Carrickmines
4 Valley, do you see it now on screen before you Mr. Caldwell?

5 A. I have a copy.

6 Q.106Do you have a coloured copy?

7 A. No I haven't.

8 Q.107It's a coloured copy.

9 A. All right.

10 Q.108On the top right-hand corner of the legend is Carrickmines Valley and it
11 purports to set out the various proposed development uses of the area in
12 question. Have you ever seen that map before Mr. Caldwell?

13 A. I have no recollection of ever seeing that map before Mr. Gallagher.

14 Q.109Mr. Finnegan has told the Tribunal that -- perhaps I will rephrase the question
15 again, ask the question again in a different way. Have you ever seen a copy of
16 that map before?

17 A. I have no recollection of seeing a copy of that map before.

18 Q.110Mr. Finnegan has told the Tribunal that he was told by Mr. Kennedy that
19 Mr. Gerry Carroll who worked for Dublin County Council would be very useful and
20 he was asked by Mr. Kennedy to pick up a map or an envelope in Dublin County
21 Council and he did so. And he says that that is, that map or a copy of it, is
22 the map that he picked up from Mr. Carroll, or a similar map to that. Are you
23 aware of that evidence?

24 A. I have read the evidence.

25 Q.111So you are aware of it?

26 A. Yes I am.

27 Q.112And he says that he gave that map to Mr. Kennedy?

28 A. I read that in the transcript.

29 Q.113Are you aware of Mr. Kennedy having received a map from Mr. Finnegan or
30 Mr. Carroll through Mr. Finnegan?

1 A. No I am not.

2 Q.114Did Mr. Kennedy ever tell you that?

3 A. He never did.

4 Q.115At one stage Mr. Finnegan became concerned about the fact that he had handed
5 over this map to Mr. Kennedy and he asked to have it returned to him and he was
6 told by Mr. Kennedy that you had destroyed the map. Are you aware of that?

7 A. I am aware of that yes. His statement in that regard is incorrect.

8 Q.116Did you ever have the map which was referred to in that evidence in your
9 possession or did you ever see it in anybody else's possession?

10 A. No, I did not.

11 Q.117Can you give any explanation to the Tribunal as to why the assumption of what
12 Mr. Finnegan has said is correct, that Mr. Kennedy would say that you had
13 destroyed the map?

14 A. I have absolutely no idea. I read Mr. Finnegan's evidence, but a significant,
15 with disbelief, and the -- in particular, I mean the evidence that I read there
16 referred to a map which showed industrial zoning, that's what he said to you as
17 I recollect it. All of the time period that we were involved in through these
18 meetings with Mr. O'Halloran and with Mr. Kilcoyne and the various discussions
19 that were taking place, they were all taking place in the context of
20 residential development, so I was -- I don't know how those two things sit
21 together, if what he said in relation to Mr. Kennedy, that Mr. Kennedy had a
22 map and this map knew, showed, that this was industrial, it makes no sense
23 having had all these meetings in relation to residential.

24 Q.118Mr. Finnegan said that he had been instructed to submit a planning application
25 for residential development on the Paisley Park lands?

26 A. Yes.

27 Q.119Are you aware of that?

28 A. I am aware of that. I recollect going to his office in 1989 and I recollect
29 that that was in the context of him preparing a planning application. I
30 recollect discussing with him his fees in relation to that but I have no -- I

1 have read his evidence and the evidence has concerned me and bothered me. I
2 have absolutely no recollection of discussing with him a map, the map that he
3 described, the Carroll map as one might call it.

4 Q.120What did you discuss about the planning application?

5 A. Just that he would prepare a housing planning application for the lands. The
6 situation with Mr. Finnegan at that time was that he was in -- he was doing --
7 my understanding of the position with him was that he had done work in relation
8 to that, that he had been involved in the preparation of some papers, he had
9 been liaising with Mr. Kennedy in relation to the position out on the land in
10 Carrickmines and that following on from the discussions that had taken place
11 with Mr. Kennedy in relation to the lands, I was meeting him to talk to him
12 about putting in, putting together a planning application, I didn't -- I have
13 to recollection of getting involved in the detail of that in any fashion with
14 him, and also the question of his fees.

15 Q.121What discussion did you have with him about the planning application?

16 A. As I say, I have no recollection of what I discussed in relation to that. The
17 circumstances that I have seen from the papers would lead me to believe that
18 that was a discussion in relation to a residential planning application, but I
19 have no recollection of it Mr. Gallagher.

20 Q.122Well, what did you agree in relation to fees?

21 A. In relation to fees? I agreed that he be paid 2,000 pounds plus VAT. I had --
22 what I agreed with him in relation to that was that he would be paid that, as
23 soon as possible.

24 Q.123Can you say when this meeting took place?

25 A. Probably sometime after the October '89 meeting because I, he was written to as
26 well from Paisley Park in relation to it, in relation to preparing a planning
27 application and I think there is a letter in one of the papers which says that.

28 Q.124Did you discuss anything further about the planning application with him, about
29 that time. Did you for example, talk about how the lands could be drained at
30 that time?

1 A. I have no recollection of doing that with him at all, Mr. Gallagher.

2 Q.125 Is it likely that did it? You may not have a recollection, but is it likely
3 that did you it?

4 A. I don't know. I honestly don't know whether I did or I didn't have a
5 discussion with him about it. It is more unlikely than likely that I would
6 have had a discussion with him.

7 Q.126 I take it that if you were paying monies to Mr. Finnegan to put in a planning
8 application you would have talked about him, to him about his view of the, as
9 to whether or not the application would be successful or not?

10 A. My recollection is that I was talking about putting together a planning
11 application in relation to it, the -- I don't recollect engaging in any
12 conversation with him about whether it would be successful or wouldn't be
13 successful.

14 Q.127 I can well understand that you don't recollect, I don't recollect many things
15 back that year, that does not mean some discussion didn't take place. I must
16 put it to you given that you travelled out to Dundrum to discuss with
17 Mr. Finnegan a planning application and the fee that he was charging, you would
18 have almost, not as a matter of certainty, as a matter of strong probability,
19 when the application would be ready, the type of application, the type of
20 houses would be applied for, things like drainage, things like access, the
21 conditions that might be imposed by the council, likelihood of objection from
22 residents in the area or the golf course or whatever. And other matters
23 relating to the planning application?

24 A. I would never have gone into that sort of detail with him on those sorts of
25 issues. I might have asked him, it is possible I would have asked him for a
26 view as to what he thought might happen on the planning application. But I
27 wouldn't have gone through whether we were going to have 120, three-bedroom
28 houses and the roads were going to be this way. It is just not something I
29 would have done with him. He would simply have been, there would simply have
30 been a discussion about putting together a planning application which suited

1 these lands. And that would have been it. I wouldn't involve myself in any of
2 the technical aspects of it, of the like.

3 Q.128What kind of application did he say would suit those lands?

4 A. I have absolutely no recollection of that. I mean the -- the classic
5 applications that Mr. Finnegan was doing at that point in time because he was
6 acting for quite a number of other builders, would have been the typical,
7 relatively high density three-bedroom houses on the side of straight roads with
8 community centres and bits of open space, it was a fairly standard sort of plan
9 that existed in a lot of the housing developments and the sort that he churned
10 out.

11 Q.129Why did you not take up the telephone and phone Mr. Finnegan and say to him

12 "Frank, what would you charge to put in a planning application for the Paisley
13 Park lands?"

14 A. I don't know, I have no idea why I was at his office as opposed to phoning him.
15 It's the way it occurred, that's -- I met him at his office, why that happened
16 as opposed to having a telephone conversation --

17 Q.130How many times did you meet him at his office?

18 A. I don't recollect meeting him very often at his office of the whole of the
19 years. If we were meeting he would tend to meet me in my office as opposed to
20 me calling into his office.

21 Q.131How many times approximately did you meet him in his offices or did you call to
22 his office for the purpose of meeting him or dealing with Paisley Park lands?

23 A. Probably, Paisley Park, not very often, maybe once or twice.

24 Q.132Well for the purpose of dealing with the Jackson Way lands?

25 A. I don't think I was out at his office in relation to the Jackson Way lands. If
26 any meetings that I had with him were probably had in my offices in town.

27 Q.133How many times did you meet him in your offices in town in connection with the
28 lands?

29 A. I am not quite sure. But it would have been, it's a number of times because
30 there was a number of things happening over the period from 89 through to the

1 97/98 period.

2 Q.134 May I have page 1119 please? This is a letter from Mr. Bullock to
3 Mr. Finnegan, it's dated 21st of September 1989 and it says "Dear Mr. Finnegan,
4 re lands at Carrickmines. We would be pleased if you would prepare a
5 submission for rezoning of the above lands which this company owns as soon as
6 possible. Please send a copy of your proposed submission for our approval?"

7 A. That would be a letter which I asked Mr. Bullock to send.

8 Q.135 Yes.

9 A. And part of my rationale in doing that would have been again driven by tax
10 considerations and it would have been to have some paperwork in relation to
11 the, Mr. Bullock who was a director of the company being involved in the
12 process.

13 Q.136 And you gave instructions to Mr. Bullock to write that letter?

14 A. I don't recollect doing so, but that is certainly what would have happened.

15 Q.137 Was that written as a result of a discussion, or following a discussion between
16 yourself and Mr. Kennedy?

17 A. I would, again I don't recollect that, but in all probability, yes.

18 Q.138 May I have page 1120 please? This was a letter in which you discovered, it was
19 a letter written to Frank Finnegan re lands at Carrickmines:

20 "Please prepare full layout and service drawings for submission in a full
21 planning application in respect of the above. Please keep me informed of your
22 progress". Do you remember arranging for Mr. Finnegan to send that letter, or
23 Mr. Bullock to send that letter to Mr. Finnegan?

24 A. I don't specifically recollect it, but again it would be a situation where I
25 contacted Mr. Bullock and asked him to send that letter to Mr. Finnegan, yes.

26 Q.139 Mr. Finnegan's version of events is that he was furnished with a drawing
27 similar to the one I have referred you to, that is to DP -- sorry, the one on
28 page 4165 similar to DP 90/110. And Mr. Carroll says that that was furnished
29 and handed over to Mr. Finnegan sometime prior to the 4th of, as I recall his
30 evidence again, sometime prior to the 4th of July of 1989. And Mr. Finnegan's

1 evidence is that sometime in 1989 he met Mr. Kennedy in Mr. Kennedy's office in
2 Lucan, in the site office, and that Mr. Finnegan received from Mr. Kennedy some
3 tracings consisting of some fairly detailed plans of the housing layout and
4 said he wanted an application made for housing on the land; that is an
5 application, for permission for approximately 7 to 8 houses per acre; do you
6 remember that?

7 A. I remember reading the transcript, yes.

8 Q.140And at that meeting Mr. Kennedy told Mr. Finnegan about Gerry Carroll and said
9 that he was a fellow in Dublin County Council who might be of assistance,
10 Mr. Finnegan said that he had no intention of using the drawings which he had
11 been furnished with and he scrapped them sometime in the mid 1990s. He says
12 that following on those instructions from Mr. Kennedy he contacted the Planning
13 Department and spoke to an official of the department about his intention to
14 apply for residential planning on the lands in question, and he was informed by
15 the planner, who he identified and who if my recollection serves me right, was
16 Mr. Hyde, but I may be wrong.

17

18 JUDGE FAHERTY: That's correct.

19 Q.141Mr. Hyde was a senior planner at the time and informed him that such
20 application would be futile because the lands were zoned agricultural, and he
21 said if Jim Kennedy had wanted the planning application submitted at that time
22 that he would be happy it do, it because times were hard, work was slow and he
23 was, he would be delighted to do the work and he said that as it happened he
24 did not make the application because he felt that he wouldn't be paid once he
25 knew the application would end in a refusal, do you recall all of that?

26 A. I remember his evidence, yes.

27 Q.142And he said that you nominated a fee to, to his firm in the sum of 2,000 pounds
28 in respect of the, what he described as the 1989 aborted application, i.e. the
29 application which he did not make. He says that his normal fee for that work
30 would have been 10,000 pounds, but as he hadn't done 10,000 pounds worth of

1 work he was happy to accept 2,000 pounds?

2 A. My recollection of the fee element in relation to it has a number of aspects to
3 it. My recollection is that I was paying him a fee in relation to work that
4 that I believed he had been doing with Mr. Kennedy in relation to residential
5 application, it was also on account of the work that he was going to do in
6 relation to putting a planning application together, which is why subsequently
7 I went and got Mr. Bullock to write that letter in November asking him to
8 prepare a planning application, and it was also an element of sympathy as well,
9 because times were hard, were particularly hard for him at that point in time
10 because he hadn't, he had been doing quite a bit of work for other people and
11 wasn't getting paid for it. So it was against that background that I proposed
12 a fee of 2,000. And he wasn't particularly keen on doing work unless he was
13 sure he was going to be paid and I gave him a personal assurance that he would
14 be paid, which he took.

15 Q.143 Did he tell you that he had spoken to the senior planner in the County Council
16 who had informed him in no uncertain terms that planning permission would not
17 be granted for the lands in question?

18 A. I have no recollection of him saying that, but he may well have said that to
19 me, I have to recollection. Even if he had said that, it wouldn't have changed
20 the position in relation to saying to him to go ahead with the planning
21 application and to prepare it, because the planner's attitude in relation to
22 agricultural land would be that anyway, would be to say you won't get any
23 planning permission on this, but -- I remember that at that time Mr. Liddy who
24 was a landowner, his land was quite nearby, off the Glenamuck Road, had a
25 planning application in and had succeeded in getting residential development
26 on -- I may be wrong, but I think that was on agricultural land as well. I
27 think subsequently he may, in 1990 have been thrown out by An Bord Pleanala,
28 but he had obtained planning permission at that stage in similar circumstances.

29 Q.144 Were you aware at that time that the council had suggested that a meeting held
30 in October, 18th of October 1989, that the lands would be -- I beg your pardon,

1 I am sorry -- sorry, beg your pardon, that's 1990.

2 I think that on the 7th of December of 1989 Mr. Finnegan forwarded an invoice
3 to Paisley Park Investments Limited, may I have page 425 of the Mr. Caldwell
4 brief? Or 4350 of the Carrickmines 1 brief? As we see on screen this is an
5 invoice of 7th of the 12th 1989 from Mr. Finnegan's firm, Desmond McCarthy &
6 Company, Consulting Engineers to Paisley Park. And it's fees for the
7 preparation of plans and documents for land at Carrickmines, Kilternan, Dublin
8 18, 2,000 pounds plus VAT, invoice total 2,500.

9

10 It appears if we look at the John Caldwell brief, 1121 that Mr. Bullock wrote
11 to Desmond McCarthy on the 15th of March 1990 enclosing a draft for 2,500
12 pounds in respect of the fees; and we see a copy of the draft drawn on the
13 Standard Chartered Bank, Isle of Man Limited for the sum of 2,500 pounds, dated
14 15th of March 1990, and it would appear that there is a reference to the
15 Standard Chartered Bank, 8 Dawson Street, on the bottom.

16 A. Yes, I assume that's what the draft was drawn against.

17 Q.145 Yes. Was that the payment to Mr. Finnegan you had arranged?

18 A. Yes. That was the payment of his fee.

19 Q.146 And you say that you arranged this, notwithstanding that he had not submitted
20 an application, and in circumstances where a decision had been taken to seek to
21 rezone the lands where he had established from the planner that any such
22 planning application would be unsuccessful?

23 A. No, not in that sequence of events, Mr. Gallagher. The fee was paid to him in
24 the context of the work that he had already done. The work that I anticipated
25 he would be doing in relation to a planning application, and as I have said, an
26 element of sympathy in relation to the circumstances. The world that existed
27 for me at that point in time in relation to what was happening here was we were
28 moving on a residential path, the memos that are there from Mr. O'Halloran
29 confirmed that was a residential path that we were moving on. That was the
30 plan. The plan in relation to that involved preparing a planning application

1 and agreeing fees with him and keeping Mr. Finnegan on board to do that. And
2 that's what was the situation through 19, late 1989 and into 1990.

3 Q.147 You see in his evidence Mr. Finnegan has said that the following was the
4 sequence of events leading up to the payment of the monies?

5 A. Yes.

6 Q.148 In 1989 he met Mr. Kennedy in the Lucan office, Mr. Kennedy gave him some draft
7 sketches, which he required him or asked that he use as basis for a planning
8 application. He was also told that at that meeting that Gerry Carroll would be
9 of assistance. He says that subsequent to that discussion with Mr. Kennedy he
10 met Gerry Carroll, who gave him an envelope. That envelope he says contained
11 the drawing which we have seen on screen. And that drawing showed that it was
12 the intention of the council to rezone a significant part of the lands in the
13 Carrickmines Valley, for industrial purposes?

14 A. I have read his evidence and --

15 Q.149 Do you accept that I am summarising?

16 A. You are summarising it accurately, yes, you are.

17 Q.150 He says, just if you allow me finish, please. He says that he, as a result of
18 what he -- he says that he collected the envelope from Mr. Carroll and that he
19 handed it over to Mr. Kennedy and he says that he was uneasy about this. He
20 felt that there wasn't something quite right about it and that at a subsequent
21 time he asked Mr. Kennedy for the return of that map, and Mr. Kennedy said John
22 Caldwell has shredded it. He says that as a result, and indeed in relation to
23 the shredding he said on Day 374 and I will just put it to you:

24 "Had you conveyed that to Mr. Kennedy -- that is conveyed the envelope to him.

25 Answer: I did.

26 Question: Mr. Caldwell spoke to you about that map. Did you ever ask for that
27 map, the return of that map?

28 Answer; I remember on one occasion asking Jim Kennedy where the map was
29 because I would have liked to have got it back and ideally handed it back to
30 Gerry Carroll, at least have it on my own file, and when I asked Mr. Kennedy he

1 informed me that Mr. Caldwell had shredded the map.

2 Question: Did he tell you why the map had been shredded.

3 Answer: No.

4 Question: You said in your statement that you believed that Mr. Kennedy felt
5 that there was something out of the ordinary in the acquisition of the map.

6 Answer: Well the fact that the map was a classified document."
7

8 Now, Mr. Finnegan says that he was asked, as I say by Mr. Kennedy, to prepare a
9 planning application, he took up the telephone and spoke to a senior planner
10 and that planner told him, in effect he hadn't a chance of getting planning
11 permission on those lands. He says he conveyed that information back to you
12 and to Mr. Kennedy, in particular. Sorry, conveyed to Mr. Kennedy certainly
13 and presumably you learned of this, and as a result he didn't prepare a
14 planning application. But you came to his office and you agreed pay him 2,000
15 pounds for the work he had done.
16

17 Now the work he had done as I, again I am summarising and subject to correction
18 but this is my recollection of his evidence and his statement, I have
19 summarised for you the work he had done in relation to that. He had not
20 submitted a planning application, if he had he would have been looking for
21 10,000 pounds. And he was therefore delighted to receive 2,000 pounds for what
22 he had done.
23

24 Again, I am putting it to you that what he had done was A, met Mr. Kennedy in
25 Lucan. B, collected an envelope from Gerry Carroll which he gave to
26 Mr. Kennedy. And C, telephoned the County Council to find out what the chances
27 of getting planning permission for housing on the site was. And for that he
28 was paid two thousand pounds.

29 A. Well, in relation to that Mr. Gallagher, my emphatic position in relation to it
30 was I did not meet him to pay him 2,000 pounds in relation to any envelope he

1 got from Mr. Carroll. I have no knowledge of any envelope coming from
2 Mr. Carroll. I have no idea until I read this information who Mr. Carroll is.
3 I have, certainly did not get a map from Mr. Kennedy. I did not go to
4 Mr. Finnegan's office with the mission of paying him money for some map that he
5 had, had been got in doubtful circumstances from the County Council, and I did
6 not shred any map, the map that you are referring to, because I never had it
7 to shred it in the first place.

8 Q.151 Would you accept that if Mr. Carroll's evidence and Mr. Finnegan's evidence in
9 relation to the map is correct, that Mr. Carroll placed in an envelope, which
10 he handed to Mr. Finnegan, a map which showed that a significant portion of the
11 Carrickmines Valley lands would be rezoned for industrial development?

12 A. Well, that may or may not have occurred. I have no information to give the
13 Tribunal in relation to that, but it strikes me as completely inconsistent with
14 what I know the circumstances to have been at that time, and it's inconsistent
15 with the memos that are there on file from Mr. Brian O'Halloran who was a
16 prodigious note taker.

17
18 My recollection at the time was that we were dealing with a residential
19 application. His notes of the time refer constantly to residential
20 applications, they don't refer to anything to do with industrial. If it were
21 the situation that Mr. Kennedy had this information, Mr. Kennedy would have
22 changed his tack from residential and would have been on a tack of industrial
23 in relation to this. He would have told Mr. O'Halloran, and Mr. O'Halloran
24 being the note taker he is, would have put it into the minutes; and there is
25 nothing in these minutes which refers to industrial.

26 Q.152 Would you accept from me that if the evidence of Mr. O'Carroll and Mr. Finnegan
27 is correct in relation to the drawing which was placed in the envelope, which
28 was according to Mr. Finnegan handed over to Mr. Kennedy, sometime in or about
29 July of 1989, that Mr. Kennedy had available to him confidential information
30 which indicated that a significant part of the Carrickmines Valley was going to

1 be proposed for, to be rezoned for industrial purposes?

2 A. Well if that sequence of events occurred, if that sequence of events occurred,
3 clearly he was in possession of confidential information and I would regard it
4 as confidential.

5 Q.153Would you accept that he was given that, this information was only published to
6 the elected members on the 18th of October 1990, that he was in possession of
7 this information some 15 months before the elected members of Dublin County
8 Council. If, and I accept --

9 A. It is all with a big "if" Mr. Gallagher. If Mr. Finnegan is right and if
10 Mr. Carroll is right, and I must say it flies in the face of the file. It
11 flies in the face of the paperwork, it just isn't plausible in the context of
12 my recollection and Mr. O'Halloran's memos.

13 Q.154Well, if --

14 A. I have the greatest respect for Mr. Finnegan and -- but it just makes no sense.

15 Q.155If he is, if their evidence is correct and if their evidence for example is
16 accepted by the Tribunal, I take it that you would accept that Mr. Kennedy was
17 in possession of confidential information in relation to the proposed rezoning
18 of the Carrickmines Valley some 15 months before the elected members of Dublin
19 County Council were so aware?

20 A. It's a matter for the members, obviously, of the Tribunal to decide that.

21 Q.156Of course.

22 A. In relation to it. And I mean, I have stated my position in relation to it and
23 I, on what I recollect, and what I know from the paperwork in relation to it,
24 it's just not a plausible situation, Mr. Gallagher.

25 Q.157Can you offer any explanation as to why Mr. Kennedy would seek to obtain
26 confidential information from the County Council?

27 A. Well, I don't know whether he sought it or he didn't seek it in relation to it.

28 Q.158Well, do you have any reason to believe that Mr. Finnegan's evidence in
29 relation to obtaining the envelope and handing it to Mr. Kennedy is incorrect?

30 A. Sorry, somebody coughed?

1 Q.159 Do you have any reason to believe that Mr. Finnegan's evidence in relation to
2 the obtaining of the envelope containing the drawing and handing it to
3 Mr. Kennedy is incorrect?

4 A. Well I do. I do, because it doesn't fit with my recollection and it doesn't
5 fit with the documents that you have provided me in the brief. It's -- it just
6 is not consistent with the information that I have read in Mr. O'Halloran's
7 notes.

8

9 MR. FINLAY: Chairman, if I just might intervene with the object of expedition?
10 We are now halfway through the third day of Mr. Caldwell's evidence, we have
11 received a witness schedule this morning, which I understand to be a document
12 publicly available to those who might be interested in it, and it indicates
13 Mr. Caldwell's evidence is ambitioned to be finished by tomorrow.

14

15 We have spent a great deal of time this morning on this issue, which relates to
16 other persons, not Mr. Caldwell, but what I would like to draw to the
17 Tribunal's attention, in ease of expedition and particularly because of the
18 questions just asked about what would be the consequence if certain evidence
19 were accepted, that's of course not a matter for Mr. Caldwell at all, it is a
20 matter for, as he correctly says, you three; what's most important, Chairman,
21 is this, that I also have read the transcript of Mr. Finnegan's evidence, and
22 the crucial evidence, critical documentary evidence which would have tested the
23 credibility of that evidence, and of which evidence Mr. Gallagher is fully
24 aware, was never put to Mr. Finnegan to test his credibility.

25

26 So this exercise now asking Mr. Caldwell about the credibility or otherwise of
27 Mr. Finnegan's evidence is largely peripheral. Mr. Gallagher had available to
28 him when Mr. Finnegan was here, the relevant documents, all the memos from
29 Mr. O'Halloran referred to by Mr. Caldwell, they were not put to Mr. Finnegan.
30 This exercise might be much more relevant, useful at the time. I cannot find

1 any reference in the transcript to those O'Halloran memos being put to
2 Mr. Finnegan. It is perfectly clear as Mr. Caldwell says, that they fly in the
3 face of the evidence. I mention that to the Tribunal in ease of moving this
4 forward, given we may not have a great deal of time.

5
6 MR. GALLAGHER: I say that Mr. Finnegan was not a party to any of the dealings
7 as I understand his evidence, any of the dealings between Mr. O'Halloran,
8 Mr. Kennedy and Mr. Caldwell and Mr. Gore Grimes, so he would not have been
9 party to the discussions and would not have been in a position to comment on
10 the contents or otherwise of what was or was not discussed at any of the
11 meetings. It is perfectly legitimate for Mr. Caldwell to say that the evidence
12 of Mr. Finnegan is not consistent with the minutes to which he has referred,
13 that's perfectly legitimate for Mr. Finlay to draw attention to that, but I
14 think it would have been inappropriate for the Tribunal to put the documents to
15 Mr. Finnegan which he could not have known about and had no part or input into.
16 If the Tribunal felt otherwise, or indeed if Mr. Finlay had wished to put those
17 documents to Mr. Finnegan, he likewise, and the Tribunal could have put those.
18 If the Tribunal feels that Mr. Finnegan should be recalled to deal with these
19 matters, so be it.

20
21 MR. FINLAY: Just for the record, Chairman, I of course wasn't here when
22 Mr. Finnegan was giving evidence I would like to mention that.

23
24 My point was very short and very simple, he of course wasn't present at the
25 meetings, but much of the Tribunal from day one has been run on the basis that
26 evidence which would normally be documentary evidence, which would normally
27 have to be formally approved in a High Court action is introduced through the
28 documents, that's the way Mr. Gallagher has run the Tribunal from day one. It
29 was perfectly open to him to put to Mr. Finnegan, or rather to ask Mr. Finnegan
30 if these memos are correct. This is the approach he has just taken with

1 Mr. Caldwell. If the memos of Mr. Halloran are correct, if they correctly
2 record what Paisley Park and the O'Halloran interests were doing in early 1990,
3 if they correctly record that, how then Mr. Finnegan can you explain your claim
4 that Mr. Kennedy was fully aware of industrial zoning back in July '89? That's
5 the way, but it wasn't raised.

6
7 CHAIRMAN: The -- I have heard, we have heard Mr. Finlay, what you have said
8 and I think -- I think Mr. Gallagher is entitled to pursue the line that is
9 currently being pursued, as I understand it, what's -- the issue which is being
10 investigated at the moment is whether or not Mr. Caldwell was aware of plans to
11 seek some sort of industrial rezoning, is that right?

12
13 MR. GALLAGHER: That's so.

14
15 CHAIRMAN: Mr. Caldwell's evidence is that he, that he had no knowledge, or he
16 wasn't aware of any steps or plans by Mr. Kennedy, or anyone else, to pursue
17 that line. Whether there was any point in pursuing Mr. Caldwell in relation to
18 that particular aspect further, it seems to me that Mr. Caldwell is saying that
19 he knows nothing about that aspect of the case.

20
21 Obviously Mr. Gallagher, you will have to consider whether there is any point
22 in pursuing that beyond the extent to which it has been pursued so far.

23
24 MR. GALLAGHER: Indeed. I had not intended pursuing it in any significant
25 detail, although I had intended to ask simply, subject to your direction,
26 Mr. Caldwell in relation to dealings, a number of dealings he had with
27 Mr. Finnegan at the time, and in particular, Mr. Finnegan's evidence about his
28 dealings with Mr. Caldwell.

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30 CHAIRMAN: Well, that seems to be appropriate. I don't see how that can be --

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MR. FINLAY: Absolutely no objection to that. My point of course was a different one.

CHAIRMAN: Thank you.

MR. GALLAGHER: In the course of his evidence, Mr. Caldwell, Mr. Finnegan said that he knew that you acted for Mr. Kennedy in 1989 and in the course of the statement that he furnished to the Tribunal, which I believe he gave in evidence, says that he received instructions from Mr. Kennedy to apply for permission to develop houses in Carrickmines and his understanding was that Paisley Park Investments Limited owns the land as disclosed to him by Jim Kennedy.

He also said that he -- in 1989 around that time he would have had more dealings with Mr. Caldwell than with Mr. Kennedy, would you accept that as a factual statement?

A. Not really. I think elsewhere in the transcript he reverses that in fact. He had some, I had some conversations with him in '89 yes, but --

Q.160 He told the Tribunal, I think on more than one occasion that he recalls speaking to you when you called to his office at one stage and he asked you whether Mr. Finnegan, sorry whether Mr. Kennedy was still involved in Carrickmines lands and he says that you informed him that "we are trying to shake him from the tree"?

A. Yeah, I read that, but I have absolutely no recollection of that comment.

Q.161 And he went on to explain that his understanding was that from that comment, was that you, and others, were endeavouring to get rid of Mr. Kennedy from the company?

A. I have no recollection, and certainly of ever being in a mind frame that I was trying to remove Mr. Kennedy from Paisley Park, it just didn't, it just did not

1 happen.

2 Q.162Have you ever used that expression?

3 A. Not -- I can't recollect using that expression with Mr. Finnegan. I am sure I
4 have used that expression in other contexts, but I have no recollection of
5 using that with Mr. Finnegan.

6 Q.163Is it an expression that you would use from time to time in the ordinary course
7 of conversation?

8 A. No. I can't recollect when using it, I am familiar with the phrase but when it
9 might have been used and if I have used it I can't recollect an instance of
10 that, Mr. Gallagher.

11 Q.164Did you ever have an intention of trying to shake Mr. Kennedy from the tree?

12 A. No, I did not.

13 Q.165Can you give any explanation as to why Mr. Finnegan should have come to the
14 conclusion that you and others were so endeavouring?

15 A. I have absolutely no idea, I have no idea who the others might be either, in
16 relation to it. So it's -- I can cast no light on it.

17 Q.166Yes. Would you accept from me that it appears from your diaries that you met
18 Mr. Finnegan on three occasions in October and November of 1989, that is on the
19 26th of October 1989, the 1st of November 1989 and the 18th of November 1989?

20 A. I think there are three diary entries all right, whether all those meetings
21 occurred or not, I don't know. I do recollect that I met him in his offices,
22 that is a clear recollection.

23 Q.167While we are talking about Mr. Finnegan, he said that you asked him to meet
24 with you in the fairly recent past, that is in the year 2002?

25 A. Yes, that's correct.

26 Q.168Why did you ask to meet him in the year 2002?

27 A. Well, what was happening was that I was in the process of gathering information
28 together for the Tribunal on some other matters and in the course of that I
29 wrote to him looking for a copy of a submission which had appeared from the
30 correspondence, appeared to me from what I was looking at, whether it was in

1 the correspondence or not I can't recollect, it appeared to me he had prepared.
2 I wrote to him in relation to that, he sent me back a copy of that submission
3 and he also sent me back a copy of a covering note that was with it. And when
4 I looked at the covering note in relation to it I saw that the letters "JC" the
5 initials "JC" were at the bottom of the note and I jumped -- I recognised
6 immediately that this was not a document that I had generated and I recognised
7 that the signature on the document wasn't mine, so I wrote to him in those
8 terms and said that to him, and I then contacted him to meet him to see what he
9 knew about the origin of this document, having come to the, jumped to the
10 conclusion that someone was producing a piece of paper, I thought bearing my
11 initials, which I hadn't been -- hadn't been the author of.

12 Q.169 Sorry to interrupt you, I think Mr. Lawlor has since confirmed that this
13 document may well have been, perhaps he confirmed, was sent by his then
14 secretary to Mr. Finnegan?

15 A. I didn't know that at the time, but.

16 Q.170 No, but I think in recent, fairly recent past Mr. Lawlor has so confirmed,
17 again I am subject to correction, but I believe that to be the case. You say
18 that was the only reason you met --

19 A. That was the reason for contacting him, yes.

20 Q.171 All right. To come back to the position then that obtained in the early, in
21 1990/1991, I think that it is clear that you had continuing dealings with
22 Mr. Finnegan in relation to the submission of proposals for the rezoning of
23 Carrickmines lands?

24 A. Yes. Mr. Finnegan would re appear from my point of view on Paisley Park and
25 the Carrickmines lands in early 1992, I think it was. In that I liaised with
26 him at that stage and worked with him on the preparation of submission that he
27 did to an oral hearing of Dun Laoghaire/Rathdown, I don't know if it was Dun
28 Laoghaire/Rathdown or Dublin County Council.

29 Q.172 We know that on the third of December 1991 a written submission was submitted
30 on behalf of Paisley Park, seeking the rezoning of the lands in question.

1 That's on page 297 of the Carrick brief, I will just put on screen for the
2 purposes of identification. I don't intend to ask you, you will see it, this
3 is the covering letter sent by Messrs McCarthy, do you recall this document?

4 A. I recall, I have seen this document.

5 Q.173The next page please?

6 A. When I have -- I can't recollect when I have seen it, but my recollection is
7 insofar as I can put it in a time sequence, was seeing it after it had actually
8 gone in.

9 Q.174Do you see this document now on screen, which is page 298, Carrickmines
10 District Centre and Business Park, Town Planner Grainne Mallon, Planning
11 Consultant Grainne Mallon and Consultant Engineers D McCarthy & Company.
12 Do you recall seeing that document before it was submitted?

13 A. Not before it was submitted, no.

14 Q.175I see. We have heard Mr. Kennedy and Mr. Lawlor was involved in this document,
15 in the preparation of this document submitted by Mr. Finnegan?

16 A. Yes, I have read that evidence.

17 Q.176You are aware of the meeting in Leinster House some few days before it was
18 submitted on the third of December 1991, and a meeting attended by Mr. Lawlor
19 and Mr. Kennedy, Mr. O'Flanagan and Mr. Finnegan?

20 A. I have read all the evidence on that, yes.

21 Q.177Did Mr. Kennedy tell you about that meeting and discussions he had had and the
22 arrangement that were being made to submit the objections or the representation
23 to Dublin County Council?

24 A. I have no recollection of him telling me that.

25 Q.178Do you think it is likely that he did tell you?

26 A. Likely, unlikely -- I don't know. I just don't know if he told me or not.

27 Q.179Well, we do know that the third of December 1991 was the last date for the
28 submission of representations?

29 A. I know that was the last date.

30 Q.180Well, you presumably knew it at the time because you were interested purely in

1 having the lands rezoned, and if you wanted to achieve that rezoning then you
2 had to have this representation in by that date?

3 A. Yes, in or around that time. I would have been aware, I have no recollection
4 of it Mr. Gallagher, but in or around that time I would have been aware that
5 the 3rd of December was a critical date.

6 Q.181 You would be aware the submission had gone in?

7 A. Again I would have been, yeah, I have no recollection. Again I would probably
8 be aware that no submission had gone in.

9 Q.182 May I have page 1338 please? This is a letter from Martin Bullock to

10 Mr. Kennedy dated 11th of November 1991, and it says as follows:

11 "Can you please identify a town planner who is suitably qualified to prepare a
12 submission to the planning authority in respect of the company's land for the
13 purpose of the Draft Development Plan.

14

15 Anyone who you suggest can only be appointed by this company and no submissions
16 may be made without the prior approval of the company."

17 Did you arrange for Mr. Bullock to send that letter?

18 A. Again I have no recollection of doing so, but I would have, yes.

19 Q.183 Why did you get Mr. Bullock to write to Mr. Kennedy to identify a town planner?

20 A. It's part of the, part of the paper trail in terms of the tax. The company is
21 a non-resident company for tax purposes and the -- you have to recollect the
22 directors of that non-resident company need to exercise some management
23 function in their own jurisdiction, so part of that process would have been the
24 reason for this letter.

25 Q.184 And did Mr. Kennedy nominate somebody through Mr. Bullock to be appointed town
26 planner for the purpose of this exercise?

27 A. I think there is a reply to that letter, isn't there, in one of the papers from
28 Mr. Kennedy to Mr. Bullock.

29 Q.185 You say that this was effectively to create a paper trail?

30 A. Yes.

1 Q.186 Was it a false paper trail?

2 A. Not a false paper trail, but a paper trail that's there in relation to the
3 company's involvement in these activities that are being carried out on it's
4 behalf.

5 Q.187 Well, was it a paper trail which was intended to indicate that Mr. Bullock was
6 the director of Paisley Park Investments Limited and was the person who had the
7 beneficial interest in that, the lands, and in the company?

8 A. Nothing as complex as that. Mr. Bullock was the director of the company so the
9 company was seen to carry out it's corporate role in relation to the various
10 activities that were taking place. Mr. Bullock would be in correspondence on
11 that. He would give instructions to town planners, he would write to
12 solicitors, he would do the things that the company would, you know, would be
13 doing as part of it's commercial function.

14 Q.188 He was doing this on your instructions and on your behalf?

15 A. Well not on, he was doing this, he was doing quite a lot of the correspondence
16 in, on my express instructions.

17 Q.189 Yes?

18 A. And quite often though he would also, because things get a life of their own,
19 if you are dealing with a firm of solicitors or whatever, they are in
20 correspondence directly with you and you are able to deal with that
21 correspondence yourself without reverting all the time for individual
22 instructions, and that would have happened on many occasions as well.

23

24 CHAIRMAN: Mr. Caldwell, can we take it that all correspondence from
25 Mr. Bullock was on your expressed instructions, or follow up correspondence
26 arising in the first instance on, with correspondence on your expressed
27 instructions?

28 A. Yes. I mean the appointment of solicitors, the doing of all the, the biggish
29 actions that the company would have done were on my express instructions.

30

1 CHAIRMAN: But he wouldn't have taken it on himself to write letters off his
2 own bat other than to follow up on letters initially written with your
3 instructions.

4 A. That's correct, yes.

5

6 CHAIRMAN: Perhaps we would rise until 2 o'clock?

7

8 MR. GALLAGHER: Yes, all right, Sir.

9

10 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

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3 MR. GALLAGHER: Mr. Caldwell, just before lunch the Chairman asked about the
4 role that Mr. Bullock played in relation to correspondence and other matters.
5 Did Mr. Bullock prepare accounts in relation to income and expenditure of the
6 company?

7 A. Yes, he prepared I think, a handwritten record in relation to that.

8 Q.190 Did he furnish that to you and/or to Mr. Kennedy each year to show you the, or
9 on a regular basis to show you the up-to-date affairs and up to date finances
10 of the company?

11 A. No, he wouldn't have furnished it in the sense of sending it out to myself or
12 Mr. Kennedy. I would have seen it in his offices. I don't believe he ever
13 sent it to Mr. Kennedy.

14 Q.191 Well apart from -- okay, did he keep you informed of the state of the finances
15 of the company from time to time?

16 A. From time to time I would have met him yes, in relation to the matter. I would
17 have known the expenses that the company was incurring because they, if one
18 thinks in a situation like this there aren't that many really Mr. Gallagher.
19 The land purchase itself, the stamp duty and the legal fees and then the
20 professional's fees are really the only expenses.

21 Q.192 But there was income for example from Conacre Lettings I think, a member of
22 your family was involved in renting the lands at one stage?

23 A. Yes I think that's correct, yes.

24 Q.193 So there would have been a rental income and there would have been incidental
25 outlays such as for example the 2,500 pounds we have heard about today?

26 A. Yes that's correct, yes.

27 Q.194 And there would have been presumably some VAT element, there was a VAT element
28 we know of, 500 pounds and there would have been a refund of that I take it
29 from the English authorities or whatever on the account?

30 A. Well in that case there was no claim for VAT refund made in relation to it.

1 The -- to claim for VAT you would have to be registered in Ireland for VAT
2 purposes.

3 Q.195 That indeed is correct, am I not correct in thinking that work done for a
4 non-Irish registered company is not, does not attract VAT?

5 A. In most cases that's correct Mr. Gallagher but in a situation where the
6 transaction relates to land, and --

7 Q.196 I see.

8 A. VAT arises in those circumstances.

9 Q.197 I see. In any event you would have been kept informed by Mr. Bullock on a
10 regular basis of the state of the accounts of Paisley Park and later of Jackson
11 Way?

12 A. Well on an intermittent basis really in relation to it, there wasn't that much
13 happening it had to be a regular matter. In Jackson Way would, he wasn't
14 involved in the accounts of Jackson Way. He was there in the Paisley Park
15 time.

16 Q.198 I see.

17 A. And subsequent, on the liquidation his role in terms of Paisley Park ended, his
18 role remained in terms of Renzenbrinck.

19 Q.199 Indeed but as a director of Renzenbrinck, I take it he would have been kept
20 informed of the accounts of Jackson Way and the date of the details of any
21 expenditures Jackson Way might have incurred or things like that?

22 A. Well I don't remember talking to him about that in terms of Jackson Way. He
23 may have received something in relation to it but I have no recollection of him
24 receiving anything Mr. Gallagher.

25 Q.200 Tell me this, did he ever visit the land at Carrickmines, to your knowledge?

26 A. That I can recall. He certainly was in Ireland a couple of times and he may
27 have been out there, but I can't recall.

28 Q.201 Did you tell Mr. Kennedy about the agreement that you had reached with
29 Mr. Finnegan in relation to fees?

30 A. Well I would have told him that he was being paid 2,000 pounds. Again I have

1 no recollection of it but it would surprise me that I wouldn't tell him.

2 Q.202Did he raise any objection to the level of fee that is, were being paid?

3 A. Again not that I can recall in relation to it.

4 Q.203I see. You had a number of dealings I think with Grainne Mallon, the town
5 planner referred to in the Carrickmines submission that was forwarded by
6 McCarthy, Desmond McCarthy on the 3rd of December of 1991?

7 A. I would have had no dealings with Ms. Mallon in relation to the 3rd of December
8 '91 submission. I did have dealings with her in relation to the, I suppose you
9 would call the February '92 submission.

10 Q.204Yes?

11 A. Which is the one that was lodged at the oral hearing.

12 Q.205Yes. That was a submission that was effectively a follow up to the, an
13 elaboration on the 3rd of December 1991 submission?

14 A. Yes, originally the 3rd of December '91 submission was put in I think, on that
15 date and the other submission then was prepared, and it contained more
16 extensive information.

17 Q.206That submission went to the Council before the second of, on or before the
18 second of March 1992, which was the date on which Mr. Finnegan attended for an
19 oral hearing with the late Neville Davin and a Ms. De Boristéal on behalf of
20 the County Council?

21 A. Yes, looking at the papers I saw an acknowledgement of receipt of it at the
22 time.

23 Q.207And that is the document that you say you were involved in preparing or
24 approving with Ms. Mallon in presumably early 1992?

25 A. Yes, that's correct and Mr. Finnegan as well, actually he was involved in that
26 too.

27 Q.208I take it that you would have had, at that stage been aware of the contents of
28 the submission of the 3rd of December 1991, that's the Carrickmines project
29 that we have, we saw on screen?

30 A. Again I have no distinct recollection of that but in all probability, yes.

1 Q.209I think we have confirmed you would have known it went in on the last day of,
2 the last day for the receipt of representations?

3 A. Again yes, there are no express recollections but --

4 Q.210As a matter ever?

5 A. As a matter of course I would expect that, yes.

6 Q.211Now Ms. Mallon has said that she, from an examination of her records,
7 discovered that she met you in her office on the 24th of February of 1992 and
8 was given maps by you?

9 A. Until I saw that in the evidence I have no recollection of ever having met her,
10 but do I have a recollection of meeting her in her offices, I think her offices
11 were down in Merrion Square.

12 Q.212But she said that you gave her maps on that occasion and they presumably told
13 her the lands were owned by Paisley Park and that on the company's behalf you
14 wished to have the zoning of the lands changed?

15 A. I think there may have been some communication earlier than the 24th, earlier
16 than that late on in February. Because that was, that date is quite close to
17 the time that Mr. Finnegan lodged the papers with the council at the oral
18 hearing, so I would suspect, although I cannot be a hundred per cent sure about
19 it, I would suspect that there was contact with her before that date.

20 Q.213Well we know that Mr. Flanagan met her in her office immediately after the
21 meeting in Leinster House on the, at the very end of November or beginning of
22 December perhaps, I think perhaps the 1st of December of 1991?

23 A. Mm-hmm.

24 Q.214So she would have been familiar the lands in question and was familiar with the
25 representation, after all her name was on that representation as being the
26 consultant planner and there was a short summary of her qualifications and
27 experience in that document, so presumably that was done with her knowledge and
28 approval?

29 A. If Mr. Flanagan said he met her I presume that took place but I have no
30 recollection of that.

1 Q.215 So far as the submission maintains and this is the submission you spoke to
2 Mr. Finnegan about in 2002?

3 A. Yes.

4 Q.216 That referred to Ms. Grainne Mallon and her qualifications and her experience
5 and all that sort of thing, I take it that was done with her approval?

6 A. I would believe so, yes.

7 Q.217 Tell me, were you told by anybody about the meeting in Leinster House on or
8 about the first of December of 1991?

9 A. No, I have no recollection of being told about the meeting.

10 Q.218 Well do you think that it is probable that Mr. Kennedy told you about it and
11 explained what had happened and who had attended?

12 A. He may well have told me about it yes, but I have no recollection of him
13 actually telling me.

14 Q.219 Did you know that he was being assisted in, the work he was doing in an effort
15 to achieve the rezoning of the part -- the lands in question and in particular
16 being assisted in relation to the submission by Mr. Liam Lawlor?

17 A. I have no recollection of that either but if Liam Lawlor helped him in
18 preparing the submission then again in all probability he would have told me
19 that.

20 Q.220 Yes. Well Mr. Lawlor has accepted that he did help have a meeting, the records
21 of Leinster House show there was such a meeting we have had the evidence of
22 Mr. Finnegan and Mr. Flanagan and we have seen Mr. Flanagan's diary which show
23 that Mr. Kennedy and Mr. Lawlor came to his office and, on I believe the 2nd,
24 speaking from memory, but about the 2nd of December of 1991 the date on which,
25 the date prior to the submission of the Paisley Park representation?

26 A. I have nothing to contradict that.

27 Q.221 Yes. As a matter of probability; can the Tribunal take it as a matter of
28 probability that you knew of that meeting and the involvement of Mr. Lawlor at
29 that time?

30 A. It is possible that I was told that at that time, yes.

1 Q.222I appreciate it is possible. But as a matter of probability, given that you
2 were effectively a co-owner of the land, can the Tribunal take it that as a
3 matter of probability you were told by Mr. Kennedy of Mr. Lawlor's involvement
4 at that time?

5 A. It's probable.

6 Q.223Yes. I just want for the record if I may, to ask you to identify a document
7 which was submitted to, just before you -- Mr. Registrar perhaps -- this is a
8 document which was submitted by your solicitors Miley & Miley on the 10th of
9 October and which arose or which was submitted arising from evidence that was
10 given and I just wanted to, for the purpose of the record, to read it into the
11 record and perhaps you would confirm that this was a declaration and a covenant
12 that was prepared on your behalf and for your benefit by Martin Bullock.

13

14 The declaration and covenant reads as follows:

15 "I confirm that I am the sole and beneficial owner of all the issued shares of
16 Renzenbrinck Investment Inc. and that no further shares shall be issued without
17 your written consent.

18

19 I covenant and confirm that I will transfer and procure the transfer of all my
20 right, title, to and in the shares of Renzenbrinck Investment Inc. to your
21 designee, who may at your discretion include yourself, when called upon to do
22 so by you.

23

24 I further covenant that I shall vote the shares and exercise my powers as
25 director as you may from time to time call upon me to do and shall procure that
26 you are appointed to direct if requested by you.

27

28 All rights and powers conferred by this declaration and covenant shall also
29 vest in your successors and assigns and shall bind my successors" to John
30 Caldwell and signed sealed and delivered as a deed by Martin Bullock. It is

1 not dated but it was declared at the Isle of Man Courts of Justice, Douglas,
2 this 24th day of January 2003 before me Clare Emily Marie Quine -- QUINE,
3 commissioner for oaths, is that right?

4 A. That's correct.

5 Q.224And you have a number of letters also furnished to the Tribunal through your
6 solicitors on the 10th, letters that you had written to Mr. Bullock urging him
7 to make a will to deal with the Renzenbrinck Investment shares?

8 A. Yes, that's correct.

9 Q.225And they are attached to that document, they are dated the 7th of November
10 2002, 9th of January 2003 and there is a response, I think the 11th November
11 2002 from Mr. Bullock confirming that he is arranging to see his solicitor and
12 sort matters out i.e. to make a will to deal with the Renzenbrinck Investment
13 shares, is that correct?

14 A. That's correct. He hasn't yet made a will by the way.

15 Q.226I now want to turn to the evidence given to this Tribunal by Mr. Frank Dunlop
16 concerning you in particular. You will recall that Mr. Dunlop, in his written
17 statement and in the evidence which he subsequently gave, has told the Tribunal
18 that he, summarising, I am going to paraphrase what he said, he said that you
19 came to see him on the 17th of January 2000 -- sorry 1991. I know that you
20 have furnished a statement subsequent to the conclusion of Mr. Dunlop's
21 evidence and perhaps Mr. Chairman it might be appropriate, I don't intend to
22 read the entire statement subject to any direction you may give because it
23 relates to lands at at Baldoyle and these lands I believe, will be the subject
24 of further inquiries by the Tribunal, perhaps, probably the subject of a public
25 hearing by the Tribunal.

26

27 But I think it is appropriate that I would read a few paragraphs from that
28 statement, because it does set out your response to the evidence or part of the
29 evidence that was given by Mr. Dunlop.

30 A. Sorry Mr. Gallagher would it be possible to have a copy.

1 Q.227Yes, I will arrange to get you a hard copy of the -- I am simply going to read
2 certain excerpts from it, I am not going to ask you any questions about it
3 really, I think we can arrange --

4
5 CHAIRMAN: Well if the section, if the --

6
7 MR. GALLAGHER: We'll print off the statement.

8
9 CHAIRMAN: If the sections that you are going to read are in anyway lengthy I
10 think it is fair that Mr. Caldwell --

11
12 MR. GALLAGHER: They are not lengthy and I will arrange if I may, I will read
13 them and I will give them to Mr. Caldwell if he wants to check them, but I will
14 assure him that I will simply read what is there. I should say that this
15 statement has not been circulated but it seems to me that in fairness to
16 Mr. Caldwell that your account has, as contained in that statement insofar as
17 it relates to what Mr. Dunlop has said should be put to you at this stage.

18 A. Yes.

19 Q.228With that in mind can I say that the statement is a narrative one which you
20 furnished to truth only on or about the 28 of March 2003.

21 A. That's correct.

22 Q.229And it's dealing with the "Involvement of Frank Dunlop with lands at Baldoyle
23 in so far as the statement is relevant to the investigation being carried out
24 by the Tribunal of Inquiry into Certain Planning Matters and payment into land
25 at Carrickmines called Carrick 1 module" that's the heading on the statement?

26 A. Yes.

27 Q.230Just to set as it were, background to the Baldoyle involvement, you say at page
28 2 "I first became involved with the lands at Baldoyle through James Kennedy in
29 1988 at the time I was involved with him in relation to some other matters and
30 at his invitation I agreed take up a quarter share of the project. I believe

1 James Kennedy was introduced to John Byrne by Mr. Lawlor, Mr. Kennedy
2 negotiated with John Byrne for over a year at least and these negotiations
3 resulted in an option" which you described as a Kennedy option being exercised?

4 A. Yes.

5 Q.231And then you set out who the main terms of the option were, grantor was
6 Endcamp, the grantee was Baubal, a company incorporated in the Isle of Man of
7 which yourself, Mr. Kennedy and Mr. Lawlor were involved. The date of the
8 agreement was the 4th November 1988 and the period for the exercise of the
9 option was up to the 6th of April 1990 with in certain circumstances which
10 should incur an extension to the 24th of January 1991. The price was 220,000
11 pounds per acre, it was in respect of an area of land of approximately 100
12 acres?

13 A. Yes, that's correct.

14 Q.232You also said in the course of that statement that there was another option
15 which you described as the Dunlop option?

16 A. Yes.

17 Q.233Which relates to those lands?

18 A. Yes.

19 Q.234I don't want to get any more, to involve you or the Tribunal at this stage any
20 more in those lands, safe to say that it is in that context that you prepared
21 this statement?

22 A. Yes.

23 Q.235And you point out that you had been dealing and Mr. Dunlop had been dealing --
24 sorry Mr. Dunlop more particularly had been dealing with those lands for some
25 time at the end of the 1989, 88/9 period prior to the time he says he met you
26 January of 1991.

27 A. That's correct, yes.

28 Q.236And at page eight, you say as follows --

29

30 MR. FINLAY: I am sorry Chairman, if I just might intervene at this stage

1 because there are for the first time perhaps since the examination of
2 Mr. Caldwell commenced, we are perhaps coming close to evidence which actually
3 relates to the allegations which essentially we are enquiring into, namely the
4 allegations made by Mr. Dunlop up to now in three and a half, two and a half
5 day it is, hasn't been the case.

6
7 But now we are coming, it appears, to matters which do appear to be relevant
8 and I think it is very important to bear in mind the circumstances which give
9 rise to this statement.

10
11 If I just might briefly remind the Tribunal how it comes into being. It arises
12 to my recollection, out of my cross-examination of Mr. Dunlop in relation to
13 this module, obviously we are only dealing with this module, Carrickmines 1 and
14 I cross-examined Mr. Dunlop in relation to a narrow but important range of
15 factual issues relating to, in particular 1989/90/91 and the evidence that he
16 had given, the crucial evidence that he had given concerning events in early
17 1991, and arising out of that, my recollection is that I suggested that the
18 material on which I had cross-examined him might be of assistance to the
19 Tribunal, if a narrative statement was prepared by Mr. Caldwell dealing with
20 that evidence, i.e. only insofar as that evidence was relevant to Carrickmines
21 1 and the Tribunal, I think, was glad to have that suggestion and took it up
22 and it lead to the making of this statement. The purpose in the preparation of
23 this 11 page statement was to set out the relevant facts, the relevant facts or
24 facts relevant to the evidence of Mr. Dunlop in relation to this module, it
25 happens that the relevant facts or a number of them, arise in the context of
26 that Baldoyle was current as you will see, at relevant and material times and
27 therefore it was crucial and is crucial for this module, for the Tribunal to
28 fully understand and know what was occurring in relation to Baldoyle at the
29 precise time at which Mr. Dunlop has described certain events in his evidence.

1 So that's the background to the statement. And you will have seen from it's
2 title it is not meant to be a statement about Baldoyle, it is meant to be a
3 statement about Baldoyle insofar as Baldoyle is relevant to Carrickmines and it
4 is purposed on that basis it was submitted to the Tribunal.

5
6 I only mention all of that by way of introduction, I notice Mr. Gallagher moved
7 on he may plan to come back, he seems to have moved on to page 8, there is
8 obviously other critically important evidence in this statement, critically
9 important to the Carrickmines module which he has passed over, maybe he intends
10 to come back to it, he may not wish to and I will have to deal with it in
11 re-examination but I merely want to mention that at this point, I didn't want
12 my silence to be taken to mean that we, I disregard or regard these sections of
13 the statement as irrelevant to Carrickmines it is, in my respectful submission
14 that they are crucially relevant.

15
16 Now in order to understand their relevance the Tribunal would have to have in
17 front of it probably some of Mr. Dunlop's evidence and other matters, I want to
18 mention that at this stage, it can be dealt with in a number of ways. I can
19 return to it in re-examination.

20
21 CHAIRMAN: I would think that's probably the best thing to do, that you would
22 have the freedom to return to it when you are cross-examining, if you feel that
23 anything of importance has been omitted by Mr. Gallagher.

24
25 MR. FINLAY: Yes indeed. No problem, but I just thought I should mention that.

26
27 MR. GALLAGHER: I should say Sir, that my understanding that the Tribunal had
28 decided that because this statement dealt with, although Mr. Finlay says it's
29 relevant to Carrickmines and I do accept that there are a number of passages
30 that deal with Mr. Dunlop's evidence in relation to Carrickmines, that it was

1 more appropriate to deal with it as a Baldoyle issue as it were. And that, for
2 that reason, the decision was taken not to circulate it.

3
4 CHAIRMAN: Yes, well I don't think Mr. Finlay is suggesting it was circulated,
5 obviously it should only be referred to insofar as it is relevant to
6 Carrickmines, but Mr. Finlay's point is that he doesn't want to be restricted
7 to dealing with the contents of the statement entirely based on what you or
8 indeed the Tribunal might deem to be relevant he wants the opportunity to refer
9 to other sections of the statement, now whether you might have reason to object
10 to that when the time comes is a matter that can be dealt with as we go along.

11
12 MR. GALLAGHER: I would just draw the attention of the Tribunal to the fact,
13 A. The statement has not been circulated.
14 B. That many people who are not involved in Carrickmines 1 are referred to and
15 mentioned in the statement and may wish to have input into it and it was for
16 that reason and for the reason that the statement seems to deal primarily with
17 the involvement of Mr. Dunlop and others with Baldoyle that it was decided at
18 that stage that did, would not be gone into in any detail and that the Tribunal
19 would essentially deal with Mr. Caldwell's evidence on the basis that he has
20 said, Mr. Finlay has said in putting questions to Mr. Dunlop, that Mr. Caldwell
21 and Mr. Dunlop had had meetings and dealings as it were, in relation to
22 Baldoyle long before the alleged meeting of the 17th of January of 1991.

23
24 CHAIRMAN: I accept that. But I think the point being made by Mr. Finlay is
25 that if he feels that a particular section of the statement is relevant to
26 Carrickmines he should at least be entitled to raise that possibility.

27
28 Now presumably he will do so on the basis of some fore-warning to yourself so
29 that if there is to be a dispute as to whether Mr. Finlay is going into some
30 other territory that the Tribunal doesn't want to go into at this stage, that

1 that could be, that could be decided on before he ventures down that road.

2

3 MR. GALLAGHER: I am quite happy to do that. It may be that Mr. Finlay would
4 have --

5

6 CHAIRMAN: Mr. Finlay, is that all right?

7

8 MR. FINLAY: Yes Chairman, but just so that my position or the place where I am
9 coming from is clear. The object of this, so that the Tribunal is in no doubt
10 about it, the object of this is not with a view to in anyway if you like,
11 protecting Mr. Caldwell's position or any particular allegation because there
12 is none, the sole purpose of this and of course as I understand it the prime
13 purpose of the three Members of the Tribunal, is to establish the truth or
14 otherwise, the truth or otherwise of allegations made which are the subject of
15 Carrickmines 1. That's the Tribunal's primary function.

16

17 Central to those allegations are the allegations made by Mr. Dunlop, the
18 purpose of this statement in it's genesis and today is directed solely to that
19 end, to assist the Tribunal in establishing whether or not certain allegations,
20 important allegations made by Mr. Dunlop which were the subject of this module
21 are in fact correct and so it was to that end that this statement was put
22 together, it was on that basis and cross-examination, that is the objective of
23 it.

24

25 CHAIRMAN: Well as we understand it Mr. Finlay, your point is that you don't
26 wish to be necessarily restricted to sections of this statement being opened
27 based on what Mr. Gallagher believes to be the only parts relevant to what we
28 are dealing with.

29

30 MR. FINLAY: That's correct.

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CHAIRMAN: That you want the freedom to at least seek leave from the Tribunal to go further into the statement as you deem it necessary.

MR. FINLAY: If necessary, yes.

CHAIRMAN: And that it presents a problem for Mr. Gallagher, then we can deal with it when the time arises.

MR. FINLAY: Absolutely. Absolutely.

MR. GALLAGHER: I have no difficulty with that.

The first page I was going to refer to was page number 8. I was going to come back to number 4, perhaps if I start at the bottom of page number 4, you have in front of you a copy?

A. I do yes.

Q.237 You say you are talking about a Foreshore license sought in respect of the lands, the subject of the Kennedy option?

A. Yes.

Q.238 You say that "It was accordingly at the suggestion of Mr. Kennedy that I met Mr. Dunlop in November 1989 with a view to retaining him to lobby the Department of the Marine to issue the Foreshore license. I believe the entry in my diary of a meeting with Mr. Dunlop on the 30th of November 1989 is the record of the meeting I had with Mr. Dunlop in this regard. I cannot recall the terms on which he was retained. In the event no license was procured and a vastly more expensive solution was implemented."

On the top of the next page "The next occasion upon which I met Mr. Dunlop in connection with the lands at Baldoyle were in 1990." and if we now turn to page

1 8.

2

3 You say: "I have no hesitation what so ever in saying that Mr. Dunlop is wrong
4 in his allegation that the first meeting he had with me was on the 17th of
5 January of 1991. I am sure that I met him in November 1989 in relation to the
6 Foreshore license at Baldoyle and again on a number of occasions in 1990 in
7 connection with the resolution of the local residents objection to the
8 industrial planning application which was then pending.

9

10 Mr. Dunlop is wrong when he says that the matter discussed at our meeting on
11 the 17th of January 1991 was Carrickmines. Both the meetings on the 15th of
12 January 1991 and on the 17th of January 1991 related solely to Baldoyle.

13

14 The first time I met Mr. Dunlop in relation to the Carrickmines lands was in
15 1992 when I met him and provided him with a copy of the submission which had
16 been prepared in 1992 in conjunction with Mr. Finnegan and Ms. Grainne Mallon.

17

18 This has already been referred to in my narrative statement dated 20th of
19 November 2002 to the Tribunal in connection with the Carrickmines 1 module. I
20 did not contact Mr. Dunlop to arrange a meeting with him on the 17th of January
21 1991 with a view to introducing him to Mr. Kennedy nor did I have such a
22 meeting with Mr. Dunlop at any other time. Mr. Kennedy was well known to
23 Mr. Dunlop at that stage and had been for a long time before that."

24

25 MR. GALLAGHER: Then on the following page, page 9 in the middle of the page :
26 "I do not recollect having any further contact with either Mr. Dunlop or
27 Mr. Lawlor in relation to Baldoyle after the 17th of January 1991 nor do I
28 recall any further meeting with Mr. Hugh Byrne after the 15th of January 1991.

29

30 The amended Dunlop rezoning plan which was promoted by Mr. Dunlop and

1 Mr. Lawlor went public on 21st and 22nd of January 1991 by articles in the
2 Irish Independent, Mr. Dunlop was named as spokesman for the development in an
3 article in the Irish Independent on the 22nd of February, 1991. Although I do
4 not recollect any further meetings with Mr. Hugh Byrne after 15th January 1991
5 he did continue to write to me. On the 7th of May 1991, he wrote to me saying
6 he had endeavoured to facilitate Mr. Dunlop in every possible way in promoting
7 his plans, he was however under extreme pressure from the anti-development
8 lobby and had written to Mr. Dunlop suggesting some promotion might be helpful
9 to counter this lobby"

10
11 And on the bottom of page 10 you say "sometime in 1992/93 Mr. Dunlop sought tax
12 advice from me in relation to the Dunlop option and at the time told me he was
13 the owner of Pennine Holdings limited. In giving his evidence questions 432
14 and 433 on days 369 it seem Mrs. Dunlop dealt with this issue by confusing the
15 giving of tax advice with the provision of legal advice on incorporation of his
16 condition which advice was not given by me."

17
18 Now that statement was furnished to you in the context of evidence that was
19 given by Mr. Dunlop, to this Tribunal?

20 A. Yes that's correct.

21 Q.239 And I should say that you have furnished your diaries to the Tribunal and if we
22 look at page 4276 of the Carrick brief, we'll see that you have an entry for
23 Frank Dunlop, at the top of the page, do you see that?

24 A. Yes do I Mr. Gallagher, yes.

25
26 CHAIRMAN: What year is that?

27
28 MR. GALLAGHER: That is the 30th of November 1989. There is a reference there
29 crossed out or is it, can you assist the Tribunal what is that?

30 A. I am not sure what that is, it looks like "Gorman" or something like that.

1 Q.240"Gorman" -- is that right? Well then above that is "Frank Dunlop" and there
2 is, there are two other initials behind, opposite that name, behind that name,
3 can you assist the Tribunal?

4 A. They look like the letter "D D, " two letter Ds.

5 Q.241D?

6 A. D as in dog.

7 Q.242Do you know what they signify?

8 A. I have no idea Mr. Gallagher.

9 Q.243I think you have another entry in your diary of the 11th of April of 1990, 1123
10 please, I should have asked you, can you remember what that meeting on the 30th
11 of November 1989 related to?

12 A. It related to the Foreshore application at Baldoyle.

13 Q.244Right. Now on the 11th of April of 1990 we see from Mr. Dunlop's diary a
14 reference to you for Wednesday the 11th of April of 1990?

15 A. Yes.

16 Q.245Your name is written in there and it's crossed out which may indicate that the
17 meeting was arranged but not held?

18 A. It may well, yes.

19 Q.246Yes. May I have the 18th of August 1990 please, sorry 1124. That's
20 Mr. Dunlop's diary and he, again he shows that he had a meeting arranged with
21 you for 9 am on Wednesday the 18th of April 1990, can you recall what that
22 meeting was about?

23 A. I recall that the meetings that I was having with Mr. Dunlop at that time
24 related to the dealing with the residents difficulties that existed in the
25 Baldoyle area.

26 Q.247Right?

27 A. As a result of the planning applications which were --

28 Q.248It was a Baldoyle matter anyway?

29 A. A Baldoyle matter, yes indeed.

30 Q.249The 23rd of August 1990, 1163? This again is Mr. Dunlop's diary and he has an

1 entry for "John Caldwell 9.30, " can you recall what that was about, was it a
2 Baldoyle matter?

3 A. A Baldoyle matter, yes.

4 Q.250Yes. 15th of January 1991, 1200 please. That again is an entry from
5 Mr. Dunlop's diary?

6 A. Yes.

7 Q.251Which he furnished to the Tribunal, which suggested he had a meeting with you
8 at 1.30 on that date?

9 A. Yes.

10 Q.252Can you recall what that was about?

11 A. Again a Baldoyle matter.

12 Q.253I see. 1201 please. He has the number "765656 John Caldwell" at the top of
13 the page?

14 A. Yes I think that was my telephone number at that time.

15 Q.254That was your name?

16 A. I think it was my office telephone number.

17 Q.255Well that is, it's not specifically related to any of the three dates at the
18 top of that page, presumably it was written at the time when the page was open,
19 that was Thursday, Thursday 17th, Friday 18th and Saturday 19th. In order it
20 isn't down in the body of indicating a particular time on any of those three
21 days?

22 A. No, it's not, it's just in the heading at the top.

23 Q.256Sorry can we scroll down for the 17th please. There is an entry at 6 pm the
24 17th "John Caldwell"?

25 A. Yes I see that.

26 Q.257Now Mr. Dunlop says that that is an entry which related to a meeting which he
27 had with you when you came to see him, you telephoned him and came to see him
28 at his office and he says that that meeting concerned land at Carrickmines?

29 A. The meeting did not concern lands at Carrickmines.

30 Q.258What did it concern?

1 A. Baldoyle.

2 Q.259Mr. Dunlop says that at that meeting you told him about Paisley Park?

3 A. No. I did not discuss Paisley Park with him in 1991.

4 Q.260To the best of your knowledge and belief, had Mr. Dunlop been told by anybody
5 about Paisley Park prior to the 17th of January of 1991?

6 A. From me personally no, but he may well have been told about, even about the
7 existence of Paisley Park by Mr. Kennedy.

8 Q.261He may have, but I mean do you have any -- you have no knowledge?

9 A. I have no knowledge.

10 Q.262You haven't been told by anybody else that they had told Frank Dunlop about the
11 Paisley Park land or anything like that?

12 A. No I have not. I have no recollection of it.

13 Q.263He says that he was asked by you to go to talk to James Kennedy and he says
14 that he called to the basement of Mr. Kennedy's arcade in Westmoreland Street
15 shortly after his meeting with you on the 17th of January 1991. He says "this
16 is the first time I met Mr. Kennedy. " Now I have to ask you, did you on that
17 occasion, or indeed on any occasion, ask Mr. Caldwell to go to speak to
18 Mr. Kennedy at his premises in Westmoreland Street?

19 A. I think.

20

21 MR. FINLAY: I think it should read in the transcript "ask Mr. Dunlop".

22

23 CHAIRMAN: Sorry?

24

25 MR. GALLAGHER: I beg your pardon, of course. Did you Mr. Caldwell, did you
26 on that occasion, the 17th of January 1991 or any other occasion, ask
27 Mr. Dunlop to go to meet Mr. Kennedy?

28 A. No I did not.

29 Q.264Did you ever tell Mr. Dunlop about the Paisley Park lands?

30 A. When I met him about the Paisley Park lands he already knew of the Paisley Park

1 lands. That was in 1992. I met him to provide him with the submission.

2 Q.265Yes.

3 A. And to give him a copy of his submission.

4 Q.266Now, Mr. Dunlop does not say that you were party to or were present when any of
5 the agreements which he says you reached with Mr. Kennedy were discussed or
6 arrived at?

7 A. Yes, that's correct.

8 Q.267Can you think of any reason why he might have given evidence to the Tribunal
9 that you called to his office on a particular occasion and asked him to go to
10 see Mr. Kennedy?

11 A. Well I have my own view that there may have been an element of retribution as
12 far as he was concerned in relation to myself and Mr. Kennedy because of what
13 transpired in relation to the Dunlop option, but that's speculation on my part.

14 Q.268Well if there was to be retribution on his part against you, one would have
15 expected him to say, to have implicated you in his allegation that the figure
16 of 25,000 was agreed to be paid to him in order that he could bribe the
17 councillors?

18 A. He has chosen do that elsewhere Mr. Gallagher.

19 Q.269Where has he chosen to do that?

20 A. He has chosen to do that in relation to another matter.

21 Q.270He could have chosen do that in this matter?

22 A. Indeed he could, yes.

23 Q.271If his motive had been one of retribution?

24 A. Indeed.

25 Q.272And I suggest to you that insofar as his evidence relating to the Carrickmines
26 lands are concerned, his motive would appear not to be one of retribution
27 because he does not implicate in the lands safe to say that you asked him to
28 call to see Mr. Kennedy?

29 A. Yes that's correct in, he makes no allegation.

30 Q.273He makes no allegation?

1 A. In allegation at all in relation to me.

2 Q.274 There is nothing improper, or would be nothing improper in one individual
3 asking another to go to see another person?

4 A. Mm-hmm.

5 Q.275 Isn't that correct?

6 A. Absolutely, I agree, yes.

7 Q.276 So it is difficult to see where there could be retribution in relation to what
8 he has said about you in the context of Carrickmines?

9 A. Well as I acknowledge it is not there in the Carrickmines allegations.

10 Q.277 And it would have been easy for Mr. Dunlop if he had been intent on retribution
11 or misleading this Tribunal, to have said that on a date that he can not recall
12 early in the 1990s he was asked by you to go to see Mr. Kennedy, but he is very
13 precise, very exact about the date on which he says this happened?

14 A. I have read his evidence Mr. Gallagher, he is very precise about it, but he is
15 wrong about that date.

16 Q.278 Tell me, did you have any other dealings with Mr. Dunlop in a PR context, did
17 you have for example, any dealings with him in relation to conferences such as
18 he has described in his evidence?

19 A. Yes I did. Several years, many years after in fact, I asked him to give advice
20 to the law firm in relation to the PR aspects of a law conference that the firm
21 was hosting. I also asked him from a PR point of view, to act for some English
22 clients of the firm who were interested in establishing a business in Ireland
23 and I recommended him to them as well.

24 Q.279 When do you say that happened?

25 A. I think those happened -- I have obviously only thought of it, to try and fix a
26 time on it but I can't recollect clearly but sometime in the 90s that would
27 have occurred mid 90s.

28 Q.280 Mr. Dunlop's evidence was that he had previous meetings and dealings with you
29 of a professional nature which did not relate to Paisley Park lands, do you
30 remember that evidence?

1 A. Yes he did have dealings with me as I said in relation to the Baldoyle lands
2 which didn't relate to Carrickmines. He had the dealings with me in relation
3 to the conference, he had dealings with me in relation to these clients. In
4 relation to another land situation he had a meeting with me, with someone who
5 was interested in those lands on that person, with that person. Yes I had a
6 number of contacts with him.

7 Q.281Do you say that you had discussions with Mr. Dunlop on a number of occasions in
8 relation to the Baldoyle lands before the 17th of January of 1991?

9 A. Yes I do.

10 Q.282Did you discuss the 85 Development lands with him prior to the 17th of January
11 1991?

12 A. No I did not.

13 Q.283When did you discuss the 85 Development lands with him?

14 A. That was after October of 1992.

15 Q.284Did you discuss an international law conference with him in which your firm at
16 that stage were involved and if so, could you have done that before the 17th of
17 January of 1991?

18 A. No that would have been late, that was well into the 90s Mr. Gallagher.

19 Q.285I see. And did you confirm that you did have discussions or dealings with him
20 in relation to US, sorry UK based client of yours?

21 A. Yes I did.

22 Q.286When do you say that took place?

23 A. Again I would say that was in the 90s as well, in the mid, sort of 95/97 range
24 I would have thought.

25 Q.287On day 341, Mr. Dunlop said that you came to his office on the 17th of January,
26 that you had a discussion in broad terms, you told him that there was a body of
27 land in Carrickmines known as Paisley Park and that you wanted these lands
28 zoned. You told him, he said, that the lands were owned by Mr. Kennedy, he was
29 asked by you go to see Mr. Kennedy?

30 A. It just did not occur in that way. I certainly went to his offices, it was in

1 1992. I went with a submission but not in 1991 and not in the terms that he
2 described.

3 Q.288Where did the meeting of the 17th of January 1991 take place?

4 A. I believe that that took place in -- I am not clear my recollection where it
5 took place, the meeting of the 15th of January was a meeting which is where he
6 briefed me in relation to the matter I was dealing with and the other meeting
7 was a follow up meeting to that, it may have taken place in his offices or it
8 may have taken place in my offices.

9 Q.289Mr. Dunlop says that you gave the address and telephone number of Jim Kennedy
10 to him and he further says that it was not expressly stated but he knew that
11 he was being approached to lobby local representatives on behalf of the owners
12 of the lands in question in order to have the lands rezoned?

13 A. I didn't give him Mr. Kennedy's telephone number, there was no need for me to
14 give Mr. Kennedy's telephone number.

15 Q.290When did you first know that Mr. Kennedy and Mr. Dunlop had been speaking one
16 to the other in connection with the Paisley Park lands and the rezoning there
17 of?

18 A. My recollection is that that was in early 1992. At the time that he arrived on
19 the scene to deal with Paisley Park lands.

20 Q.291Well now, in 1991 we know that the council was reviewing the 1983 County
21 Development Plan?

22 A. Yes.

23 Q.292And there had been a vote on the 6th of December of 1990 when the council voted
24 that the Draft Development Plan for the Carrickmines Valley be prepared on the
25 basis of limiting zoning development to the eastern side of the South Eastern
26 Motorway proposed line and taking cognisance of the development approved in the
27 areas adopted in the 1983 plan and doing this significantly reduced the number
28 of areas being proposed for industrial zoning and indicated the nature of
29 residential zoning for proposed residential lands. You are aware that
30 resolution had been passed at that time?

1 A. Well I am now aware the resolution was passed and certainly at some point after
2 it had been passed I was aware, but when precisely, I don't know.

3 Q.293I take it you are aware of the meeting of the council on the 18th of October of
4 1990 and the manager's report which he produced, adjoined DP 90/12, page 205
5 perhaps. Do you see this, the drawing on the map that's on the screen, had you
6 seen that?

7 A. Yes I have seen that map before.

8 Q.294Had you seen it at the time, about the time it was provided to the councillors
9 of the Dublin County Council?

10 A. I saw it after the meetings took place.

11 Q.295When we talk about after the meeting you are talking about in or about October
12 of 1990?

13 A. October of 1990, that's correct.

14 Q.296And you knew that at that stage, what the council was proposing was that the
15 lands of Paisley Park would be rezoned for industrial purposes in large
16 measure?

17 A. Largely.

18 Q.297In large measure?

19 A. That's right, that's correct, yes.

20 Q.298And you know that following that meeting and the publication of that drawing,
21 there was a vote at a special meeting of the Council on the 6th of December of
22 1990 which was passed by 21 votes to 8 with 6 abstentions which requires that
23 the Draft Development Plan for 1990 for the valley be prepared on the basis of
24 limiting zoning development to the eastern side of the South East Motorway?

25 A. Yes I would have been aware of that afterwards.

26 Q.299And if that position had been carried through, if there hadn't been a change in
27 that position then none of the lands south of the blue line as we see it on
28 screen would have been rezoned, isn't that right?

29 A. Yes that's correct, that's correct.

30 Q.300And all of the Paisley Park lands therefore would have remained in agricultural

1 use?

2 A. Yes, that's correct.

3 Q.301And your hopes of having residential or industrial rezoning on the lands would
4 have come to naught?

5 A. Yes, that's correct.

6 Q.302Now if Mr. Dunlop is correct in his evidence it means that some short time
7 after that motion was passed some six weeks after it was passed, you contacted
8 him and asked him to contact, you spoke to him and asked him to contact
9 Mr. Kennedy and he says that he was told by Mr. Kennedy that the idea to get to
10 you approach Mr. Dunlop was the idea of Mr. Liam Lawlor, you are aware he said
11 that?

12 A. Well I don't have a recollection of reading that but no doubt if he said it, it
13 was there, yes. But he is not correct.

14 Q.303Yes. He says he rang Mr. Kennedy and made an appointment to meet him and
15 Mr. Dunlop wasn't to meet Mr. Kennedy in Westmoreland Street arcade and they
16 had a conversation. He says that Mr. Kennedy told him about the lands, that
17 the lands were called Paisley Park and that he owned the lands. He, that's
18 Mr. Dunlop, says, that Mr. Kennedy knew what would be required and had a very
19 good knowledge of matters involving zoning and the infrastructure that was
20 required. Would you accept that Mr. Kennedy had a very good knowledge of
21 matters involving zoning and infrastructure?

22 A. Yes I think he did. He was professional auctioneer, land dealer, developer, he
23 had a good knowledge. He talked a good case.

24 Q.304Well he can more than talk a good case I suggest to you. He had succeeded in
25 getting planning permission and selling land at Ballyogan for something of the
26 order of 3 million pounds, I am speaking in round terms, isn't that right?

27 A. Yes I am aware that he had --

28 Q.305He had also involved himself in the acquisition of lands with you at, in Lucan
29 and the steps would have been taken at this time for the laying of a pipeline?

30 A. Well he -- in relation to Lucan, I wasn't involved in a personal sense in the

1 acquisition of the lands. I provided a company that we talked about.

2 Q.306 You provided the structure?

3 A. For that, but the lands were -- weren't something that I was in a co-venture
4 with him.

5 Q.307 You may not have been a in a co-venture but you were subsequently involved in a
6 beneficial way, direct or indirectly?

7 A. Yes, not so much in the lands but in the infrastructure.

8 Q.308 In the infrastructure. So he was a man that knew about infrastructure?

9 A. Yes.

10 Q.309 And he was involved in infrastructure in Baldoyle?

11 A. Yes.

12 Q.310 And he was involved in infrastructure in Donabate?

13 A. Yes.

14 Q.311 And he was involved in infrastructure in Carrickmines?

15 A. Yes.

16 Q.312 Now when did Mr. Kennedy first tell you that he had met and spoken to
17 Mr. Dunlop about the Paisley Park lands?

18 A. I can't put a fix on that in terms, I have no recollection of the first time,
19 but I would assume it was in 1992 at the time that I went to Mr. Dunlop with
20 the submission.

21 Q.313 Mr. Dunlop says, that on the occasion of his first meeting, the question of
22 access was discussed with Mr. Kennedy and Mr. Kennedy said he knew what was
23 required because of discussions with a member of the County Council and he
24 mentioned specifically the name Tom Hand, said that Tom Hand had been very
25 helpful and would be very helpful. Did you know of any dealings that
26 Mr. Kennedy had at any stage in connection with any lands or otherwise
27 involving Tom Hand?

28 A. None whatsoever.

29 Q.314 Did Mr. Kennedy ever tell you that he knew Tom Hand?

30 A. He did mention his name, yes.

1 Q.315In what context?

2 A. In the context that he knew him as a councillor.

3 Q.316And what did he say about his knowledge of Tom Hand?

4 A. I can't recollect what he said in relation to it. I think he mentioned him in
5 the context of Lucan, but that's the only recollection I have.

6 Q.317When you say Lucan, do you mean the lands, the Pentagon Pipeline lands or are
7 you talking about Lismore Homes or some other lands?

8 A. I can't recollect what it was Mr. Gallagher.

9 Q.318Did he speak to you about Tom Hand as being somebody who would be of assistance
10 or might be of assistance in securing the rezoning of the Carrickmines lands?

11 A. No he did not.

12 Q.319And given that Tom Hand had been mentioned in the context of the Lucan lands,
13 did this not surprise you?

14 A. No, not at all.

15 Q.320Did it not occur to you to say to Mr. Kennedy when he mentioned Tom Hand in the
16 context of the Lucan lands, Jim, Tom Hand might be a man that can help us
17 because his bailiwick is really of the south side much closer to the
18 Carrickmines lands than the Lucan lands?

19 A. I had no such conversation with him at all.

20 Q.321But did it not occur to you to do that. You see, you have said that you were
21 asked by Mr. Dunlop if you knew any councillors?

22 A. Yes.

23 Q.322What councillors did you know at that time?

24 A. The only councillor that I knew was, or my ex-wife, was Mrs. Helen Keogh.

25 Q.323Did you know Councillor Liam Lawlor?

26 A. Oh, yes, well I knew him as a councillor.

27 Q.324Why didn't you mention him as somebody you knew?

28 A. It's a good, it's a question -- I just never think of him as a county
29 councillor because he ceased being a council, County Councillor sometime in
30 1990. I think of him in terms of being a TD, it just didn't occur to me, but

1 you are correct, he was a County Councillor for a period of time.

2 Q.325And you knew him?

3 A. Yes.

4 Q.326And you had dealings with him?

5 A. Yes.

6 Q.327And you had dealings with him in relation to Baldoyle?

7 A. Yes.

8 Q.328And he was a partner of yours in Baldoyle?

9 A. He was involved in a company there, yes.

10 Q.329And he was involved with you in relation to transactions in Lucan, sorry more

11 correctly he was involved with Mr. Kennedy in relation to transactions in

12 Lucan, to your knowledge?

13 A. To my knowledge, yes.

14 Q.330And you had had meetings with Mr. Lawlor from time to time, had you?

15 A. I had on some aspects, yes, of various things that were happening.

16 Q.331What were they?

17 A. Particularly Coolamber lands.

18 Q.332Yes?

19 A. That was the principle thing, he also at some occasions, introduced some people

20 to me in terms of asking me to act for them, so I met him in relation to those,

21 with those individuals.

22 Q.333Well now, Mr. Kennedy, would you describe Liam Lawlor as somebody who would

23 have been helpful at that time?

24 A. In relation to Carrickmines, I had personally no contact whatsoever with

25 Mr. Lawlor in relation to Carrickmines and I never discussed it with him. I

26 would not have sought his help in any shape or fashion in relation to

27 Carrickmines and I did not do so.

28 Q.334Would you regard him as somebody that would be helpful to Mr. Kennedy in

29 relation to Carrickmines or anything else Mr. Kennedy was involved in?

30 A. He may well have be with Mr. Kennedy in relation to it, but in terms of the

1 vote that you referred to, he actually voted against the Paisley Park interest
2 when he was a councillor.

3 Q.335The vote I referred to was not the vote he voted --

4 A. Well there was a vote.

5 Q.336Subsequent?

6 A. Subsequent vote --

7 Q.337But here he was, he was involved as a partner with Mr. Kennedy in at least two
8 transactions, land dealings, infrastructural dealings, call them what you wish,
9 that you were aware of?

10 A. Yes.

11 Q.338Now, it would be reasonable to assume that in those circumstances Mr. Lawlor as
12 a councillor, would be, would do whatever he could to assist Mr. Kennedy?

13 A. I couldn't conclude that in relation to it because I don't know what
14 discussions they had. In relation to that -- I don't think it is reasonable to
15 conclude that because someone is, knows someone that they will necessarily do
16 things as you describe them.

17 Q.339But you were asked, you concede or say, by Mr. Dunlop, whether you knew any
18 councillors and the man with whom you had a number of meetings in 1989, who was
19 a partner of yours in a transaction in Baldoyle at that time and whom you knew
20 to be friendly with and to be a partner of James Kennedy in relation to at
21 least two other matters did not instantly come to mind?

22 A. Mr. Lawlor wasn't a councillor in 1992.

23 Q.340No, I am talking about the 1990s and I am talking in particular about the
24 period of 1991 when and 1990 -- sorry 1991 when Mr. Dunlop says he was dealing
25 with Mr. Kennedy.

26 A. Well my conversations with Mr. Dunlop in relation to the Carrickmines occurred
27 in 1992.

28 Q.341I see.

29 A. And my conversations in relation to councillor issue which I have in my
30 narrative occurred in 1992.

1 Q.342I see. All right. Now you say that you were told at some stage by Mr. Kennedy
2 that he had arranged, agreed a success fee with Mr. Dunlop?

3 A. That's correct.

4 Q.343When did he tell you about that success fee?

5 A. After the meetings with him, presumably sometime in 1992.

6 Q.344Did he tell you where this meeting took place and what had been discussed?

7 A. Well I think Mr. Dunlop was probably correct in that he met Mr. Kennedy in his
8 cellar in Westmoreland Street, I would suspect that that's where whatever
9 discussions they had about fees took place.

10 Q.345Yes. What did Mr. Kennedy tell you about what he had agreed?

11 A. He told me he had agreed a success fee with him of 200,000 pounds. That's my
12 recollection of, although I have read Mr. Dunlop's evidence in relation to it
13 being a hundred thousand pounds, but my recollection is two.

14 Q.346And this was in 1992?

15 A. 1992, yes.

16 Q.347How long after the sale had closed approximately, did this conversation take
17 place?

18 A. The sale closed in June of 1991,.

19 Q.348Right.

20 A. So it's early 1992, six to nine months afterwards.

21 Q.349What was the sale price?

22 A. 700,000 pounds.

23 Q.350So on your evidence, Mr. Kennedy told you that he was, that he had agreed a
24 success fee of approximately one third the value, somewhat less than a third of
25 the value of the lands?

26 A. Well.

27 Q.351In 1992?

28 A. Yes, at that point in time because of the covenant that was associated with the
29 land you would have taken a very conservative view in relation to valuation and
30 you wouldn't have thought about the lands as being more valuable than the cost

1 of them, give or take a little.

2 Q.352Yes?

3 A. So the measure is not so much against the cost of the lands because nothing is
4 paid in relation to him unless a successful outcome occurs, so it is more a
5 measure of the prospective value of them as a result of his activity.

6 Q.353So on your evidence, Mr. Kennedy agreed without consulting you, to give a
7 success fee to Mr. Dunlop in the event that Mr. Dunlop succeeded in having the
8 land rezoned?

9 A. If I disagreed with the success fee I would have told Mr. Kennedy I wasn't
10 happy with the success fee, but you don't pay a success fee unless there is an
11 outcome and I wouldn't have been unhappy with the outcome. If he had succeeded
12 in having the land rezoned as a result of his lobbying the land would have been
13 worth somewhere well in excess of 10 million pounds, at a point in time even
14 allowing for the covenant associated with it, so that would have been a good
15 outcome, so 200,000 pounds was -- was not unpalatable.

16 Q.354Do you accept on your evidence Mr. Kennedy agreed without consulting you to
17 give a success fee of 200,000 pounds to Mr. Dunlop in the event Mr. Dunlop
18 succeeded in having the land rezoned?

19 A. Yes, he probably agreed the fee without consulting me in relation to it. The
20 same way as he ultimately agreed the deal with Brian O'Halloran and negotiated
21 that deal to conclusion and then told me the results of it.

22 Q.355Did he tell you what steps Mr. Dunlop proposed to take in order to secure the
23 rezoning of the lands?

24 A. Just that he would be lobbying to have the lands rezoned.

25 Q.356Did he tell what you that lobbying would involve?

26 A. In terms of dealing with councillors that I knew that the, that this was a
27 question where you had to have a sufficient number of councillors behind a
28 motion, so I would understand the task that he had was to marshall whatever
29 vote was necessary to get the requisite positive vote.

30 Q.357And if he succeeded in marshalling whatever vote was necessary to get a

1 positive vote, secure the rezoning of the lands, that rezoning was increasing
2 the value of the land and the outlays that you had incurred in relation to it
3 from something of the order of nine hundred thousand pound to 10 million
4 pounds, of that order?

5 A. Of that order, yes it would.

6 Q.358 Why did you not go around to canvas the councillors yourself, to convince them
7 why they should, persuade them that they should rezone these lands?

8 A. I have no, I have no personal contact with any councillors to go and talk to
9 them about anything. I have no access to councillors other than going ringing
10 their doorbells. I have -- it's not what I do. I am, was and hope to remain
11 an intensely private individual, I would not see myself in a role of talking to
12 councillors about the rezoning of land even if there was a substantial economic
13 benefit to me in it.

14 Q.359 Did you discuss with Mr. Kennedy precisely what Mr. Dunlop would have to do to
15 canvas and to persuade councillors to vote in favour of the rezoning of these
16 lands?

17 A. I didn't pay particular attention to what, they had to do in relation to that.
18 If -- it's a bit like the architectural situation, if there is an architect
19 laying out plans and doing what he does in relation to a housing development, I
20 won't involve myself in the minutea of that in a situation like this, where he
21 is a lobbyist, he has a job to do, I understand the broad thrust that was
22 what's involved in being a lobbyist, he goes and he does what you legitimately
23 and lawfully expect him to do in those circumstances.

24 Q.360 But Mr. Finnegan's involvement in securing planning permission would have been
25 worth or would have entitled him to a fee of the order of 10,000 pound isn't
26 that right?

27 A. Yes that's right.

28 Q.361 And Mr. Finnegan is an experienced engineer, who would have had to prepare
29 drawings, do surveys on the land, check levels, to consult with the sanitary
30 services section, consult with planners, consult with adjoining landowners,

1 prepare design drawings, prepare layouts, prepare all sorts of drawings
2 associated with the planning application, put them in in quadruplicate, apply
3 for by-law building approval at the same time, all for 10,000 pounds?

4 A. Well Mr. Finnegan's fees were always on the very low side, certainly for the
5 amount of work that he would do in relation to planing applications and, he was
6 at the cheaper end of the scale in relation to that. If you dealt with one of
7 the large firms of architects for work that you are describing you would have
8 fees certainly in the six figures.

9 Q.362 Well Mr. Finnegan, we know that you didn't employ anybody to look at, or to
10 prepare a planning application and we do know that Mr. Finnegan would have done
11 what you have or what I have described for 10,000 pounds?

12 A. Yes.

13 Q.363 And yet you were prepared to give Mr. Dunlop 200,000 pounds in the event that
14 he succeeded, presumably by making telephone calls or having a chat or meeting
15 with people he knew, and asking them to vote for this proposal?

16 A. Yes if I had employed or, if one employs an estate agent to sell his property
17 he charges a fee which is a significant fee two, two and a half per cent of the
18 value of the property. His fees would be coming out of the same sort of
19 multiple, he is realising that sort of value for you from the property so he
20 justifies his charge.

21 Q.364 Yes, but you don't suggest that any estate agent would be charging something of
22 the order of 30 per cent of the value of the property in toward achieve a
23 particular result?

24 A. No, well do I can't --

25 Q.365 Wasn't this a unique situation where Mr. Dunlop was effectively being promised,
26 according to you, approximately one third of the actual market value of the
27 land at the time, if he could achieve a particular purpose?

28 A. Not at all, he was not being promised one third of the market value of the
29 land.

30 Q.366 At that time?

1 A. It's illogical. The -- what he was being promised was a success fee, based on
2 a prospective value, anticipated value and the anticipated value as a result of
3 his labours in terms of producing that value, and the gain to the company was
4 substantial. I mean, to have a 200,000 pounds fee against a ten million pounds
5 valuation is not bad, if every bet resulted in that, one would be very happy.

6 Q.367 Tell me this, what did you know about Mr. Dunlop at that time, what did you
7 know about his career, his background?

8 A. Well in general terms I knew that he had been, he was a lobbyist, I knew in
9 general terms that he had some government involvement, but I don't think that I
10 would have had any particular clear recollection, I don't have a particularly
11 clear recollection of whether I knew that he was government press officer or
12 whatever. I knew that he had been associated with Murray Consultants, who were
13 PR people and had a good reputation.

14 Q.368 Did you or did Mr. Kennedy to your knowledge speak to any other PR consultants
15 with a view to seeking the rezoning of these lands?

16 A. At that stage in 1992 I don't think that, I have no recollection of anyone else
17 being spoken to about it. I think that subsequently certainly I discussed with
18 Mr. Kennedy the possibility of somebody else being used as the PR consultant in
19 the mid 1990s.

20 Q.369 So the answer to the question that I have asked, did you or Mr. Kennedy to your
21 knowledge speak to any other PR consultants with a view to seeking rezoning of
22 the lands, is no?

23 A. If we can, talking --

24 Q.370 Talking about 1992?

25 A. 1992. No to the best of my recollection Mr. Gallagher.

26 Q.371 Now what qualities did Mr. Dunlop have or did you perceive him to have, what
27 ability did he have that commended himself, that commended himself to you and
28 commended Mr. Dunlop to you and Mr. Kennedy?

29 A. Mr. Dunlop was a man with the biggest ego and biggest set of confidence, not
30 that I have ever met, but certainly he would be up there. He was a very

1 articulate individual, very polished, very professional in the, in his image
2 and in how he, the way he spoke. He was a man that you felt you could have
3 confidence in.

4 Q.372He wasn't an engineer?

5 A. No he wasn't.

6 Q.373He wasn't a town planner?

7 A. No he wasn't.

8 Q.374He wasn't a developer?

9 A. No he wasn't. But he didn't have --

10 Q.375You thought that he talked a good talk and he could persuade by his eloquence
11 and his persona and his ego, to persuade sufficient members of Dublin County
12 Council to vote in favour of the rezoning of a land locked farm of 108 acres
13 which had no services available to it, which had no road access, which was
14 serviced by the nearest, a substandard country road?

15 A. He was a lobbyist and a lobbyist has a skill set and he has a set of years of
16 experience in what he does and he goes to sell a package and a vision. He is a
17 seller of ideas; and while you are right in your description of the property at
18 that point in time, if that land had been rezoned at that point in time they be
19 all of the problems that you have described would all have melted away over the
20 years in terms of access to it, in terms of services to it and the, there would
21 be buildings standing on that property now.

22
23 Those are the -- the reasons that you have given are not necessarily reasons
24 for not rezoning, they are, the rezoning process creates a situation in which
25 the infrastructure can follow behind the rezoning. If it makes sense to have
26 land in a particular area changed from agricultural into a different use.

27 Q.376Mr. Dunlop on his evidence, had no experience of lobbying councillors at that
28 time, save for one particular project where everybody was in favour of a
29 particular project and voted unanimously in favour of it. He had not, apart
30 from that particular project Pentagon out to lobby anybody, this was his first

1 excursion, isn't that right?

2 A. That's what he says.

3 Q.377Well now, why if this was, if that had been his first excursion why did you and
4 Mr. Kennedy select him as the appropriate person to approach 78 councillors, to
5 persuade them to vote in favour of the rezoning of your effectively land locked
6 and unserviced land?

7 A. Because Mr. Dunlop was not telling the truth in relation to that. The
8 situation was that I met Mr. Dunlop in 1992. The -- when I met him in 1992 in
9 relation to the submission, Mr. Dunlop had already been active for over a year
10 on the ground in something which I was directly aware of, which is the Baldoyle
11 situation. He had his own proposal, he was on the ground dealing with that.
12 He was dealing with local residents' associations, he was promoting this in the
13 media as a project that had to happen. I had seen that in the media. I had
14 seen what he could do in terms of getting the story in the media, in terms of
15 what happened with it, with Baldoyle. So this, this was no amateur appearing
16 on the scene. This man knew what he was doing. He was a professional and I
17 felt confident he could do a professional job.

18 Q.378He says that in 1991, when he met Mr. Kennedy at your request that he looked
19 for 50,000 pounds from Mr. Kennedy, Mr. Kennedy agreed to pay him 25 thousand
20 pounds and did give him 25 thousand pounds in order that he could bribe
21 politicians to vote for the proposal. Did Mr. Kennedy ever tell you that he
22 had agreed and had in fact paid 25,000 pounds to Mr. Dunlop?

23 A. Mr. Kennedy did not say to me that he had paid 25 thousand pounds to Mr. Dunlop
24 and he has denied that had he paid 25 thousand pounds to Mr. Dunlop.

25 Q.379You say that Mr. Kennedy has denied, he certainly hasn't, doesn't appear to be
26 willing to come to give evidence to deny it?

27 A. That's correct, yes.

28 Q.380And can you give the Tribunal any explanation as to why Mr. Kennedy isn't
29 prepared to come back to deny what Mr. Dunlop has said about it?

30 A. In terms of what he said to me, he said to me that he is not prepared to have

1 his affairs torn apart in the public domain and to spend the next several years
2 of his life involved in dealing with the demands of the Tribunal and he regards
3 himself as an innocent man, who is being wrongly accused of paying these funds.

4 Q.381But could he not come back to give evidence in relation to the evidence that
5 Mr. Dunlop has given to say that i.e, evidence that Mr. Kennedy paid 25,000
6 pounds, could he not deal well that as a single issue, give evidence to rebut
7 what he says is the incorrect evidence of Mr. Dunlop?

8 A. It may well be the case if it were put to him that he, that the matter could be
9 dealt with it on a single issue basis, that he would deal with it.

10 Q.382Mr. Dunlop says that he was informed by Mr. Kennedy that Mr. Lawlor had an
11 interest in the Carrickmines lands and had been invited, or had been advised to
12 set up an offshore entity and that Mr. Lawlor, he was lead to believe, had
13 interests in the lands through that offshore entity. Did Mr. Kennedy ever say
14 anything like that to you?

15 A. No he never did.

16 Q.383I am not going to get into the question of ownership?

17 A. Certainly.

18 Q.384I am not going to press that any further. Now you are aware that Mr. Lawlor,
19 sorry Mr. Dunlop did work on your behalf and on behalf of Mr. Kennedy in
20 relation to the rezoning of the lands?

21 A. Yes I am, yes.

22 Q.385He has told the Tribunal that in working for you and in working for Mr. Kennedy
23 he gave money to certain councillors and you know who they are and the amounts
24 he said he has given?

25 A. Yes, I have read the evidence.

26 Q.3863,000 pounds to councillors Hand and Lydon, who were signatories of a motion,
27 and one thousand pounds each to Messrs Gilbride, Larkin and Gallagher?

28 A. I have seen his evidence.

29 Q.387Did you ever discuss with Mr. Kennedy the efforts that Mr. Dunlop was making on
30 your behalf and the success or otherwise which he appeared to be having in his

1 efforts to lobby councillors to persuade them to vote for the lands that you
2 have, that you bought and that you have still?

3 A. I have some recollection of Mr. Kennedy at various stages, telling me that he
4 was, that Mr. Dunlop was making progress, that he thought there might be
5 success, some recollections in relation to the some of the difficulties that he
6 had, or some of the things he wanted to achieve in terms of neutralizing the
7 golf course for example, which I was involved in discussions, in relation to
8 that so --

9 Q.388I should of course put to you that Mr. Dunlop disagrees with what you say about
10 the 200,000 pounds success fee. He says he sought from Mr. Kennedy a sum of
11 50,000 pounds but eventually agreed to accept 25,000 pounds in cash as a
12 success fee of 100,000 pounds, you are aware of that?

13 A. I am aware of his evidence, yes.

14 Q.389Yes. And he says that he knew that this money was to be expended by him as a
15 bribe to councillors and that Mr. Kennedy was so aware and so intended?

16 A. I am aware of his evidence in relation to it but I have no knowledge of it and
17 I have a denial from Mr. Kennedy in relation to it.

18 Q.390But you are aware that that is what he has said and both he and Mr. Kennedy
19 were aware that this 25 thousand pounds or an amount of it was to be used to
20 bribe councillors with a view to securing the rezoning of the land?

21 A. I am aware that he has made that allegation.

22

23 JUDGE FAHERTY: Mr. Caldwell, you are saying essentially in 1992 you agreed a
24 200,000 pound success fee?

25 A. Yes Judge, Mr. Kennedy told me the success fee was 200,000 pounds.

26

27 JUDGE FAHERTY: When did he tell you that?

28 A. It would have been 1992.

29

30 JUDGE FAHERTY: Was that the only fee that you say Mr. Kennedy mentioned to you?

1 A. In relation to the 1992 rezoning, yes, it was. There was a fee later on in
2 relation to the 1997.

3
4 JUDGE FAHERTY: We won't come to 1997 yet. I am just curious from this point of
5 view, based on what you say Mr. Kennedy told you in 1992, he had employed
6 Mr. Dunlop, who was a lobbyist, who you obviously knew of and knew, to lobby
7 County Councillors to get the rezoning, if at all possible?

8 A. Yes.

9
10 JUDGE FAHERTY: And the only arrangement was made that, regarding money, was
11 that if he were successful, but I am curious that there was no arrangement
12 arrived at for payment to Mr. Dunlop per se for his services. You have already
13 given evidence to us that you paid Mr. Finnegan 2,000 for work yet to be done.
14 Based on what you are saying, you are suggesting that in the event that the
15 rezoning wasn't successful, no success fee obviously would be paid to
16 Mr. Dunlop

17 A. That's correct.

18
19 JUDGE FAHERTY: But there was no provision at all for actual work on the ground
20 done by Mr. Dunlop. I am curious why that would be?

21 A. It wasn't part of the deal that Mr. Kennedy came to with him. And it may have
22 been a function of Mr. Dunlop's enthusiasm or certainty that he would get a
23 result in relation to it that he felt that he wanted to base his relationship
24 on a success fee and solely on a success fee. There was no other element to
25 it.

26
27 JUDGE FAHERTY: See.

28
29 Q.391MR. GALLAGHER: Mr. Caldwell, you agree with Mr. Dunlop's evidence in one
30 respect, which may or may not be of importance to the Tribunal. You agree that

1 Mr. Kennedy told you that he had agreed with Mr. Dunlop to pay Mr. Dunlop a
2 success fee?

3 A. Yes, that's correct.

4 Q.392That is what, that is part of what Mr. Dunlop has said?

5 A. Yes, it is.

6 Q.393And you agree that Mr. Kennedy independently confirmed to you that he had
7 agreed to pay a success fee?

8 A. Yes.

9 Q.394And the difference, and the essential difference between your evidence and the
10 evidence of Mr. Dunlop I suggest to you, apart from dates now, just leave that,
11 but in relation to what was agreed to be paid, and the matter is as follows:
12 Mr. Dunlop says the success fee was to be a hundred thousand pounds?

13 A. Yes, that was his evidence.

14 Q.395And you say that the success fee was to be 200,000 pounds?

15 A. Yes.

16 Q.396That you were told that the success fee was to be 200,000 pounds and you
17 accepted it. You agreed with it being paid, because if you hadn't agreed with
18 it being paid you would have made your opposition or disapproval known to
19 Mr. Kennedy at that time?

20 A. Yes, I would have.

21 Q.397All right. So there is agreement that there was first of all, you accept and
22 Mr. Dunlop accepts that there was an agreement?

23 A. Yes, there was. There was an agreement, absolutely.

24 Q.398He says the agreement involved a success fee in part. You say the agreement
25 was, the entire of the consideration was success fee?

26 A. Yes.

27 Q.399He says that the consideration was a success fee of 100,000 pounds plus 20,000
28 pounds cash, which he received from Mr. Kennedy?

29 A. Yes, that's his evidence.

30 Q.400You say so far as you are aware there was no cash element of it and the success

1 fee was 200,000 pounds?

2 A. That's correct.

3 Q.401And you do of course acknowledge that he was employed on your behalf,
4 indirectly, I don't want to get involved in the structures, but on your behalf
5 ultimately and ultimately on behalf of Mr. Kennedy, by Mr. Kennedy?

6 A. Yes, leaving the structures aside.

7 Q.402And you acknowledge that you had meetings with him with, i.e. that's with
8 Mr. Dunlop in relation to the attempts to secure the rezoning of these lands?

9 A. Yes I did, yes.

10 Q.403And you accept that you were actively involved in taking such steps as you
11 could to secure the rezoning of these lands by, for example, meeting with
12 Grainne Mallon, meeting with Mr. Finnegan, preparing submissions to Dublin
13 County Council following upon the original representation that went in on the
14 3rd of December of 1991?

15 A. Yes, I was. I was involved actively in the preparation of that submission,
16 yes.

17 Q.404And you were actively involved in the preparation for the oral presentation
18 done by Mr. Frank Finnegan with Dublin County Council on the 2nd of March of
19 1992?

20 A. Well --

21 Q.405I believe.

22 A. Not so much in terms of the oral submission, but certainly the document.

23 Q.406The document which he presented.

24 A. Presented at that oral hearing, yes.

25 Q.407So you had obviously discussed with him what he would say and what
26 representation he would make and what case he would make to the planner,
27 Mr. Davin, and to the other council official whom he was obliged to meet or
28 had, who he was obliged to meet as part of the consultation process in the
29 context of the review?

30 A. Yes. I don't have a specific recollection of doing that with him, but we have

1 worked on this submission document together, so there was a summary I think in
2 that document and I assume that's what he presented to them.

3 Q.408 Were you aware of the motion proposed by Councillor O'Connor for the rezoning
4 of the O'Halloran, Darragh, Kilcoyne lands?

5 A. I probably was aware of that, yes.

6 Q.409 And were you aware of the necessity to have a motion proposing the rezoning of
7 the Paisley Park lands lodged with Dublin County Council and voted upon in
8 order to secure the rezoning of the land?

9 A. I was aware that was the process that had to be undertaken.

10 Q.410 And you knew at this time, this is in early 1992, that Dublin County Council
11 did not propose to rezone your lands?

12 A. Well I understood, I knew at that point in time that the previous vote that you
13 referred to had taken place in terms of the motorway line but outside of that I
14 would have no insight into what the council itself would do in regard to these
15 lands.

16

17 JUDGE FAHERTY: Mr. Caldwell, you have told us already that shortly after the
18 October 1990 special meeting you became aware of the manager's plan?

19 A. Yes.

20

21 JUDGE FAHERTY: So you were aware that there was a plan of that had Pentagon
22 through, that the Paisley Park lands would be rezoned industrial, isn't that
23 right?

24 A. That's correct.

25

26 JUDGE FAHERTY: You have just said to Mr. Gallagher, as I understand it, that
27 other than that you were only aware generally, but surely you must have been
28 aware there was a vote in May 1991, where the 83 plan with updates was adopted,
29 it follows on the December 1990 resolution, as I understand it?

30 A. The way that I regarded the 1990, October 1990 situation was that effectively

1 the manager had come forward with that proposal but that the councillors had
2 thrown it out and had completely turned their face against that approach. And
3 that there had been a number of votes that had taken place which had this
4 defining effect in terms of the road, so that's the background of the knowledge
5 that I had. So when I respond to Mr. Gallagher I am responding to him in the
6 sense that I knew what the council's position was as a result of those votes
7 having taken place and I knew what the councillor's position was, as you
8 rightly say, in relation to having thrown out the 1990 plan and against that
9 background I had no other information.

10

11 JUDGE FAHERTY: I see.

12

13 Q.411MR. GALLAGHER: Tell me, were you disappointed that the council had voted as
14 they did on the 24th of May of 1991?

15 A. Well, I was disappointed before that because --

16 Q.412Don't, just for the moment now answer just the question I am asking. Were you
17 disappointed that the council had voted as they did at their meeting on the
18 24th of May 1991?

19 A. Well yes, but no more than I was from the previous, but that was just a
20 continuation of the theme that had been established.

21 Q.413Were you aware that Mr. Kennedy was very annoyed with Mr. Lawlor for having
22 voted as he did at that meeting on the 24th of May of 1991?

23 A. The -- yes, I was aware of that, yes.

24 Q.414And are you aware that Mr. Dunlop was very annoyed with Mr. Lawlor for having
25 voted as he did at that meeting?

26 A. No, not at all, because Mr. Dunlop wasn't there at that, in that 1991
27 situation. Mr. Dunlop didn't appear on the scene until 1992.

28 Q.415Why was Mr. Kennedy annoyed with Mr. Lawlor for having voted as he did on the
29 24th of May 1991?

30 A. Mr. Kennedy regarded the Paisley Park land as being lands that should be

1 rezoned and that there was a good case for rezoning it and that -- Mr. Lawlor
2 had voted in a different way. But that was Mr. Lawlor's prerogative to do
3 that.

4 Q.416 What did he consider to be the good case for the rezoning of the Carrickmines
5 lands?

6 A. The situation in relation to the suitability of the land for development in
7 terms of it's -- the flatness of the land, it's location, particularly it's
8 location.

9 Q.417 What else did it have going for it apart from location?

10 A. Well location is the principle matter in relation to property.

11 Q.418 It didn't have access?

12 A. No, but these are, those are all matters that get solved. They get solved
13 afterwards. If you -- in so many property situations nothing is perfect on day
14 one in relation to it. Nothing has got all the services and everything else
15 associated with it. So it's -- you solve the problems as you go.

16 Q.419 How did Mr -- what did Mr. Kennedy say to you about Mr. Lawlor's vote on the
17 occasion and how did he convey to you that he was annoyed with Mr. Lawlor?

18 A. I don't have a clear recollection in relation to that. I mean there was an
19 element, I do recollect annoyance but I don't recollect a verbatim exchange in
20 relation to it.

21 Q.420 Did he lead you to believe that he had anticipated that Mr. Lawlor would vote
22 in a manner other than the way he in fact voted?

23 A. No, he did not.

24 Q.421 I see. Did you anticipate that Mr. Lawlor would vote in a way that would
25 facilitate your development and would be other than the way he voted?

26 A. I wasn't particularly conscious of that vote at that particular point in time,
27 Mr. Gallagher. In mid 1991, my concern in mid 1991 was to get the transaction
28 closed, that was happening, to try and deal with the issue and close the
29 purchase of the lands. I wasn't caught up in votes and what was happening in
30 relation to votes and who was voting and whatever, later on I would have become

1 aware of it, but at that time it wasn't in my consciousness.

2 Q.422 You have said that you were not told by Mr. Kennedy that he had agreed to pay
3 and did pay 15,000 pounds to Mr. Lawlor, or to Mr. Dunlop, and you say that
4 Mr. Kennedy denied that he had?

5 A. The sum, I think was 25 thousand.

6 Q.423 Sorry, 25 thousand, I beg your pardon, I said 15. 25,000 pounds to Mr. Dunlop.
7 Did Mr. Kennedy ever speak to you about making a contribution towards any
8 monies that he had paid to Mr. Dunlop at any stage?

9 A. No, he did not. The -- he never spoke to me about making contributions to him
10 because he never raised with me making any contribution to him. The only
11 arrangement that existed with him was one of this success fee.

12 Q.424 Just in case there is any confusion, Mr. Caldwell, I want to make it clear that
13 when I am speaking about you I am speaking about, I am asking you, did he ever
14 ask you to pay, I am including in that question, did he ever ask Renzenbrinck
15 or any other company to pay, or contribute; or Paisley Park, or Jackson Way; do
16 you understand?

17 A. I do.

18 Q.425 I mean in every possible manifestation; beneficial interest, quasi beneficial
19 interest, de facto beneficial interest, every other way; so when I talk about
20 you, I am talking you wearing the many and varied hats that you might
21 conceivably wear. Do you understand that?

22 A. I do and in relation the answer is the same.

23 Q.426 That's the position in relation to any question I ask you; you doing this or
24 you doing that, I mean in a structured sense?

25 A. In a structured sense.

26 Q.427 Renzenbrinck, etcetera.

27 A. Yes.

28 Q.428 So you were aware that a motion had to be put down for the rezoning of your
29 lands?

30 A. Yes.

1 Q.429 Now you knew that there was huge opposition to the rezoning of the lands at
2 that time?

3 A. Oh, massive opposition, yes.

4 Q.430 Massive?

5 A. Massive opposition, yes.

6 Q.431 Every politician in the area was coming under ferocious pressure, isn't that
7 right?

8 A. Yes. From --

9 Q.432 From the Carrickmines and residents, Carrickmines Valley -- I have forgotten
10 the name of the title?

11 A. Carrickmines Valley Preservation Society, they call themselves.

12 Q.433 Preservation Society, they were lobbying in a most vigorous manner every
13 politician, and particularly in South Dublin?

14 A. They were very well organised, very well organised.

15 Q.434 And they were determined insofar as they possibly could to ensure that
16 Carrickmines Valley was not developed?

17 A. Yes. It wasn't just for them, it just wasn't an issue of the Paisley Park
18 lands, for them it was an issue of the entire valley and they were, the
19 development and everything else that was contemplated, they turned their face
20 to.

21 Q.435 And they lobbied every elected member on a very regular, and in a very regular
22 manner and in a very vigorous manner?

23 A. I don't know, but I would expect that that's what they did.

24 Q.436 I think you have told the Tribunal that you were reading and furnished with
25 information that appeared in various documents and reports, leaflets etcetera
26 issued by or on behalf of the objectors to this?

27 A. Yes, I was going to add this Mr. Gallagher.

28 Q.437 So you were aware?

29 A. From those broad sheets that they were producing.

30 Q.438 Everyone in Dublin was aware, it was virtually, at that time as big an issue as

1 the refuse charges are at the moment, certainly it was in South Dublin?

2 A. It was a big issue, yes.

3 Q.439And people like Mr. Monaghan were being picketed and were being challenged and
4 had to go to try to justify their position. The position of Monarch in seeking
5 to have the Monarch lands rezoned because that was going all in tandem with
6 your proposal?

7 A. Yes. To a large extent Mr. Monaghan was doing our job for us, because
8 Mr. Monaghan had a very active campaign in hand to rezone the Carrickmines area
9 and he was producing his own broadsheets and road shows and all sorts of
10 things.

11 Q.440And his reason for so doing was because of the vehemence of the opposition and
12 determination of the people living in that area to ensure that there was no
13 rezoning; isn't that right?

14 A. Yes, some of the, certainly insofar as interest groups were concerned, yes, to
15 stop rezoning of the Carrickmines Valley taking place, yes.

16 Q.441It was a situation where signatures were obtained, thousands upon thousands of
17 signatures were obtained from interested parties and presented to politicians
18 to just demonstrate the extent and the depth of opposition to any rezoning in
19 that general area?

20 A. That may well have been.

21 Q.442You were aware of that?

22 A. I am aware of what was on the sheets, I can't recollect at this point in time
23 Mr. Gallagher, everything.

24 Q.443You are aware as a general proposition that there was wide spread and deeply
25 felt opposition to the rezoning of any of the lands in the Carrickmines Valley?

26 A. There was a very well organised and vociferous group working against the
27 rezoning of the Carrickmines Valley.

28 Q.444But they were representing the viewing of thousands of residents of the area,
29 have you any doubt about that?

30 A. They were representing the views of a lot of people in the area certainly, what

1 the numbers were, I have no idea.

2 Q.445 But you would accept that they would be representing thousands of householders
3 in that general area, stretching from Cabinteely to Ballybrack to Carrickmines
4 up to Ballyogan, all in that general area?

5 A. They certainly were representing quite a number of people, I have no concept of
6 how many that was, it may have been hundreds, it may have been --

7 Q.446 All right, we won't get into a numbers game, but you will accept from me that
8 there was vigorous opposition to the proposed rezoning, and that councillors
9 were being lobbied on a daily basis?

10 A. They were very, there was vociferous and well organised counter-lobbying going
11 on, yes.

12

13 CHAIRMAN: Well Mr. Gallagher, it is just after four o'clock. Say half ten
14 tomorrow?

15

16 MR. GALLAGHER: Thank you, Sir.

17

18 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, WEDNESDAY,

19 15TH OCTOBER, 2003 AT 10.30 AM.

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