

1 THE TRIBUNAL COMMENCED AS FOLLOWS AT 10.30 AM ON THURSDAY,
2 16TH OCTOBER, 2003:

3

4 CHAIRMAN: Morning Mr. Gallagher.

5

6 MR. FINLAY: Morning Mr. Chairman.

7

8 CHAIRMAN: Mr. Finlay.

9

10 MR. FINLAY: With your permission I will just conclude my -- my questions to
11 Mr. Caldwell.

12

13 Mr. Caldwell, if I could bring you back briefly to the topic of Baldoyle? I
14 think that since yesterday's proceedings you have reviewed the narrative
15 statement which I referred to yesterday, in relation to the Carrickmines aspect
16 of Baldoyle, is that correct?

17 A. That's correct.

18 Q.1 Arising out of that review, is there anything further on that aspect which has
19 occurred to you which you think may be of relevance to the Tribunal?

20 A. Yes, there is. There is one additional aspect which occurred to me in relation
21 to the preparation for the meeting with Mr. Byrne in December of 1990. Advice
22 had been taken from Mr. O'Connor, the architect, and advice had been taken from
23 Stuart Harrington, who was the valuer at that time, but I recollect that
24 Mr. Kennedy also took some advice from Mr. Dunlop at that stage, in relation to
25 whether or not he was of the view in the --

26 Q.2 When you say he was --

27 A. Sorry, Mr. Dunlop was of the view that it would be possible to change the
28 industrial to residential at the edge of the Grange Road. But I was told by
29 Mr. Kennedy that Mr. Dunlop had told him that that would be a very
30 straightforward matter because the local residents were in favour of it. But

1 notwithstanding that that was the situation, the commercial decision that was
2 taken which was conveyed to Mr. Byrne, was that the planning application that
3 was there in relation to industrial would continue. And the primary reason for
4 that was the question of services.

5 Q.3 If I may turn now Mr. Caldwell, back to Carrickmines? You recollect being
6 asked by Mr. Gallagher about the preparation of any maps or drawing for the
7 purpose of Carrickmines submissions or rezoning applications or matters of that
8 kind, do you recollect that?

9 A. Yes, I do.

10 Q.4 And my recollection of your evidence was that insofar as that query is
11 concerned you couldn't and can't recollect anyone other than Mr. Finnegan being
12 involved in that issue?

13 A. Yes, that's correct.

14 Q.5 But just for completeness, though it is not strictly on that issue, for
15 completeness, have you any recollection of anyone else who may have been
16 involved in the preparation of any maps or drawings related to Carrickmines,
17 although not for the purpose of planning applications or rezoning applications
18 and submissions?

19 A. Yes. I recollect that Mr. Galbraithe prepared a map which was a title type map
20 showing the burdens on the lands at Carrickmines. I can't recollect whether he
21 prepared that for Mr. Kennedy or Mr. Tracey, but I do recollect that he did
22 that, yes.

23 Q.6 Just so that I and the Tribunal clearly understand, that map was prepared for
24 title purpose only, do I correctly understand?

25 A. Yes, that's correct, title purpose that related to the burdens that affected
26 the property.

27 Q.7 If I can move briefly, Mr. Caldwell, to a different topic, you were asked by
28 Mr. Gallagher about contacts you may have had with Mr. Holland, do you
29 recollect that?

30 A. Yes, I do.

1 Q.8 And I think that in that regard your evidence was that you had had two
2 telephone conversations with him?

3 A. That's correct.

4 Q.9 But I think is it not -- that it is also correct that as the Tribunal is
5 already aware, and was made aware at an earlier stage, there was also a meeting
6 in London?

7 A. Yes, that's correct. I had a meeting with him in London in relation to the
8 compliance issue.

9 Q.10 And that that meeting took place in October 2002?

10 A. That's correct.

11 Q.11 And when you say in relation to the compliance issue, that was with a view to
12 securing compliance by Jackson Way with the discovery order?

13 A. That's correct.

14 Q.12 And the Tribunal I think has already been made aware of that meeting and in
15 fact I think that that meeting was minuted by Mr. Miley?

16 A. Yes, it was.

17 Q.13 And Mr. Miley and yourself were present at that meeting and I think that
18 Mr. Holland and perhaps Mr. Morgan were also present at the meeting?

19 A. Yes, that's correct.

20 Q.14 I believe in fact subject to checking with the minutes of that meeting,
21 Mr. Miley's minutes of that meeting, are already and have been for some time
22 with the Tribunal?

23 A. They have been given to the Tribunal, yes.

24 Q.15 Just for the record Chairman, and again as always subject to correction, my
25 recollection is that that's a meeting that I referred to and dealt with when we
26 had some discussions, that's me and the Members of the Tribunal, at the very
27 end of July, on the day I appeared in that regard.

28

29 Mr. Caldwell, I am not sure what documents you have in front of you just now,
30 but there are just two -- oh sorry before I come to that, just one other matter

1 I would like to touch on.

2

3 I am just asking Mr. Miley to circulate to the Members of the Tribunal, Counsel
4 for the Tribunal and Mr. Caldwell, just a couple of sections from the 1963
5 Planning Act.

6

7 (Documents handed to members of Tribunal, counsel for Tribunal and witness)

8

9 I wonder do the members have that document? Mr. Caldwell, you have that
10 extract from the Local Government Planning and Development Act 1963

11 A. Yes, I do.

12 Q.16 First of all Mr. Caldwell, I think that the '63 Act was the Act that was in
13 force at the dates which are material to Carrickmines, which we have been
14 discussing over the last four or five days?

15 A. Yes, I believe so.

16 Q.17 And I am introducing this statutory extract in the following context

17 Mr. Caldwell, you will recollect that, and the members will recollect that
18 Mr. Gallagher questioned you quite extensively, I think it is fair to say, on
19 the topic of services and insofar as the Carrickmines land and Paisley Park
20 Jackson Way lands are concerned, the absence of services to those lands, you
21 recollect all that?

22 A. Yes, I do.

23 Q.18 And I think it's fair to say that anyone listening to that cross-examination
24 would have understood that the thrust of it was that the wisdom or purpose of
25 acquiring lands zoned agricultural and not serviced was curious or questionable
26 or open to considerable debate, isn't that fair to say?

27 A. Yes, that's correct, yes.

28 Q.19 I think you have a, quite a different view on that issue, is that correct?

29 A. Yes, I do. I expressed that view to Mr. Gallagher in the course of the
30 examination.

1 Q.20 Yes. And if I could take you then to Section 22 of the Act? Section 22.1.
2 "It should be the duty of a planning authority to take such steps as may be
3 necessary for securing the objectives which are contained in the provisions of
4 the Development Plan."

5
6 Now in your understanding of the legislation and the way in which planning and
7 development processes worked under the 1963 Act at the time, Mr. Caldwell, how
8 does that statutory provision accord with your view, your view, as we
9 recollect, is that zoning comes first and services come later. How does that
10 statutory provision, as you understand it, fit into your view?

11 A. As I understand it it fits in with my view, which is that the -- it is a much
12 more sensible policy to zone lands and to follow that with services than it is
13 to put services in the ground for land which may never be zoned and -- I think
14 that the intention of this section reflects that approach, philosophical
15 approach to planning, to rezoning.

16 Q.21 What's the potential consequence for a local authority and consequently the
17 State, if major expenditure is incurred and substantial infrastructure and
18 servicing supplied to lands which are at that time unzoned, what are the
19 potential consequences there?

20 A. Well there is significant expenditure incurred which may not come to, may not
21 be utilised in any productive fashion by rezoning land and subsequently dealing
22 with services issues. It enables the local authority or the State to charge
23 the developers for those services and to get a contribution from those
24 developers towards those services and to plan that infrastructure on a more
25 rational basis, but this -- this is a layman's view of what, of what should
26 occur in relation to it. I am not a planner.

27 Q.22 Of course, but your view as a layman is relevant because your view was sought
28 by Mr. Gallagher, that's the reason I am asking you those questions?

29 A. Yes, I understand.

30 Q.23 Mr. Gallagher obviously considers it to be of relevance. That's the only

1 reason I am asking you.

2

3 Mr. Caldwell, I am not sure, as I said, what papers you have in front of you
4 just now, but there are two documents which I would like you to have in front
5 of you for my next question and the first is a letter to your then solicitors
6 of the 19th of June 2000 from the Tribunal and the second is a statement of
7 yours of the 4th of September 2000, following that letter. Whether you have
8 those and if you don't, whether you can be provided with them? They have been
9 touched on already in evidence, Chairman, in the last few days.

10 A. I have the 19th of June, 2000 and --

11 Q.24 Yes the 19th of June, 2000?

12 A. Yes.

13 Q.25 And then that was followed Mr. Caldwell by a three-page document from you of
14 the 4th of September 2000, do you have that at the moment?

15 A. Yes, I do.

16 Q.26 You do. I just want to ask you some brief questions arising out of, or
17 relating to those documents.

18

19 MR. GALLAGHER: The letter of the, sorry Mr. Finlay the letter of the 19th of
20 June is found on page 631.

21

22 MR. FINLAY: Yes, sorry I forgot to mention the page numbers. The letter of
23 the 19th of June 2000 is page 631 and the next document, Mr. Caldwell's
24 document is page 634.

25 A. Yes, I have those documents.

26 Q.27 You have both of those?

27 A. I have both of them, yes.

28 Q.28 First of all, you recollect, Mr. Caldwell, being asked questions by
29 Mr. Gallagher in relation to your document of the 4th of September 2000, page
30 634?

1 A. Yes, I do.

2 Q.29 And I think it's correct to say that throughout that questioning, which was at
3 a very early stage in your evidence, and I accept that it was rectified in
4 other respects later, but at that stage in your evidence Mr. Gallagher was
5 questioning you when you didn't have the letter of the 19th of June 2000 in
6 front of you, isn't that correct?

7 A. That's correct, yes.

8 Q.30 And I think that Mr. Gallagher, in that context, suggested to you that the --
9 that your statement of the 4th of September 2000 had been misleading by
10 omission, you recollect that question?

11 A. Yes, I do.

12 Q.31 Being questioned about that. Now I think that since that event, which happened
13 early on the first day of your examination, you have had an opportunity to
14 review the whole of that correspondence, is that correct?

15 A. Yes, I have.

16 Q.32 Including the letter from the Tribunal of the 19th of June 2000, I would just
17 like to ask you some questions about it. About the entire correspondence.

18

19 First of all, is it correct that the letter or the statement from you of the
20 4th of September 2000 was intended as a reply to the letter of the 19th of June
21 2000?

22 A. Yes, it was.

23 Q.33 Secondly, is it correct that the letter of the 19th of June 2000 asked you a
24 number of discrete and specific questions?

25 A. Yes, it did.

26 Q.34 And only asked you a number of specific and discrete questions, in the sense
27 that it didn't, at any point, ask you for a narrative statement, isn't that
28 correct?

29 A. That's correct.

30 Q.35 Can you just turn to that letter of the 19th of June 2000? It reads as

1 follows:

2

3 "Dear Sir, the Tribunal has received information to the effect that substantial
4 monies were paid to elected members of Dublin County Council by or on behalf of
5 Paisley Park Investments Limited and/or Jackson Way Properties Limited for the
6 purpose of securing the rezoning of lands at Carrickmines being the lands
7 comprised in Folio 4940 County Dublin; prior to the making of 1993 Dublin
8 County Development Plan, and the current Dun Laoghaire/Rathdown County
9 Development Plan.

10

11 The Tribunal is inquiring into that matter, pursuant to paragraph A5 of its
12 amended Terms of Reference. Inquiries by the Tribunal have shown that in
13 August 1988 a caution was registered on the folio on behalf of Paisley Park
14 Investments Limited who were described as "Contractual Purchasers" of folio
15 4940. That company was registered as full owner on 8th of December 1992. The
16 company had been incorporated in the Isle of Man in 1987 and the original
17 holders of the share capital are as follows:

18 1. Maskani Management Limited, 12 Mount Havalock, Douglas, Isle of Man.

19 2. Renzenbrinck Investments Inc, Villa Espania, 122 Bank of Boston
20 Building, Panama; and

21 Xenon Limited, of Nava Building, Tortolla, British Virgin Islands.

22

23 Paisley Park Investments Limited appointed a liquidator in March 1992 following
24 which Jackson Way Properties, a UK registered company, was registered as owner
25 of the lands in question.

26

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

30

1 The Tribunal is aware that Consulting Engineering and Planning Consultants were
2 engaged by or on behalf of Jackson Way Properties Limited to forward
3 submissions to Dun Laoghaire/Rathdown County Council setting out reasons why
4 the lands in question should be rezoned. In addition an architect recently
5 made submissions on behalf of Jackson Way Properties Limited to the council in
6 relation to the lands in question in the context of the Carrickmines Great
7 Action Plan."

8
9 As in distinction to the Carrickmines Great Action Plan, I don't know if that's
10 clear?

11
12 "The Tribunal is also aware that part of the lands comprised in Folio 4940 has
13 been rezoned". And then appears the following "In order to assist the Tribunal
14 in it's investigations, the Sole Member has asked me to write to you."

15
16 That, of course at the time, was your solicitor.

17
18 "To write to you to inquire whether your client John Caldwell has or had a
19 beneficial interest in (a) the lands comprised in Folio 4940 County Dublin
20 and/or (b) Paisley Park Investments Limited and/or (c) Jackson Way Properties
21 Limited and/or (d) Maskani Management Limited and/or (e) Renzenbrinck
22 Investment Inc and/or (f) Xenon Limited.

23
24 If the answer is in the affirmative in relation to all or any of the foregoing,
25 please state.

- 26 1. The nature you have in your client's interest in such lands and/or company.
27 2. The date when such interest was acquired.
28 3. If the interest has been disposed of, when and to whom was such interests
29 disposed of.
30 4. Whether your client, directly or indirectly, and whether on his own behalf

1 and/or on behalf of any other person or persons or legal entity gave or
2 provided any monies or benefits to or for any politician and/or officials
3 and/or any other persons in relation to the said land and whether in relation
4 to attempts to secure the rezoning there of or otherwise.

5 5. If the answer to question 4 is in the affirmative please furnish full
6 details of all such monies and/or benefits indicating, without prejudice, to
7 the generality of this question the following: (a) The name or names of all
8 the parties concerned. (b) The monies or benefits provided and the dates
9 thereof. (c) The purpose for which the monies and benefit were provided. (d)
10 The amount or amounts of monies and/or benefits paid or given.

11
12 I would appreciate if you would let me have the information sought by 4pm on
13 the 23rd of June 2000"

14
15 So am I correct in understanding or perhaps should I say was your
16 understanding, that as appears from the letter your solicitor was asked to
17 inquire from you, as to your beneficial interest in the lands at (a) and the
18 companies at (b) to (f)?

19 A. Yes, that's correct.

20 Q.36 And that those were the questions you were asked?

21 A. Yes, they were.

22 Q.37 And if the answer to any of those questions was in the affirmative, there were
23 then subsidiary questions relating to the nature of your interest, the date of
24 acquisition of your interest, and the disposal of your interest, if such had
25 occurred, isn't that correct?

26 A. That's correct.

27 Q.38 In addition to those inquiries from the Tribunal, is it correct that there was
28 an inquiry in relation to the giving by you, either directly or indirectly,
29 nothing turns on it for present purposes, of monies to politicians?

30 A. Yes, there was.

1 Q.39 So you were asked about beneficial ownership, your beneficial ownership and you
2 were asked about monies given by you or on your behalf directly or indirectly,
3 to politicians and officials, is that correct?

4 A. That's correct.

5 Q.40 And is it also correct that nowhere in that statement, in that letter, were you
6 asked to provide a narrative statement?

7 A. That's correct.

8 Q.41 Now Mr. Caldwell, just for completeness, you then replied to that letter in
9 your statement of the 4th of September 2000?

10 A. Yes, I did.

11 Q.42 And if I can just, for present purposes, start at the fourth paragraph of your
12 reply:

13

14 "However the Tribunal have asked certain questions of me whether I have or had
15 a beneficial interest in (a) The lands comprised in Folio 4940 County Dublin
16 and/or (b) Paisley Park Investments Limited and/or (c) Jackson Way Properties
17 Limited and/or (d) Maskani Management Limited and/or Renzenbrinck Investment
18 Inc. and/or Xenon Limited and if the answer was in the affirmative in relation
19 to all or any of the foregoing to please state."

20

21 And then it goes on to set out the rest of the queries which we have already
22 read in the letter from the Tribunal, is that correct?

23 A. That's correct.

24 Q.43 As far as you were concerned, then and now, were you there correctly setting
25 out what you understood to be questions asked of you by the Tribunal?

26 A. Yes, I was.

27 Q.44 And you then went on to deal with those queries and you deal with those at (a)
28 and (b), isn't that correct?

29 A. Yes.

30 Q.45 You refer to: "The lands comprising Folio 4940 County Dublin are registered in

1 the name of Jackson Way Properties Limited, and they have been so registered
2 since on or about the 5th of May 1994. Mr. Holland is the director of the
3 company.

4 (b) Paisley Park Investments Limited was an Isle of Man company registered in
5 or about 5th day of March 1987 and Mr. Bullock and Mr. Harker are the directors
6 of the said company." Isn't that correct?

7 A. Yes.

8 Q.46 And on the second page then in relation to ownership you referred, at the
9 fourth last paragraph, to the liquidation of Paisley Park, distribution of it's
10 assets in specie, to the fact that the lands in Folio 4940 were transferred to
11 Jackson Way as nominee from Renzenbrinck former shareholders Paisley Park
12 Development Limited and you stated the lands were held to your order, isn't
13 that correct?

14 A. That's correct.

15 Q.47 And that reference there has been fully explained subsequently, in terms of
16 what it actually means. We know now what your evidence is in relation to
17 beneficial ownership and we have had hours and hours of that, so I am not going
18 to trawl over that again?

19 A. Yes.

20 Q.48 But that is what that is intended to refer to, isn't that correct?

21 A. Yes, that's correct.

22 Q.49 And then at the end of the letter, or the second last paragraph you dealt with
23 the other query asked of you which is the reference to, or the question about
24 monies paid by you to politicians and officials?

25 A. That's correct.

26 Q.50 And you said you hadn't ever. Isn't that correct?

27 A. That's correct.

28 Q.51 And then the letter concluded, or statement concluded:

29

30 "If there are any matters arising from this statement, which the Tribunal of

1 Inquiry into certain Planning Matters and Payments wishes to seek clarification
2 on, I will certainly seek to assist them." Isn't that how it ends?

3 A. That's correct.

4 Q.52 Just so that the picture is complete, as you will recollect the sentence on, in
5 that letter in respect of which you were repeatedly questioned and challenged
6 and pressed by Mr. Gallagher, was one sentence on the second page. Which is
7 the sentence which refers to Mr. Bullock. You remember that?

8 A. Yes, I do.

9 Q.53 Mr. Bullock of Maskani Management Limited directed Paisley Park Limited to
10 appoint Mr. Kennedy to act as it's agent for purchasing the lands at Folio 4940
11 County Dublin. Now just in relation to that, first of all, you have confirmed
12 that you hadn't been asked, as is clear, for any narrative statement?

13 A. That's correct.

14 Q.54 Did you in anyway intend this to be a complete narrative statement?

15 A. No, I did not.

16 Q.55 In your understanding then and now, was Mr. Bullock relevant to any of the --
17 in your understanding, was Mr. Bullock relevant to any of the questions which
18 had actually been asked?

19 A. No.

20 Q.56 The letter, as we have seen, invited the Tribunal to raise any further query
21 which they wished for clarification, did they? Did the Tribunal raise any
22 query arising out of this short statement?

23 A. They raised a query in relation to the meaning of "held to my order."

24 Q.57 Yes and that is, isn't that a matter that you dealt with extensively later on?

25 A. That was dealt with in subsequent correspondence, yes.

26

27 CHAIRMAN: Sorry just -- can I just, before you leave this topic,
28 Mr. Caldwell, you were asked in the letter from the Tribunal two particular
29 questions which might be reasonably described as straightforward and simple.
30 One was -- at least your solicitor was asked, did John Caldwell, had he ever

1 had or has he ever had a beneficial interest in and then the lands and the
2 companies were listed. And then further down, in the letter from the Tribunal
3 the question was asked to give details as to the nature of your client's
4 interest in such lands and/or companies.

5
6 Now the statement that you gave on the 4th of September in response to that,
7 and I accept that it was specifically designed not as a general statement or
8 narrative, at the same time a statement, but it was a response to the various
9 queries that had been raised by the Tribunal, and in your response you didn't
10 deal with either of those questions. You gave a very detailed, in fairness to
11 yourself, you gave a very detailed account of the history of the various
12 companies and so on, but those specific queries were not addressed by you in
13 the, in your response, do you accept that?

14 A. I didn't -- I agree, Chairman, that I didn't use the words or refer to
15 beneficial ownership in the response.

16

17 CHAIRMAN: But isn't it more than that? Isn't it a fact that those specific
18 queries were not addressed by you? You gave a very detailed history of the
19 various companies and so on, but the only possible response to those very
20 important questions put by the Tribunal and which presumably you would have
21 been aware were vital for their inquiry, your only response was that the lands
22 are held to my order, which I have to suggest to you, is a meaningless phrase
23 if you are asked had you any beneficial ownership or entitlement in the
24 property. Would you agree with that?

25 A. I certainly didn't intend it to be --

26

27 CHAIRMAN: I accept that. But looking back at it now, would you accept that
28 that is a fair comment, that you didn't deal with those particular questions
29 and that the term, the lands are held to my order, is, I would suggest, a
30 meaningless phrase or a phrase that could mean all sorts of things. It could

1 mean a Power of Attorney, where, or if you were acting in some capacity as a
2 trustee?

3 A. I was probably being overly legalistic with it from this tax driven point of
4 view that I had in relation to it.

5

6 CHAIRMAN: But I mean, the term, the lands are held to my order, isn't
7 legalistic term that I am aware of?

8 A. Yes, but I had a particular, as I have explained in terms of the beneficial
9 ownership side of it, I had a particular notion in my mind as to what the
10 situation was in relation to it. Certainly looking back in hindsight it would
11 have been a simpler answer to say I had no beneficial ownership in relation to
12 it and the lands are held to my order and that would have completed the
13 response.

14

15 CHAIRMAN: But that wouldn't have given the Tribunal the impression or
16 understanding it now has, that if the lands were to be sold and the companies
17 liquidated, that you would have had an entitlement to be paid half the net
18 proceeds. I mean nobody could have got that meaning from the response that you
19 gave, and even if you had added the words: "I don't believe I have any
20 beneficial interest -- " I have to suggest to you that the intent of the
21 response from you was to suggest to the Tribunal that other than your duty to
22 act in sort of a, as a trustee or as a, on foot of a Power of Attorney or
23 possibly as a solicitor, that you had no further interest in the land and that
24 you weren't entitled to benefit in way shape or form in the event that the
25 lands were sold or the companies were liquidated?

26 A. It was certainly to suggest that I didn't have a beneficial ownership in it,
27 yes, I accept that, in relation to it. It's something that could have been
28 more expansively dealt with in that letter. It was subsequently more
29 expansively dealt with in subsequent letters.

30

1 MR. FINLAY: Chairman, just to be fair to Mr. Caldwell, by the way, this wasn't
2 the issue that I was examining him about. You have now raised another issue
3 which wasn't the issue Mr. Gallagher raised and isn't the one I am asking
4 about, I have a simple question to put to him at the end of this I wanted to
5 put all of this in context. But to be fair to him, if Mr. Caldwell had written
6 back and said simply: "I have no beneficial interest, " which is the legal
7 position, imagine the chaos which might subsequently caused arising out of
8 that. He would have been entitled to do that. He was asked had he a
9 beneficial interest.

10
11 CHAIRMAN: He was asked that question.

12
13 MR. FINLAY: Yes. And the -- all the subsidiary questions as I read it,
14 Chairman, just to be fair to Mr. Caldwell I have no wish to get into a great
15 debate about it, but to be fair to Mr. Caldwell, whether you have or have not
16 and if the answer is in the affirmative then he is asked subsidiary questions
17 but only if the answer is in the affirmative and on a strict view, I emphasise
18 on a strict view, on the evidence which he has most carefully described in the
19 first couple of days and which cannot be gain-said, Mr. Caldwell does not have
20 a -- what the law understands as a beneficial interest in any of those
21 companies. And my view, and merely as a mere senior counsel here, he could
22 have been entitled to respond to that letter, no, I have no beneficial
23 interest. If he had said that, which would have been legally correct, none of
24 the subsidiary questions would have arisen. Now I realise all of this is
25 historic and expanded on in later correspondence and to some extent it is
26 somewhat academic, but with great respect, there was a question on subsidiaries
27 which only arose if the answer to the first question was yes.

28
29 CHAIRMAN: I accept what you are saying, but he did not answer the question,
30 which was a hugely important question, he had or did he have a beneficial

1 interest in the --

2

3 MR. FINLAY: He didn't answer it in terms. My point is slightly different
4 Chairman, if he had answered the question: "No, " he would have answered the
5 question. But I suspect that he would have got himself into great trouble,
6 potentially with Counsel for the Tribunal if he had simply said: "No. "
7 But it would have been the correct answer as a matter of law. That's my point.
8 If he had said: "No" The subsidiary questions wouldn't have arisen, and the
9 correct answer, as a matter of law was: "No." Instead of saying nothing, "I
10 have no beneficial interest, " what he said was: "The lands are held to my
11 order."

12

13 My understanding, with respect, of saying something is held to your order means
14 you control the disposition of the asset. That's my understanding of something
15 to be held to my order. If I have monies held to my order, if I have assets
16 held to my order, I control the disposition of them, and in many ways, as I
17 have understood his evidence, listening to it on Thursday and Friday, that's
18 the effect of the structure which Mr. Caldwell has created for tax planning
19 reasons. He controls the disposition, and the control of disposition means you
20 can control the disposition to yourself or to somebody else. Now, unless I
21 misunderstood his description of his structure, that is in fact the position
22 that he tried to describe to Mr. Gallagher on Thursday and on Friday. He
23 controls ultimately the disposition of those assets and the destination of
24 proceeds. He controls that. And that, in my simple view of things, is not
25 dissimilar from the concept of holding something to your order.

26

27 But all I am saying is, with the very greatest of respect, it seems to me that
28 he would have been entitled, as a matter of law, to say: "I have no beneficial
29 interest. " He went further than that because that might have, might have
30 subsequently been considered to mislead although I don't believe it would have

1 been misleading as a matter of law. He said: "The lands are held to my
2 order," which clearly indicated to a reader that he had a capacity in relation
3 to the lands. He had the capacity to direct the disposition of the lands and
4 all of this of course -- first of all, the letter invited further clarification
5 and when that was sought it was given, so to some extent it is a matter of
6 history, but I would like to, for once, try and question him on that issue, it
7 is -- it is not unreasonable to characterise it as I have just tried to do.

8

9 CHAIRMAN: All right.

10

11 MR. FINLAY: But can I just say all of this has only one purpose at the end of
12 the day and I will, it leads to one question which I am going to come to now
13 and if I may it put it, I would like --

14

15 Mr. Caldwell, whatever the debate that has just taken place between you and the
16 Chairman and me the only question with all the background I want to ask you is
17 this: Against the background I have described, when you furnished that
18 statement of the 4th of September 2000 did you in anyway, whatever the
19 understanding on this side, did you in anyway intend that to mislead the
20 Tribunal?

21 A. Absolutely not.

22 Q.58 And subsequently, when you were asked, when you were asked for a narrative
23 statement we know that of course you did furnish a narrative statement?

24 A. Yes, I did.

25 Q.59 In fact narrative statements in the plural?

26 A. Yes.

27 Q.60 Isn't that correct?

28 A. That's correct.

29 Q.61 Now just in relation to that Mr. Caldwell, I think because of your role you
30 have been furnished, you were furnished with the Carrickmines 1 brief and as

1 part of that you have seen the statements which were furnished to this Tribunal
2 for the purposes of this module, isn't that correct?

3 A. Yes, I have.

4 Q.62 Now, obviously as you know, there are different categories of witnesses in this
5 sense before this module, there are witnesses who have -- there are witnesses
6 who have made allegations of corruption, and there are witnesses against whom
7 allegations of corruption have been made, isn't that correct?

8 A. That's correct.

9 Q.63 And isn't it correct to say, as we know, that you fall into neither of those
10 categories?

11 A. That's correct.

12 Q.64 You are neither a witness against whom any allegation of corruption has been
13 made nor are you a witness who has made any allegation of corruption?

14 A. That's correct.

15 Q.65 Now you have, I think, reviewed all the statements that have been made. You
16 have seen the statements that have been made for this module by all the
17 witnesses, including witness who have made allegations of corruption and
18 witnesses against whom allegations of corruption have been made, isn't that
19 correct?

20 A. That's correct.

21 Q.66 And I think it is fair so say, that of all of the witnesses, including
22 witnesses in those categories, I think it is fair to say, that the narrative
23 statements furnished by you to this Tribunal for the Carrickmines 1 module
24 either by you or on your behalf through your solicitor, both in their extent
25 and in detail, are far greater in volume than any statements furnished by any
26 of the other witnesses in any of the other categories including Mr. Dunlop,
27 isn't that correct?

28 A. Yes, I believe that to be the case.

29 Q.67 And I think that it is also correct that as well as furnishing those statements
30 to which I have referred, you have also extensively dealt with correspondence

1 from the Tribunal, voluminous correspondence and queries and responded to
2 those, isn't that correct?

3 A. Yes. Yes, I have.

4 Q.68 And I think it is also correct to say that for the purposes of this module
5 alone, for the purposes of this module alone, you have carried out extensive
6 work for the purpose of locating, assembling, reviewing, analysing and
7 ultimately listing, in affidavit form, for the purpose of discovery, some 6,000
8 to 10,000 documents, isn't that correct?

9 A. That's correct.

10 Q.69 And in addition to that and during the currency of this module when you have
11 been carrying out all of that work for the purposes of this module, isn't it
12 also correct that you have been researching, locating, assembling, analysing,
13 assessing, and listing further documents, with a view to assisting the Tribunal
14 on other matters which have now been discovered to the Tribunal, amounting to
15 an additional, I think between 15,000 and 20,000 documents, is that correct?

16 A. Yes, that's correct.

17 Q.70 Finally, Mr. Caldwell, in the context of what you have just described, in the
18 most approximate form, could you give any sense to the Tribunal of the volume
19 of time that you have committed to the Tribunal's affairs, over the period
20 which has passed?

21 A. Since the passing of the Brendan McGowan module, which is the one when it
22 arose, I spent thousands upon thousands of hours on Tribunal business. To a
23 very large extent, significant parts of my business and personal life have come
24 to an end in dealing with Tribunal matters, I have had to deal with letters
25 that, on a very regular basis -- I have had to deal with finding documents
26 cataloguing documents, following this module. It's been an endless process
27 going on for two years at this stage.

28

29 I have thrown my time, energy and considerable amounts of money into complying
30 with the requirements of the Tribunal and trying to assist it in every way I

1 possibly can.

2 Q.71 Thanks, Mr. Caldwell?

3 A. Thank you.

4

5 CHAIRMAN: Do you want to say anything Mr. Gallagher?

6

7 MR. GALLAGHER: Thank you, Chairman.

8

9

10

11 MR. CALDWELL WAS RE-EXAMINED BY MR. GALLAGHER AS FOLLOWS:

12

13 Q.72 MR. GALLAGHER: Mr. Caldwell, when did you first tell Mr. Dunlop that you had a
14 beneficial interest, and you may not have used those words, you know what I
15 mean, that you had a financial interest in the lands in Carrickmines?

16 A. I don't actually recollect having a conversation with him about that. Even in
17 the 1999 time that we talked about yesterday, I don't believe at that stage
18 that he would have realised that I actually had an interest in the sense that
19 we have talked about before in Carrickmines.

20 Q.73 Well he, according to his evidence, brought you along to a meeting with an RTE
21 reporter, on the basis that you were the owner of the lands in question?

22 A. Yes --

23 Q.74 You have heard his evidence to that effect?

24 A. I have read his evidence to that effect, yes. That was part of this media
25 management exercise that he was trying to do in 1999. I don't think that for
26 one moment he believed that I was the owner of Carrickmines.

27 Q.75 Well, you understand that the purpose of the meeting was to represent to
28 Charlie Bird that in fact you were the owner of the lands?

29 A. Yes, it was to put a face on the Jackson Way lands.

30 Q.76 And you allowed yourself be used in that way?

1 A. Yes, I did.

2 Q.77 For the purposes of misleading a journalist?

3 A. For the purpose of conveying that to the journalist, yes.

4 Q.78 For the purposes of misleading a journalist?

5 A. Yes, absolutely. I suppose, yes.

6 Q.79 So for all the years that you have dealt with and during all the years that you
7 dealt with Mr. Dunlop in relation to the Carrickmines lands, from 1989 up to
8 now, as I understand your evidence, you never conveyed to him or made him aware
9 that you were, what you say effectively one of the true owners of those lands,
10 I accept when I say owners I understand about structures and all that sort of
11 thing, you understand it is shorthand for what you say, the interest that you
12 say you have?

13 A. Yes. I don't believe I did.

14 Q.80 Now, Mr. Finlay started his questioning of you by referring to the Baldoyle
15 lands. My understanding of the Baldoyle lands is that an option agreement was
16 acquired by a company called Bauval?

17 A. That's correct.

18 Q.81 And that is the option agreement you describe as the Kennedy agreement?

19 A. That's correct.

20 Q.82 And in answer to a question by Mr. Finlay, you said that yourself and
21 Mr. Lawlor had an interest in those lands and I think that the transcript, I
22 may say so confirms, at page 60, question 35 of yesterday's evidence, that's
23 417: "And the option was granted to -- " This is the question: "And the
24 option was granted to a company called Bauval Limited, a company with which
25 yourself and Mr. Lawlor were involved? " Answer: "Yes, that's correct. "

26

27 In fact there were three of you. Mr. Kennedy, Mr. Lawlor and yourself?

28 A. That's correct.

29 Q.83 And what percentage, what proportion?

30 A. Mr. Kennedy was 50 per cent, Mr. Lawlor was 25 per cent and I was 25 per cent.

1 Q.84 Am I correct in thinking that the company Bauval Limited which was incorporated
2 in the Isle of Man, had registered offices at 29/30 Duke Street, Douglas, Isle
3 of Man?

4 A. It was incorporated in the Isle of Man. I can't be certain as to the
5 registered office but that was a registered office.

6 Q.85 The directors were Martin Bullock, Jennifer Shade and David Moore in November
7 of 1989?

8 A. That's probably correct, yes.

9 Q.86 That your name, Mr. Lawlor's name and Mr. Kennedy's name did not appear
10 anywhere on the company records of Bauval Limited?

11 A. No, they wouldn't have.

12 Q.87 Would it be fair to say that you were anxious to preserve your privacy, you did
13 not want it known that you had a share in the option agreement?

14 A. From a structural point of view I would have structured -- my part would have
15 been structured the same as in other matters.

16 Q.88 As in Carrickmines?

17 A. Yes.

18 Q.89 In other words, you were endeavouring to not disclose, or have made public,
19 your share in that, in the option and the lands?

20 A. Yes, that's correct.

21 Q.90 And in the profits actually?

22 A. Yes, that's correct.

23 Q.91 And did that position obtain up to fairly recently?

24 A. Well --

25

26 MR. FINLAY: Sorry Chairman, before Mr. Caldwell is asked to answer that
27 question, I would be very glad to understand, at this point in time, the
28 procedure being adopted by the Tribunal. It would be of assistance to me
29 personally in this context:

30 As the Tribunal is aware, the issue of Baldoyle was introduced by me originally

1 and it was referred to by me in my questions to Mr. Caldwell in a most specific
2 and limited context because of the concerns expressed by Mr. Gallagher. And
3 those concerns were that no aspect of Baldoyle, no aspect of Baldoyle which was
4 to be the subject of a future module, we have been told, no aspect of Baldoyle
5 was to be touched on, unless it was relevant to the issues that I identified in
6 my opening yesterday, before I asked any question of Mr. Caldwell.

7
8 I was, I hope, meticulous in confining myself to that, as you will recollect
9 the only relevance of Baldoyle to this module -- but as I say yesterday, I
10 repeat, I believe it has a critical relevance but a very narrow relevance, is
11 to the credibility of certain evidence given in this module.

12
13 Now the only aspect of Baldoyle I have ever become familiar with or discussed
14 with Mr. Caldwell to date, is directed to that limited end. And I, if
15 Mr. Gallagher now wishes to pursue aspects of Baldoyle which have no relevance
16 to the evidence of Mr. Dunlop in January 1991, which is the only relevance of
17 Baldoyle, as I understand it at the moment. The first point is that I am not
18 at present qualified, shall I put it that way, to in any way represent
19 Mr. Caldwell and this is not a defensive position, I am absolutely sure, there
20 will be no problem in due course, I merely point to the fact that the history
21 of this is clear.

22
23 If Mr. Gallagher, as he now appears to be, is touching on other aspects of
24 Baldoyle, which I am sure will be of great interest to him in due course, today
25 at whatever time it is, I am not in a position to deal with them.

26
27 CHAIRMAN: All right, Mr. Gallagher --

28
29 MR. GALLAGHER: I, Sir, am dealing with the evidence that was given by this
30 witness yesterday, where he discussed and told the Tribunal about his

1 involvement with the lands in Baldoyle. He has referred to the Bauval
2 agreement, he identified that company in his statement and he has talked about
3 his dealings with Mr. Dunlop in relation to the Baldoyle lands. That's what I
4 am going to ask him about and ask him some questions but, but in order to do
5 that I wanted to establish what the position, factual, was at that time in
6 relation to the company.

7
8 CHAIRMAN: But I think Mr. Finlay is quite understandably concerned that we
9 are now getting into Baldoyle to a greater degree than was deemed appropriate
10 and necessary in the last few days.

11
12 MR. GALLAGHER: Only because of the evidence that has been given by this
13 witness yesterday. And I think if you will permit me to continue with the
14 questions, you will see that it is relevant, that it does arise.

15
16 CHAIRMAN: Well on the basis that it is for the purposes of clarifying or
17 dealing with --

18
19 MR. GALLAGHER: That's the only reason.

20
21 CHAIRMAN: Querying evidence given yesterday, but not beyond that.

22
23 MR. GALLAGHER: No I have no intention of going beyond it.

24
25 CHAIRMAN: Mr. Finlay, that seems to be reasonable so long as it isn't -- so
26 long as the purpose of Mr. Gallagher's questioning isn't to elicit additional
27 information about Baldoyle, beyond where we touched on it yesterday and the day
28 before.

29
30 MR. FINLAY: Of course. The issue, as Mr. Gallagher fairly mentioned just now,

1 is Mr. Caldwell's dealings with Mr. Dunlop and Baldoyle is only relevant
2 insofar as it relates to that. That was the purpose of the evidence. If these
3 questions are directed to Mr. Caldwell's dealings with Mr. Dunlop they come
4 within the ambit of what was permitted yesterday, anything beyond that does
5 not.

6

7 CHAIRMAN: All right well that's fine.

8

9 MR. GALLAGHER: Yesterday you also mentioned a company called Edington
10 Limited?

11 A. Yes, I did.

12 Q.92 Can the Tribunal take it that you had no dealings, or had no interest in
13 Edington Limited?

14 A. I had no interest in Edington Limited.

15 Q.93 In other words you had no shareholding, beneficial holding, interest in the
16 sense --

17 A. Absolutely nothing.

18 Q.94 Edington was a separate, stand alone company with which you were not
19 associated?

20 A. That's correct.

21 Q.95 What was the relationship between Edington and Bauval?

22 A. Edington was the company that was associated with the landowner who was
23 granting the option to Bauval.

24 Q.96 You gave evidence yesterday that you had a meeting with Mr. Dunlop in November,
25 I think the 30th of November of 1989 and you said that that related to the
26 application for a Foreshore License which had been, which application had been
27 advertised in the newspapers some seven days earlier or thereabouts, is that
28 correct?

29 A. That's correct.

30 Q.97 And I think you have identified the date of the advertisement as the, about the

1 24th of November, I may be wrong?

2 A. About the 23rd, 24th. Yes, that's right.

3 Q.98 And you associate the placing of the advertisement, as I understand it, with
4 your meeting with Mr. Dunlop?

5 A. Yes, I do.

6 Q.99 You have, I take it, done research on the documents and I understood from the
7 question that was put to you yesterday by Mr. Finlay, that you have managed to
8 locate this advertisement after some searching?

9 A. Yes, a copy of it has --

10 Q.100 Was that the date on which the application was made?

11 A. It's the date that's on the notice that's in the newspaper.

12 Q.101 I see. Who made the application?

13 A. The application was made by David Galbraith on behalf of Edington to the
14 Department of the Marine.

15 Q.102 I see. When was that application made?

16 A. It would have been in or around the date that the notice appeared in the paper.

17 Q.103 I suggest to you that that application was made in July of 1989?

18 A. Well you may be correct in that. I would have expected it to be made around
19 the date of the application -- date of the notice in the paper.

20 Q.104 Arising from your evidence yesterday I did some -- looked at some documents,
21 perhaps you can have a hard copy, which indicates that Mr. Galbraith made an
22 application to the Department of the Marine on the 21st of July 1989, on behalf
23 of Edington Limited for the laying of the foul sewer?

24 A. Yes.

25 Q.105 Effectively for the Foreshore License?

26 A. Yes, I see the letter of the 21st of July.

27 Q.106 And it was, it would appear, that he was subsequently asked by the Department
28 of the Marine on the 15th of November 1989 to place advertisements in the Irish
29 Times, the Irish Press and the Irish Independent in relation to the application
30 and it would appear that it was following the writing of that letter by the

1 Department -- sorry, I can give you a copy of that letter -- the Department
2 wrote to Mr. Galbraithe on the 15th of November 1989:

3
4 "With reference to your application on behalf of Edington Limited for
5 permission under the Foreshore Act 1933 to lay a sewage effluent pipe at
6 Baldoyle, County Dublin, it will be necessary for you to complete the enclosed
7 notice relating to the proposal and to publish a copy of it in one issue of
8 each of the following newspapers: The Irish Times, Irish Press and Irish
9 Independent. Complete copies of the newspapers containing the notice should be
10 sent to the Department after publication.

11
12 In accordance with the terms of the notice, arrangements should be made to have
13 a copy of the site plan of the area and drawings of the proposed work sent to
14 An Ceannfort, Garda Siochana, Raheny. To be made available for inspection at
15 Howth Garda Station for the required period of 21 days."

16 A. I see the letter, yes.

17 Q.107 That is an application that was made by Edington with which you had no
18 involvement?

19 A. Yes, that's correct.

20 Q.108 And I take it that you did not disclose to Mr. Galbraithe or to anybody else
21 that you have had a beneficial interest in Bauval at that time?

22 A. No, I wouldn't have discussed something like that with Mr. Galbraithe.

23 Q.109 Well why then would you be approaching Mr. Dunlop in or about that time and
24 asking him to make representations on behalf of a company with which you had no
25 involvement to get a Foreshore License from the Department of the Marine?

26 A. The option had been in existence for nearly a year at that point in time. And
27 a planning application had been made in the name of Edington Limited. This was
28 one of the issues that arose on that planning and the intention was to exercise
29 the option and to take the land that this planning application was -- that the
30 planning application had been made in respect of and at that particular time,

1 at that time in November/December of 1989 there was a prospective sale of the
2 property to someone who wanted to build houses on it, so the two things were
3 being synchronised with each other at that stage.

4 Q.110Did you -- would you explain the circumstances in which you say you met Frank
5 Dunlop to elicit his help in persuading the Department of the Marine to grant a
6 Foreshore License on foot of the application that was before it?

7 A. Well the background to it was that we were preparing, I was preparing with
8 people in the office, a contract for the sale of the lands and one of the
9 issues that was there was this question of the Foreshore License. Would a
10 Foreshore License be got or not got in relation to it and I recollect special
11 conditions were put in the contract relating to that and the -- it was against
12 that background that Mr. Dunlop was contacted.

13 Q.111Where did you speak to him?

14 A. I don't recollect where it was, Mr. Gallagher, but I would suspect it was in
15 the office I spoke to him.

16 Q.112And what did you tell him on that occasion?

17 A. I would have just been asking him to find out what the position was in relation
18 to this, was there some way in which it could be expedited.

19 Q.113What fee did he nominate for this work?

20 A. I have no recollection of a fee being nominated.

21 Q.114Did you ask him what he would charge to do this work?

22 A. I have no recollection of speaking to him about fees.

23 Q.115Why did you think that he might be willing to go along and do this work for
24 nothing?

25 A. Well I was given his name, I recollect, by Mr. Kennedy, in relation to it.

26 Q.116I take it he was dealing with you as John Caldwell, Solicitor of Binchy and
27 Partners who was representing client or clients?

28 A. Yes, I would believe so. Yes.

29 Q.117He wasn't dealing with you as somebody who had a beneficial interest in the
30 lands or in the acquisition of acquiring or obtaining of the Foreshore License?

1 A. No, he wouldn't have been.

2 Q.118 We have had reason to believe therefore that if he did work for you, or for
3 your clients, that he would more correctly; your client; that he would be paid
4 for that work?

5 A. The normal course, when you would employ someone to do something like that,
6 would be that you would receive a fee invoice from them in due course, but I
7 have no recollection of ever receiving a fee invoice.

8 Q.119 Do you have any copy, any record in the various documents, in files that you
9 have looked at, of receiving any fee note from him for that?

10 A. I have no recollection of seeing something on that.

11 Q.120 What exactly did you ask him to do in relation to the Foreshore License?

12 A. My recollection is that it was to check on the position and see if there was
13 some way in which it could be expedited.

14 Q.121 Did he furnish you with a report in relation to that?

15 A. I have no recollection of him coming back to me in relation to it. My
16 recollection is, that he came on board to deal with the issue, those issues,
17 the situation in relation to the Foreshore License, my recollection of that is
18 that it -- it didn't progress to a conclusion and I can't recollect whether
19 that was because it was abandoned or because it issued, but I do know that the
20 person that took the land and subsequently built the services on it, put his
21 services down through a route, through a lean which was adjoining the lands.

22 Q.122 Well, if I stay with Mr. Dunlop just for the moment, do you have any
23 Solicitor's Attendance of your meeting with Mr. Dunlop or giving him
24 instructions in relation to the Foreshore License?

25 A. I don't. This is purely a recollection Mr. Gallagher.

26 Q.123 Do you have any document from Mr. Dunlop confirming that he had acted on your
27 instructions and had made inquiries in relation to the Foreshore License?

28 A. I don't. I do not.

29 Q.124 You don't have any fee note from him?

30 A. I do not.

1 Q.125 Do you have any correspondence with the owners of Edington or with Edington
2 Limited or indeed with Bauval, Mr. Bullock, confirming that Mr. Dunlop had been
3 engaged to look into the possibility of obtaining a Foreshore License?

4 A. I have no documentation.

5 Q.126 Why did you not rely on Mr. Galbraith and Mr. O'Connor to make the necessary
6 representations to the Department of the Marine in relation to the Foreshore
7 License?

8 A. Well the suggestion was made to me, as I recollect, by Mr. Kennedy to bring
9 Mr. Dunlop in to make representations, as I see from this correspondence the --
10 Mr. Galbraith had obviously lodged the application several months before and
11 had reached whatever point on the path of obtaining the license that he had, I
12 have no recollection of that.

13 Q.127 Did Mr. Dunlop ever set up a meeting with officials of the department to your
14 knowledge?

15 A. I have no recollection.

16 Q.128 Did Mr. Kennedy ever tell you that he had attended a meeting with officials of
17 the Department on foot of an arrangement made by Mr. Dunlop?

18 A. No, he didn't. Again I have no recollection.

19 Q.129 Can you identify any single step that was taken by Mr. Dunlop arising from the
20 meeting that you say you had and the instructions which you say you gave him in
21 relation to the Foreshore License?

22 A. No. My recollection -- the only recollection I have is as I have explained it.
23 I don't have any more background information or anything else in relation to
24 it. I know that the -- my recollection is that the Foreshore License ceased to
25 be an issue at sometime after the, it was an issue at the contract stage, but
26 sometime afterwards it ceased to be an issue so he may have just simply dropped
27 out of the picture altogether.

28 Q.130 Just so I am clear on it. You cannot identify any single step that was taken
29 by Mr. Dunlop arising from the meeting you say you had with him in relation to
30 the Foreshore License?

1 A. I can't recollect any Mr. Gallagher.

2 Q.131 Can you identify any by either recollection or by reference to a document or to
3 a record or a note or a memorandum or an entry in a ledger, entry into accounts
4 or anything of that nature?

5 A. No, other than the entry in the diary, I have no documents of any description.

6 Q.132 And you are relying on your memory which is not clear in some respects about
7 matters, about events at that time, you are relying on your memory to say that
8 the meeting which is recorded and referred to in your diary of the 30th of
9 November was a meeting which related to the Foreshore?

10 A. I am relying on my memory in that regard. I do have a memory of Mr. Dunlop
11 being instructed in relation to getting involved in it, the detail of it, I do
12 not have any memory of.

13 Q.133 How can you therefore say that the meeting of the 30th of November was a
14 meeting relating to the Foreshore?

15 A. I know that he -- I know that he was met in relation to the Foreshore. And I
16 know that at that time the Foreshore issue was a significant issue because it
17 was an issue in relation to the contracts that were in hand with the third
18 party who was buying from the option holder and it's designee, so --

19

20 MR. FINLAY: Chairman, with a view to expediting matters because we anticipated
21 that this would end at an earlier stage, I understood that from discussions
22 with Mr. Gallagher, I wonder if I could inquire, make inquiry of you and in the
23 following terms.

24

25 I have listened to the last 20 minutes, I don't begin to understand the
26 procedure which is now being adopted, I say that in the following context:

27

28 Mr. Gallagher, in his examination of Mr. Caldwell, Mr. Gallagher not me, lead
29 the evidence from Mr. Caldwell about the Foreshore License. He lead the
30 evidence that Mr. Caldwell had met Mr. Dunlop in November 1989 and that that

1 meeting was with a view to retaining him to lobby for the license. He lead the
2 evidence about the meeting on the 30th of November and that Mr. Caldwell
3 couldn't remember the terms on which Mr. Dunlop was retained and other
4 evidence. So he lead all of that evidence.

5
6 Now the extraordinary, in my limited experience of practice, this situation now
7 arises, having lead you will that evidence himself, Mr. Gallagher, he either
8 must be taken to have considered none of this questioning now, to have been
9 relevant at the time or alternatively, he must be taken to have considered all
10 of this questioning to be relevant when he lead the evidence but to have
11 deliberately withheld until after I had re-examined Mr. Dunlop and the members
12 will be well aware, well aware, that in my examination of Mr. Dunlop on this
13 issue, on this issue, it's apparent from the transcript, I added almost nothing
14 to what had already been lead by Mr. Gallagher. On the Foreshore License issue
15 I added almost nothing and certainly changed nothing from what had already been
16 lead by Mr. Gallagher.

17
18 So the position is as counsel, Mr. Gallagher, leading counsel to the Tribunal,
19 had the responsibility and has the responsibility of leading, leading from
20 Mr. Caldwell, against no -- who no allegation is made, relevant evidence. It
21 is to be taken by you and by me that he does that when -- when he finished
22 examined Mr. Caldwell about the Foreshore License, which he did, anything that
23 he was aware of at the time that he thought was relevant must have been put.
24 Mr. Caldwell -- Mr. Gallagher was of course in possession at that time of the
25 two letters, for example, that came out this morning, he never put those to him
26 and they weren't even disclosed to me until this morning, nothing turns on
27 that, but the principle is the important thing.

28
29 I then add nothing material to the issue of the Foreshore License and then
30 after my re-examination, Mr. Gallagher comes back to, as it would appear to me,

1 challenge the credibility of Mr. Caldwell's evidence which he has already lead
2 on the Foreshore License. In circumstances which nothing has been altered in
3 the meantime, that in the greatest of respect, is a procedure which I wholly
4 fail to comprehend, I don't know where it comes from, I don't know whether it's
5 been -- I can't believe it has been mandated by the Tribunal, it hasn't
6 appeared in any of the literature that I have read about the role of counsel to
7 Tribunal of Inquiry or the manner in which such a counsel should conduct the
8 examination of witnesses to the inquiry, all I can say is, that if it is the
9 procedure which is sanctioned by you and your co-members, it is novel and it
10 will certainly warrant further consideration as a way of proceeding. This
11 procedure alone, unknown anywhere else, as I understand.

12
13
14
15 MR. GALLAGHER: Can I say that, I think Mr. Finlay inadvertently referred to
16 his examination of Mr. Dunlop, and my examination of -- he mentioned Mr. Dunlop
17 rather than Mr. Caldwell just --

18
19 MR. FINLAY: I am terribly sorry.

20
21 MR. GALLAGHER: A slip of the tongue.

22
23 MR. FINLAY: I apologise for that.

24
25 MR. GALLAGHER: Can I say, Sir, the issue in relation to Baldoyle was raised
26 by Finlay on day 369, when he cross examined Mr. Dunlop in relation to Baldoyle
27 and his involvement in Baldoyle and suggested to Mr. Dunlop in broad terms that
28 Mr. Dunlop's dealings with Mr. Caldwell in 1991 were not the first dealings he
29 had, but that they had extensive dealings going back to 1989 and he put to
30 Mr. Dunlop on that occasion that the dealing -- that the transactions they had

1 in 1989, in particular related to the Foreshore License and in relation to the
2 concern that residents had in relation to proposed developments in that area.

3
4 MR. FINLAY: No, sorry, an important correction that related to 1990, not '89,
5 1989 was the Foreshore License. 1990 was the residents in Baldoyle.

6
7 MR. GALLAGHER: I don't intend to suggest otherwise, what was at issue was
8 whether or not Mr. Caldwell had met and had dealings with Mr. Dunlop, that
9 Mr. Dunlop did not tell this Tribunal about and which had occurred prior to the
10 17th of January of 1991. And it was put to Mr. Dunlop at that time that he had
11 in fact two different meetings and transactions with Mr. Dunlop in relation to
12 Baldoyle prior to the 17 of January, 1991 and they were, in broad terms, the
13 Foreshore issue, Foreshore License issue and dealing with residents objections
14 in the area.

15
16 Mr. Dunlop said he had no recollection, sorry Mr. Caldwell -- I beg your
17 pardon. I will start again.

18
19 Mr. Dunlop said he had absolutely no recollection of having dealt with
20 Mr. Caldwell in relation to Baldoyle prior to the 17th of January of 1991. I
21 asked Mr. Caldwell in examination certain things about Baldoyle, I tried to
22 keep it as tight as I could. I didn't want to get more deeply embroiled in the
23 Baldoyle issue than I actually did. Mr. Finlay chose, as was of course his
24 entitlement, to ask further questions, and in particular in the course of
25 asking questions of his witness, introduced an advertisement which he suggested
26 had been placed in relation to the Foreshore License on or about the 24th of
27 November of 1989. I hadn't seen that advertisement. I hadn't addressed my
28 mind to when the Foreshore License might have been applied for or not been
29 applied for. But having had sight of the advertisement, which I have to
30 confess I didn't read, but knowing that it was an advertisement which had been

1 placed on the -- around the 24th of November 1989, I decided to look up what
2 documents we had in-house in relation to the Foreshore License, I found the
3 application had been made and I found that yesterday evening and, for that
4 reason, I felt it was important that it should be put to the Tribunal and
5 should be put to this witness so he could have an opportunity of dealing with
6 it.

7
8 And it is for that reason and that reason only, that I introduced this document
9 at this stage. I was not aware of the extent to which Mr. Caldwell was going
10 to deal with his dealings with Mr. Dunlop, the dealings that he says took place
11 in 1989 and 1990 and having heard what he had to say, I felt that it was my
12 duty to ask him questions in relation to what he said about those matters, in
13 order to test his recollection and so that the Tribunal could have a clearer
14 appreciation of exactly what he says happened, given that Mr. Dunlop
15 emphatically denies that such meetings took place and such dealings took place.

16
17 Now if the Tribunal feels that I am in anyway being unfair to this witness,
18 then I of course will desist from asking the questions I am asking, but I do
19 think it is relevant. And if, in fairness to Mr. Finlay, and in fairness to
20 Mr. Caldwell, if the Tribunal feels that anything arises in relation to his
21 client which he should be allowed to address or come back on, then I am sure
22 that the Tribunal will facilitate him in this regard.

23
24 This is not a court of law. This is an inquiry and we inquire as best we can
25 in relation to matters as they arise. There is no question of entrapment or
26 anything of that nature. It is the same procedure that will apply depending on
27 the circumstances that obtain.

28
29 Now it may be that, for example, a witness will be recalled to give, to deal
30 with matters in the future. And the Tribunal is entitled to do that as part of

1 it's inquiries.

2

3 As I say, if I ask any question that's unfair or that Mr. Finlay should be
4 allowed to come back on, that he wishes to come back on, I suggest that the
5 Tribunal would facilitate him in that regard, but in the meantime I suggest
6 that I should be allowed to continue with the questions that I am addressing to
7 Mr. Caldwell.

8

9 MR. FINLAY: Just one tiny point of fact Chairman. Because Mr. Gallagher
10 hasn't really dealt with my point, I hear what he is saying but he hasn't dealt
11 with my point.

12

13 The point is this: On page four of a lengthy narrative statement which I
14 suggested to the then Chairman, and you three members who were already here, I
15 think, at the time, I suggested would be of assistance to the Tribunal, when I
16 was cross-examining Mr. Dunlop, that narrative statement was put together as a
17 result of considerable work and research by Mr. Caldwell. It's 11 pages long,
18 he went into considerable detail on relevant matters, the Tribunal welcomed the
19 suggestion of that statement, was anxious to have that statement, clearly
20 considered that the statement was relevant to the issues which I raised at the
21 time. The statement was prepared after considerable work and research by
22 Mr. Caldwell, it was submitted to the Tribunal in that context and against that
23 background.

24

25 Mr. Gallagher had that statement before he examined Mr. Caldwell.

26 Mr. Gallagher must be taken to be familiar with every single line of that
27 statement. He deliberately chose not to take Mr. Caldwell through certain
28 sections of it, in particular he chose not to ask Mr. Caldwell about the
29 following sentence in that statement and I quote:

30

1 "A notice of application for a Foreshore License to lay a foul sewer dated the
2 23rd of November 1989 was published in one of the national newspapers in
3 conjunction with an application to the Department of the Marine for a Foreshore
4 License", and quote again:

5
6 "Maps relevant to this application and the application itself were prepared and
7 processed by Mr. David Galbraith on behalf of Edington Limited. I recall
8 Mr. Kennedy thought there would be considerable local objection to the granting
9 affidavit for a Foreshore License"

10
11 Now Mr. Gallagher chose to decide not to lead that evidence from the statement
12 which he had and had had for a long time, he must be taken, either to have done
13 that because he took the view it wasn't relevant or as I said initially,
14 because he wanted to keep that in reserve for some form of credibility test or
15 ambush after I had re-examined Mr. Caldwell. There is no other possible
16 explanation. He was fully aware of the advertisement for the Foreshore
17 License, it is incorrect for him to suggest this morning that he only became
18 aware of it during Mr. Caldwell's evidence yesterday, therefore his attempt
19 today, to go back to that advertisement for the Foreshore License and discuss
20 it, is not explained by his submission just now, with the greatest of respect.

21
22 So it gets back to my final point, Mr. Gallagher is in charge here. He decides
23 what's relevant, it's his job. He examines on evidence that's relevant to him,
24 he does that and I re-examine, if he at the time of examining Mr. Caldwell
25 decided that the Foreshore License was irrelevant, that the notice for that was
26 irrelevant, that the advertisement was irrelevant, that Edington was
27 irrelevant, that was his decision, he should not now, suddenly, be allowed to
28 decide it is relevant after I examine and crucially, in the context of all of
29 this, particularly having regard to his remarks about Mr. Dunlop, I would ask
30 the Tribunal just to bear in mind the following:

1

2 First of all, the Tribunal is well aware that Mr. Dunlop was absolutely unable
3 to offer any explanation, any explanation at all, for his own diary entries of
4 meetings with Mr. Caldwell in 1990, couldn't offer any explanation and
5 secondly, it is notable and will be the subject of submissions in due course,
6 that Mr. Dunlop has chosen, chosen not to by counsel, to examine Mr. Caldwell
7 on this issue. He has not been here at any stage of Mr. Caldwell's evidence
8 and he is not here today, by counsel.

9

10 MR. GALLAGHER: I just want to repeat again very briefly, there was no
11 question of, no intention to ambush and I would ask the Tribunal to accept
12 that. That that is the position, and indeed Mr. Finlay to accept it.

13

14 CHAIRMAN: All right. It's our understanding that the Baldoyle aspect was
15 raised as an issue insofar as it related to or was relevant to evidence
16 concerning Mr. Caldwell's first dealings with Mr. Dunlop in relation to
17 Rathmines, sorry, Carrickmines. And in that context and that issue having, or
18 the Baldoyle issue having been raised in that context, Mr. Finlay introduced,
19 quite correctly, the advertisements which were dealt with in yesterday's
20 evidence. So, I think the Tribunal would be of the view that the questions now
21 being put to Mr. Caldwell should be confined to issues as arising in relation
22 to Baldoyle, but only insofar as it has been raised in that context.

23

24 And for the purposes particularly of testing Mr. Caldwell's recollection as to
25 his early dealings with Mr. Dunlop, in effect, the Baldoyle issue should only
26 be touched upon insofar as it relates to recollection and credibility.

27

28 Now whether that throws some light as to how the Tribunal views
29 Mr. Caldwell's -- or Mr. Caldwell's questioning should proceed or not, I am not
30 quite certain. If that doesn't deal with the position that is now arisen I

1 think we would have to rise to consider the matter, it is difficult to conduct
2 any thorough consideration of the points here, while we are sitting on the
3 bench but --

4
5 MR. GALLAGHER: I am quite happy to try and, if I stray beyond what --

6
7 CHAIRMAN: Obviously the Tribunal is keen on this occasion, as in previous
8 occasions, to ensure that one module doesn't make -- doesn't drift into other
9 modules otherwise the whole investigation procedure becomes unwieldy, but as I
10 understand it, Mr. Gallagher should be entitled, or is questioning Mr. Caldwell
11 on the basis of testing his recollection and testing his credibility in
12 relation to evidence given as to when he first had contact with Mr. Dunlop.

13
14 MR. FINLAY: There is no doubt that's what he is doing, the only issue is at
15 what point in time he does that whether he does in the examination or at this
16 stage. My point is very simply that all of this should and could have been
17 done in the first session, that's the only point. The only point.

18
19 CHAIRMAN: All right. Well -- Mr. Gallagher, do you accept then that
20 Mr. Finlay's point that there shouldn't be or it shouldn't happen that
21 Mr. Caldwell should be re-examined in relation to aspects of evidence which
22 have been touched on before by you in your initial cross-examination?

23
24 MR. GALLAGHER: Well I -- I think Mr. Caldwell or indeed any other witness can
25 and should be re examined if any issue arises and has been touched upon in his
26 examination by his counsel which relates to credibility and which relates
27 perhaps to the credibility of other witnesses, so that the Tribunal can have
28 the fullest possible picture.

29
30 It is not in anyway a situation where there is a defendant --

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CHAIRMAN: No but only -- yes, but only insofar as those issues have been touched upon previously, or haven't been dealt with previously.

MR. GALLAGHER: I would hope that that is the position. But if a situation arises where they haven't been touched upon, perhaps as extensively as they should or other clarification is required then that, I suggest, would have to be done. It may be that the Tribunal might, at a later stage, decide to recall a witness for further clarification. I would have thought that it is preferable to do it now and if somebody wishes to ask a supplemental question or another question arising from it then they should be entitled to do so.

I am simply seeking to elicit what -- the detail of the transactions that Mr. Caldwell said he had with Mr. Dunlop -- to see what he recalls about and to see what weight the Tribunal should -- and hopefully assist the Tribunal in determining what weight to give to Mr. Caldwell's evidence and indeed Mr. Dunlop's evidence about the alleged meeting.

CHAIRMAN: Do you wish to say anything else, Mr. Finlay?

MR. FINLAY: No, I think the point has been made and I hope understood.

CHAIRMAN: All right. If you want to elaborate on the point further. I think Mr. Gallagher -- insofar as Mr. Gallagher's examination of Mr. Caldwell is concerned this is somewhat different to a court case in the sense that he is not restricted merely to dealing with issues which have been raised by you in your examination of Mr. Caldwell.

The purpose of the inquiry is to carry out an investigation in the fullest possible sense.

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MR. FINLAY: Undoubtedly.

CHAIRMAN: And Mr. Gallagher, would you in the ordinary way, this point has been raised before, would be entitled on what might be called a re-examination of a witness, is entitled to raise an issue, or elaborate on an issue which perhaps requires elaboration even though the issue had been touched on or even hadn't been touched on when he was conducting his original cross-examination of the witness.

He is not restricted in the same way as he might be in a court case.

MR. FINLAY: No, I do understand that. But --

CHAIRMAN: But having said that, I think it is important that the Baldoyle issue should not be investigated at this stage to any greater extent than is necessary, in order to --

MR. FINLAY: Yes, it is just this Chairman. It is perfectly obvious in terms of efficiency and procedure it makes much more sense, taking into account everything you have said, which I fully understand and appreciate makes infinitely more sense procedurally if leading Counsel for the Tribunal chose to conduct the examination of witnesses on the basis that issues which are relevant to the Tribunal are elicited from the witness. If that is done then other witnesses, other counsel and other witnesses, through their counsel may or may not need to re examine that witness, because if Counsel for the Tribunal has elicited the relevant evidence then our roles are subsidiary and perhaps non-existent. Our roles as representatives for witnesses only become relevant to the extent that Counsel for the Tribunal has left matters unclarified or not elicited evidence. It is then our function to either clarify those matters or

1 elicit that unelicited evidence, but the point is this, that where the Tribunal
2 counsel is in a position, if I were counsel for the Tribunal, if I were in a
3 position to elicit evidence which I considered relevant, I would do that. The
4 point is that that is not what has happened here. Mr. Gallagher now, this
5 morning, clearly considers that the evidence about the Foreshore License is
6 relevant otherwise he would be wasting the taxpayers money in asking these
7 questions. He clearly considers that this is relevant territory. He clearly
8 considers that the advertisement for the Foreshore License is a relevant issue,
9 but he was fully aware when he examined Mr. Caldwell before but he chose not to
10 elicit it so it is a waste time. I have to re-examine after it. It is
11 wasteful.

12
13 CHAIRMAN: But the Foreshore License is relevant insofar as--

14
15 MR. FINLAY: That's why it is in the statement. Of course it is relevant, it
16 is highly relevant.

17
18 CHAIRMAN: And it has been quite properly introduced in the course of the
19 evidence over the last two or three days.

20
21 MR. FINLAY: By me. The point is that --

22
23 CHAIRMAN: Yes but --

24
25 MR. FINLAY: Mr. Caldwell when he examined -- Mr. Gallagher when he examined
26 Mr. Caldwell about the Foreshore License, did not examine him on the territory
27 that he is moving on now. If he had considered that territory to be relevant
28 he should have done it at the time, that's my point. So he should and could.

29
30 CHAIRMAN: Yes but it became relevant. The reason or cause of it's

1 introduction into the evidence, over the last two or three days, isn't terribly
2 important. The fact is it became -- it became a sort of mini issue in the
3 evidence over the last two or three days. It is then incumbent on
4 Mr. Gallagher on behalf of the Tribunal to follow up on that and ask questions
5 about it.

6
7 MR. FINLAY: Yes, of course but the point is, the record will show, the
8 transcript will show that it was Mr. Gallagher himself who introduced it in the
9 first place. I didn't suddenly introduce it in my re-examination. It was
10 Mr. Gallagher who introduced it as a relevant issue. But the point is in
11 introducing it and leading the evidence about the Foreshore License, he chose
12 not to ask the questions which he is asking today. Every one of those
13 questions could have been asked in the first session.

14
15 CHAIRMAN: Well then --

16
17 MR. FINLAY: That's my point.

18
19 CHAIRMAN: Can we agree then Mr. Finlay, your criticism to use a word, of
20 Mr. Gallagher's approach is that he is now asking questions which he could have
21 asked a couple of days ago.

22
23 MR. FINLAY: Absolutely as simple as that

24
25 CHAIRMAN: But he is not prevented from doing that, he might be in a court
26 case but not here. In the same way Mr. Caldwell could be recalled at a later
27 date to be asked further questions arising, by Mr. Gallagher.

28
29 MR. FINLAY: Absolutely.

30

1 CHAIRMAN: So in that sense his evidence doesn't end at any particular time
2 while the investigations are continuing. So Mr. Gallagher is not restricted as
3 he might be in the a court case, in re-opening or further delving into issues
4 that have arisen in his initial examination of Mr. Caldwell or issues that
5 might arise as a result of your cross-examination of Mr. Caldwell.

6

7 MR. FINLAY: I do understand.

8

9 CHAIRMAN: Now having said that obviously you would be permitted, if you feel
10 it necessary to do so, to re-examine Mr. Caldwell, when Mr. Gallagher is
11 finished.

12

13 MR. FINLAY: Yes, indeed I am saying that event which may well now be
14 necessary, would not be necessary if the route I am suggesting had been
15 followed. I should not have to re-examine twice.

16

17 CHAIRMAN: I agree. But this does happen from time to time because of the
18 huge amount and the unwieldy aspect of many of the issues that come before the
19 Tribunal.

20

21 All right we'll see how we proceed.

22

23 MR. GALLAGHER: The second issue Mr. Caldwell that you say you discussed with
24 Mr. Dunlop in 1990, I believe, certainly before the 17th of January 1991 --

25 A. Yes.

26 Q.134 Was the issue of resident's objections to certain proposed developments in the
27 Baldoyle area, is that a fair summary of what you say?

28 A. Yes, that's correct.

29 Q.135 When do you say this discussion took place with them?

30 A. The discussion would have taken place at the time of those meetings, I believe.

1 Do you want me to go into some Baldoyle background.

2 Q.136I don't really, just to try to identify where the meetings took place, what was
3 discussed, whether there was any written instructions or requests issued to
4 Mr. Dunlop at that time?

5 A. In relation to dealings with the residents it was really a question of seeking
6 his advice as to how matters might be handled. There was a lot of resident
7 unhappiness in the local area because of the planning in the industrial
8 planning application that was in hand and it was to - I recollect speaking to
9 him about how that should be handled.

10 Q.137And did you tell him on whose behalf you were acting at that time?

11 A. I don't recollect specifically saying to him: "This is X, Y, Z company that I
12 am discussing this, on behalf of, with you."

13 Q.138Well would you have said you were acting on behalf of a client?

14 A. Well yes, I would. It would have been a client related matter as far as he was
15 concerned. It wouldn't have been a situation where he was coming in to talk to
16 me in a principal position, it would have been coming in to talk to a solicitor
17 whose client had a difficulty.

18 Q.139I think that you are aware that Mr. Dunlop has denied that he had any dealings
19 with you in relation to Baldoyle and says in answer to Mr. Finlay's questions,
20 on day 369 that he has no recollection whatsoever of meeting you about Baldoyle
21 or your interest in Baldoyle?

22 A. Yes, well he certainly didn't meet me in relation to the interest in Baldoyle,
23 in relation to those meetings that we are talking about and I have read his
24 evidence that he has no recollection. But my recollection is different,
25 Mr. Gallagher.

26 Q.140I see. Do you have any documentary evidence or material or record which would
27 indicate what was said and what you asked him to advise upon in relation to the
28 Baldoyle matter at that time?

29 A. No, I have not.

30 Q.141Do you have any letter that you wrote, for example, to any of your principals

1 or clients at that time?

2 A. No, I do not.

3 Q.142Were you acting on behalf of Bauval at that time or were you acting on behalf
4 of some other company, can you recall?

5 A. Well -- it would have been either Bauval or Saber Developments or possibly Cara
6 Sports, there were three companies involved at that stage.

7 Q.143And were they companies with which you were involved in one way or the other, I
8 mean, beneficially involved?

9 A. Yes. In relation to Bauval I was, I would have had the interest that we talked
10 about. In relation to Saber Developments that was an Irish company and it had
11 a subsidiary, as I recollect which was Cara Sports and there was a shareholding
12 in relation to the Saber Developments which was held through trusts.

13 Q.144So it could have been for any one of those, one or more of those companies that
14 you were meeting Mr. Dunlop at that time?

15 A. Well, all of those companies are involved around the Baldoyle lands.

16 Q.145I put to you yesterday, or the day before, a map which is page 4165 of the
17 brief, it's DP 90/110 and I asked you had you seen that map, can you see it? I
18 will show it to you now?

19 A. Yes, as I said --

20 Q.146You see the colouring on it? Nothing in particular I want to say to you about
21 it, but you remember asking, my asking you about that map?

22 A. Yes I do, I don't have a recollection of it, Mr. Gallagher.

23 Q.147I should have asked you, I don't think I did ask you that there is a map, page
24 4167, DP 89/150. I will hand you a hard copy of, just to see whether you can
25 confirm whether you saw it or not, I don't have -- it's on the screen. That is
26 the Carrickmines Structure Plan map?

27 A. I don't have a recollection of that, Mr. Gallagher.

28 Q.148That map was according to records prepared at the end of 1989?

29 A. '89 was it?

30 Q.149Do you have any recollection of seeing that map?

1 A. I don't have a recollection of it.

2 Q.150I see.

3 Thank you Mr. Caldwell -- sorry, just --

4

5 CHAIRMAN: Mr. Finlay, would you like to ask some more questions?

6

7 MR. FINLAY: I am terribly sorry. I was having a quiet discussion with
8 Mr. Miley. I'm afraid I did not hear what was just said by anyone?

9

10 CHAIRMAN: What was just said was, Mr. Gallagher said he was finished by
11 Mr. Caldwell.

12

13 MR. FINLAY: I am in a state of some temporary shock, perhaps I might just
14 absorb that fact for a moment. If I could just reflect on that for 30 seconds,
15 Chairman?

16

17 CHAIRMAN: If you want to ask anything?

18

19 MR. FINLAY: Thank you very much.

20

21 Chairman, yes just some very brief queries arising out of the exchange we have
22 recently had. I would hope to be finished in five or ten minutes, if that's
23 permissible?

24

25 CHAIRMAN: Yes.

26

27 MR. FINLAY: Thank you very much.

28

29 JOHN CALDWELL WAS RE-EXAMINED AS FOLLOWS BY MR. FINLAY:

30

1 Q.151Mr. Caldwell, just coming back to Baldoyle, you recollect the discussions that
2 have just taken place, I just want, for the avoidance of doubt, to clarify some
3 matters arising out of Mr. Gallagher's recent questions to you on Baldoyle.

4
5 The first point is this, when you met in 1990 with Mr. Dunlop, in relation to
6 the residents, and the proposals which were then moving forward, that was in
7 the context of Mr. Dunlop's own zoning proposal which you have referred to in
8 your statement; isn't that correct?

9 A. Yes, the meetings, yes. That's correct.

10 Q.152And I may have misunderstood, or not fully understood one of Mr. Gallagher's
11 questions, but insofar as Mr. Gallagher might have been suggesting or asking
12 you had you retained Mr. Dunlop in some way, am I right in understanding it
13 wasn't an issue of retaining him; he had a, you both had a common interest, you
14 were both in effect interested parties. He had his zoning proposal, you and
15 Mr. Kennedy had your option and interests, and you had a joint interest from
16 that point of view, he wasn't there simply as a lobbyist with no interest in
17 the lands; isn't that correct?

18 A. He was promoting a rezoning proposal for the Baldoyle Race Course, which
19 impacted on the, what we describe as the Kennedy Option Lands.

20 Q.153Yes.

21 A. He was promoting that, effectively on his own behalf.

22 Q.154And in that context you never retained him in anyway as a personal lobbyist to
23 you or Mr. Kennedy, is that correct, he wasn't retained on any fee basis for
24 you and Mr. Kennedy?

25 A. Not at all in relation to that. No, that was something he was doing himself.
26 My concern in meeting him was in relation to how that impacted on the Kennedy
27 option lands.

28 Q.155And so to understand the bigger view, your dealings with Mr. Dunlop in 1990 in
29 relation to Baldoyle, were not, so to speak "vertical" in the sense that you
30 were the client and he was a lobbyist, as might have been the case in

1 Carrickmines; but "horizontal" if I can put it that way, where you were both
2 coming from the same perspective, you were both proposers of Development Plans
3 for the area, isn't that correct?

4 A. There are two time periods.

5 Q.156Yes?

6 A. The time period which is the '89 and early 1990 period when I was in the
7 situation of effectively being employed or, advice was sought from him in a
8 professional capacity at that stage. In the subsequent time period which is
9 the late 1990 period into early 1991 that was really, the clash of interests
10 meetings took place at that stage.

11 Q.157Yes. Thanks, Mr. Caldwell?

12 A. Thank you.

13

14 CHAIRMAN: Thank you.

15

16 JUDGE FAHERTY: Mr. Caldwell, it is something I touched on previously, so I
17 won't detain you too long. Just in relation, as I understand it in relation to
18 your retaining or Paisley Park, retaining Mr. Dunlop in 1992, you say it was in
19 1992?

20 A. Yes.

21

22 JUDGE FAHERTY: To get the lands rezoned, you say in negotiation fee, a success
23 fee of 200,000 was negotiated?

24 A. Yes.

25

26 JUDGE FAHERTY: And I think in answer earlier to myself and to the Tribunal, you
27 said that it was all or nothing, that obviously to earn his fee -- forget the
28 success fee, he had to get the land rezoned?

29 A. Yes, that's correct.

30

1 JUDGE FAHERTY: We know that Mr. Dunlop has a different version of events.

2 A. Yes, I do.

3

4 JUDGE FAHERTY: And you can't say whether or not that obviously, that
5 conversation that Mr. Dunlop alleges with Mr. Kennedy took place, you weren't
6 privy to that?

7 A. I wasn't privy to the conversation.

8

9 JUDGE FAHERTY: We know what he says, that in January sometime in 1991
10 Mr. Dunlop alleges a conversation, going at your instigation to Mr. Kennedy, a
11 conversation with Mr. Kennedy, an agreement being reached if you like, in
12 respect of which he says sometime later he got 25 thousand from Mr. Kennedy and
13 a promise of a success fee of 100,000.

14 A. Yes.

15

16 JUDGE FAHERTY: So there is obviously two different version of events; that's
17 just the back drop. I want to ask you this question, Mr. O'Halloran has also
18 given evidence and Mr. Dunlop has given evidence about O'Halloran, Darragh,
19 Kilcoyne arrangements, both in 1992 and in 1997 and as far as I can recollect
20 both Mr. Dunlop and Mr. O'Halloran say that in 1992 Mr. Dunlop negotiated a
21 success fee of 8,000 pounds if you were to get the O'Halloran, Darragh,
22 Kilcoyne lands rezoned, but also negotiated a fee for his work, of 15 hundred
23 pounds, which I think he was paid for?

24 A. Yes.

25

26 JUDGE FAHERTY: We know that the motion didn't really go anywhere and wasn't
27 successful. Again in 1997 Mr. O'Halloran says that his consortium and
28 Mr. Dunlop negotiated a 30,000 pounds success fee if the lands were
29 successfully rezoned in 1997?

30 A. Yes, I saw that.

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JUDGE FAHERTY: And also a 5,000 fee to Mr. Dunlop for his works. I am just, as far as you are concerned, as far as your knowledge is, that in 1992; both 1992 you say and in 1997 that there was only really a success fees be, that actual money or one acre, commercial value of one acre negotiated?

A. Yes, that's correct.

JUDGE FAHERTY: Do you have any suggestion or explanation as to why Mr. Dunlop would have used a different modus operandi in his negotiations with yourself, meaning Paisley Park and Jackson Way, as opposed to his negotiations with O'Halloran, Darragh, Kilcoyne?

A. Well I can't really give any clear, any reason other than the possibility he was dealing with a dealer when he was dealing with Mr. Kennedy, and in dealing with Mr. O'Halloran he was dealing with someone who comes from a professional, architectural background and may have been just, more fee orientated in his approach to it. Mr. Kennedy is a business dealer, and it's the only difference that I can see in the chemistry that might have been there when the deals were being done.

JUDGE FAHERTY: I see. And you didn't, as I understand it, in post the unsuccessful rezoning in June 1992, you didn't see fit to inquire to make inquiry of Mr. Dunlop as to whether or not he was putting in any invoice?

A. No, I didn't.

JUDGE FAHERTY: For the actual work he had done.

A. No, absolutely, no. No. He was on a success fee, and again the situation was where he didn't earn the success fee. He was prepared to take that financial risk, himself.

JUDGE FAHERTY: Right. And just one further thing. We have heard a lot in the

1 course of the evidence here, from various witnesses and reference to newspaper
2 articles and references to Minister Smith's, a speech he made, the then
3 Minister for the Environment back in, I think 1993, that was post the events of
4 the 91/92; of rumours about, if you like, planning in Dublin being a debased
5 currency; and you heard that, I am sure you have read the transcript?

6 A. I have read the transcript, yes, I have.

7

8 JUDGE FAHERTY: Yes. I think we also had reference to a memo where Mr. Kilcoyne
9 seemed to be making, having some concerns about a possible involvement, you
10 might recall that?

11 A. I do, yes.

12

13 JUDGE FAHERTY: And I think Mr. Kilcoyne gave his evidence as to how that came,
14 knowledge came to him. He gave evidence to us; I am asking, you were a person
15 who had, if you like, a lot of interests in property and dealings in, around
16 Dublin in the '70s, or in the '80s and '90s, and have you ever heard rumours to
17 that effect or, mutterings about possible untoward dealings?

18 A. I can't --

19

20 JUDGE FAHERTY: In the County Council or otherwise.

21 A. I can't specifically say around that '80 to early '90 period that I heard those
22 sort of mutterings, but I certainly have over the years heard mutterings about
23 the system having it's problems.

24

25 JUDGE FAHERTY: I see. Thank you.

26

27 JUDGE KEYS: Mr. Caldwell, just one question, if I may ask you while you
28 practiced as solicitor I take it that when clients came in looking for advice
29 or they were going to enter into an transaction, you would open a file for
30 them, obviously, and you would take their details and anything that's relevant

1 to whatever transaction they proposed to get involved in; wouldn't that be
2 right?

3 A. Yes, a file would open.

4
5 JUDGE KEYS: And I take it that you have been involved yourself, personally, in
6 numbers of transactions involving either buying or selling property or
7 investing in properties. I take it you would approach it similarly as well,
8 you would open a separate file?

9 A. Personally, in --

10

11 JUDGE KEYS: Yes?

12 A. I would tend to leave the information on the solicitor's file or the
13 accountant's files in relation to transactions.

14

15 JUDGE KEYS: What about your own personal file, to know what's going on? I mean
16 you have Carrickmines, you have Baldoyle, there are other transactions you
17 would have been involved in. Surely you had a master file yourself which you
18 had all your relevant information on, so that when you went back to the
19 transaction, when you wanted to revisit again if something arises, that you
20 have all the documentation there and you can examine it and then take whatever
21 further steps to further that transaction?

22 A. I didn't operate a, personally didn't operate a master file system.

23

24 JUDGE KEYS: Why not?

25 A. Well, it's duplicating information that's already in place. It's in place at,
26 you know, the solicitor's office in terms of the transaction, or it's in place
27 at the accountant's offices in relation to --

28

29 JUDGE KEYS: Okay. What happens then if an event takes place, a meeting takes
30 place for example which is very pertinent to furthering the transaction, you

1 haven't got a file to record it; do you come back and then contact those
2 individuals and say "by the way, for the purposes of records, would you have
3 note that I visited Joe Bloggs to either agree something or to discuss
4 something, and out of that meeting we came to the following conclusions"?

5 A. If it were something that required the solicitors to generate a letter or an
6 agreement or something then I would contact them and give them instruction in
7 relation to it. That might have occurred orally, or I might have done a fax up
8 and sent a fax to them, so they have a fax on their file.

9
10 JUDGE KEYS: But what happens if you agree at one of these meetings that
11 something, you want to do something which involves yourself. Do you, as you
12 say, you would then contact either the solicitor, the accountant to record that
13 on the file, is that correct?

14 A. It's hard to be precise for, in relation to that because when looking back over
15 20 odd years of business life. But my principal approach in relation to it
16 would be that if there is an agreement that required to be committed to writing
17 it would be the lawyers would be asked to generate a document in relation to
18 it.

19
20 JUDGE KEYS: I asked this simply for the reason, because Mr. Gallagher asked you
21 do you have any documentation that would support your recollection that when it
22 was put to you in relation to a number of entries in Mr. Dunlop's diary, you
23 were adamant that they were all to do with Baldoyle. Now, bearing in mind we
24 are going back to 1990, we are going back to 1991, there is a whole list of
25 entries here, I am not going to go through them, but you were adamant that all
26 of those dealings had nothing to do with Carrickmines but had something to do
27 with Baldoyle?

28 A. The --

29

30 JUDGE KEYS: How do you know that?

1 A. I can only rely on my recollection, Judge.

2

3 JUDGE KEYS: Yes, but your recollection through the last couple of days have
4 been, on numerous occasions, "according to my recollection" or "I don't have a
5 recollection". I am just wondering how you are so definite that the dates
6 which were mentioned by Mr. Gallagher to you; for example the 3rd of the 11th,
7 the diary meeting you said that was the Foreshore application, Dunlop diaries
8 19th of April 1990; Wednesday 11th of the 4th '90, there was a crossing out on
9 that; Dunlop's diary 18th of August '90, Wednesday 9 am; related to resident
10 difficulties with Baldoyle meeting. Diary entries 9.30, 23rd of August 1990,
11 Baldoyle you said it was; 15th of January 1991, diary, Baldoyle matter. And
12 the 17th of January '91 meeting, came to see him in the office, and then you
13 said that was Carrickmines, I believe.

14

15 Now, I am subject to correction on that. Just if we leave that one out because
16 I am not absolutely sure on my notes here. You are definite on every occasion
17 they are Baldoyle, yet you don't have any documentation to support that. You
18 are going entirely on memory?

19 A. In relation to the Baldoyle entries, if we took the one of the 15th of
20 December, sorry the 15th of January, I can recollect meeting him and it's a
21 clear recollection of meeting him in relation to the revised Dunlop plan.
22 Because I was having a meeting with Mr. Byrne of the Resident's Association and
23 Mr. Byrne of the Resident's Association wrote a letter subsequent to that
24 giving information in relation to that meeting, and the things that had taken
25 place at it. So I have that sort of a stimulus or background to confirm in my
26 own mind that I am not just -- I am not imagining the situation.

27

28 JUDGE KEYS: What about the 15th of January 1991, then how can you be so sure
29 it's a Baldoyle matter when you met him at 1.30?

30 A. I met Mr. Byrne on the 15th of January of 1991 in relation to Baldoyle.

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JUDGE KEYS: What about the 23rd of August 1990 then?

A. Again in terms of the specific date, whether it was 23rd or 24th of April, I can't say to you that that's the specific date I met him, but I know that during the course of that year I had a number of meetings with him in relation to Baldoyle. I know that those meetings were in relation to the Resident's Association issues. And I -- in relation to the Foreshore license I have the same recollection I met him in relation to that.

JUDGE KEYS: And you have no personal files yourself relating to any of your business transactions dealing with property over the years?

A. As I say the information goes onto the accountant's files and tax files.

JUDGE KEYS: A simple question; you either do or you don't; do you have any personal files relating to all the transactions you have been involved with in land over the years?

A. I don't have any.

JUDGE KEYS: You don't?

A. I don't.

JUDGE KEYS: Thank you.

CHAIRMAN: Thank you, Mr. Caldwell. That concludes your evidence, unless, in relation to Carrickmines 1, unless something arises. You will be required to give evidence in relation to other aspects of the Tribunal's investigation.

A. Yes, so I believe, yes.

CHAIRMAN: Contact will be made with your solicitors. Thank you very much.

A. Thank you.

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MR. GALLAGHER: Can I say that --

Thank you Mr. Caldwell, you may step down. Thank you.

That, Sir, concludes the evidence in relation to the Carrickmines 1 module subject to any further evidence that the Tribunal may decide to call in relation to it.

Can I just say that there were allegations made by Mr. Dunlop in relation to monies he alleged to have paid to the late Jack Larkin and the late Cyril Gallagher, and having examined the financial records of both the late Mr. Gallagher and the late Mr. Larkin, the Tribunal decided that it was not, it would not be appropriate to call any representative of either of the deceased to give evidence. So I just wanted to tidy that up, as it were.

Can I remind the Tribunal that in the past the Tribunal has sought written submissions from parties in relation to the various issues that have arisen, and if the Tribunal is minded to invite written submissions from any party or parties, you might consider either putting it on the web or perhaps announcing at this stage the date by way --

CHAIRMAN: Well, as far as the Tribunal is concerned, the aspect of Carrickmines relating to public evidence has concluded. Unless something arises that requires a recall of a witness or the introduction of another witness, a new witness.

MR. GALLAGHER: Yes, well I don't know whether the Tribunal has considered the question of written submissions in relation to Carrickmines 1?

1 CHAIRMAN: No. That's something that can be addressed at a later stage and
2 the relevant parties can be contacted then.

3

4 MR. GALLAGHER: Fine. Thank you.

5

6 CHAIRMAN: All right? Thank you, Mr. Finlay.

7

8 MR. FINLAY: Thank you very much Chairman.

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10 THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY FRIDAY,
11 17TH OCTOBER, 2003 AT 10.30 AM.

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