

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 15TH OCTOBER 2003

AT 10.30 AM:

CHAIRMAN: Good morning.

MR. GALLAGHER: Morning.

CONTINUATION OF EXAMINATION OF MR. JOHN CALDWELL

BY MR. GALLAGHER:

Q 1 Mr. Caldwell, yesterday, we dealt with some of the events of 1991 and we had moved on to 1992. If you excuse me I want to come back very briefly to 1991.

A Yes.

Q 2 Mr. Dunlop has given evidence that he met you in the company of Mr. Kennedy on perhaps two occasions.

A Yes.

Q 3 And he met you in the company of Mr. Kennedy, in Mr. Kennedy's premises in Westmoreland Street, in the basement?

A Yes, I certainly have a recollection of meeting him in the premises in Westmoreland Street.

Q 4 On how many occasions?

A Certainly one, possibly two.

Q 5 Now he said that on one occasion, when you were present, there was a reference in relation to what the manager had proposed in relation to Carrickmines Valley. And that that was the -- he said that was the only occasion which he ever heard that referred to and that was, that mentioned took place in your presence and in the presence of Mr. Kennedy, it was something obviously that was raised in Mr. Dunlop's presence according to his evidence?

A I don't have a specific recollection of that but it wouldn't surprise me that Mr. Kennedy would raise that because the October 1990 plan was something which

1 he put a lot of store on.

2 Q 6 Now, in relation to the evidence of Mr. Finnegan, I had asked you yesterday
3 some questions in relation to Mr. Finnegan and I went away from the subject
4 without dealing with one or two matters that he had addressed in evidence and
5 that I had intended to put to you for your comment and observations. You
6 recall yesterday you gave evidence about the giving rise to the payment of 2
7 thousand pound fees plus five hundred pounds VAT?

8 A Yes I do.

9 Q 7 And we had your evidence in relation to your knowledge, or lack of it, of the
10 drawing which is similar to drawing DP 90/110, you remember the coloured map of
11 the Carrickmines Valley.

12 A Yes.

13 Q 8 It was similar to the drawing Mr. Finnegan said he received from Mr. Carroll,
14 which was a confidential document?

15 A Yes I remember that.

16 Q 9 In the course of his evidence on Day 374, Mr. Finnegan said "Mr. Caldwell was
17 in my office. After we realised that it was likely that the land would be
18 rezoned, Mr. Caldwell, I think it was probably the only time I remember being
19 in my office and he mentioned a map so I was aware that he had seen a map."

20

21 Do you accept that you had seen the map?

22 A I do not accept that I had seen the map.

23 Q 10 Question 261: "This is the map that is on screen.

24 Answer: That is the map on screen.

25 Question: It is reference 4165 or a similar map.

26 Answer: Yes, and commented on it being zoned -- sorry, and commented on it
27 being industrial zoning and I said, I most likely said it would be a waste of
28 time, it will certainly be a waste of time making an application for housing
29 now. He said oh, he said that was very helpful to have that information and
30 saved it -- presumably us -- making a planning application for housing and he

1 seemed to appreciate my sharing the information with him. He said we saved a
2 lot on that so send in an invoice for, I think he mentioned 2,000 pounds and I
3 asked him where will I send it, he said send it to Paisley Park in the Isle of
4 Man which I did.

5 Question: Did he have a map with him at that time?

6 Answer: No."

7
8 Now, what Mr. Finnegan was saying there was that there was a comment about the
9 lands being zoned for industrial development and he says that he said it would
10 most likely be a waste of time. Do you remember him saying that?

11 A I don't remember a conversation as he has described it in his evidence in
12 relation to a map and industrial zoning. As I think I said yesterday, it is
13 probable that he would have mentioned to me a conversation with someone from
14 the planning office in relation to the them not being in favour of a
15 residential zoning on it, but I have absolutely no recollection of a
16 conversation in relation to a map and in relation to industrial zoning. And as
17 I said yesterday, it just doesn't tie in with all the events that were going on
18 at that time and subsequently.

19 Q 11 Well it is his evidence, his recollection that there was a discussion about the
20 map, you mentioned a map. He thereby became aware that you had seen a map
21 according to his evidence. And he goes on to say that you said that it was
22 very helpful to have that information and saved making a planning application
23 for housing and seemed to appreciate my sharing the information with him. He
24 also said that it would have been improper for Mr. Hyde to disclose to him at
25 that time what the council's future plans were for the Carrickmines Valley, and
26 it seems to follow that what he was referring to was a knowledge, the
27 information that was contained in the drawing which had been given by Mr.
28 Carroll, which caused Mr. Carroll subsequent anxiety, to put it neutrally and
29 caused Mr. Finnegan certain anxiety. That map indicated that it would, the
30 Carrickmines Valley would carry substantial industrial zoning and that was the

1 inside information, if I may so describe it, that he said that caused him and
2 you to realise that an application for a housing development was destined to
3 fail.

4 A Well, I have no recollection of the conversation like that with him and when I
5 think in the context of what was happening at that time with Mr. O'Halloran,
6 where it was an entirely residential view of the world that I was involved in
7 with him, and that is evidenced in fact from the papers that he produced. I
8 can't reconcile the two things.

9 Q 12 Well could they be reconciled in this way?

10 A Could I just take one moment to pull the plug out on this heater?

11 Q 13 Certainly.

12 A Thank you.

13 Q 14 Could it be reconciled in this way: That Mr. O'Halloran was being told a
14 particular story about what your intentions were in relation to the development
15 of the land, at a time when you knew that the intention of the council
16 officials was to recommend an industrial zoning for the land, but of course
17 also at a time when you couldn't have anticipated what the final decision of
18 the councillors would be.

19 A No, I mean if anything, if the information was available in relation to
20 industrial, it would have been put to Mr. O'Halloran because that had the
21 effect of degrading the value of his land, degrading the value of Tracey's land
22 as well, because residential was a much preferred zoning to get on the land.

23 Q 15 You see on the 3rd of December 1991, you had sought an industrial zoning on the
24 land.

25 A Yes, that's --

26 Q 16 And as an alternative --

27

28 MR. FINLAY: Sorry, Chairman, just in relation to sequence which of course is
29 critically important, the dates and the sequence. Mr. Gallagher, I believe,
30 has just said to Mr. Caldwell "On the 3rd of December 1991 you had sought an

1 industrial zoning of the lands." Of course the point is, that the evidence of
2 Mr. Finnegan, what he alleges to have occurred, relates in fact to December
3 1989, so it's not a question of 'had' sought an industrial zoning, any
4 application for industrial zoning relates to a period some two years later, so
5 it's not 'had' sought, indeed, that should be made very clear before
6 Mr. Caldwell is asked to answer that question.

7
8 MR. GALLAGHER: It's quite correct to say that the application to rezone was
9 made on the 3rd December of 1991, clearly the council had in its, at its
10 meeting of October 1990 received recommendations from the officials in relation
11 to the proposed zoning of the lands in question. So if I use the word 'had',
12 then that was inadvertent on my part and incorrect on my part.

13
14 To come back to the conversation you had with Mr. Finnegan, he said that this
15 document would have been a classified document and he said in the course of his
16 evidence, that the map which was produced in 1990, October 1990, that's 90/123
17 was a refinement or development of the earlier map and he confirmed and
18 accepted, as you accepted I think yesterday, that if you and/or Mr. Kennedy
19 were in possession of the map which is similar to DP 90/110, you were in
20 possession of effectively a classified or a confidential document some 15
21 months before the councillors were aware of the contents of it, and you accept
22 that?

23 A If the map was not in the public domain, it was a county council map.

24 Q 17 And he goes on, on page 49 of his evidence on that date, that's day 374, the
25 question was "Mr. Caldwell had spoken to you sometime in the beginning of
26 December 1989, he had discussed the map. Answer: Oh he had, yes. He had
27 discussed the map. Yes," so there would have been an involvement there. So
28 Mr. Finnegan repeated in the course, reiterated in the course of his evidence
29 that the map had been discussed between you, by you and him.

30 A I have absolutely no recollection of discussing the map with him and I have no

1 recollection of ever having had that map or sight of that map.

2 Q 18 I just want to move on now if I may to 1992.

3
4 JUDGE FAHERTY: Mr. Gallagher, I just have a question in the context, if you
5 don't mind. Mr. Caldwell, just could I ask you, we know that in December of
6 1991 a submission was put in on behalf of Paisley Park for industrial zoning.

7 A Yes.

8
9 JUDGE FAHERTY: We have seen the documentation. I just want to ask you, you
10 have been saying to us you can't recall the conversation that Mr. Gallagher has
11 put to you, but you say that you are fairly confident that in the context of
12 what was the thought process then, which was residential zoning or planning
13 permission for houses that it doesn't make sense essentially.

14
15 Now as I understand it, there was this map, the precursor to DP 90/123, we had
16 DP 90/123 in October and November 1990, we had a vote in December, essentially
17 rejected it, it was confirmed I think in January 1991 and again reaffirmed, if
18 you like, in May 1991 when the decision was to put up the 1983 plan with
19 updates and essentially on my recollection, the following month, in June 1991
20 or thereabouts perhaps, the first public display went on public, the first
21 Development Plan or display came about.

22
23 So really by then, on my read of it, it was as you were vis-a-vis Carrickmines
24 Lands, i.e., there was no suggestion by June 1991 of any change.

25 A Yes, as far as these lands were concerned, that's correct. Yes.

26
27 JUDGE FAHERTY: So, the situation I have reverted to is much the same as what
28 you say your emphasis was in 1989 i.e. look for planning permission for houses.

29 A Yes.

JUDGE FAHERTY: Now the only way you could do that obviously post June 1991, as I understand it, would be to make submissions for residential zoning or in the alternative, if you didn't go down that route, you would have to go down the material contravention route and that was raised I think in 1989 and just in the context of all of that, why then, when it was as you were, if you like, vis-a-vis your lands, even after June 1991, that you didn't put in a submission for residential zoning?

A Well the reason for that was, that the October 1990 plan changed the view as to what should go on the land and the reason for that was that here was a plan that the planners themselves had put forward to the councillors as their vision of what should be on these lands and that was industrial. And the view that was taken by Mr. Kennedy, and I agree with that view, was that we should, you know, not go against the planners' view in relation to it and we should follow that view, which was the industrial and because of that, the submissions that were subsequently made in the 1991 submission and then the revised 1991 submission was in the first instance an industrial application, with this district centre on one corner of it. And all that did was reflect the view that if the planners were prepared to propose this in 1990, we shouldn't go against that and we should put forward a proposal which supports that on the basis that when they came to review it internally in the context of the review of the plan, that they would be looking back to what their own views were in relation to the land and may well support it. As it transpired we were wrong in that, but that's why we took that decision.

JUDGE FAHERTY: Thank you, Mr. Gallagher.

MR. GALLAGHER: Mr. Caldwell, in early 1992, you were aware that if the lands were going to be rezoned, it would be necessary to bring a motion to have them rezoned.

A Yes, I was.

1 Q 19 And you discussed that, I suggest, with Mr. Kennedy and Mr. Dunlop on many
2 occasions.

3 A I don't know that I discussed that on many occasions. I certainly was aware
4 that it was something that had to be done. I didn't -- I don't have any
5 recollection of having a conversation with Mr. Dunlop in relation to it. But
6 it's inevitable in conversation with either him and/or Mr. Kennedy that it
7 would have come up.

8 Q 20 Well I suggest to you that in, according to Mr. Dunlop's diary, you met him on
9 three occasions in March of 1992, on four occasions in May of 1992 and on three
10 occasions in June of 1992. And we can have the page reference numbers if you
11 wish to see them?

12 A No, I am aware of the list of the meetings, yes.

13 Q 21 So in total in the period from the 12th March to the 15th June, you had,
14 according to Mr. Dunlop's diary, 10 meetings?

15 A I had quite a number of meetings with him.

16 Q 22 So you accept that you had a significant number of meetings. I take it you
17 accept that, that those meetings were related to the Carrickmines lands and the
18 rezoning and the work that he was engaged to do?

19 A I think in all -- well in all probability, yes, the majority of those meetings
20 were that and what those meetings would have dealt with, Mr. Gallagher, were
21 the process involved, there would have a meeting which was the meeting in
22 relation to the submission. There was another meeting in relation to a summary
23 of that. There was a change in tack at one stage, when the district centre was
24 dropped and there was another summary document produced for that. There was
25 certainly more than one meeting, two or three meetings with him in relation to
26 the golf course negotiations and what was happening on that. There was a
27 meeting with him in relation to the motorway and the impact of that. There was
28 a meeting with him as well in relation to something else -- oh yes, in relation
29 to the liquidation of the company and the difficulties that arose on that. So,
30 he was coming to me for those sorts of things and I was dealing with him on

1 those.

2 Q 23 Why was he coming to you? What expertise did you have in relation to these
3 matters, that would assist him in advancing the work that he had undertaken on
4 behalf of Paisley Park Investments Limited?

5 A Well in relation to each of those, I would have been the author of some papers,
6 some documents in relation to the various changes that were taking place. I
7 produced from the documents summaries of the submissions.

8 Q 24 Who had a planning input into that, who was the consultant planner you had
9 engaged to advise in all of that?

10 A Well what was there was a master document, the submission that had gone in,
11 that had gone in with the oral hearing. From that document, I generated the
12 summary documents and circulated those to him. The other issues, the issue in
13 relation to the liquidation, I dealt with that with him because I was the
14 person that was involved in that and I dealt with the golf course side of it
15 because I was the person who was having the discussions with the committee
16 members of the golf course.

17 Q 25 And this was a document that evolved from the document which had been faxed by
18 Mr. Lawlor to Mr. Finnegan that bore the initials JC on the cover sheet?

19 A I don't think that document bore the initials JC, I don't think the
20 Carrickmines document did that, I think the document that did that was the
21 early document.

22 Q 26 You are right, correct. But at the time that, it was a document that evolved
23 and related to the submission of the 3rd of December 1991 in relation to the
24 Carrickmines District Centre, etc, etc, and the Carrickmines project?

25 A The document of December 1991 was, I think, was to all intents abandoned, a
26 more comprehensive document was produced in February and that was the document
27 that went into the oral hearing and it was from that document that I generated
28 the various summaries and I gave to him.

29 Q 27 Did you obtain advice from Mr. Lawlor in relation to that document or in
30 relation to the proposed rezoning of the lands?

1 A No, I did not.

2 Q 28 Did you obtain advice from anybody, any consultant engineer or consultant
3 planner in relation to that area, in relation to the proposed rezoning of the
4 Carrickmines lands?

5 A In relation to the production of the summary documents, no, because the master
6 document was there. And it was, it was an authorship issue just simply to
7 extract from that document the relevant passages.

8 Q 29 So it is clear you were actually involved in attempts to secure the rezoning of
9 these lands by redrafting documents, by submitting documents, by meeting
10 people, by discussing it with Frank Dunlop and James Kennedy and to advance the
11 rezoning prospect.

12 A Well, I was involved in the process insofar as I could contribute to it. The
13 people that I dealt with in that regard were Frank Dunlop and Mr. Kennedy.
14 Mr. Dunlop and Mr. Kennedy. The skill that I could bring to it was the skill
15 of organising paper and putting paper into a presentable form and he wanted
16 summaries at various stages in relation to these issues and I generated these
17 summaries for him.

18 Q 30 What I said was that you were actively involved on your evidence, for example,
19 you were actively involved with the discussions with the Carrickmines Golf
20 Club?

21 A Absolutely, I was involved with the Carrickmines Golf Club in terms of trying
22 to reach an accommodation with them in relation to a sterile strip around the
23 golf course.

24 Q 31 So, we come to a situation where a motion has to be proposed and you are
25 familiar with the procedure because you have been involved in attempts to
26 rezone lands and obtain planning permissions on other lands at that time?

27 A Well certainly obtaining planning permission in relation to it. I don't think
28 there was any situation before this where --

29 Q 32 Well I take the view, you knew the procedures that had to be gone through in
30 order to obtain a rezoning?

1 A I knew that a motion had to be put down, yes.

2 Q 33 How did you go about ensuring that motion would be put down?

3 A I took no part in ensuring the motion would be put down. Mr. Dunlop was the
4 person employed as the lobbyist to look after those matters.

5 Q 34 Well did you discuss the putting down of a motion with Mr. Dunlop?

6 A I have no recollection of discussing the detail of it other than the fact that
7 it had to occur.

8 Q 35 Did you discuss with him how it might be achieved? How somebody might be
9 persuaded to sign a motion and to second a motion in order to have the matter
10 debated?

11 A No, I did not.

12 Q 36 Now, you have told us yesterday that there was very, very strong objections by
13 residents in the area to the rezoning of the Carrickmines Valley, so it would
14 have been reasonable to anticipate that politicians would be reluctant to
15 become involved in a motion that would appear to be unpopular with their
16 voters?

17 A Yes, certainly some politicians would be reluctant to be involved, would take
18 the aspirations of some of their voters into account and would also take into
19 account the aspirations of other voters as well.

20 Q 37 It would be reasonable to assume for anybody looking, any interested bystander
21 to assume that the politicians in that general area would oppose the rezoning
22 because of the depth and vehemence of the opposition articulated by the voters
23 they represented?

24 A No, not at all, what the politicians were faced with was a vociferous action
25 group who had a particular agenda, which was to effectively keep the
26 Carrickmines Valley as a green area for themselves and their dogs and as
27 against that, they had to weigh the requirements of that local area in terms of
28 jobs and in terms of the rest of their other constituents, who equally had a
29 voice but whose voice was overwhelmed by this very vociferous small group.

30 Q 38 On the other hand you had Monarch organisation employed a leading firm of

1 public relations consultants to mount road shows and displays and information
2 nights in schools and community halls and hotels and other venues in the
3 general south Dublin area, in an effort to persuade the voters of that area of
4 the merits of what was being proposed for Carrickmines Valley, isn't that
5 right?

6 A Indeed they did.

7 Q 39 And they spent huge amounts of money doing that?

8 A They had the money to spend, they had deep pockets.

9 Q 40 It was necessary for them, in an effort to counteract the opposition mounted by
10 Professor John Varian, the specialist hand surgeon and others to this proposal,
11 to employ Bill O'Herlihy, public relations and others to go out and mount
12 particular displays, information meetings, information documents, leaflets,
13 newspapers and even to try and persuade the people of South County Dublin that
14 this was in their best interests, isn't that right?

15 A Oh yes, they mounted a very substantial campaign in relation to it and
16 obviously spent a lot of money in doing it. They had a huge financial
17 investment in the property, they had paid a very, very high price for the
18 property and it was absolutely essential to Monarch financially, certainly I
19 gather from the papers at the time, that they succeeded in getting the rezoning
20 there.

21 Q 41 And did they do this because of the opposition at this time?

22 A They told us to do that, if the finances had been available to us, we would
23 have extended the campaign as such, but we didn't have the same deep pockets as
24 they had. I don't know if at that stage they had GRE as their partner in it,
25 but they certainly had substantial financial resources and a substantial
26 financial risk to overcome.

27 Q 42 Well, we know that on the 4th May of 1992 in the teeth of that opposition
28 mounted by, what you describe as a vociferous group, a motion was signed by
29 councillors Don Lydon and Tom Hand resolving that the lands owned by Paisley
30 Park, though the company wasn't named, which has been signed for identification

1 purposes by the proposer and seconder be zoned E to provide a high quality job
2 creation base for south County Dublin." Would you tell the Tribunal the
3 circumstances in which that came to be drafted, signed and seconded?

4 A I don't know the circumstances in relation to it, I wasn't involved in the
5 drafting, the signing and the filing of the motion.

6 Q 43 What did Mr. Dunlop tell you about the motion?

7 A The only recollection I have is that he told me subsequently that it was done
8 and filed but nothing more.

9 Q 44 Mr. Dunlop has told the Tribunal that he drafted this with the assistance of
10 Mr. Liam Lawlor and that on the 1st May 1992, he went to see Councillor --
11 Senator Lydon in St. John of God's in Stillorgan on Friday the 1st May, you are
12 aware of that?

13 A I am aware of that.

14 Q 45 And he said that on that occasion, there was agreement that Councillor Lydon
15 would sign the motion. Councillor Lydon expressed concern about the political
16 consequences for him of signing the motion because it would be unpopular with a
17 significant number of voters in the area, you are aware of that?

18 A I am aware of the evidence, but not of the content.

19 Q 46 And you are aware of Mr. Dunlop's evidence, on the same date, he travelled to
20 see Mr. Hand at his home in Dundrum?

21 A Yes, I am aware of that evidence, yes.

22 Q 47 And you are aware that on the 5th May, Mr. -- or on the 4th May rather,
23 Mr. Dunlop says that he met Councillor Lydon and paid him 3,000 pounds, the
24 motion was signed by Councillor Lydon in St. John of God's and that it was
25 subsequently signed by Councillor Tom Hand in the offices of Dublin County
26 Council. You are aware of that?

27 A I am aware of that.

28 Q 48 And you are aware in respect of both signatures, Mr. Dunlop says he gave the
29 signatories 3,000 pounds each.

30 A I am aware of the evidence.

1 Q 49 Now, I must put it to you, that you met with Mr. Dunlop on Friday the 1st of
2 May 1992, shortly before he says you met Councillor Lydon and Councillor Hand
3 at their home.

4 A I have seen the extract.

5 Q 50 Do you accept that you did meet him on that occasion?

6 A It's probable that I did, yes.

7 Q 51 What did you discuss on that occasion?

8 A I have no recollection.

9 Q 52 Is it probable you discussed the motion he was about to have signed?

10 A It's unlikely because I didn't engage in conversation, I didn't have
11 conversations with Mr. Dunlop about the motion process. I mean, I knew the
12 motion process had to be done, but who was going to sign motions, when motions
13 were going to be signed, where they were going to be signed, who was going to
14 sign them, who he was meeting in relation to it, I didn't have those
15 conversations with him.

16 Q 53 Given the evidence that the Tribunal has heard so far from you in relation to
17 your interest in the property, i.e. the beneficial interest of, concerning the
18 structures arising from or notwithstanding or whatever word one uses, one
19 chooses to use, your interest in the property and your desire to have the lands
20 rezoned or developed, it seems to me that given that you knew that a motion had
21 to be filed and that there was a limited window of opportunity to deal with
22 this, because the councillors were moving on to deal with Carrickmines at a
23 particular time and if the motion wasn't filed at a particular time, then the
24 opportunity would be lost, do you accept that?

25 A All of these things worked within time limits, so he was working within time
26 limits.

27 Q 54 So the time limit for the deliberation on the motion was at the very beginning
28 of May for the lodging of the motion. Now given you knew all about these
29 things and you had your interest and your involvement in these things, can I
30 suggest to you that given that you met Mr. Dunlop on the 1st of May and again

1 indeed that you met him again on the 5th of May, according to his diary and
2 that is the occasion in the presence of Mr. Kennedy, that if you didn't discuss
3 the motion and the circumstances and who was signing it, etc, that there could
4 be only two reasons for that, one is that you weren't interested or second was
5 that you didn't want to know.

6 A Well it's, who would sign the motion was a matter of indifference to me.
7 Mr. Dunlop's job was to get a motion signed, do the lobbying and see whether he
8 could get it successfully rezoned, I didn't involve myself in the process of
9 that, I didn't involve myself in the discussions about the councillors, who
10 were the councillors, who might vote for it, who might not vote for it, it was
11 not something which was part of my role and my interest in what was going on
12 and that wasn't because I didn't want to know what was going on.

13 Q 55 Mr. Dunlop has said that it was probable that in the course of his meeting with
14 you he mentioned that Senator Lydon and Councillor Hand were to sign the
15 motion.

16 A It would have meant nothing to me. The names of Senator Lydon, obviously the
17 name of Councillor Hand is a name that I knew from Mr. Kennedy, as I said
18 yesterday, but it would have been -- if he said it was Joe Soap and Fred, it
19 would have made no difference to me who those people were.

20 Q 56 Now in relation to the meeting of the 1st of May, he said that you discussed at
21 that meeting what was to happen in relation to Paisley Park developments, both
22 the mechanics, they both had to be prepared and he too, he says he told you
23 that the motion would be put forward and would be signed, he confirms of course
24 that he doesn't recall discussing the names of the persons who were signing the
25 motion with you.

26 A Yes I mean, I have a knowledge, I knew the process and I knew that motions had
27 to be signed. In probability I spoke to him about that as I said but in terms
28 of who was signing the motion, when they were signing it, where they were
29 signing it, that's just, we did not discuss that.

30 Q 57 I am curious as to why you wouldn't have enquired as to who signed it, whether

1 for example, he had succeeded in getting councillors from the area to support
2 the motion?

3 A It didn't matter to me who had signed it, if he was successful in getting it
4 signed, he had met his objective, which was to have a motion filed within the
5 time limit and once it was filed within the time limit that was fine. If he
6 had got people from within the area to sign it, clearly from his own point of
7 view in terms of bringing forward the proposal to the next level, that was a
8 bonus but --

9 Q 58 From your point of view it was a bonus?

10 A If he succeeded in doing that, it was a bonus.

11 Q 59 And therefore one would be, I suggest, interested to find out the areas the
12 councillors who signed the motions represented?

13 A I just -- I didn't involve myself in it Mr. Gallagher. I mean I dealt with
14 specific aspects of this. In terms of it, I employed, as with Mr. Kennedy,
15 employed Mr. Dunlop to lobby for this and to get the motions filed in relation
16 to it. He went and did that. And I didn't get involved in -- because there
17 would have been some interest in relation to the local people, that would have
18 been a plus if that happened, but I have no recollection of discussing that
19 with him.

20

21 JUDGE FAHERTY: Mr. Caldwell, can I ask you, a little while ago you told me
22 that the reason you went for industrial zoning, the submission on the oral
23 hearings and the motion was that, what I got from your answer I may be
24 surmising here, that you felt that given that the planners had put forward
25 industrial zoning in October 1990, that you were, if you like, in with half a
26 chance, that you could make the argument that the planners themselves had at an
27 earlier time?

28 A That's correct.

29

30 JUDGE FAHERTY: Suggested industrial zoning. Now that suggests to me that you

1 were saying that you had half a chance with the submission or you felt could
2 you make that argument in any event.

3 A Yes, I felt we were on stronger ground.

4
5 JUDGE FAHERTY: Yes and given that it was County Councillors in May 1991 that
6 had voted down the industrial zoning, that would suggest to me that the
7 emphasis will have to be, from your point of view on the mechanism to change
8 the councillors' minds. Because they were the people who had voted down the
9 planners.

10 A Yes.

11
12 JUDGE FAHERTY: And it seems to me extraordinary, when you would be discussing
13 these matters with Mr. Dunlop, that that wouldn't have exercised your mind?

14 A Well it exercised my mind in that the -- he required information to convince
15 them and information to provide them with summaries and arguments and that in
16 terms of that, I produced these several documents that I have spoken about and
17 provided those to him so that he had these as little information packs.

18
19 JUDGE FAHERTY: I understand that.

20 A With maps and photographs.

21
22 JUDGE FAHERTY: Yes, but now we are talking about the 1st of May, the
23 submission would have gone in, all of that documentation, presumably the
24 submissions would have been circulated at a fairly early stage to County
25 Councillors, as I understand it, of the councillors themselves, you wouldn't be
26 making those arguments on the 1st of May, that would have been done and dusted
27 surely?

28 A In terms of him dealing with it, it was a continual process. I had quite a lot
29 of meetings with him and these were because he was continually coming back on
30 issues that were arising. So, if he had an issue on, as I said, the

1 liquidation thing, someone must have brought it up with him, I dealt with that
2 with him. If he had an issue in relation to the, a rumour that the golf course
3 was going to vote against it, then I dealt with it in relation to that and
4 similarly on the other matters that are listed.

5
6 JUDGE FAHERTY: Are you saying Mr. Dunlop didn't tell you tell you on the 1st
7 May that he was getting Senator Lydon and the late Mr. Hand to sign the motion?

8 A I knew that he was getting the motion signed.

9
10 JUDGE FAHERTY: Yes, he had to --

11 A He had to get the motion signed. I knew he was getting the motion signed. I
12 have no recollection of him telling me that it was Senator Lydon and Mr. Hand
13 who were going to sign it.

14
15 JUDGE FAHERTY: He says, I'm only going on my own note, that it was not
16 conceivable that he wouldn't have told you?

17 A It may well be that he did tell me, I've no recollection of him telling me
18 that, those specific individuals.

19
20 JUDGE FAHERTY: Given your own evidence, it all came down to county councillors
21 at the end of the day as far as your motion was concerned, is that right?

22 A Yes, it did. It came down to convincing the county councillors to vote in
23 favour.

24
25 JUDGE FAHERTY: Thanks, very well.

26
27 MR. FINLAY: Arising from Judge Faherty's very understandable inquiries of
28 Mr. Caldwell, it's an opportune moment with a view to assisting all three
29 members of the Tribunal to point yet again to an aspect of the evidence which
30 Mr. Gallagher has failed to reveal this morning, either to Mr. Caldwell or to

1 the three members of the Tribunal. It's a critical aspect of the evidence
2 because it's Mr. Dunlop's own evidence and it's directly pertinent to the last
3 15 minutes of questions.

4
5 On two occasions when questioned in his evidence, Mr. Dunlop in unequivocal
6 terms made it clear that Mr. Caldwell had no role of the kind now being
7 suggested by Mr. Gallagher and being inquired about by Judge Faherty and I will
8 give the references to the Tribunal now because I think it's of immediate
9 relevance. On Day 342 of the proceedings on the 17th December 2002 in response
10 to the following question, number 86: "Did you tell Mr. Caldwell of the
11 efforts that you had made and the contacts that you had made with the
12 councillors with a view to obtaining their support for the proposed rezoning."
13 Mr. Dunlop replied in the following terms: "No. Mr. Caldwell never" -- and I
14 emphasise the word 'never' to the Tribunal -- "Mr. Caldwell never showed any
15 interest really in the elected representatives. He did express himself on a
16 number of occasions, not particularly at this meeting, I do recall him
17 expressing himself colourfully on other occasion in relation to another
18 development but not in this particular instance. He was there, I suppose the
19 best way to describe it is in what appeared to be a support capacity for
20 Mr. Kennedy at the meeting."

21 He is there referring to a particular meeting.

22 "He didn't express any great interest in the finer detail of how this was going
23 to be done."

24 And then later on that same day at Question 104, line 11, it's the following
25 sentence in an answer given by Mr. Dunlop. "As I said to you earlier,
26 Mr. Caldwell never had any interest in the actual mechanics of what needed to
27 be done or didn't need to be done. The discussions in the main with reference
28 to Mr. Caldwell referred to technical issues and I do recall on one occasion,
29 and the occasion being the occasion Mr. Caldwell was present, the only
30 reference I recall being made to -- and this matter was brought into focus to

1 me recently by something I read in relation to the Tribunal, the evidence given
2 to Tribunal because I certainly hadn't recalled it and wouldn't have unless
3 that issue had arisen -- was in relation to what the manager had proposed for
4 the Carrickmines Valley along the map that you have outlined heretofore."

5
6 Now in my most respectful submission, first of all it's essential at this point
7 for the three members of the Tribunal to be aware of the evidence but the
8 matter goes further than that.

9
10 Mr. Gallagher is fully aware of that evidence. He and his vast resources have
11 trawled through every word ever given in evidence by Mr. Dunlop to this
12 Tribunal. He is fully aware of that evidence and despite the evidence of
13 Mr. Dunlop, the express evidence of Mr. Dunlop contradicting what he is now
14 putting to Mr. Caldwell, he is now putting to Mr. Caldwell an entire contrary
15 suggestion without advancing or mentioning to him the evidence already given by
16 Mr. Dunlop and in my most respectful submission, this is an improper and unfair
17 way of dealing with Mr. Caldwell. It's unfair to Mr. Caldwell and also fails
18 to disclose to members of the Tribunal who are charged with assessing this or
19 to the public, because this is a public inquiry that that evidence has already
20 been given.

21
22 MR. GALLAGHER: May I say I would reject the suggestion it was unfair or
23 improper. This is an inquiry and this is not a situation of taking and testing
24 Mr. Dunlop's evidence and assuming that it is correct and simply putting what
25 he said without questioning to any other witness. We are inquiring from all
26 witnesses the fact that Mr. Dunlop has given a version which is, of course, on
27 the record and the Tribunal will be aware of it. The fact that I asked
28 Mr. Caldwell a question which may seem to contradict evidence that was given by
29 Mr. Dunlop is, I suggest, part of my duty. I have to ask questions and it may
30 be that Mr. Caldwell will give evidence which will accord in all respects with

1 that of Mr. Dunlop. If so, so be it. If he gives a different answer, then so
2 be it also. The Tribunal may want to test it further or it may not but I can't
3 proceed on the basis that everything that Mr. Dunlop has said is absolutely
4 accurate, that his recollection is absolutely accurate and I would be
5 criticised if I proceeded on that basis. So I have a duty, it seems to me, to
6 ask Mr. Caldwell those questions because, for example, it does seem to me and
7 it may not commend itself to the Tribunal that it would be of interest to
8 somebody who had a large tract of land in south County Dublin which he wanted
9 to get rezoned, it would be of interest to know whether the person who is
10 signing that motion came from south Dublin or north Dublin because that might
11 indicate a level of support within the council and the willingness of people or
12 councillors of South Dublin to support. I am putting it no further than that.
13 I readily acknowledge Mr. Dunlop has said he did not tell Mr. Caldwell about --
14 he did not tell Mr. Caldwell about the signatories or who was going to sign it
15 but he did concede that it was probable that he mentioned that Mr. Lydon and
16 Mr. Hand were to sign the motion. That's on page 28, at question 152. All of
17 these answers are available to the Tribunal and the Tribunal will weigh them
18 all up in due course and the fact that I don't put every single point of
19 evidence given by any particular witness to Mr. Caldwell should not be
20 suggested or be considered as unfair or improper treatment.

21
22 MR. FINLAY: Just one last point briefly, Mr. Chairman. Mr. Gallagher probably
23 through my own fault missed the only point I was really making is that the
24 evidence of Mr. Dunlop on this issue, the evidence of Mr. Dunlop on this issue
25 was selectively put to Mr. Caldwell, only one aspect of Mr. Dunlop's evidence
26 on this very issue as to whether they discussed technical dealings but not the
27 other evidence and that is my point.

28
29 CHAIRMAN: Very good, well in relation to the point as I understood your
30 objection, Mr. Finlay, your objection was in relation to the fact that

1 Mr. Dunlop had said certain things about what he believed to be Mr. Caldwell's
2 interest or lack of interest in the role of councillors in the whole process.
3 I understood your objection to be largely made on the fact, on the basis that
4 notwithstanding Mr. Dunlop's evidence, Mr. Mr. Caldwell was still being
5 questioned about whether or not in fact he did have a greater interest in the
6 role of the councillors and the Tribunal would certainly be of the view that
7 the mere fact that Mr. Dunlop said something or gave evidence in relation to
8 this or any other particular matter would not in any way restrict the Tribunal
9 in making its own inquiries because of course the Tribunal is not a
10 Mr. Dunlop-driven inquiry, though some people might suggest it is from time to
11 time.

12
13 MR. FINLAY: I respectfully agree with everything you have just said. My only
14 concern is this: I appreciate there are challenges for counsel for the
15 Tribunal in this regard and I will come to it later today in respect of another
16 matter. My only concern is that if there is an examination of a witness based
17 on the evidence of another witness, which is what Mr. Gallagher has been doing
18 up to now, he has been referring to evidence given by Mr. Dunlop in relation to
19 Mr. Caldwell, it is in my respectful submission to the Tribunal, and the
20 Tribunal may take a different view, it is not fair that counsel for the
21 Tribunal should selectively open that particular evidence to the witness when
22 he doesn't have the transcript in front of him. The witness is being asked
23 about one section of Mr. Dunlop's evidence on this issue but not being told
24 about the other. And the Tribunal may take a different view. It's something
25 of course that I can deal with in re-examination. It can be left at this
26 stage.

27
28 CHAIRMAN: All right well I take your point but at the same time I think it has
29 to be said that Mr. Caldwell is familiar with the evidence that's been given by
30 Mr. Dunlop and would have read the transcript but we would accept the point

1 that you make that obviously the full picture should be put to Mr. Caldwell if
2 he is being asked about a particular aspect of --

3
4 JUDGE FAHERTY: Mr. Finlay, I would like to add, you appreciate that given that
5 Mr. Caldwell was there when the events were happening, he had an involvement
6 and he is giving his evidence in regard to his involvement, there is an onus on
7 the Tribunal to ask Mr. Caldwell questions as to, he was there at the
8 coal-face.

9
10 MR. FINLAY: Absolutely.

11
12 JUDGE FAHERTY: As to what his motivations were, what he did and didn't do and
13 why he did one thing as opposed to another, it's a inquiry and that's what we
14 must do and you appreciate that.

15
16 MR. FINLAY: Absolutely and an inquiry --

17
18 JUDGE FAHERTY: We made the same enquiry as I recall of Mr. Dunlop when he was
19 sitting in the witness-box.

20
21 MR. FINLAY: I have no difficulty with that at all. Thank you.

22
23 MR. GALLAGHER: Mr. Caldwell, do you remember the meeting of the 5th May with
24 Mr. Kennedy and Mr. Dunlop?

25 A I remember that there was a meeting, that I had a meeting with Mr. Dunlop and
26 Mr. Kennedy. I can't say on the -- I can't be specific as to specific
27 recollections of a meeting on that day.

28 Q 60 Well perhaps the fact that the motion for the rezoning of the agricultural
29 lands to industrial lands had been lodged the previous day, it may assist you
30 in identifying that meeting.

1 A In terms of the meeting, the fact that it had been lodged would have been
2 something that would have been said at that meeting.

3 Q 61 OK.

4 A I have no recollection, I am sure that would have happened.

5 Q 62 Is it likely that there would have been a discussion about who supported the
6 motion and who was signing it etc?

7 A They may have discussed it but if I was there for a particular purpose, I can't
8 recollect what that was, then I would have listened into whatever conversation
9 they had in relation to it but I don't recollect any conversation they had
10 about it.

11 Q 63 In any event, I take it that you were pleased, Mr. Kennedy was pleased that the
12 motion had been signed and had been lodged?

13 A Yes, I would have been pleased that it was signed and lodged, the process would
14 have been over if that had not occurred.

15 Q 64 Did you ask Mr. Dunlop at that stage what he thought of the chances of success
16 would be in having the motion passed at a subsequent meeting of the council?

17 A I can't specifically recollect asking him at that meeting in relation to it but
18 certainly at some stage he would have commented to me that he felt he was in a
19 very tight situation.

20 Q 65 I suggest to you that you had a number of further meetings, perhaps eight
21 further meetings between that date and the date on which the motion was debated
22 by the council, on the 12th June. Something of that order. Four or five or
23 six meetings at least?

24 A There would have been several meetings during that period, yes.

25 Q 66 Can you tell the Tribunal what was discussed at those meetings?

26 A I would have been dealing with specific issues.

27 Q 67 Tell the Tribunal the issues that you were dealing with?

28 A The issues would have been updates on the golf course situation. They would
29 have been providing him with some additional summaries, they would have been
30 dealing with the liquidation issue, it became a live issue, that's my

1 recollection.

2 Q 68 May I have page 4691 please. It's a single page document. You see it on
3 screen. It reads as follows: "Paisley Park Investments Limited. Paisley Park
4 Investments Limited is a consortium of UK and Irish investors, the directors of
5 the company which is registered in the Isle of Man are Rod Harker and Martin
6 Bullock, the project manager for the proposed development, that is a high
7 quality business park is James Burgess who has extensive experience of property
8 management both in the UK and in Ireland contrary to a recent newspaper report
9 this company is not in liquidation. It has undergone an internal business
10 reorganisation only. The ownership of the company has not changed."

11

12 Have you seen that document before?

13 A The first time I saw that was in the brief.

14 Q 69 I see. So you hadn't seen it at the time that this motion was being debated or
15 in the period of 1992?

16 A No, I have no recollection of seeing it. I have a recollection of the genesis
17 of the document in that he had an issue in that someone had raised with him the
18 fact that the company was in liquidation, and that you know, he needed to
19 explain what the situation was. So I do recollect having a discussion with him
20 about it but this particular document, I don't recollect seeing the document
21 before.

22 Q 70 Do you know James Burgess?

23 A I do know James Burgess. He is a quantity surveyor in Northern Ireland who
24 acts as a project manager in with Northern Ireland and in the Republic of
25 Ireland.

26 Q 71 Did you give that name to Mr. Dunlop?

27 A Yes, I would have.

28 Q 72 So would it be fair to assume that the information contained in this document
29 was furnished by you to Mr. Dunlop?

30 A Yes, it would, yes. It would have come from me, the name James Burgess would

1 have come from me.

2 Q 73 Would the information contained in that press release or statement or document,
3 call it what one wishes, have come from you?

4 A Well the -- I would have told him who the directors of the company are. I
5 would have told him about James Burgess, the gloss in relation to it in terms
6 of the consortium of UK and Irish investors and the use of the language
7 contrary to a recent newspaper story, this company is not in liquidation, those
8 would have been glosses that Mr. Dunlop would have put on the document.

9 Q 74 Was it a consortium of UK and Irish investors?

10 A No, it wasn't. Well insofar as -- to an extent it was, I suppose, in that I am
11 UK and Mr. Kennedy is Irish. But that's more coincidence than anything else.

12 Q 75 Do you say that Mr. Dunlop was not told that Paisley Park was owned by a
13 consortium of UK and Irish investors? That you did not tell him that?

14 A No, I did -- this is how he constructed the press view in relation to it.

15 Q 76 Did he ask you who owned Paisley Park Investments Limited?

16 A I don't remember having that discussion with him in terms of a question which
17 goes to the issues that we were talking about yesterday and the Friday.

18 Q 77 If that question hadn't been asked, why would he be told that the directors are
19 Ron Harker presumably and Martin Bullock?

20 A He wanted to know who the directors were, he would have been told it was Ron
21 Harker and Martin Bullock, but he obviously took it down wrong in preparing
22 this.

23 Q 78 You say of his own volition, without input from you, he stated that Paisley
24 Park is a consortium of UK and Irish investors?

25 A He probably picked that up from the document that was in circulation. The
26 December -- the document lodged on the 3rd December 1991 may have, may have
27 made that reference.

28 Q 79 But there obviously were newspaper reports at that time that the company was in
29 liquidation?

30 A I don't know whether there were newspapers reports or not. I can't recollect,

1 Mr. Gallagher, whether it was newspapers or whether it was somewhere else, a
2 journalist contacted him or what the background was but somebody had contacted
3 him and it was an issue that he was excited about.

4
5 CHAIRMAN: Mr. Gallagher, we are going to take a very short break, I am having
6 a difficulty with my laptop here, it might be corrected. Thank you.

7
8
9 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK
10 AND RESUMED AS FOLLOWS:

11
12 Q 80 MR. GALLAGHER: Mr. Caldwell, would you tell the Tribunal about any involvement
13 you may have had with the events leading up to and indeed the actual voting on
14 the motion which was signed by Senator Lydon and Councillor Hand.

15 A I am not sure I understand the question but in terms of what I think you are
16 asking me, my involvement is, as I stated, it was dealing with the issues like
17 this liquidation issue when they came up. Dealing with the situation in
18 relation to the golf course which again was something which excited Mr. Dunlop.
19 In terms of the vote as such, at the council meeting, I had no role in relation
20 to that.

21 Q 81 I see. I mean you have stressed the situation in relation to the golf course
22 on a number of occasions. Am I correct in thinking that there was no objection
23 to any application for rezoning that was submitted in respect of the lands in
24 question from the golf course?

25 A There was no -- not that I am aware of, there was no formal objection from
26 them.

27 Q 82 Was there any informal objection?

28 A Well what was happening there was again a commercial negotiation taking place
29 between effectively Paisley Park and the golf course. Clearly the golf course
30 is an important neighbour of Paisley Park's and it was peopled by the sort of

1 influential people you were referring to earlier. It was important from
2 Paisley Park's point of view to neutralise their objections if that was
3 possible and the carrot that was involved in that was the possibility of having
4 a sterile strip around the golf course which they wanted and which they had
5 been trying to get from 1989-1990.

6 Q 83 Well was there any formal agreement entered into between Paisley Park and the
7 golf course?

8 A Negotiated heads of terms sometime towards I think the end, sorry, the
9 beginning of May, 1992 and those heads of terms dealt with the issue of this
10 strip and they were forwarded by the golf course, I can't remember if it was
11 the treasurer or the secretary, to their solicitors to generate a document.

12 Q 84 Well the question was, was there any formal agreement entered into between
13 Paisley Park and the golf course in relation to any boundaries or sterile strip
14 or anything of that nature?

15 A Well we didn't get to the point of actually signing off on the agreement. The
16 agreement was conditional on the zoning occurring, so terms were circulated and
17 the solicitors were asked to draw up the document. Before the document was
18 actually finalised, the vote took place in June and the matter became moot.

19 Q 85 Is the answer to the question no?

20 A Well the answer is no, yes.

21 Q 86 Thank you. What other input did you have at that time with Mr. Dunlop in
22 relation to the motion which was to be brought on by Dublin County Council in
23 June of 1992?

24 A I can't recollect any other input. This liquidation issue was probably
25 something that came up around that time as well but outside of that, I have no
26 recollection of anything else.

27 Q 87 I think that the matter came for a hearing on the 12th June 1992. May I have
28 page 441 please of the Carrick brief, I am just going to refer you to the
29 report on the motion. This is the meeting held on the 12th June. Perhaps we
30 could go on to 443, 444.

1
2 This is a representation by Mark Forkin, could we move on please? This is the
3 Paisley Parks Investments and the manager's report which was read, it said:
4 "That the only access is from the narrow cul-de-sac roadway leading to
5 Carrickmines Golf Course, to provide access for industrial development would
6 require a junction on the motorway and such a junction would not be warranted
7 in the circumstances. Even if direct access could be provided onto the
8 Glenamuck Road, it would be unacceptable in view of the substandard nature and
9 the amount of traffic generated. The western portion of the site is unsuitable
10 for industrial development due to the steep contours and exposed nature of that
11 part of the site. In view of the isolated location of the lands and difficulty
12 of access and having regard to the decisions already taken by the council in
13 relation to the adjoining lands, this site is not an appropriate location for
14 industrial development, it is recommended that this motion be not passed."
15

16 I think the motion was put and there were 26 in favour -- 24 in favour, 26
17 against with one abstention, is that right?

18 A I see. Yes.

19 Q 88 So it was very narrowly defeated.

20 A Yes.

21 Q 89 I take it you were disappointed at that outcome?

22 A I was disappointed, yes.

23 Q 90 Did anything further happen in relation to those lands or attempts to develop
24 those lands prior to the dissolution of Dublin County Council?

25 A No, I think that that, this vote ended the position of Paisley Park in relation
26 to the lands, I don't think anything else occurred until 1995.

27 Q 91 Well would you tell the Tribunal about the attempting to rezone the lands which
28 occurred in the review of the 1993 plan by Dun Laoghaire/Rathdown County
29 Council.

30 A That's the 1995 period, is it?

1 Q 92 Well subsequent indeed to the 1995 period.

2 A Yes.

3 Q 93 I take it in the 1995 period you are talking about representations that were
4 submitted?

5 A Yes, I am.

6 Q 94 I'm aware of those but I would like to move on to the actual attempts to secure
7 the rezoning of the lands.

8 A This then is the 1997 period?

9 Q 95 Indeed. Yes.

10 A Yes. In relation to 1997, what happened at that stage was that a commercial
11 arrangement had been reached between Mr. O'Halloran and his co-owners and
12 Jackson Way in relation to the land which was on the northern side of the
13 motorway. And a joint application for rezoning was put together by his
14 professional team.

15 Q 96 In what way did that agreement differ from what had been agreed earlier in
16 relation to the ceding of the right of way or right of access to the O'Halloran
17 interests and the waiving of the claim in relation to restrictive covenant?

18 A The original right of way was no longer suitable for Mr. O'Halloran and I can't
19 remember whether it was in 1997 or before that that it became an issue, but the
20 right of way itself was something that required to be modified because of the
21 change in, I think the road layout. So, there was an agreement to change the
22 wayleave agreement effectively and that was an agreement which was an addendum,
23 the way it was done I think to the existing wayleave agreement of Paisley Park.
24 There was also an agreement in relation to the abandonment of the covenant or
25 any right to rely on the covenant. The situation with Mr. O'Halloran and his
26 group came forward from a series of submissions which were made through
27 1995-1996 and the submission of 1997, all of which were joint submissions.
28 They were submissions which were effectively in relation to his 20-odd acres
29 and in relation to the 20-odd acres of Jackson Way land which would be on the
30 northern side and Mr. O'Halloran was extremely active in dealing with his

professionals to put together the application for the rezoning submissions that were done during that time. My view in relation to it was that, you know, we were relying on his expertise to do a good job in relation to that.

Q 97 Can you tell the Tribunal whether you knew anything about a representation in relation to lands at Carrickmines submitted by Paramount Construction Limited to Dun Laoghaire/Rathdown County Council?

A Absolutely nothing at all, until I saw it in the brief.

Q 98 Would you tell the Tribunal what you know about the involvement of Mr. Dunlop in attempting to secure the rezoning of the lands at Carrickmines in that period?

A Mr. Dunlop was there as the person who was lobbying on behalf of Jackson Way. He dealt with Mr. Kennedy in relation to that. His role in 1997 was the same role of being a lobbyist, to secure rezoning of the Jackson Way lands. A submission was put in in relation to Jackson Way lands for 1997 in terms of both parts of the lands, in terms of the land on the northern side and land on the southern side of the motorway and that was put in more as a technical, put in rather than anything that one felt was going to actually produce a result. And again, for the reasons that are laid out here, the council had turned its face entirely against doing something on that southern side. Mr. Kennedy had negotiated again a success fee arrangement with Mr. Dunlop in relation to that 1997 rezoning effort and that involved that if he were successful in that, he was to receive one commercial acre and that applied if he was successful in obtaining a rezoning of the land on both sides of the motorway. Which he didn't and as it happened, that was not successful.

Q 99 Did you have any discussion with Mr. Kennedy about the advisability or desirability of employing Mr. Dunlop in 1997?

A No, not in 1997.

Q 100 When did you learn that Mr. Dunlop had been employed?

A Well Mr. Dunlop was employed to deal with the Jackson Way rezoning going back to 1995 when the submissions were put in in 1995 and again in 1996 and again in

1 1997. So I knew he was there in dealing with whatever lobbying was necessary
2 in relation to that. But --

3 Q 101He says that he was employed in 1997. Do you accept that or do you not?

4 A Well, he certainly was employed in 1997, there's no doubt about that. It would
5 be my recollection that certainly myself and Mr. Kennedy would have had
6 discussions in 1995 in relation to employing him at that point in time but
7 nothing happened at that time in terms of the submission that was put in wasn't
8 one which operated in the same sort of system as operated in 1997 in terms of
9 the --

10 Q 102Can the Tribunal take it that you did not discuss with Mr. Kennedy the question
11 of employing Mr. Dunlop in 1997?

12 A I have no recollection of discussing it with Mr. Kennedy in 1997.

13 Q 103Is it likely that you discussed it with him?

14 A It's likely he would have told me that Mr. Dunlop was there, in fact it's
15 certain that he would have told me that, Mr. Gallagher.

16 Q 104But you are suggesting that he told you after he had formed or reached some
17 form of agreement with Mr. Dunlop.

18 A Yes, in all probability.

19 Q 105What did he tell you about the terms of the agreement with Mr. Dunlop?

20 A He told me that the agreement was that Mr. Dunlop was to receive one commercial
21 acre if the rezoning was successful. It was a success fee he was getting and
22 he was being paid no other fee.

23 Q 106In your statement you said that Mr. Kennedy informed you that Mr. Dunlop wanted
24 several acres of land if the Jackson Way rezoning of the land was successful?

25 A Yes, I mean his original negotiating position with Mr. Kennedy was that he
26 wanted several acres but the end result of it was that Mr. Kennedy negotiated
27 him down to one commercial acre.

28 Q 107Mr. Dunlop has said that the initial agreement with Mr. Kennedy was that he was
29 to receive a success fee of a quarter of a million pounds.

30 A I am not -- I don't have a clear recollection in relation to a money side. I

1 mean my clear recollection in relation to the agreement with him was that it
2 was to be one commercial acre.

3 Q 108 And he says that he subsequently renegotiated the arrangement with Mr. Kennedy
4 and the agreement between them was that the success would translate into the
5 value of one commercial acre.

6 A It may well have been, that was the genesis of the one commercial acre but I
7 don't have a clear recollection of the 250,000 pounds fee.

8 Q 109 And did you give any thought to what work or what outlays or what time
9 Mr. Dunlop would have to do or expend in order to secure the rezoning of your
10 land?

11 A No, none at all. I mean it's a matter for Mr. Dunlop what he would expend and
12 what time and effort he would have to put into it. But as far as I was
13 concerned, the possibility of getting the land to the north and the south of
14 the motorway rezoned in 1997 was a complete and absolute lost cause. It was a
15 waste of time having anything to do with it. But Mr. Kennedy negotiated this
16 arrangement with him in relation to it and he did what he did. What he did in
17 relation to it, I have no idea.

18 Q 110 Did you ask Mr. Kennedy or did you ask Mr. Dunlop what they did in relation to
19 securing the rezoning of the lands?

20 A I had no conversations with Mr. Dunlop at all in that time period. This
21 application, 1997, was just an application that was made because the
22 opportunity was there to do it. It was a complete damp squib, it had no
23 possibility of succeeding.

24 Q 111 Well now is it not the fact that the lands were rezoned in part, at the end of
25 1997?

26 A An entirely different matter, Mr. Gallagher. The lands on the northern side of
27 the motorway, yes, had a high probability of success because they were on the
28 right side of the motorway, given the series of decisions that the council had
29 made.

30

1 JUDGE FAHERTY: Just as a matter for the record, looking at the transcript, you
2 answered Mr. Gallagher, in ease of yourself, the previous question saying that
3 the possibility of lands being rezoned north or south of the SEM line was an
4 impossibility.

5 A Sorry, what I meant by that, thank you, judge, what I meant by that as a bundle
6 package together because the application that was put --

7
8 JUDGE FAHERTY: I just wanted to clarify that.

9 A Thank you very much for that.

10

11 MR. GALLAGHER: But the fact is an attempt was made to rezone 88 acres of the
12 lands which included lands north and south of the motorway line.

13 A Yes, an attempt was made, but a completely futile attempt.

14 Q 112But you were aware of it?

15 A I am aware.

16 Q 113You were aware at the time?

17 A I was aware -- yes I was aware of it, I was aware a submission had gone in and
18 I was aware it was something that was going to be moved by Mr. Dunlop.

19 Q 114But you were aware, I take it, that Councillors Cosgrave and Fox were moving a
20 motion to rezone 88 acres of your lands at the end of 1997?

21 A No, I mean who was moving it, Mr. Gallagher, would have not been something --

22 Q 115Were you aware that a motion to rezone 88 acres of your land at the end of 1997
23 was before Dublin and Dun Laoghaire Rathdown County Council?

24 A I am sure Mr. Kennedy would have told me that.

25 Q 116Can the Tribunal take it you would have been aware?

26 A I am sure Mr. Kennedy would have told me that, so yes, I was aware of it.

27 Q 117Well, if you felt that it was a damp squib, why did you not take steps to stop
28 it going ahead at that time?

29 A Well, it's -- Mr. Kennedy was driving that train. He felt it was worthwhile
30 putting the application -- putting sorry, putting the submission in and the

1 motion forward. My view was that was a complete and absolute waste of time to
2 do that.

3 Q 118 Did you discuss the prospects of the motion being carried with Mr. Dunlop?

4 A No, I had no discussions with Mr. Dunlop.

5 Q 119 Why did you not discuss it with Mr. Dunlop who was the man, as it were, in the
6 field trying to organise support for the rezoning of the entire of the lands if
7 he could do so?

8 A I thought it was completely futile, absolutely and utterly futile. I had no --
9 my life at that stage and my life over the last 20 years has been one of a very
10 busy practitioner, very active in business, in my family businesses, in my
11 computer software businesses, in the property side of it. I don't have the
12 hours in the day or the minutes in the day to waste on futile exercises and it
13 was a completely futile exercise, I took that view from a commercial point of
14 view and I had no communication with him.

15 Q 120 At the end of 1997, there were a number of motions, some of which related to
16 the lands north of the motorway line and some of which related to lands south
17 of the motorway line.

18 A Yes.

19 Q 121 You knew about all of those motions, I take it?

20 A I knew that this whole thing was in process. I mean I wasn't monitoring it on
21 a daily basis.

22 Q 122 I understand from what you have told the Tribunal that you believed that there
23 was little or no prospect of any of the lands north of the motorway being
24 rezoned.

25

26 MR. FINLAY: Sorry, I don't believe that was the effect of Mr. Caldwell's --

27

28 MR. GALLAGHER: If I misunderstood what you said, perhaps you would clarify it.

29

30 JUDGE FAHERTY: It was an answer that was ambiguous, to say the least, that's

1 why I interjected.

2
3 MR. FINLAY: Following Judge Faherty's intervention, I thought the matter had
4 become clear. It was ambiguous originally.

5
6 JUDGE FAHERTY: That's what appeared on the transcript.

7
8 MR. FINLAY: My understanding of the evidence and of course, Mr. Caldwell
9 can -- the application that Mr. Dunlop was promoting for all the land north and
10 south had no prospect of success, but the northern lands alone, because they
11 stood north of the motorway, were an entirely different category, but
12 Mr. Caldwell can clarify.

13 A Yes, that's correct.

14
15 MR. GALLAGHER: Perhaps you can explain to me, was it your view that it was
16 unlikely that the lands north of the motorway would be rezoned?

17 A The lands --

18 Q 123Yes, north of the motorway.

19 A North of the motorway, yes. I thought they had a reasonable prospect of being
20 rezoned.

21 Q 124Was it your view that it was unlikely that the lands south of the motorway
22 would be rezoned?

23 A Yes, those are the lands outlying the Carrickmines Golf Course, I thought there
24 was no possibility of those lands being rezoned.

25 Q 125Why then did you permit a motion to be lodged with Dun Laoghaire/Rathdown
26 County Council seeking the rezoning of lands which were north and south of the
27 motorway?

28 A Well if Mr. Kennedy wanted to spend time and effort on that and had come to his
29 commercial arrangement with Mr. Dunlop in relation to it, one put the motion in
30 and let it run, you have nothing to lose by that happening. If it were

1 successful by some chance of freak, then fine, it was a substantial benefit.

2 But I had -- my belief was that there was absolutely no possibility of it.

3 Q 126 I take it you were aware of and approved of the fact that a motion seeking the
4 rezoning of approximately 36 acres of land to the north of the motorway was
5 being submitted and voted upon?

6 A I would have known that the process was in hand, Mr. Gallagher. I would have
7 known that Mr. O'Halloran and his team were dealing with it. I wouldn't have
8 been approving individual motions in relation to it. I would have had no input
9 to the motions that were filed, he looked after all of that. I mean he had a
10 huge interest, which was exactly the same interest as the Jackson Way interest
11 and his professional team knew the situation backwards.

12 Q 127 I take it that you were closely associated with Mr. Kennedy at this time in
13 trying to secure the rezoning and that you had regular contacts and
14 communications?

15 A I wouldn't have had much communication with him at that time in relation to
16 rezoning. I mean we had set this ship afloat and the ship was being captained
17 by Brian O'Halloran and his people so he was in charge of it, he was running it
18 and I was perfectly happy to let that happen. I had no desire to interfere
19 with that process and with the actions that his people were taking.

20 Q 128 The motion, the four motions signed by Councillors Liam Cosgrave and Betty
21 Coffey were received by Dun Laoghaire/Rathdown County Council on the 28th
22 October 1997. You accept that?

23 A Yes, as the paperwork has outlined.

24 Q 129 May I have page 4299 please, it's 401 in the Caldwell brief.

25 This is a copy of your diary for the 14th October 1997, 12.45 pm, Jim Kennedy
26 wishes to collect maps and motion. It's a telephone message, sorry.

27 A Yes.

28 Q 130 Can you tell the Tribunal what maps and motions Mr. Kennedy was collecting from
29 you at that time?

30 A Well it's what I now know in relation to it the maps that it refers to, the

1 motion in relation to the rezoning of the 88 acres which was the land on the
2 north and the south side, what I think happened in relation to that when I was
3 doing my research for the purposes of discovery to the Tribunal, I researched
4 the computer records of Binchys and it threw up these telephone records and it
5 also threw up two drafts of motions for the 88 acres and from the sequence of
6 in the computer, it looks like October 1997, I think what happened in relation
7 to it, someone phoned those in to my secretary and they were typed in Binchys,
8 the intention being as evidenced by this that they would be collected but I
9 have no recollection of being in that process as such.

10 Q 131 Did you have any dealings that you can recall at that time with Mr. Dunlop?

11 A None whatsoever.

12 Q 132 Did you have any contact or hear of any communication or contact from
13 Mr. Dunlop following the passing of the motion in 1997?

14 A No, I had no communication from him.

15 Q 133 Did you become aware of any communication from Mr. Dunlop seeking payment for
16 his success in having part of the lands rezoned?

17 A Well, no, he didn't come to me looking for any payment in relation to that when
18 it was rezoned. The arrangement with him in terms of the commercial deal as
19 described by Mr. Kennedy to me with him was the success fee was dependent on
20 the rezoning of both the land on the north and the southern side of the
21 motorway. In that only the land on the northern side of the motorway was
22 rezoned so far as Mr. Kennedy was concerned meant that he hadn't succeeded from
23 a commercial point of view and he was, he had no interest in paying him in any
24 shape or fashion but Mr. Dunlop never came to me and said Jim Kennedy is
25 treating me badly.

26 Q 134 No. Did Mr. Kennedy ever tell you that Mr. Dunlop had sought a success fee for
27 succeeding and having something of the order of 40 acres or thereabouts, 47
28 acres of land in the area rezoned? I know it's not all of your land, not all
29 Paisley Park lands?

30 A No, he never did.

1 Q 135How many acres of Jackson Way lands were, in fact, rezoned?

2 A I think it's about 26.

3 Q 136So that would be approximately one quarter of the entire?

4 A Of the entire holding, yes.

5 Q 137And it would be just less than a third of the holding when one excludes what
6 was being taken by Dun Laoghaire/Rathdown for the road?

7 A About that, yes.

8 Q 138And would you give the Tribunal your estimate of what the, how much the
9 value -- by how much per acre the value of the land was increased as a result
10 of that rezoning?

11 A At that time it would have increased probably to the order of three or 400,000
12 pounds an acre.

13 Q 139What would the value have been prior to rezoning?

14 A Because of where it was on that side of the motorway and because of the
15 attitude that there was prevailing to deal with the Carrickmines Valley up to
16 the edge of the motorway, there would have been a substantial hope value
17 associated with it. So someone may have paid 250,000 against a 400,000
18 possibility.

19 Q 140Are you saying that the increase in value per acre following the rezoning
20 amounted to, you would have suggested 150,000 per acre?

21 A Yes, I would have thought that of that magnitude, yes.

22 Q 141If you are correct in that and some people might disagree with you, with your
23 assessment and say it's on the low side, it meant that Mr. Dunlop, through his
24 efforts, had succeeded in greatly enhancing the value of approximately 26 acres
25 of your land, he had increased it by 150,000 pounds per acre, isn't that right?

26 A Yes, he had. On the relation to the northern side, yes.

27 Q 142So he had added millions of pounds to the value of your land?

28 A Yes.

29 Q 143And is it your evidence that notwithstanding the agreement that he would be
30 paid one commercial acre in the event of the rezoning of the lands, that he got

1 nothing for that work, for the work that he put into obtaining the rezoning of
2 the lands in 1997?

3 A Absolutely nothing. His fee arrangement in relation to the lands on the
4 northern side was a fee arrangement with Brian O'Halloran and his consortium.

5 Q 144 So it was all duck or no dinner so far as Mr. Dunlop was concerned?

6 A Absolutely, all duck or no dinner, yes. He had two employers effectively in
7 relation to it. One employer was the Brian O'Halloran side of it who agreed a
8 fee with him for his efforts on which Jackson Way piggy-backed and in relation
9 to the north, south 88 acre side of it, he had a separate fee arrangement and
10 that was the success fee, the one commercial acre.

11 Q 145 To the best of your knowledge and belief, did Mr. Dunlop seek payment of any
12 monies or compensation or recompense from or through Mr. Kennedy arising from
13 his work obtaining the rezoning of the 26 acres of Jackson Way lands?

14 A Not to my knowledge.

15 Q 146 To the best of your knowledge and belief, was any such request made by
16 Mr. Dunlop for recompense?

17 A Well Jim Kennedy is a very tough businessman. Mr. Dunlop may well have taken
18 the view there was no point in raising the issue with him at all but certainly
19 nobody came back to me saying Dunlop is on my door saying he wants a fee, he
20 wants a fee or a part of the success fee.

21 Q 147 Did Mr. Kennedy, when he told you about the arrangement for the one acre of
22 commercial lands, tell you that that was a situation was all duck or no dinner
23 for Mr. Dunlop; that if he didn't succeed in getting the entire of your lands
24 rezoned, that he would get nothing for his efforts?

25 A Well my understanding was that there were two -- the element was the agreement
26 was the rezoning of the 88 acres. And it was a success based -- if he didn't
27 succeed, he didn't get anything.

28 Q 148 But did he tell you that -- did Mr. Kennedy, for example, tell you there was no
29 question of a pro rata payment to Mr. Dunlop in the event of his getting only
30 part of the lands rezoned?

1 A No, Mr. Kennedy never had any discussion with me about it being pro rata based
2 success fee.

3 Q 149Did you have discussions with Mr. Kennedy in relation to the support that had
4 been obtained or generated for the rezoning of the lands in question at the end
5 of 1997?

6 A No, I didn't.

7 Q 150Did you discuss with him who was likely to support or who was likely to oppose
8 the rezoning?

9 A No, I did not no.

10 Q 151Did you discuss with him the views of the council, when I say the council I
11 mean the management, in relation to the merits or otherwise of the rezoning?

12 A No, not in 1997. Their views were known from the various reports that they had
13 produced. 1997 was a situation where another team of people were dealing with
14 this rezoning. They had put the arguments and the submissions in relation to
15 it and they were let just, let deal with it.

16 Q 152Were you aware that the management and planners in Dun Laoghaire/Rathdown
17 County Council were of the view that the proposed rezoning was premature until
18 the Southeastern Motorway was in place, until adequate access could be provided
19 to the lands from the upgraded local road network, until a public water supply
20 could be provided and until the issue of park and ride could be resolved?

21 A Well I would have expected -- it didn't occupy my mind as such. I have would
22 have expected if I thought about it that the council officials would lay out
23 the same series of reasons that they had laid out before, although at that time
24 caveated by the fact that things had moved on in that the road was certain, in
25 that the Carrickmines sewer was a reality, and that the area was changing.
26 Cherrywood was under construction, substantial parts of it had already started
27 I think at that point in time, but all of that was stuff that would have been
28 addressed in the submissions and Mr. O'Halloran had his team prepare those
29 submissions.

30 Q 153Yes, he had but notwithstanding the submissions, the council officials and

1 planners took a particular view as expressed by the manager in his report to
2 the council. You were aware of that report? I just read it to you.

3 A I am aware of that report, yes.

4 Q 154And you are aware that that was the view of the planners and officials at that
5 time?

6 A Yes, yes. I am not aware necessarily at that particular point, I know as a
7 train over a significant period of time, the officials had a view in relation
8 to the land and had a series of almost, one would almost call them stock
9 reasons for not supporting the rezoning.

10 Q 155Did it surprise you therefore that the council voted to rezoning the lands in
11 light of the objections of the managers and the planners?

12 A Not at all, it's their prerogative to do that and it's their responsibility to
13 look at a particular project, a particular land project and to decide it on the
14 planning reasons and all the wide reasons that they have to take cognizance of.

15 Q 156Mr. Caldwell, you had a meeting with Mr. Charlie Bird in relation to these
16 lands, isn't that correct?

17 A Yes, I did.

18 Q 157And Mr. Dunlop has given evidence in relation to that. He said that he had
19 discussions with Mr. Kennedy regarding the ownership of Jackson Way arising out
20 of matters relating to the Tribunal. That he received a phone call from
21 Charlie Bird asking whether he acted for Jackson Way Properties Limited and
22 asking for an introduction to the owner of the land.

23 A Yes, I read that, yes.

24 Q 158Would you tell the Tribunal what your recollection of events around that time
25 was?

26 A Well my recollection is that the issue with Mr. Bird arose, and I may be wrong
27 in this, it arose in the context of the proceedings that were in hand at that
28 time with the county council. And that we were in the process, Jackson Way was
29 in the process of settling in dealing with those proceedings.
30 Mr. Bird and a crew arrived down at the proceedings with allegations in

1 relation to who the owners of the property were and that the situation that
2 arose then was that the settling of the situation with the county council,
3 which was influx because of the proceedings, completely and absolutely
4 evaporated.

5
6 I believe, I don't know, but I speculate that that arrival was possibly
7 provoked by somebody else who had a commercial interest in helping to
8 neutralise the Jackson Way lands.

9 Q 159 What I want to know is what discussions you had with Mr. Dunlop concerning the
10 query by Mr. Bird and what arrangements you had with Mr. Kennedy and Mr. Dunlop
11 in relation to the subsequent meeting with Mr. Bird.

12 A I had been out of, not in Ireland and I returned to Ireland and went to a
13 meeting with Mr. Dunlop out on the west of the city, out Dunshaughlin, a pub
14 out there, and discussed with him the situation that had arisen in relation to
15 these allegations as to who were the owners of the property and I certainly
16 didn't want several of the names associated, that were then being put into the
17 public domain as being people associated with the land because to the best of
18 my knowledge and belief, they have and had no role in relation to it.

19
20 So, against that background and with a view to trying to calm things so we
21 could try and settle the matters with the council, Mr. Dunlop, who was advising
22 on this PR aspect of it and I hadn't spoken to him in terms of anything to do
23 with Carrickmines for quite sometime until that time, his advice in relation to
24 it was, you know, we need a spokesperson, we need someone here who is the
25 owner, this company has been shrouded in mystery for so long and I agreed to --
26 reluctantly I must say and possibly with hindsight I should have stuck to my
27 usual private position -- I agreed to meet Mr. Charlie Bird.

28 Q 160 Are you saying that Mr. Dunlop advised you to put yourself forward as the owner
29 of the lands?

30 A Yes, he had -- that was his advice to me, yes, as a way of managing the media

1 situation.

2 Q 161 You see his evidence was that he had this conversation with you at a time when
3 you were out of the country. That you returned to this country and he met you
4 and you travelled to Dunshaughlin.

5 A Yes. I recollect that I had a conversation with him when I was aware overseas
6 and that I did come to Ireland and did go to meet him in Dunshaughlin.

7 Q 162 You went there for the purpose of dealing with the query that Charlie Bird had
8 addressed to Mr. Dunlop?

9 A Dealing with this ownership issue, yes.

10 Q 163 And discussing how it might be dealt with.

11 A From the PR point of view.

12 Q 164 His evidence is that he discussed the matter with you and you told him that you
13 had discussed the matter with Jim Kennedy and that you had agreed between you,
14 that's yourself and Mr. Kennedy, that you would put yourself forward as the
15 sole owner of Jackson Way Properties Limited.

16 A Yeah, I had a discussion with Mr. Kennedy as well. The situation -- I mean
17 Mr. Kennedy and Mr. Dunlop were communicating with each other.

18 Q 165 Is Mr. Dunlop correct when he says that you told him that you and Mr. Kennedy
19 had agreed that you would put yourself forward as the sole owner of Jackson Way
20 Properties Limited?

21 A He is correct in that. The genesis of it is that he had a conversation with
22 Mr. Kennedy in relation to this issue, that Mr. Kennedy then had a conversation
23 with me in relation to it and I agreed that I would meet him, Mr. Dunlop, in
24 relation to it and discuss it with him.

25 Q 166 Did Mr. Dunlop -- he says that he queried you as to the veracity of this
26 position, in other words the veracity as to whether or not you were the sole
27 owner of Jackson Way Properties Limited and he asked you whether you could
28 prove it and he says, he said in evidence here that you assured him you were
29 now the owner of Jackson Way Properties Limited.

30 A No, I mean none of that is factually correct. Mr. Dunlop knew the reality of

1 the situation. He knew that Mr. Kennedy was a primary owner in relation to it,
2 he knew Mr. Kennedy was a person that he dealt with in relation to it and he
3 knew that I was being asked to appear on the scene as the owner of it because
4 up until this point in time and I think even at that point in time, he wasn't
5 cognizant of the fact that I actually was a co-owner in the structured sense of
6 a co-owner and that's -- so far as he was concerned, he was meeting someone who
7 was obliging Mr. Kennedy by taking this mantle and who was, you know, doing it
8 for whatever financial arrangement Mr. Kennedy had agreed with me.

9 Q 167But it would seem perfectly reasonable in those circumstances if he didn't
10 realise that you had some prior involvement in the matter that he would seek
11 assurance from you that you were, in fact, the owner?

12 A No, he knew that this situation was purely media management. This situation
13 was one where this was a construct of his genesis and he wasn't interrogating
14 me about the ownership in relation to it. He wasn't seeking those assurances.

15 Q 168Well it follows from what you have said that your evidence in this regard in
16 relation to the alleged assurance is accurate or not accurate and that
17 Mr. Dunlop's evidence is accurate or not accurate; in other words, you both
18 can't be correct.

19 A Look, that's correct in relation to it. My recollection of what happened in
20 relation to it and the background to it is as I have described it. I don't
21 accept Mr. Dunlop's evidence on this particular matter.

22 Q 169Why was there a necessity to go to Dunshaughlin to have such a debate about,
23 you know, a straightforward question, who owns the property?

24 A Well it was a matter of convenience I think I was coming back in from overseas,
25 it was in the evening and my son's car was at the airport and I cut across to
26 where he was, he asked me to meet him out there and I inconvenienced him by going
27 out there.

28 Q 170His evidence is that he met you at the airport.

29 A No, he did not. I drove in my son's car, in fact he didn't have the change in
30 it to get over the toll bridge.

1 Q 171Did you tell him subsequently that it had cost you dearly?

2 A Did I tell him?

3 Q 172Yes.

4 A No, I said no such thing to him.

5 Q 173He said in his evidence he understood this to mean that you had stepped into
6 the shoes of ownership of Jackson Way Properties Limited for a substantial fee
7 or substantial sum of money.

8 A No, we just didn't have that conversation.

9 Q 174Sorry, I beg your pardon.

10 A I think that was --

11 Q 175Mr. Kennedy said to him that it had cost him dearly and that he understood from
12 Mr. Kennedy that Mr. Kennedy had to pay a substantial fee to you in order to
13 get you to hold yourself out as the sole owner of Jackson Way lands.

14 A I read that in evidence but that is not correct.

15 Q 176You mean it's not correct in that there was no substantial fee to be paid?

16 A There was no substantial fee to be paid, absolutely.

17 Q 177And it didn't cost Mr. Kennedy dearly?

18 A Absolutely, it didn't cost Mr. Kennedy anything.

19 Q 178Now, in your statement, you said that you met Mr. Bird, I think in Mr. Dunlop's
20 office and you had a discussion concerning the Jackson Way lands and in the
21 course of that, there was a reference to Mr. Stanley.

22 A Yes, that's correct.

23 Q 179Sorry, just bear with me and I get my reference. sorry, it's in your
24 solicitor's letter of the 31st January 2002 which I read.

25 A Yes, I have it.

26 Q 180And you say in the course of your, Mr. Miley's letter which was based on
27 information, material furnished by you, you say "Charlie Bird, the RTE
28 television news reporter to whom you refer in your letter, told our client
29 during the meeting together in the presence of Frank Dunlop that Mr. Tracey had
30 caused a police investigation to be carried out into Mr. Stanley's conduct

1 related to a request by Mr. Stanley to Mr. Tracey for money to pay politicians
2 to have the land rezoned for Mr. Tracey. This is the first time our client has
3 been aware made aware by anyone about such an allegation. Our client cannot
4 recall Mr. Dunlop expressing a view in relation to what Mr. Bird had to say
5 about Mr. Stanley."

6 Do you stand over that statement?

7 A Yes I do, that's my recollection of what was said.

8 Q 181 Was that said in the presence of Mr. Dunlop?

9 A Yes, it was.

10 Q 182 I see. You said that this was supposedly off the record briefing?

11 A Yes, that's correct.

12 Q 183 Does that mean that you were told by somebody that it would be off the record
13 or were you told by Mr. Bird that it would be off the record in particular?

14 A I went to the meeting on the basis that the meeting was off the record and I
15 was told that it was off the record.

16 Q 184 Were you suggesting that Mr. Bird told you it was off the record?

17 A Yes.

18 Q 185 When did he tell you that?

19 A At the meeting.

20 Q 186 I see. I didn't put it to you but for the purpose of the record, I want to, in
21 order to have details on the record, perhaps you would identify for the
22 Tribunal a memorandum of agreement made the 15th November 1989 between
23 Mr. Tracey and Paisley Park Investments Limited. It is not in the brief, I
24 should say, but it is a document which you, in fact, provided.

25 A Fine.

26 Q 187 I think Mr. Finlay may have it, it was omitted from the brief inadvertently.

27 That's a memorandum of agreement, is 10th November 1989 between Mr. Tracey and
28 Paisley Park. And it shows that the purchase price at 700,000 pounds, deposit
29 of 50,000 pounds and the balance of 650,000 pounds and it's signed by Robert
30 Tracey, the vendor, and it's signed by Ronan O'Siochain in trust for the

1 purchaser?

2 A That's correct.

3 Q 188That's Mr. O' Siochain, the solicitor, isn't that correct?

4 A That's correct.

5 Q 189The closing date was the 31st March 1991?

6 A Yes.

7 Q 190And this related to the lands comprised folio 4940 in the county of Dublin?

8 A Yes.

9 Q 191I think this agreement was entered into following legal proceedings which arose
10 from the earlier agreement.

11 A That's correct.

12 Q 192And following the conclusion of those legal proceedings or settlement of those
13 proceedings, a fresh contract was entered into and this was the contract which
14 we have before us?

15 A I believe so.

16 Q 193And that was dated 15th November 1989.

17 A Yes.

18 Q 194It's now just one o'clock, I'm almost finished but perhaps would you say two
19 o'clock or -- I don't know how long my friend, I'll be only --

20

21 CHAIRMAN: Two o'clock.

22

23 .THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

24

25

26

27

28

29

30

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 2.00 PM:

2
3 Q 195MR. GALLAGHER: Mr. Caldwell, I showed you before lunch the memorandum of the
4 15th November 1989 for the sale of the lands in question. I think that the
5 factual position is that there had been a dispute with the vendor, Mr. Tracey,
6 which resolved itself on the 14th November 1989 when litigation I think was
7 settled and agreement was reached on the terms of a new contract which was
8 executed on the following day or thereabouts.

9 A Yes, there had been litigation, litigation was settled, I am not sure about the
10 precise dates but, this is the contract that resulted from the settlement.

11 Q 196It was settled immediately before the execution of this contract?

12 A Very, very close to it.

13 Q 197And the closing date on this contract was an 18-month closing to the 31st March
14 1991.

15 A Yes.

16 Q 198Why was there such a long closing date?

17 A It was part of the negotiated terms in relation to it, the longer the period
18 before the balance of the purchase monies were paid, the better.

19 Q 199I appreciate that but it meant there was an expenditure of 50,000 pounds which
20 effectively secured the lands for 18-months.

21 A Yes, that's right. The deposit was increased and the price was increased and
22 as part of the quid pro quo for increasing the price, the time element on the
23 contract was increased by Mr. Tracey.

24 Q 200And was your intention in extending the date of closing or securing a longer
25 closing to give you an opportunity to apply for planning permission and/or to
26 have the lands rezoned?

27 A Well, it meant that the possibility, the possibility was always there when the
28 contract was signed to apply for planning permission or rezoning. Really the
29 extension of time was more in the context that more money was being given and
30 because more money was being given, more time was sought.

1 Q 201 Yes. But was it your intention or part of the reason for extending the closing
2 date, having an 18-month closing, the fact that you would have an opportunity
3 within that time of applying for planning permission or applying to have the
4 lands rezoned?

5 A It was part of the process that was going on was the possibility of doing that,
6 and if that could happen during the time period before completion, then all the
7 better in relation to it.

8 Q 202 Do I take it that the answer to the question is yes, that it was a factor that
9 you had regard to and had in mind in negotiating an 18-month closing?

10 A It would have been a factor yes, but not a primary factor. The factor was --
11 it was part of the trade that took place.

12 Q 203 What other reason was there? There was no problem about providing the funding?

13 A Well it meant that the funding didn't have to be provided for a longer period.
14 It was purely on the commercial side of it was the reason for it. The
15 possibility being to be able to apply for planning permission or to have the
16 land rezoned certainly was also a factor.

17 Q 204 What other factor was there? There was no shortage of money, you had the
18 monies available to you and to your co-purchaser from the Isle of Man so what
19 other factor was there?

20 A Well as I say, I mean when you are buying something from a commercial point of,
21 the longer you wait before you pay for it, the better it is for yourself so it
22 was nothing more complex than that in relation to it.

23 Q 205 But from a commercial point of view, you bought this land with Mr. Kennedy with
24 the intention of developing it, developing it either by obtaining rezoning for
25 the lands or by obtaining planning permission for the lands.

26 A Yes.

27 Q 206 Now, the fact that you had an 18-month closing I suggest means you had that
28 material in which to look for a material contravention of the plan for to
29 secure a rezoning of the lands at a time when you believed and everybody else
30 believed that the 1983 plan to be replaced by a new plan in the immediate

1 future.

2 A Yes, that's correct. It gave a longer time period before you would have to
3 actually pay over the money, those events may occur.

4 Q 207I suggest to you that is the only reason why there is an 18-month closing
5 period?

6 A It was one of the factors in it, but the negotiations to get the 18-months went
7 along the lines of you are getting more money, but you are getting more money,
8 we want more time.

9 Q 208That may be but the fact, the reason that you wanted more time is that it gave
10 you 18-months to turn over the land, to secure development, secure planning
11 permission for development or to secure the rezoning of the lands.

12 A Yes, it would certainly give more time to do those things which underpinned the
13 value of the lands, underpinned the investment.

14 Q 209And on the basis that all that you were expending in return was 50,000 pounds?

15 A Yes, that's right.

16 Q 210And if your expectations had been fulfilled or your hopes had been fulfilled,
17 the hopes that you had in November of 1989, those lands could well have been
18 sold on within the 18-month period or very shortly thereafter, at a very
19 substantial profit in circumstances where your expenditure was 50,000 pounds.

20 A That's a possibility and certainly in my career I have seen that happen.

21 Q 211And can I suggest to you that it was a hope that you had at the time that that
22 would happen?

23 A It certainly was a hope that the land would obtain planning permission or be
24 rezoned in the time. Whether it would have been sold on, or it would have been
25 developed would depend on the circumstances. If someone had come along, if
26 that had happened and someone had come along with a large offer in relation to
27 it, then the land may well have been sold, but it's equally possible that the
28 decision would have been taken not to sell the land and to hold onto it and
29 solve some of the other problems that existed in relation to it and develop it.

30 Q 212Well you had all of those options of course. But those options were available

1 to you on paying a deposit of 50,000 pounds.

2 A Yes, that's right.

3 Q 213And in that sense I appreciate there are significant differences of course, in
4 that sense it was a form of option?

5 A A contract deposit is always a form of option.

6 Q 214And it was a form of option that gave you and your partner, Mr. Kennedy, an
7 opportunity to enhance the value of the lands within an 18-month period without
8 having to expend any further monies in terms of purchase?

9 A Yes. I mean the option was always there to expend the deposit monies. See
10 what the situation was in relation to planning or zoning over the time period,
11 come up to the closing and make a decision but it's not going to close and
12 effectively give the land back to Mr. Tracey at that point in time. I mean
13 that was an option but it was not an option that was contemplated.

14 Q 215No, but it was an option in that sense in that all, there was a relatively
15 small outlay by you and your partner at that time?

16 A Yes, a deposit of less than 10 percent.

17 Q 216And you had there by ensured, that you were free to deal with the land in
18 whatever way you wished, in terms of obtaining planning permission or seeking
19 to have it rezoned for 18-months without expending any further monies?

20 A Yes, that's correct.

21 Q 217And the position of course in relation to any planning application that might
22 have been contemplated was that you didn't have sufficient interest or
23 sufficient uncontroverted or unchallenged interest in the lands to apply for
24 planning permission until this agreement was signed on the 15th November 1989,
25 is that right?

26 A We obviously took the view that a contract existed and conditioned to exist.

27 Q 218Of course you did, but it was challenged?

28 A Yes it was.

29 Q 219And there was litigation pending?

30 A There was litigation, yes.

1 Q 220 And therefore you couldn't represent to anybody that you had an unchallenged
2 right to apply for planning permission, to do what you want in relation to the
3 lands?

4 A Well I think the proceedings at issue were specific performance in relation to
5 that, and certainly the other side set up circumstances where they had sought
6 to undermine that contract in relation to this and this was this contract that
7 came out of the settlement. So, if a planning application had've been made
8 during this time period, and I don't recollect that I ever consciously thought
9 what you are putting to be true at the time, yes, it may have been open to
10 someone to --

11 Q 221 Mr. Russell on behalf of Mr. Tracey could have said these people have no right
12 or they do not sufficient interest in these lands to apply for planning
13 permission.

14 A It would follow, yes, that's right.

15 Q 222 But you did have sufficient interest in the lands to apply for planning
16 permission once this agreement of the 15th November 1989 was signed?

17 A Yes, there would have been no one in a position to dispute that right.

18 Q 223 Mr. Dunlop said in the course of his evidence that he was told by Mr. Kennedy
19 that there had been a falling out between yourself and Mr. Lawlor.

20 A Yes.

21 Q 224 Is that true?

22 A Yes.

23 Q 225 I don't propose to ask you anything further about that at this stage, maybe and
24 as probably will be the situation that you may be asked about it in the future,
25 but for the moment, thank you.

26

27 CHAIRMAN: Thank you, Mr. Finlay, do you want to --

28

29 MR. FINLAY: Yes, Chairman. There are some matters I would like to revisit
30 with Mr. Caldwell. Before I do that, Chairman, with your permission, there are

1 some very brief observations that I would like to make and which I would make
2 with two purposes in mind.

3
4 The first purpose is to explain the basis of the examination of Mr. Caldwell
5 which I propose to conduct, particularly in relation to matters arising from
6 the context of Baldoyle, we heard about it in his evidence. I do that with a
7 view to clarity and to avoid any confusion or unnecessary confusion and debate
8 about the reason for all of that and its relevance.

9
10 And the second reason perhaps just as important if not more important, I hope
11 and certainly intend that my observations may be of some genuine assistance to
12 the Tribunal when it comes to its task at the end of this module, but I believe
13 it will be helpful to perhaps hear them now before his evidence is taken.

14
15 There's also one other important matter arising out of yesterday's transcript
16 which needs to be clarified, before I ask Mr. Caldwell any questions.

17
18 CHAIRMAN: All right.

19
20 MR. FINLAY: So, I'll be as brief as I can, but and I just might say at the
21 outset, in that making these observations, that the Tribunal will bear in mind
22 I'm sure, that as counsel, I am in the fortunate position that I am not here
23 today or indeed at any stage in this module protecting the interests of a
24 client who is the subject of any allegation, there's no allegation against
25 Mr. Caldwell and I think that is abundantly clear from the examination of him
26 by Mr. Gallagher and it has always been the position, so I'm not coming from
27 that perspective and that being so, my sole purpose today, that being so, is to
28 assist the Tribunal in its task and that task, as I understand it, is to
29 establish the truth or otherwise of allegations which have been made involving
30 other people, of course not my client.

1
2 That brings me to the following and it leads in a few moments to the Baldoyle
3 aspect. The current members of the Tribunal are, as I understand it, have
4 inherited a rather unusual procedural structure, which is the modular approach
5 to the Tribunal as a matter of the history and as the members are aware, the
6 criterion which was adopted at the outset of the Tribunal, and before the time
7 of the present members, the criterion for defining a module was land was land
8 that defined the modules, so the modules are separated by reference to parcels
9 of land, that was made clear at an earlier stage of the Tribunal.

10
11 As I understand it and I think this is very fair to say, the modular concept
12 which may have had administrative attractions at the outset can work but of
13 course it can only work if the subject matter of any particular module, the
14 allegations, the subject matter of any module are discrete in the strict sense
15 of that word. And to the extent that any particular module deals with discrete
16 allegations, that may well work. But to the extent that there are facts or
17 events arising from connection with other elements which are relevant in
18 determining the truth or otherwise of allegations in the current module, then
19 clearly the Tribunal has to be aware of those facts and has to take them into
20 account in order to adequately discharge its function.

21
22 And that's what in the first instance gave rise to the limited aspect of
23 Baldoyle, which we mentioned at an earlier hearing and which arose again
24 yesterday and may be of assistance to the Tribunal members because of the
25 volume of material that they have to remember and the length of time it has all
26 lasted, to be reminded of how Baldoyle, despite the fact that it's ostensibly
27 another module, becomes critically relevant to this module.

28
29 And that can be explained, I think, very simply in the following way: This
30 module, the Carrickmines 1 module in many respects has at its source the

1 allegations of Mr. Dunlop and central to the sequence of those allegations and
2 the story that he told are events which he described in January 1991. That's
3 the starting point for much of what this Tribunal has been concerned with for a
4 long time.

5
6 And in relation to those events and I'll be coming to them in a moment because
7 it was touched on yesterday by Mr. Gallagher, in relation to those events,
8 critically Mr. Dunlop initiated his account with two pieces of evidence. One
9 piece of evidence was, that until January 1991, not only had he never met
10 Mr. Kennedy but that he didn't know who Mr. Kennedy was. The second piece of
11 evidence is that until the 17th of January 1991, apart from a possible social
12 meeting, Mr. Dunlop had never met Mr. John Caldwell. And as the Tribunal will
13 probably recall and as can be more comprehensively dealt with in submissions at
14 the end of this module, those two facts, those two -- perhaps I should qualify
15 that -- those two versions of events, those two pieces of evidence given by
16 Mr. Dunlop are crucial as founding his explanation for what allegedly occurred
17 with Mr. Kennedy. Crucial.

18
19 His account of his first or allegedly first encounter with Mr. Kennedy
20 critically depends on those two pieces of evidence.

21
22 Now, the relevance of Baldoyle insofar as it has a limited relevance for this
23 module, limited but important relevance, is that events occurred in Baldoyle
24 which may have a significant bearing on the Tribunal's evaluation of the truth
25 or otherwise of those two pieces of evidence. I'm summarising matters very
26 elementally there, but that effectively is what leads us to Baldoyle and the
27 Tribunal will have had some flavour of that from Mr. Gallagher's only question
28 to Mr. Caldwell yesterday and also from my cross-examination of Mr. Dunlop at
29 an earlier stage of the Tribunal.

1 Now, that brings me then to yesterday's hearing and before I ask Mr. Caldwell
2 any questions, I think it's very important that the, that one question asked by
3 Mr. Gallagher to Mr. Caldwell is clarified. At question 280 of yesterday's
4 hearing, Mr. Gallagher asked Mr. Caldwell a question and the context is
5 important. He had been talking to Mr. Caldwell about the events of early 1991.
6 He had referred to the fact that Mr. Dunlop in his evidence had been very
7 precise about the date on which he, Mr. Dunlop, said he had had his contact
8 with Mr. Caldwell and then at question 280 against that background,
9 Mr. Gallagher asked the following question: "Mr. Dunlop's evidence was that he
10 had had -- sorry was that he had previous meetings and dealings with you of a
11 professional nature which did not relate to Paisley Park lands, do you remember
12 that evidence?" and Mr. Caldwell's reply was: "Yes, he did have dealings as I
13 said in relation to the Baldoyle lands which didn't relate to Carrickmines. He
14 had the dealings with me in relation to the conference, he had dealings with me
15 in relation to these clients, in relation to another land situation, he had
16 another meeting with me as someone who was interested in those lands with that
17 person, yes, I had a number of contacts with him."

18
19 Now, it's important for the Tribunal reading that transcript and anybody else
20 reading that transcript to be aware of the following:

21
22 Firstly, Mr. Caldwell's evidence in relation to those identified other contexts
23 with Mr. Dunlop all related to a period after January 1991. That's the first
24 point but much more important, insofar as Mr. Gallagher's question at 280
25 suggests, that Mr. Dunlop's evidence was that he had previous meetings and
26 dealings, in the sense of previous to January 1991. Critically, that of
27 course, there's no criticism of Mr. Gallagher here at all, that was not
28 Mr. Dunlop's evidence, so insofar as that question suggests to the reader that
29 Mr. Dunlop's evidence was that he had meetings and dealings with Mr. Caldwell
30 previous to January 1991, that was not Mr. Dunlop's evidence. Mr. Dunlop was

1 adamant to the contrary effect. Adamant.

2
3 On day 369, at question 400, I asked Mr. Dunlop the following question: "Are
4 you still adhering to your evidence that until you met him on the 17th of
5 January 1991, apart from a possible social encounter, you had never met
6 Mr. John Caldwell?" and the answer to that question was "Yes", and he was
7 subsequently pressed as the members will see, when they come to consider the
8 transcript about that, and he maintained his position that he had never met
9 Mr. Caldwell before the 17th of January 1991. I draw your attention to that
10 because without a hint of criticism of Mr. Gallagher, I just want to make it
11 clear that any inference which might be drawn from that question 280 yesterday,
12 that Mr. Dunlop's evidence of previous meetings related to pre-January 1989, is
13 not in fact Mr. Dunlop's evidence, so I wish to correct that before I moved on
14 to ask Mr. Caldwell some questions.

15
16 So, it's against that background that I'm going to turn to the -- and that
17 background only -- that I'm going to turn to the Baldoyle aspects and in so
18 doing I just want to make one other observation and it is this. I have no
19 desire to, don't need to and don't intend to, refer to anybody who isn't
20 already referred to. Absolutely no need or wish to do that.

21
22 CHAIRMAN: That would be our main concern.

23
24 MR. FINLAY: Of course I am and I am alerted to that Chairman. If there's
25 any -- if it's necessary to refer to the fact that an individual might be
26 referred to as an individual without being referred to -- I have no intention
27 of naming anybody.

28
29 CHAIRMAN: Or a name could be written down.

1 MR. FINLAY: Or a name could be written down. I don't anticipate any
2 difficulty in that regard. So, that's the way I propose to approach it. Those
3 are the reasons why, in my respectful submission, this evidence is relevant to
4 the Tribunal's deliberations and may hopefully be of assistance to the Tribunal
5 when it comes to evaluate the evidence to which I just referred. So, I just
6 hope that all of that may be of some use and against that background, I would
7 now like to ask Mr. Caldwell some questions.

8
9 THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FINLAY:

10
11 Q 226 I wonder could Mr. Caldwell be given his statement which Mr. Gallagher took him
12 through, in part, yesterday, March 2003.

13 A I still have a copy, the copy that Mr. Gallagher gave me yesterday.

14 Q 227 Very good. This Mr. Caldwell is your statement dealing with the involvement of
15 Frank Dunlop with lands at Baldoyle, insofar as it's relevant to the
16 investigations been conducted by the Tribunal in the lands at Carrickmines, is
17 that correct?

18 A That's correct.

19 Q 228 And it was prepared for that purpose and for that purpose only?

20 A Solely for that purpose.

21 Q 229 I wonder do members of the Tribunal have that document?

22
23 CHAIRMAN: We do, yes.

24
25 Q 230 MR. FINLAY: And yesterday Mr. Caldwell, I think, Mr. Gallagher took you
26 through some passages in this statement, isn't that correct?

27 A Yes, he did.

28 Q 231 And attached to the statement is a map and on the first page of the statement
29 you set out a series of definitions of various sections of land on that map,
30 isn't that the position?

1 A Yes, I do.

2 Q 232And essentially there were various areas of lands at Baldoyle which became the
3 subject of what you have described as the Kennedy option, isn't that correct?

4 A That's correct.

5 Q 233And then there are other areas of lands which became the subject of the Dunlop
6 option, isn't that correct?

7 A That's correct.

8 Q 234And insofar as it's necessary, if I may turn to some detail on that at a later
9 stage. Is it correct that the Kennedy option as you describe it was an option
10 which Mr. Kennedy had negotiated with the owner of the race course lands?

11 A Yes, he did.

12 Q 235And the option was granted to a company called Bauval Limited which was a
13 company which you yourself and Mr. Lawlor were involved?

14 A Yes, that's correct.

15 Q 236Is it correct that the option was in the following structure, that initially up
16 to the 6th of April 1990 and then in certain circumstances, up to 24th of
17 January 1991, the option could be exercised in different lots of lands?

18 A Yes, that is correct.

19 Q 237Provided that no lot was less than 10 acres, lots of not less than 10 acres, is
20 that correct?

21 A That's correct.

22 Q 238And there were different types of land included in the Kennedy option, types in
23 the sense of different zonings and so on, isn't that correct?

24 A Yes, the option extended over an area of one hundred acres of land at Baldoyle
25 and contained land which had been, was zoned for industrial use, contained some
26 land which was zoned for residential use and contained some unzoned land.

27 Q 239Yes. And am I right in understanding that some of the Kennedy option lands
28 were the subject of an exercised option by December 1989, is that correct?

29 A Yes, the option was exercised in relation to a portion of the land along the
30 Willie Nolan road, which became known as Admiral's Park.

1 Q 240 Yes. Now, just taking that period at the end of 1989, Mr. Gallagher,
2 yesterday, asked you about an application for a Foreshore licence, do you
3 recollect that?

4 A Yes, I do recollect that.

5 Q 241 Could you just tell the Tribunal in a little more detail why that Foreshore
6 licence was applied for and by whom.

7 A The planning permission had been obtained for a part of the lands at Admiral's
8 Park in respect of which the option had been exercised and one of the
9 conditions attaching to the planning permission/bylaw approval was that the
10 sewage had to, the sewage design took it on to a pipe that was to run along the
11 foreshore and to do that required a foreshore licence to be granted from the
12 Department of the Marine. Around that time of 1989, November 1989, when the
13 licence was being applied for, it was applied for in the name of Eddington
14 Limited, a contract was being negotiated with someone else who wanted to buy
15 the sites that the planning permission had been obtained for and to builders,
16 and in the context of trying to get the contractual terms sorted out and to
17 deal with this uncertainty that was there, it was necessary to try and progress
18 the foreshore licences and see whether it was going to be granted because it
19 was anticipated that because of the sensitivity of the area, of the foreshore
20 that is at Baldoyle, there would be quite a lot of objections to bringing a
21 foul sewer pipe along that foreshore.

22 Q 242 Just taking back a step there, if I may, Mr. Caldwell, you refer to the
23 application you made by Eddington Limited, could you just tell the Tribunal
24 what Eddington Limited was or what its role was in it?

25 A Eddington Limited was a company associated with the existing landowner from
26 whom the property was ultimately purchased.

27 Q 243 And I think that you have been able to locate a copy of the newspaper
28 publication of that notice of application for the foreshore licence dated the
29 23rd of November 1989, is that correct?

30 A Yes I have.

1 Q 244 That can be furnished to the Tribunal as required. It's a copy of a notice
2 which appeared in a newspaper on that date in respect of that application.
3

4 You refer in your statement to Mr. Kennedy's views, as to what might arise in
5 relation to the application for the foreshore licence, can you recall what
6 Mr. Kennedy's views were?

7 A Well, his views were as were mine, that this is going to be a controversial
8 matter and one that there was no certainty of success in relation to obtaining
9 the licence. Against that background he suggested that I contact Mr. Dunlop
10 and speak to Mr. Dunlop about it.

11 Q 245 What's your recollection of when that occurred, you suggested Mr. Kennedy meet
12 Mr. Dunlop, contact Mr. Dunlop?

13 A That would have been around the time the foreshore application was being made.

14 Q 246 Is it correct, Mr. Caldwell, that in your diary there's an entry referring to a
15 meeting with Mr. Dunlop on the 30th of November 1989.

16 A Yes, that's correct.

17 Q 247 What is your understanding of the purpose of that entry or that meeting?

18 A I believe that that's related to this foreshore licence matter.

19 Q 248 In the event Mr, Mr. Caldwell, was that foreshore licence which was applied for
20 actually procured or granted?

21 A No it wasn't, I can't recollect whether it was refused or abandoned but I know
22 that it didn't issue. And an alternate sewage system had to be built in lieu
23 of it.

24 Q 249 If I take you on then, Mr. Caldwell, from the end of 1989 into the year 1990,
25 did you meet with Mr. Dunlop in the year 1990?

26 A Yes, I did.

27 Q 250 Was that in connection with the lands at Baldoyle?

28 A Yes. I met him in connection with Baldoyle. At the time a planning
29 application, two planning applications were in, one in particular was causing,
30 both of them were causing difficulty but one in particular was causing a lot of

1 difficulties which was an application for an industrial development on the
2 industrial zoned lands and the neighbours, the residents that lived adjoining
3 that were particularly concerned about it because the development that had
4 occurred on the other side of the road had been a particularly bad development
5 and they were, you know, appealing, they were causing difficulties in relation
6 to it, they were doing all the lobbying things that Mr. Gallagher was talking
7 about before and in the context of that, to see how one could manage dealing
8 with the residents association, whether or not how that could be, could be
9 handled and whether Mr. Dunlop would deal with that, I spoke to him.

10 Q 251 And can you recollect whether, when you spoke with Mr. Dunlop, he gave you any
11 advice or suggested any particular course of action?

12 A Well his advice was that they should be met and that their concerns should be
13 addressed if possible. But I don't remember that he actually engaged in the
14 process himself, that he actually went to any meetings with any residents
15 associations or had any meetings with them.

16 Q 252 I think it's correct, Mr. Caldwell, that your diary or rather Mr. Dunlop's
17 diary contains two entries on the 18th of April 1990 and the 23rd of August
18 1990, do those entries relating to you, do those entries suggest anything to
19 you in terms of the evidence you have just given?

20 A I believe both entries relate to Baldoyle.

21 Q 253 Staying for the moment, Mr. Caldwell, with the year 1990, you have described
22 your interest and Mr. Kennedy's interest in the lands at Baldoyle, apart from
23 the meeting that you just described with Mr. Dunlop and the advice that you
24 described, did you become aware in 1990 of any role that Mr. Dunlop personally
25 had in relation to the Baldoyle lands, the race course lands?

26 A Towards the end of 1990, Mr. Kennedy told me that Mr. Dunlop was formulating a
27 plan, a rezoning plan for the Baldoyle lands, for the race course lands and
28 that he had been in discussions with him in relation to the elements of that
29 plan. My recollection is that there were, that the plan that Mr. Dunlop was
30 bringing forward initially in relation to the Baldoyle race course involved the

1 placing of a green lung, if I might call it, around the edge of the existing
2 urban area and I think that it also included the conversion of the industrial
3 area into a residential area, on the Grange Road side of the lands and then it
4 had other things, as I said, with it.

5
6 That was something which wasn't -- something that Mr. Kennedy or indeed myself
7 were particularly keen to see happening on those lands. At that point in time,
8 the option that existed was expiring I think, on the 24th of January 1991, it
9 was to expire and a decision had to be taken as to what parcels of the land
10 would be taken on foot of that option, the option catered for taking the lands
11 in plots of at least 10 acres. And Mr. Kennedy and I had been discussing which
12 parcels the option might be exercised in relation to.

13 Q 254 And do I understand your evidence correctly to be, that the structure or basis
14 of Mr. Dunlop's plans had a bearing or was relevant to the decision you and
15 Mr. Kennedy would make in relation to which options you would or wouldn't
16 exercise by the 24th of January 1991?

17 A Yes, we had a view as to what the land -- what way these possible pieces of
18 land should be dealt with on a future basis.

19
20 We had a planning application insofar as the industrial part of the land was
21 concerned and we didn't want any situation to arise where the planning was
22 interfered with. In relation to the other parcel of land that we were
23 interested in, which lay into the Baldoyle village, the view that we had in
24 relation to that, is that, that should be a district centre and Mr. Kennedy was
25 particularly strong on the view that that should be a district centre.

26
27 But a decision had to be made on that by the 24th of January which is when the
28 option expired.

29 Q 255 And can you recollect whether Mr. Kennedy had a copy or details of what I
30 think -- what you described as the Dunlop rezoning proposal?

1 A Yes, he told me what had been the original proposal in relation to the Dunlop
2 rezoning proposal and he told me that --

3 Q 256 Just for clarity, Mr. Caldwell, in your statement you refer, at page 6, to the
4 Dunlop rezoning plan and you later come on to the amended plan, are we talking
5 at the moment about the Dunlop rezoning plan as being the original?

6 A The way the discussions are taking place is, there was an issue proposed that
7 Mr. Dunlop had put together, which was as I had outlined it, which was this
8 green belt and so on around it. Under pressure from Mr. Kennedy, he changed
9 his approach in relation to that and was, had -- was formulating a plan where
10 the district centre would be on this plot of land, where Mr. Kennedy would like
11 to see it and that the industrial land would remain where it was and it would
12 be somewhat enlarged but on the Grange Road side of the 100 acres that were the
13 subject of the Bauval option.

14 Q 257 Just regarding the district centre for the moment, because I believe it's of
15 some importance, am I correct in understanding that Mr. Dunlop had originally
16 produced a plan which showed a proposal for a park and playing fields on part
17 of the lands, which were in fact covered by the Kennedy option, is that
18 correct?

19 A Yes, that's correct. Mr. Kennedy said that he had had discussions with him in
20 relation to that sort of a proposal and that he had argued with him that the
21 position should change to the one that he wanted, which was the district centre
22 on that area.

23 Q 258 For the avoidance of doubt and obviously referred to in your statement, am I
24 correct in understanding that Mr. Dunlop was not alone in developing this plan,
25 he was not doing this on his own?

26 A No, Mr. Lawlor was associated with him in relation to it.

27 Q 259 And you refer to that in your statement. Could I just then understand the, if
28 you like, to try and understand the relative negotiating strengths of
29 Mr. Kennedy and Mr. Dunlop, could you explain to the Tribunal why, if it were
30 the case, Mr. Kennedy was in a position to, shall we say, exercise such

1 leverage over Mr. Dunlop, why was that so?

2 A The option expired on the 21st or the 24th of January 1991. And it covered the
3 industrially zoned lands and it covered this potential district centre site.

4 If Mr. Kennedy exercised that option, he would be exercising -- and demarcated
5 land within the area being, over which he is exercising it, he could
6 effectively land lock anyone who was going to try and develop the rest of the
7 Baldoyle race course.

8

9 What -- and he could achieve that by exercising the option over a part of the
10 industrial land at the Grange Road entrance by exercising the option literally
11 from boundary to boundary at that particular part of the land and on the
12 district centre side of it, by exercising the option for quite a long way along
13 the strand road or the sea road that runs there, it effectively could also
14 block people from getting into the Baldoyle site but the key thing was that it
15 was always envisaged out there, because of the poor quality of the Grange Road,
16 that if there was going to be development in Baldoyle on the race course, that
17 a relief road, a distributor road would have to be taken from just over the
18 railway bridge into the industrially zoned land, around the back of the
19 existing housing and out on to the sea road on the far side.

20 Q 260 Do I understand from that, in summary, that Mr. Kennedy controlled the relevant
21 access to the lands, is that correct?

22 A Yes, he did. Yes.

23 Q 261 Under an option which he hadn't yet exercised but could exercise up to the 24th
24 of January 1991?

25 A Yes, that's right.

26 Q 262 And is it your understanding that because of the situation or the circumstance
27 that you have just described, that Mr. Dunlop was obliged to amend his original
28 proposals to incorporate Mr. Kennedy's wishes?

29 A Yes he was, he was obliged to move to a plan which had a district centre on
30 that sea side and which had the business/industrial on the Grange Road side.

1 Q 263 And once again, each time you referred to a district centre, is it correct that
2 the district centre was something which Mr. Kennedy was insisting on?

3 A Yes, it was. Yes. The land at that part of the site was agriculturally zoned
4 land, it had no commercial zoning but that was the aspiration that he had for
5 that area.

6 Q 264 Now, can I bring you then on to the end of 1990 and possibility the very
7 beginning of 1991. Can you recollect what was happening, in relation to what
8 you have described, as the amended Dunlop rezoning plan, that's Mr. Dunlop's
9 plan amended to include Mr. Kennedy's district centre.

10 A Yes.

11 Q 265 Can you just recollect what was being done in relation to that plan or how it
12 was being promoted or circulated?

13 A Well, in December of 1990, I had had a meeting with a representative of the
14 residents association in relation to trying to resolve the differences that
15 there were over the industrial parcel of land and the planning application that
16 was there. And following on from that, in January of 1991, I had another
17 meeting with the same gentleman.

18 Q 266 Can you remember the date of that second meeting or the approximate date of the
19 second meeting?

20 A It was the 15th of January 1991 and for the purposes of going to that meeting,
21 I met Mr. Dunlop and he briefed me on his plan, this is what I call the
22 "revised Dunlop plan."

23 Q 267 Just for the purpose of clarity, Mr. Caldwell, when you say "revised" is that,
24 do you intend to mean the same thing as what you refer to as the amended Dunlop
25 plan?

26 A The amended Dunlop plan, yes, which showed the district centre and the business
27 area.

28 Q 268 If I might pause in that moment in time, the 15th of January 1991, the members
29 of the Tribunal will recall, I don't think Mr. Caldwell was here that day, that
30 when I cross-examined Mr. Dunlop on these matters, I produced to him and he

1 acknowledged, an article from the Irish Independent, I think it was on the 22nd
2 of February 1991 and -- I'm just going to produce those again, the Tribunal has
3 already seen that article and as well as that article, Chairman, I am just
4 producing a second article from the previous day, the 21st of February 1991
5 which is a similar article about the same development.

6
7 Mr. Caldwell, do you have copies of those two articles?

8 A No, I don't. (Documents handed to witness).

9 Q 269 I think hopefully everyone will now have photocopies of two newspaper articles,
10 one from the Irish Independent of the Friday, the 22nd of February 1991 which
11 the Tribunal already has and it's been read into the record transcript on day
12 369 and then one from the previous day, the 21st of February 1991 with the
13 headline "Developers now face high hurdles over latest plans." The article is
14 by Eilish O'Regan, due to the constraints of photocopying, the article is on
15 two A4 pages, but one of the reasons it's been produced to the Tribunal today,
16 Chairman, is that it contains what the second article doesn't contain, it
17 contains a map which may be of some assistance to make sense of some of the
18 evidence just given by Mr. Caldwell.

19
20 Mr. Caldwell, would you just briefly look at this map, you see, as I understand
21 it, you see an indication of lands running roughly north to south along the sea
22 at Baldoyle, is that correct?

23 A Yes, that's correct.

24 Q 270 And the lands bear legends in relation to various uses, amenity, residential,
25 golf village business and so on, isn't that correct?

26 A That's correct.

27 Q 271 And down at the bottom, the southern end of the map, on the right hand side,
28 close to the water is an area marked district centre.

29 A Yes, that's correct.

30 Q 272 Is that the district centre that you have been referring to as a proposal in

1 your evidence?

2 A Yes, that's the rough location of it.

3 Q 273First of all, I should have perhaps started at the beginning, I apologise for
4 not doing that.

5

6 Is this -- perhaps not perfectly mapped or drawn but is this, in broad terms,
7 the amended Dunlop zoning proposal?

8 A Yes, it is.

9 Q 274And am I correct in understanding that on the amended Dunlop zoning proposal,
10 as it appears on this map, Mr. Kennedy's district centre appears down on the
11 bottom, the south eastern corner, is that correct?

12 A Yes, that's correct, in terms of the actual location of where it was to be, it
13 was slightly more to the right but largely in that position.

14 Q 275But in broad terms --

15 A In broad terms, yes.

16 Q 276In illustrative terms. Bear with me if I have got this wrong, Mr. Caldwell but
17 one sees at the bottom of the map, just above the designation of the district
18 centre a dotted line travelling from right to left and turning south as
19 identified as a relief road, do you see that?

20 A Yes, I do.

21 Q 277Could you just indicate to the Chairman and members of the Tribunal where in
22 relation to that dotted line, broadly speaking, the Kennedy and Caldwell option
23 lands lie?

24 A If you took a line from just in around the words: Golf Village, on the right
25 hand side of the map.

26 Q 278Yes?

27 A And drew a line from that across the word: Pitch and putt.

28 Q 279Yes?

29 A To the railway line, it would more or less fall within that line and the white
30 area which represents Baldoyle and the existing residential.

1 Q 280It would be south of that line?

2 A South of that line, yes.

3 Q 281And the railway is marked in the usual sort of way on the left-hand side of the
4 map?

5 A Yes.

6 Q 282And if we just then might turn briefly to the other newspaper article. The
7 following day in the Irish Independent and I might read some sections from it.
8 "Baldoyle residents gave a tentative but guarded welcome yesterday to proposals
9 for a new major building plan, a major new building plan on the former 500-acre
10 local race course."
11

12 And then second column, second paragraph: "The multimillion pound development,
13 details of which were disclosed in yesterday's Irish Independent" -- I think,
14 Mr. Caldwell, that's reference to the article we looked at containing the map.

15 A That's correct.

16 Q 283"includes proposals for houses, business park, golf course, hotel and a leisure
17 complex. The developers promised a "sensitive land use proposal" which would
18 be "environmentally friendly." Developer's spokesman, Frank McDonald said:
19 "We are at a very preliminary stage along a series of discussions with local
20 residents and local public representatives are meant to be held." Isn't that
21 correct?

22 A That's correct.

23 Q 284And then there's a reference, and this is a matter of public record of course,
24 at the end of that column, "The resident's leader Hugh Byrne said he was happy
25 with the plans at this stage, the next round is likely to be fought at county
26 council level."
27

28 That reference to a resident's leader, would that accord with a meeting you had
29 with a representative of the residents earlier that month on the 15th?

30 A Yes, that's the gentleman that I met in January.

1 Q 285After that date, Mr. Caldwell, after January 1991, the publication of
2 Mr. Dunlop's amended plan, what happened in relation to the exercise by
3 Mr. Kennedy, and presumably yourself, in relation to your option which expired
4 on the 24th January, did you or did you not exercise the option?

5 A The option was exercised in relation to a part of the lands which are shown on
6 the map as business. The lands that were exercised in relation to were the
7 lands which went from the railway line across to the existing residential area.

8 Q 286Yes.

9 A There was some 10 acres, I think it was maybe some 10 acres of land in that
10 exercise and effectively that blocked off access there. On the district centre
11 side of it, I think the area that was exercised was slightly larger than that,
12 maybe 11, 11 and a half acres and that was the land which runs along the little
13 line that is the division between the sea and the land in along the road
14 enlarged in the area, the district centre appears on the map.

15 Q 287And did, in the period following that, I am talking about now slightly longer
16 period in the couple of years after the 1991 to 1993, did Mr. Kennedy stick to
17 his guns in relation to his demand and requirements about the district centre
18 or did he relent?

19 A Oh, he stuck to his guns absolutely and completely in relation to it and was
20 absolutely adamant that the district centre had to appear on any rezoning
21 proposals for the Baldoyle lands on -- located on -- that would be located on
22 his lands.

23 Q 288And what were the consequences for Mr. Dunlop of Mr. Kennedy's attitude in
24 Mr. Dunlop's amended rezoning plan?

25 A Well in addition to all the other problems he would have had out there, he
26 created a problem for him dealing with the local residents. The wish of the
27 local residents was that there would be this green area behind the housing that
28 was planned there and that he wanted to put forward a proposal which permitted
29 parks and walkways and so on to take.

30 Q 289He being Mr. Dunlop?

1 A Yes, sorry but Mr. Kennedy just absolutely refused to countenance that proposal
2 because that would have effectively meant that the land, which he had exercised
3 the option in relation to, would be valueless.

4 Q 290Yes. When you say exercised the option, which option are you now talking
5 about?

6 A Sorry, at the 24th January the decision was taken to exercise the option in
7 relation to two parcels of land out of the hundred acres that the option
8 extended over. The option was exercised in I think over about 11 and a half
9 acres or thereabouts and in the area of the district centre.

10 Q 291In all of those circumstances and against that background, that was the
11 ultimate fate of the rezoning proposal for these lands?

12 A Mr. Dunlop failed in his rezoning proposal for the lands and my view of it is
13 that this is one of the contributing factors to that failure.

14 Q 292Yes. I think there's perhaps one missing aspect of that, that is, it's
15 something which Mr. Dunlop has of course accepted in evidence, Chairman,
16 nothing new to the Tribunal, I think it's correct, Mr. Caldwell that in
17 addition to putting together and promoting his rezoning plan, Mr. Dunlop
18 personally acquired an interest by way of option, isn't that correct?

19 A Yes, a company which I believe to be the owner of Pennine Holdings, acquired an
20 option from the landowner in respect of the Baldoyle race course lands. I
21 think that occurred at the end of 1991.

22 Q 293Yes. Just in relation to that, Pennine Holdings Limited and Mr. Dunlop's
23 option, did Mr. Dunlop ever talk to you about his option which you have just
24 described?

25 A He spoke to me once about it in that it was one event in that he spoke to me
26 about some tax planning aspects in relation to it, he was looking for some tax
27 planning advice.

28 Q 294Yes.

29 A And I remember --

30 Q 295Sorry to interrupt you, can you remember roughly when he came to you looking

1 for that tax advice?

2 A I think roughly -- I think it was around 1993, 1994, that sort of time. It
3 wasn't at the time that the option was granted, the option was in existence at
4 the time.

5 Q 296 Can you recollect whether -- whether you actually met him?

6 A I actually met him and he had the option with him, the option had no map
7 attached to it which stuck in my head, the fact that there was no map with it,
8 but we discussed it, it came to nothing in relation to it. There was no sort
9 of ongoing relationship with him, ongoing advice in relation to it. It was,
10 you know, effectively one meeting.

11 Q 297 For completeness, because you referred to it in your statement, Mr. Caldwell,
12 and just to be fair to Mr. Dunlop, I should draw your attention to what
13 Mr. Dunlop said when I put your evidence or your evidence that was to be put to
14 him. I put to him at question 432 "Mr. Caldwell's evidence will be,
15 Mr. Dunlop, that subsequently to all of this, you came to him for tax advice in
16 relation to the Pennine Holdings Limited option and his answer was: "I think
17 Mr. Finlay, the -- I am just, the reason that I am pausing, I am absolutely
18 flabbergasted at the idea that I would be going to Mr. Caldwell for tax advice
19 in relation to Pennine when the company was established by clearly professional
20 people through a solicitor's company, not Mr. Caldwell's, Anthony F Collins was
21 the name of the solicitor's company, I wrote it down as I spoke, was the name
22 of the company which formed the shareholding in Pennine Holdings. I have never
23 asked Mr. Caldwell for advice and I think you made an observation on that
24 evidence in your statement", would you just like to comment on that?

25 A Yes, I think I said in the statement that he is correct in that, I was not
26 involved in the formation of Pennine Holdings or any advices associated with
27 that. My recollection is purely in relation to this one tax related inquiry.

28 Q 298 You are aware, Mr. Caldwell, that Mr. Dunlop's evidence has been read out, I
29 think, earlier this afternoon, that apart from a possible social meeting, the
30 first meeting he ever had with you was on the 17th of January 1991, you are

1 aware of that evidence?

2 A Yes, I am.

3 Q 299And what do you say as to its correctness?

4 A He is not correct. I had, in addition -- he is not correct on the social side
5 of it because I had no social meetings with him at any time.

6 Q 300And you have described your meeting with him on the 15th of January 1991 and
7 the purpose of that meeting, do you accept that you did meet him on the 17th of
8 January 1991?

9 A Yes, I believe I did.

10 Q 301And what was the purpose of that meeting?

11 A The purpose of that meetings was to brief him on the outcome of the discussions
12 with Mr. Byrne, Mr. Hugh Byrne.

13 Q 302Mr. Byrne he had met on the 15th, as representative of the Baldoyle residents?

14 A That's correct.

15 Q 303I think you have already told Mr. Gallagher, consistent with your statement,
16 that the first time you met Mr. Dunlop in relation to Carrickmines was in 1992
17 and I don't propose to traverse that evidence again because Mr. Gallagher took
18 you through it. Apart from the evidence that you have just given in relation
19 to your own dealings with Mr. Dunlop, you are aware, or are you, that he has
20 given evidence to the effect that as of the 17th of January 1991 he did not
21 even know who Mr. Kennedy was, you are aware of that evidence?

22 A I am aware of that evidence, yes.

23 Q 304And what, from your knowledge, do you say as to the correctness of that
24 evidence?

25 A It's just not correct.

26 Q 305I just want to put to you for completeness a small further section of
27 Mr. Dunlop's evidence, day 341 at question 409, Mr. Gallagher asked him the
28 following question: "Did he -- that's reference to you, Mr. Caldwell -- I'll
29 paraphrase it this way, did Mr. Caldwell, did he introduce himself and say I am
30 John Caldwell, I am the solicitor, I am from Binchy & Partners", and

1 Mr. Dunlop's answer was: "Yes, he did" and that of course is a reference to the
2 telephone call that Mr. Dunlop had with you before the 17th of January 1991.
3 What do you say to the account given by Mr. Dunlop of his alleged first
4 conversation with you?

5 A His recollection is not correct.

6 Q 306Mr. Gallagher asked you yesterday to consider why, looked for your view as to
7 why Mr. Dunlop might have made the allegations he has made in relation to
8 Mr. Kennedy and the transmission of 25,000 pounds from Mr. Kennedy to
9 Mr. Dunlop allegedly in January 1991, you remember those questions?

10 A Yes I do.

11 Q 307You mentioned obviously by way of view, or opinion, the possibility of
12 retribution. Is that, do I understand that to be a reference to what you have
13 just described in relation to the fate of Mr. Dunlop's option?

14 A Yes, it is. As a result of not succeeding in having the land rezoned and I
15 don't say that this was the only factor that applied in relation to that, but
16 it was a significant factor, there were several significant factors from the
17 relationship of Mr. Kennedy, he lost a very large amount of money in terms of
18 potential profit on the land that would have arisen if his rezoning application
19 had been successful.

20 Q 308Mr. Gallagher has asked you on several occasions over the past few days to
21 attempt to put a figure, valuations, profit or increase in value or whatever.
22 On the same basis, obviously and one can be held to it, can you attempt to put
23 some figure on the loss or potential loss to Mr. Dunlop which flowed, partly
24 flowed from Mr. Kennedy's demands in relation to Baldoyle?

25 A I think the value of it was quoted at the time in newspapers and I wouldn't
26 disagree with it, was that the value of the land would have been somewhere in
27 the order of 10 million pounds so --

28 Q 309And have you any recollection as to the cost to Mr. Dunlop of the option to
29 which that ultimate value would have related?

30 A I think it was it was around 20 or 30,000 pounds an acre, but my recollection

1 is a bit unclear on that but there's a substantial profit lost to him by this
2 project not succeeding.

3 Q 310 Could I ask you Mr. Caldwell some questions now about Carrickmines and the
4 period of mid to late 1989 and into 1990 and this is in the context of
5 questions you were asked by Mr. Gallagher about the evidence of Mr. Frank
6 Finnegan, you recollect that line of examination?

7 A Yes, I do.

8 Q 311 There's a small collection, Chairman, of documents relevant to these questions
9 and the Tribunal has kindly arranged photocopies of them.

10

11 Mr. Caldwell, you have there a bundle of documents and I want to take you
12 through certain sections of some of them and I can ask you some questions. The
13 first is page number 4261 and I think that is a meeting of Brian O'Halloran's
14 in relation to a meeting held on the 23rd of November 1988 which records that
15 Mr. Kennedy was present, is that correct?

16 A Yes, that's correct.

17 Q 312 Mr. Kilcoyne and Mr. O'Halloran?

18 A Yes.

19 Q 313 I appreciate it's slightly earlier than the period I have just mentioned to
20 you, it's 1988 but we will move quickly on to 1989 in a moment. And you will
21 see there, I think, the third paragraph along, the points of the meeting
22 "Kennedy will immediately seek to change the present zoning which is
23 agriculture to residential." is that correct?

24 A Yes, I see that.

25 Q 314 Now, first of all, this is a reference to the Carrickmines lands, is that
26 correct?

27 A Yes, it is.

28 Q 315 And am I correct in understanding that as far as Mr. Kennedy was concerned and
29 I take it, unless you have different -- as far as you were concerned, that as
30 of November 1988, that was your plan?

1 A Yes, that's correct.

2 Q 316 To try to have the then existing agricultural zoning changed to residential.

3 A That's correct.

4 Q 317 And then arising out of a comment that you made to Mr. Gallagher, I think it's
5 probably appropriate to touch on the last line of the first page. It reads as
6 follows, "Also Leddy has already made an application for about 90 residential
7 units on a property along the Glenamuck Road, additional to that is a further
8 recent application for houses on property owned by Patsy Mooney, also in the
9 Glenamuck Road area."

10

11 Just on a slightly different aspect, but now that it's in front of us because
12 it's relevant, is that the residential application that you referred to
13 yesterday when Mr. Gallagher was asking you about the feasibility of retaining
14 permission on these agriculturally zoned lands?

15 A I believe the Leddy application is that application.

16 Q 318 Yes. I think at the bottom of that page, the last two paragraphs, "Kennedy
17 told us that if we three want to change the present zoning of our land to
18 residential, we must work on this at once as the 31st March '89 deadline in
19 which the review of the Dublin County Council Development Plan must be
20 completed is fast approaching. Can you confirm that you sent me a copy of
21 correspondence from the Department of the Environment confirming date
22 deadline", and then last paragraph:

23

24 "Brian O'Halloran told Kennedy that we three cannot make a planning application
25 until we can secure proper access to our property. Kennedy was aware of this
26 and the fact that we are for the moment effectively landlocked."

27

28 I just draw your attention to that last paragraph. Am I correct in
29 understanding that that is an indication that it wasn't merely your lands and
30 when I say yours, you know what I mean, Paisley Park, ultimately Jackson Way

1 lands, that had difficulties in terms of access but that the O'Halloran lands
2 and O'Halloran interests also faced similar difficulties, is that correct?

3 A That is correct.

4 Q 319And I think in conversation with Mr. Gallagher, you had referred to the fact
5 Mr. O'Halloran's lands also had certain difficulties, is that so?

6 A That's correct, they shared the same issue of the Golf Lane and shared the
7 additional issue of having to get access from the Tracey lands which became the
8 Paisley Park lands.

9 Q 320If I move forward some ten months or so, to the 7th of September 1989, the next
10 document in the bundle, when you wrote to Anthony Gore Grimes, re-Brian
11 O'Halloran, in the following terms.

12 "Dear Anthony, would you please confirm that you are", I don't know whether you
13 are in a position to read the rest of the photocopy which is poor on my copy,
14 Mr. Caldwell, can you --

15 A No, I can't, I just can't make it out.

16 Q 321"Would you please confirm that your clients are agreeable to allowing being
17 included in the submission for rezoning of our client's adjoining lands?"

18 A That's the thrust of it.

19 Q 322The question I really want to ask you is when, on the 7th of September 1989 in
20 that letter that you wrote to Anthony Gore Grimes representing Brian
21 O'Halloran, you referred to the submission for rezoning. What kind of rezoning
22 did you have in mind?

23 A The one that we were contemplating at that time, which is residential rezoning.

24 Q 323If on the date of that letter you had any knowledge that the County Council's
25 proposal or vision was to rezone the lands industrial, would you have written
26 that letter in those terms?

27 A Well I can't read from the letter whether it actually specifies the type of
28 rezoning because that's blotted out to one side of it.

29 Q 324I see.

30 A So -- but I mean the only thing that was contemplated at that point in time was

1 residential.

2 Q 325 I see. I think the matter perhaps becomes a little clearer if we move on in
3 time to the next document of the 20th of September. It's a memo of a meeting
4 which you were not at, between Brian O'Halloran and Anthony Gore Grimes and
5 Gerard Kilcoyne. And the purpose, as appears from the memo, was to discuss a
6 reply to your letter which we have just read. And I just take you to the third
7 paragraph under the heading "Background to the meeting, AGG pointed out that if
8 we three joined out lands with Kennedy for a rezoning application, that would
9 definitely weaken our covenant position. In those circumstances, we would be
10 seen to want to put a housing development on our land whereas the purpose of
11 the covenant is to protect our lands against precisely that. That very obvious
12 conflict would be injurious to our interests under the covenant. AGG therefore
13 advised against that."

14

15 Do you understand from that that paragraph that Mr. Gore Grimes' understanding
16 at that meeting certainly was that the rezoning application was in relation to
17 housing development?

18 A Yes.

19 Q 326 And isn't that clear from that paragraph?

20 A To me it's clear from that paragraph, yes.

21 Q 327 The next document, sorry I omitted to give the page reference for the previous
22 document which is 3636, and the one before was 3635, and we now move on to
23 3638. This is once again a meeting report of Mr. O'Halloran's relating to a
24 meeting of the 5th October 1989 at which, in this case I think, you were
25 present. It records your presence with Mr. Kennedy as a meeting with Mr. Gore
26 Grimes, Mr. Kilcoyne and Mr. O'Halloran, is that correct?

27 A That's correct.

28 Q 328 "Purpose of the meeting, to meet Jim Kennedy and John Caldwell in order to
29 discuss a response to JCs September 7th letter to Anthony Gore Grimes in which
30 he asked if we were agreeable to include our land in the submission which JK,

1 that's Jim Kennedy, will make in the near future for the rezoning of Bob
2 Tracey's farm."

3
4 First of all, as far as you were concerned at that meeting, as you can
5 recollect it, what rezoning submission was -- what form of rezoning was
6 contemplated by you or Mr. Kennedy on your side, at that meeting?

7 A As far as I can recollect, it was residential.

8 Q 329Yes and if we move on to page 3639, the matter has been clarified by the memo
9 itself, if we go down to the middle of the page. You will see "In view of
10 this, JK stressed urgency to make representations to the council for a rezoning
11 of Tracey's lands at least and wondered if we would like to add your lands as
12 part of that rezoning application.

13
14 Since our earlier discussions and in view of the timing of the revised County
15 Council Development Plan, JK has decided to seek permission for a residential
16 development over two phases and as follows:

17
18 1. To first seek permission for a rezoning of the lands from its present
19 usage, agriculture to a residential."

20
21 I think that makes it clear, Mr. Caldwell, that at that meeting you or
22 Mr. Caldwell were identifying a residential permission rezoning as what you
23 were planning to seek.

24 A Yes, that is correct.

25 Q 330Again I must ask you, the date is October 5th. If you were aware as of the
26 date of that meeting that the County Council's proposal was to rezone to
27 industrial rather than to residential, would you have been promoting to Mr.
28 O'Halloran, Mr. Kilcoyne and -- an application to rezone to residential?

29 A No, it wouldn't have been occurring.

30 Q 331I suppose, in fairness, I should also ask you if Mr. Kennedy had been aware

1 that proposal, although you had not been, if there had been such a proposal of
2 which Mr. Kennedy was aware, can you now, looking back, think of any reason,
3 can you conceive of any reason why Mr. Kennedy would have concealed that
4 knowledge, both from you and from the O'Halloran interests?

5 A I can't think of any reason why he would have done that.

6 Q 332 Does it make any sense to you looking back that he would have done that?

7 A It makes no sense to me, he would have done that. If he had that information
8 that it was industrial and that was something that the planners were intending
9 to do, then, while he may not have shared that knowledge with the people that
10 he was dealing with, and if he did have, he certainly didn't share it with the
11 people he was dealing with, he would have changed, knowing the man he would
12 have changed his tack and he would have had simply said that he had decided and
13 it should be industrial and not residential and he would have been pressing for
14 industrial rezoning, industrial planning applications to be put in and he
15 wasn't doing that.

16 Q 333 There's an emphasis on the next page 3640, both you and Mr. Kennedy were
17 urgently pursuing a residential rezoning application, isn't that correct?
18 About the fourth paragraph down, "JC and JK stressed time urgency in making the
19 rezoning application and suggest we should now deliberate our intentions and
20 inform them as soon as possible", do you see that?

21 A I see that.

22 Q 334 Do I correctly understand, Mr. Caldwell, that that reference to the rezoning
23 application is a reference back to the passage I quoted on the previous page,
24 page 3639, is that correct?

25 A Yes, it's the same rezoning.

26
27
28 Q 335 There's only one rezoning application being contemplated at that time and that
29 was residential.

30 A That's correct.

1 Q 336Next document is page number 3643 dated 10th of October 1989 from Anthony Gore
2 Grimes to you, referring to the meeting on the 5th of October which was the
3 meeting in respect of which we just saw the report; "Dear John, I refer to our
4 meeting on the 5th of October, our clients have now had a meeting and discussed
5 this matter further. They have instructed me to let you know the following.
6 They are not agreeable to their lands being included in the submission being
7 made for rezoning." When you received that letter of the 10th, what rezoning
8 did you understand, what form of rezoning did you understand that sentence to
9 be a reference to?

10 A I don't specifically recollect the receipt of the letter as such but -- but
11 reading it out? But reading it now, it would have been the residential.

12 Q 337Yes. And then moving on to the next document, page 3650, this again is a
13 report of a meeting which you did not attend, Mr. O'Halloran's report of a
14 December 18th 1989 with Dr. Darragh, Gerry Kilcoyne and Anthony Gore Grimes.

15
16 Points of the meeting, the first paragraph on the first page "I told the
17 meeting that Jim Kennedy recently told me that he has resolved his differences
18 with Bob Tracey by paying him more money. JK is now in a position to make an
19 application for planning permission and is likely to do so in the near future."

20
21 Do you understand that to be a reference to the application we have been
22 discussing, the residential application or some other application?

23 A No, the residential application.

24 Q 338Now the next page is 3011 and it's dated the 15th January 1990 to Mr. Kilcoyne
25 from Mr. O'Halloran, it's a letter and there's just one paragraph in this
26 letter I'd like to open. It's the second indented paragraph reads as follows
27 and I quote, "Tracey told me that a recent application for a housing
28 development on lands owned by Patsy Mooney and Michael Leddy along Glenamuck
29 Road has been turned down by An Bord Pleanala. Kennedy was watching this
30 application very carefully as he felt it would set a precedent for his

1 forthcoming application in respect of Bob Tracey's lands." Do you see that
2 sentence?

3 A Yes I do.

4 Q 339Now first of all, I think that that's the other application in any event you
5 told Mr. Gallagher about, the Leddy application on Glenamuck Road.

6 A That's correct.

7 Q 340The reference there to Mr. Kennedy, Mr. Caldwell, do you or do you not
8 understand that to mean that the precedent of Mr. Leddy which of course was a
9 residential precedent, was a precedent for Mr. Kennedy's forthcoming
10 residential application, is that how you read the letter?

11 A Yes, that is how I read the letter.

12 Q 341And that's as of the 15th January 1990, isn't that correct?

13 A That's correct.

14 Q 342And then if I move on to page 5035 -- 3035 to a Brian O'Halloran meeting report
15 of the 18th April 1990 of a meeting involving yourself, Mr. Kennedy,
16 Mr. Kilcoyne, part-time, and Mr. Gore Grimes, do you see that document.

17 A Yes, I do.

18 Q 343And just some short passages from that report might be of relevance, the
19 purpose of the meeting to the two draft documents given by John Caldwell to
20 Anthony Gore Grimes, one being a purchase of the land, the other being the sale
21 of the covenant, do you see that?

22 A Yes, I do.

23 Q 344And then numbered paragraph 1 at the bottom of that first page of the report.

24

25 "AGG told JK that the owners are not therefore prepared to give him an option
26 to purchase the lands, instead he suggested the following:

27

28 1. That JK would seek a planning permission and building bylaw approval for
29 your land when making an application for his own. Having obtained those within
30 a timescale to be agreed, the owners would then surrender the covenant free of

1 charge to JK." First of all, the reference to the suggestion that Mr. Kennedy
2 would seek a planning permission, what form of permission do you understand
3 that to be?

4 A Residential.

5 Q 345And over the page then at paragraph 2. Should JK seek and obtain a change of
6 zoning only from agriculture to residential within a two and a half years, JK
7 would be entitled to buy the covenant for 200,000 pounds." Do you see that?

8 A Is that a reference to a proposed application for residential zoning? Yes, it
9 is.

10 Q 346And is it the position therefore, Mr. Caldwell, that from the beginning of that
11 of the period covered by that correspondence from the end of 1988 right through
12 the period covered by this, these documents up to and including at least the
13 18th April 1990 the constant objective of both you and Mr. Kennedy was to
14 achieve either a residential permission or residential zoning?

15 A Yes, that is correct.

16 Q 347And up to at least the 18th April 1990, that didn't change?

17 A That did not change.

18 Q 348And up to at least that date, were you ever aware that the county council had
19 it in their minds to bring about an industrial zoning?

20 A I was not.

21 Q 349Up to at least that day, did Mr. Kennedy ever suggest to you or indicate to you
22 that he was aware that the county council had it in their minds to bring about
23 industrial zoning?

24 A He had not.

25 Q 350Up to at least the 18th April 1990, can you conceive of any reason why
26 Mr. Kennedy, if he had such a knowledge, would have kept it from you?

27 A No reason. If he knew it, other than the reason that he, if he had obtained,
28 if it had been obtained improperly, he may have decided not to tell me about
29 it. But even if that were the scenario in relation to it, if he had obtained
30 it improperly and I don't believe that he did, he would have changed his course

1 of conduct with relation to these lands.

2 Q 351 Would the meetings that have been described in these reports and the business
3 that was transacted in the sense of the discussions that took place and the
4 negotiations that occurred, would any of those have made any sense or be
5 purposeful if Mr. Kennedy had known that the local authority was envisaging an
6 industrial zoning of the lands?

7 A It would certainly have suited him at an earlier stage to have played the
8 industrial card if he wanted to because that would have been a situation which
9 would have created a lower value for the land. Residential land was more
10 valuable than industrial land at that time.

11 Q 352 And would you just develop that thought, why would it have suited him to play
12 that card?

13 A It would have suited him in negotiations because part of the negotiations as we
14 see from the correspondence was to get into a situation of having a right to
15 purchase the adjoining lands.

16 Q 353 The O'Halloran lands?

17 A Yes, and it was clearly from his own commercial interests, be in his interests
18 to purchase those at the lowest price so if he could convince them that it was
19 industrial, was the use, that was the only one he felt could be got on it, then
20 that would be the valuation basis that would have -- as opposed to the housing
21 valuation basis which they did apply in those discussions.

22 Q 354 Yes. And for completeness, I understood from your evidence and particularly
23 your response to some questions from Judge Faherty this morning that you first
24 became aware, you first became aware of the planners' views in relation to a
25 preference for industrial zoning at the end of 1990, isn't that correct?

26 A That's correct, it was after it came out on the October 1990 plan.

27 Q 355 But when you did become aware, when you first became aware, you took these
28 views on board and changed tack to reflect them?

29 A Completely. Once it was seen that the planners would favour industrial zoning
30 and it brought that forward as the possibility for these lands, the strategy in

1 relation to the zoning that was contemplated changed.

2 Q 356 And at the time at which you first became aware of that change in the planners'
3 views, did Mr. Kennedy at that time at the end of 1990 agree with the change in
4 the strategy from residential strategy to industrial?

5 A Yes, he did. Yes, he did.

6 Q 357 Chairman, two things. Firstly, I was proposing to move on to a new topic and
7 secondly, I will be confident of finishing relatively shortly in the morning, I
8 don't propose to take up terribly long tomorrow. I was wondering in those
9 circumstances whether the Tribunal might wish me to continue today or to --

10

11 CHAIRMAN: If it suits, we'll leave it till tomorrow, it's really -- what sort
12 of time are you thinking?

13

14 MR. FINLAY: I would be confident, I say that hesitatingly, quietly confident
15 in finishing in half an hour.

16

17 CHAIRMAN: The only thing there may be one or two questions from ourselves.

18

19 MR. FINLAY: Of course.

20

21 CHAIRMAN: It would give us an opportunity to review -- Mr. Gallagher probably
22 will want to --

23

24 MR. GALLAGHER: I may have a good few questions. Can I suggest also that
25 there's one further witness we had hoped to deal with this morning, she has
26 been here this afternoon I believe, so the taking of the evidence that had been
27 scheduled for this week in relation to Carrickmines will obviously run into
28 tomorrow.

29

30 CHAIRMAN: Do you want to take that other witness now?

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MR. GALLAGHER: I think that might be convenient. Mr. Quinn is available to deal with that.

CHAIRMAN: I think it's only ten minutes or so.

MR. QUINN: Yes, she's a relatively short witness and she has been here.

CHAIRMAN: All right. Well then Mr. Finlay, we'll take up Mr. Caldwell again at half ten tomorrow.

MR. FINLAY: If it's suits the Tribunal. Thank you very much.

A Thank you.

THE WITNESS THEN WITHDREW.

MR. QUINN: Joan Caffrey.

1 MS. JOAN CAFFREY, HAVING BEEN SWORN, WAS EXAMINED

2 AS FOLLOWS BY MR. QUINN:

3
4 Q 358MR. QUINN: Thank you, Miss Caffrey. I think you provided a statement to the
5 Tribunal and I don't know if you have a hard copy of the statement, if not we
6 can furnish you with one.

7 A Yes, I have a copy.

8 Q 359I propose to go through your statement and just ask you one or two questions
9 arising from it, I think you are a senior planner with Fingal County Council,
10 is that correct?

11 A Yes, that's correct.

12 Q 360I think your statement is as follows: You say that you are a qualified town
13 planner and a member of the Irish Planning Institute, you have been employed as
14 a town planner for many years. You say you worked with Dublin County Council
15 from 1978 to 1993. In 1994, you were transferred to Fingal County Council.
16 You say you were involved in the review process of the 1983 Dublin County
17 Development Plan since its commencement in 1987.

18
19 You say you researched and prepared working papers and various topics for
20 presentation to the council and you referred to working papers number 3,5 and
21 nine. Working paper number 3 was a review of objectives which was presented to
22 the council on the 29th January 1988. Working paper number 5 is rural housing
23 which was presented on the 25th March 1988. And number 9 was conservation
24 which was present on the 16th September 1988, is that correct?

25 A That's correct.

26 Q 361And that you have supervised the preparation of the draft plan for the first
27 statutory display. You go on to say that as acting senior planner in the
28 County Development Plan review, you were involved in reporting and on
29 representations, the holding of oral hearings and representations and the
30 presences to the council and the representations received following the first

1 statutory display and organising the second statutory display. And under
2 heading "Proceedings of Council Meetings" you say the following. "Individually
3 and collectively, members of Dublin County Council performed their duties in
4 relation to planning matters, including reviews of its development, material
5 contravention motions etc. within the procedural regulations laid down in the
6 planning legislation and the standing orders of the council. Full resources of
7 the local authority, manpower, expert technical knowledge and recommendations,
8 legal case history and legal opinion were made available to the proceedings of
9 the council meetings.

10
11 And the heading "Role of Councillors, "you say "With regard to the role played
12 by councillors in the manner in which meetings of Dublin County Council in
13 relation to such matters were conducted, consequent to the presentation of the
14 working papers and the initial Draft Development Plan, the council made it
15 clear that the making of the new Development Plan is a reserve function. The
16 initial presented draft plan was cited as the manager's plan and the council
17 stated they would now prepare their own Draft Development Plan. This
18 distinction of roles permeated the entire proceedings of the making of the 1993
19 Development Plan. On one side were the recommendations of the manager and on
20 the other side was the council divergence from those recommendations in many of
21 the decisions taken.

22
23 "Developer/Landowners, " you say the following: The involvement of these
24 client groups became evident in the public proceedings of the council meetings.
25 Individuals seeking tickets (which could only be signed in by the councillors)
26 to the public gallery for the council meetings. At times it was evident that a
27 tally of the councillors voting on decisions was made by individuals in the
28 public gallery. As the public gallery was small, a large crowd of individuals
29 was regularly evident in the public foyer before and after council meetings.
30 Councillors would also leave the proceedings to engage in discussions with

1 individuals in the public foyer. It was clearly apparent that apart from any
2 formal representations made, that there was ongoing contact between the
3 councillors, developers, landowners and their agents.

4
5 Council staff: The professional/technical planning staff to my knowledge had
6 no direct contact with the client groups and did not engage in formal or
7 individual formal discussions. The procedures for representations were adhered
8 to. Oral hearings were enabled and written responses prepared and submitted to
9 the council meetings.

10
11 Public: Members of the public had access to the public gallery. Resident
12 groups held protest outside the council offices in O'Connell Street. National
13 newspapers journalists sat in the public gallery and reported proceedings of
14 the council meetings as did the national TV and radio broadcasters. Individual
15 councillors cited the wishes of their constituent residents in their opposition
16 to rezoning and development proposals. The public also made written
17 representations on the first and second displays of the Draft Development Plan.

18
19 Whip system: I noted that the 'whip system' was evident.

20
21 Lobbyists: The professional/technical staff did not have contact with
22 lobbyists. The lobbyists were evident in the public gallery and public foyer
23 of the offices in O'Connell Street.

24
25 Infrastructure Considerations: The absence of and the availability or
26 non-availability of adequate infrastructure did not influence the councillors,
27 as evident in their decision. The speech of Mr. Michael Smith, TD, Minister
28 for the Environment at the Irish Planning Institute Awards Ceremony on Tuesday
29 11th May 1993 had no affect.

1 Relevant factors: With regard to the factors which various councillors
2 considered to be relevant or irrelevant in their review of the County
3 Development Plan, the councillors constantly justified their decisions to
4 rezone on the basis of individual location requirements rather than the overall
5 strategic requirements. The regular response was that land that was not zoned
6 in the right locations and that more land needed to be rezoned.

7
8 Benefits: With regard to whether the councillors or officials solicited or
9 received and/or were offered monies or other benefits in return for support in
10 in a planning/development/review context, the professional/technical planning
11 staff to my knowledge did not solicit benefits to be made to them nor to my
12 knowledge did this happen to them.

13
14 Professional advice: With regard to whether the council usually accepted the
15 advice of the manager and his professional staff in relation to

16 A. The proposed zoning/rezoning of lands,

17 B. Roads, including roads and motorway reservations,

18 C. Foul and surface water sewers, water supply and the availability of
19 adequate funding for the necessary infrastructure,

20 the council A and C on many occasions rejected the advice of the manager and
21 his professional staff.

22
23 You are referring there to the proposed zoning/rezoning of lands and surface of
24 foul water sewers and the availability of adequate funding for the necessary
25 infrastructure, isn't that correct?

26 A Yes.

27 Q 362 In relation to B and B is roads including roads and motorway reservations, you
28 say "by resolution relocated the line of the Naas Motorway and objectives for
29 'motorway services' complexes were voted in, at Courtlough, Diswellstown and a
30 'truck with overnight and long-term parking of trucks to service traffic on the

1 M1" at Turvey. You say that's an occasion on which that vote took place.

2 A That's correct.

3 Q 363 Outside Professional Advice: You say I recollect cases of the advice of the
4 manager and county council planners were rejected or not followed, other than
5 the councillors own statements, no professional advice to the contrary was
6 furnished to the council by any councillor, landowner, developer or lobbyist at
7 any meeting of the council. In the representations following the first and
8 second displays of the draft development plan, professional consultants
9 advocated their clients' requirements." But it would be fair to say I think
10 just in relation to that, that all those various landowners and developers
11 would have made their representations during the display period to the council,
12 isn't that right?

13 A That's right.

14 Q 364 Independent staff: With regard to any requests/representations made to me or
15 other officials (either directly or indirectly) in relation to any Development
16 Plan matter (including but not limited to rezoning roads and services) or
17 planning matter. The professional/technical planners avoided any involvement
18 with outside parties in relation to our work on the Development Plan review.

19
20 And then under heading "Newspaper Articles": You say "With regard to the
21 documents shown to me by the solicitor to the Tribunal, I consider the series
22 of articles published by the Irish Times to have been a great service to the
23 public. They explored and exposed a factual way of what was happening in the
24 council chamber."

25 Signed Joan Caffrey.

26 Is that your statement to the Tribunal in relation to those matters?

27 A Yes, that is my statement.

28 Q 365 There's just one other matter I wish to clarify with you. In the course of
29 evidence given to this Tribunal by Mr. Cormac Rabbitt who in 1991, the late
30 '80s, early '90s was in an engineer attached to the Roads Department of Dublin

1 County Council, he said he saw for the first time in November 1990, map number
2 DP 90/123. Now do you recall seeing that map or being involved in the
3 preparation of that map? I think it accompanied a presentation to the council
4 made it in October and November 1990.

5 A I recall in a very general way the preparation, the -- I can't say the
6 preparation of the map, in a very general way I recall the subject matter. I
7 cannot specifically cite in a very factual or confirmative, affirmative way any
8 details.

9 Q 366 If he could have document 205 please. The reason that Mr. Rabbitt dealt with
10 this map was that when he saw it, he was of the opinion as a Senior Roads
11 Engineer that the roads structures set out in the map could never give rise to
12 roads as shown in that map. And he said that his disquiet in relation to that
13 was something that he conveyed to a number of people and he identified
14 Mr. Willie Murray but he also said his anxiety in relation to the map was
15 conveyed to you. Do you recall Mr. Rabbitt expressing any anxiety about the
16 road configuration as we see it in that map?

17 A No, I cannot categorically say that I specifically recall a conversation with
18 Cormac.

19 Q 367 Now he also says that the anxiety, his anxiety in relation to the map was an
20 anxiety shared by other roads engineers in late 1990, do you recall any anxiety
21 amongst the engineering staff, particularly the road engineer staff of the
22 county council in relation to the road lay out as we see it on that map?

23 A No, I do not recall but that does not mean it didn't exist, there would have
24 been normal meetings informal and formal meetings and discussions.

25 Q 368 But you have no recollection of Mr. Rabbitt raising any anxiety he had in
26 relation to the road layout on that map with you?

27 A Specifically, no.

28 Q 369 Thank you very much.

29
30 CHAIRMAN: Just one question, Miss Caffrey. DP 90/123, when you say you recall

1 in a general way the preparation of the map, is it that map that you recall
2 generally preparing? It's there beside you.

3 A Yes, yes, yes. The subject lands were always an area of question and scrutiny
4 so I am not clear in my own memory as to what I recall as memory as distinct
5 from fact so I really can't categorically, you know, say that I have
6 familiarity with the map as displayed.

7
8 CHAIRMAN: Do you recall seeing it at the time?

9 A Oh yes, I mean -- well I recall it being part of the process and therefore I
10 would have seen it.

11
12 CHAIRMAN: Were you at the meeting when it was first displayed in October 1990?

13 A I don't think I was.

14
15 CHAIRMAN: When you say that you remember it in a general way, do you actually
16 have a memory of seeing it, say, in the office?

17 A Yes, I would -- I cannot say that it was 123 but I recall the preparation of
18 the map and you know the discussions pertaining to the map in a very general
19 way.

20
21 CHAIRMAN: And can you remember whether it was, whether there was concern being
22 expressed or was it just being treated as just an ordinary preparation of a
23 map? Was it attracting any particular attention or comment, can you recall?
24 A Yes, I recall that it was handled with great care and scrutiny being such a
25 sensitive area. And that there was great regard to sort of, how would I put it
26 confidentiality as to the actual how the map was, the rationale for bringing
27 forward the map and the detail of the map.

28
29 CHAIRMAN: Was that more care and scrutiny than you would, or than might be
30 expected in your experience in relation to other maps? I mean was it being

1 treated as something that required very special care or more than normal or --

2 A Yes, I would say more than normal, yes.

3
4 CHAIRMAN: And what would have been the reason for that?

5 A The area was highly sensitive. The potential for its development had been the
6 subject of many discussions, particularly on the ERDO strategy and the
7 timeframe which might be appropriate for the bringing forward of the lands was
8 a very political issue and therefore the timeframe as to indicate the
9 development potential would have been very carefully considered, whether it was
10 appropriate to initiate such openness for discussion.

11
12 CHAIRMAN: And do you recall who or what people with whom you worked were
13 promoting this map or how it emerged or who might have brought it to your
14 attention in the first place?

15 A Well the procedures were always that the close contact between the councillors,
16 the council was with the manager and the principal officer so whatever
17 procedural or subject matter items were to be brought forward to the council
18 formally would have been discussed directly between the manager and the
19 principal officer in planning and the chairperson and perhaps representatives
20 of the councillors.

21
22 CHAIRMAN: And you wouldn't have been necessarily privy to those?

23 A No, we would have received -- the team would have received direction and
24 instruction.

25
26 CHAIRMAN: But you don't know or you can't recall if the map was being or the
27 preparation of the map was being particularly promoted by one or more
28 individuals?

29 A No, I cannot say, our concern would have been the timeliness of bringing
30 forward development proposals, having regard to the process of the Development

1 Plan, which would have been that there could have been a sequence of haphazard
2 random type development rather than a framework for development but that would,
3 that is only my perspective as an individual planner. I would not have been
4 aware of the background between the manager, the principal officer and the
5 councillors.

6
7 CHAIRMAN: All right. Thank you.

8
9 JUDGE FAHERTY: Just one question, Miss Caffrey. Would you have been aware of
10 prior maps, prior similar-type maps at all to this one that's on screen?

11 A There was general work always in the Planning Department on a range of action
12 plans, local plans for possible development plans, including these lands. But
13 again, specifically, as to which maps were being worked on in the past or
14 concurrently in the Planning Department, I can't at this stage state.

15
16 JUDGE FAHERTY: All right.

17
18 JUDGE KEYS: Miss Caffrey, just two questions. The first question, do you
19 know who actually drew this map? Or would you know from the position you hold
20 within the planning --

21 A They are normally in the Planning Department there was a register, a log book
22 whereby all maps are entered and the initials are on the key to the map.

23
24 JUDGE KEYS: Well on this map can you tell or is it possible to tell who
25 actually drew up the map?

26 A Well, the key as displayed on the monitor doesn't have any initials.

27
28 JUDGE KEYS: Is that unusual?

29 A It is, yeah.

1 JUDGE KEYS: Would that indicate -- you believe that to be unusual?

2 A Yes. Except that perhaps on the rake of Development Plan review maps presented
3 to the council, there may not have been an initial on the key other than the
4 planning officer but I think in the preparation of the map, there would always
5 be an initial.

6

7 JUDGE KEYS: This is a map I understand which was produced for the first time,
8 I am subject to correction on this, I think it was at a meeting in October of
9 1990.

10 A Mmm.

11

12 JUDGE KEYS: If it was to be produced on display for the councillors to
13 consider or among yourselves, all the more reason we would expect there would
14 be some reference as to who drew up the map.

15 A Not necessarily, in terms of the final map going to council.

16

17 JUDGE KEYS: Well this particular map, is this not the final map that went on
18 display to the councillors for discussion?

19 A Yes, well -- we'd have to check with the other maps that were brought before
20 the council, did they have the initial of the individual who prepared the map
21 or was this the standard format that we adopted.

22

23 JUDGE KEYS: But your evidence is that it's unusual that this map does not
24 have an initial on it?

25 A If I might correct, normally in the preparation of any maps for discussion,
26 there is an initial and then perhaps if it goes for formal displays as part of
27 the Development Plan, it would just have the standard key.

28

29 JUDGE KEYS: Yes, but --

30 A But this should be traceable even though this does doesn't have an initial. It

1 should be traceable back in the drawing office register as to who prepared the
2 map.

3
4 JUDGE KEYS: I am not sure if you heard the second question of Mr. Rabbitt's
5 evidence but his evidence was that it was at that meeting that the first time
6 he ever saw that map and he was somewhat taken aback by its contents and layout
7 as such, do you find that surprising a man of his expertise in the council,
8 that he should be confronted with a situation like that?

9 A No, the manager and the principal officer in the Planning Department would have
10 made that decision and it's not unusual for that to happen.

11
12 JUDGE KEYS: Even though Mr. Rabbitt's evidence is that he was surprised that
13 he wouldn't have been, would not have seen that map or I should say that he was
14 extra taken aback that he had not seen that map until it was displayed?

15 A His reaction would not be unusual. I mean it would -- the manager and the
16 principal officer would make decisions and inform us subsequently.

17
18 JUDGE KEYS: But would not all those experts like Mr. Rabbitt, would they not
19 have access to seeing these maps before they are put on display?

20 A Yes, there would have been a whole series of meetings informal and formal
21 whereby the opinions would have been expressed but the final output of a map
22 doesn't necessarily require the agreement of the various technical --

23
24 JUDGE KEYS: Would it be unusual for a map find its way to the council without
25 the expert who would have had an input to have seen it in advance?

26 A I would say at that stage not necessarily so.

27
28 JUDGE FAHERTY: Just on Judge Keys' question, I recall when this map was
29 produced in October, Mr. O'Sullivan gave evidence some considerable time ago,
30 he wasn't that long, I think, manager at the time I think.

1 A Yes.

2

3 JUDGE FAHERTY: He wasn't that long as manager?

4 A Yes, he was a new manager.

5

6 JUDGE FAHERTY: And in relation to what Judge Keys asked you, I think
7 Mr. Coughlan who gave evidence here and Mr. Mulhern, one was a civil engineer,
8 Mr. Mulhern was in roads, they didn't see it either. Just in relation to what
9 Judge Keys asked you, do you consider the combination of people who said they
10 didn't see it unusual?

11 A Yes, it sounds unusual but while it sounds unusual, it is not necessarily
12 unusual that the management would make a decision to proceed regardless or
13 independent of technical advice.

14

15 JUDGE FAHERTY: I see.

16

17 Q 370MR. QUINN: Just to clarify two matters. If we could have document 4164
18 please, this is the register of maps from the Planning Department and Judge
19 Keys was asking you about the key to this map. Now I am going to suggest to
20 you there appears to be no key to this particular map but there was a key to a
21 similar type map as appears on that register about midway down, do you see a
22 map 90/123, Carrickmines Valley structure scheme 2, do you see that?

23 A I do.

24 Q 371That relates, as I understand it, to map DP 90/123 which is to be found at 4166
25 and seems to be a precursor to the map we were looking at. Are you familiar
26 with that?

27 A No.

28 Q 372Were you familiar with any of the previous maps which led up to the map DP
29 90/123 which was published?

30 A No, I did not personally work on any of those maps.

1 Q 373When you referred to the secrecy surrounding these maps and the sensitivity
2 with which they were regarded within the Planning Department, and you referred
3 specifically to DP 90/123, would it be fair to say you were also referring to
4 precursors of that map?

5 A Yes, I would have been referring to those also.

6 Q 374And you knew that for sometime people had been working on those maps and
7 similar maps?

8 A Yes.

9 Q 375And just finally in relation to the point made by Judge Faherty, do I
10 understand you to say that you wouldn't be surprised that an individual within
11 another technical department wouldn't be aware of a map before it was put on
12 public display? Or are you actually saying you wouldn't be surprised that
13 another technical department wouldn't be aware of a map before it was put on
14 public display?

15 A I would say your latter, that a technical department may not have been
16 consulted or aware.

17 Q 376This is a map being promoted by the manager of the council as a way forward to
18 be supported by the councillors, isn't that right?

19 A Yes.

20 Q 377And it's seriously defective from a roads infrastructural point of view, isn't
21 that right; what's being proposed according to the expert evidence given to the
22 Tribunal was incapable of being constructed?

23 A That is the evidence delivered -- of the expert who was --

24 Q 378Isn't it improbable that the manager would seek to promote something which was
25 incapable of being constructed?

26 A It sounds totally contradictory.

27 Q 379To your knowledge, have you ever known of a similar situation where the manager
28 on behalf of the planners has put forward a proposal for the construction of
29 something that did not meet with the approval of all the experts within his
30 department?

1 A Well to go forward publicly into a formal legal process of a Development Plan
2 review, it is or was unusual.

3 Q 380Yes. What was Mr. Davin's role in relation to the production of this map?

4 A Specifically on this map, I don't know. He did do work on the perhaps an
5 action area plan, local plan for the area.

6 Q 381Was this plan produced as part of the Development Plan review process that you
7 were involved with or was it done separately and incorporated into the
8 Development Plan review process?

9 A As far as I can recall it was completely separate.

10 Q 382Thank you very much.

11

12 CHAIRMAN: Thank you, Miss Caffrey, and I am sorry you were delayed.

13 A Thank you.

14

15 THE WITNESS THEN WITHDREW.

16

17 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

18 THURSDAY, 16TH OCTOBER 2003, AT 10.30 A.M:

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