

1 THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY 24TH OCTOBER 2003

2 AS FOLLOWS:

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4 CHAIRMAN: Good morning.

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6 MS. DILLON: Good morning, Chairman. Mr. Edward Hogan please.

7

8 MR. EDWARD HOGAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

9 BY MS. DILLON:

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11 Q 1 Mr. Hogan, you are an architect, is that correct?

12 A That's correct.

13 Q 2 And in 1991, you had a practice at 2 Killian Terrace in Malahide?

14 A That's correct, yes.

15 Q 3 And at present I understand you have a practice at Baskin Lane in Kinsealy?

16 A That's correct.

17 Q 4 In 1991 you were retained by the Wright family, that is the family of Mr. GV

18 Wright, to carry out some works in connection with the development that they

19 were doing in Malahide.

20 A That's right, yes, they were in a commercial development in Townyard Lane,

21 Malahide.

22 Q 5 All right. And were you approached by Mr. Wright to prepare a map and

23 submissions in connection with the Fox and Mahony lands?

24 A He did ask me to give him a hand in preparing a submission, the time I recall,

25 there was a time, probably there wasn't much time left so and that the people,

26 the person was a friend of his, yeah.

27 Q 6 And did you recollect the name of the person for whom you were to do this

28 submission.?

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30 CHAIRMAN: Mr. Hogan, could you just speak a little bit more clearly in the

1 microphone, your voice isn't coming...

2 Q 7 Would you like me to go back over that, Chairman?

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4 CHAIRMAN: Yes, please, possibly.

5 Q 8 If we take it back to 1991, Mr. Hogan, you were doing a commercial development  
6 in Malahide for the Wright family?

7 A That's correct.

8 Q 9 You were approached by GV in connection with a submission for certain lands?

9 A I was -- well, I was to do the professional work for him, he did ask me would I  
10 be able to help him in a matter of preparing a planning submission.

11 Q 10 A planning submission?

12 A Yes.

13 Q 11 Are you talking about a submission in connection with the Draft Development  
14 Plan, are you talking about a planning application?

15 A No, in relation to the Development Plan submission.

16 Q 12 There are time limits, Mr. Hogan, in relation to the time in which submissions  
17 have to be made, isn't that right, in connection with the Development Plan?

18 A That's correct, yes.

19 Q 13 And Miss Sinead Collins will tell the Tribunal, and it's in her statement, a  
20 planning official from Dublin County Council, that the public display of the  
21 Draft Development Plan in 1991 was between the 2nd September 1991 and the 3rd  
22 December 1991?

23 A Yeah, I recall that was around the time period, yes.

24 Q 14 And as I understand matters, Mr. Hogan, and correct me if I am wrong, if a  
25 submission were to be made in connection with any lands within the particular  
26 area, it would have to be with the County Council by the 3rd December 1991?

27 A Yeah, that's correct, yes.

28 Q 15 So if we come up to the events of December of 1991, can you tell the Tribunal  
29 what you recollect occurred when Mr. Wright approached you about this  
30 submission?

1 A I do recall that there was -- I can't recall the exact amount of days, but  
2 there wasn't much time left for a submission to be prepared. Sorry, is that --

3 Q 16 It might assist you, Mr. Hogan, to know, if we can have page 164 and it will  
4 come up on the screen immediately beside you, Mr. Hogan, you will see that the  
5 letter you sent in to Dublin County Council is dated the 2nd December 1991?

6 A Yes, that's right.

7 Q 17 And the public display was finishing on the 3rd December 1991?

8 A That's right, yes.

9 Q 18 And just to confirm that and ensure we are accurate, if we have pages 2 please,  
10 Mr. Kavanagh, which is part of Miss Sinead Collins' statement to the Tribunal  
11 and if you just look at the screen, Mr. Hogan, you will see that in the last  
12 sentence on paragraph 4 she says "the Draft Development Plan including map 8  
13 was then put on public display from the 2nd September 1991 "and on to the next  
14 page, which is 3, you will see "to the 3rd December 1991.?"

15 A Yes.

16 Q 19 Now, it's your understanding, if I understand what you are saying, Mr. Hogan,  
17 that any submission in connection with the proposed change in the zoning of  
18 lands would have to be with the County Council by the 3rd December?

19 A Yes, that's correct, yes.

20 Q 20 So when you say that there was a difficulty with the time, is that the  
21 difficulty that you are talking about?

22 A Oh no, what I meant there was that when Mr. Wright asked me could I be of some  
23 assistance to him, I recall there was only a week left up to that date.

24 Q 21 Up to the 3rd December. So sometime up to the week of the 3rd December, you  
25 were asked by GV Wright to prepare a submission on behalf of certain  
26 landowners, who were Mr. Fox and Mr. Mahony?

27 A That's correct.

28 Q 22 Did you go out and visit the lands?

29 A I didn't make an inspection due to the time constraints but I was, I know the  
30 area pretty well, I have been living there a long time but I didn't actually

1 walk the lands as such.

2 Q 23 Yes. In the course of your submission, Mr. Hogan, you refer to a map which is  
3 at page 176, it's the last page of your submission and it will come up on  
4 screen beside you. That's the last page of your submission?

5 A Yes.

6 Q 24 Where did you get that map?

7 A I got a map, a map was left in to me, into my house which is my office as well,  
8 sometime, shaded, this was a shaded map and I outlined in red. I am not  
9 actually sure if it came from Mr. Wright's office or Mr. Mahony's family, I  
10 can't recall. But I wasn't handed it, it was actually left into my premises.

11 Q 25 Did you ever meet with Mr. Dennis Mahony in connection with this submission?

12 A No, I never met him.

13 Q 26 Did you ever meet with Mr. Noel Fox in connection with this submission?

14 A No, I did not.

15 Q 27 Did you have any telephone conversations with either Mr. Mahony or Mr. Fox?

16 A I recall when I was speaking to Mr. Wright at the time, when he did approach me  
17 to see could I be of some assistance to him, he was speaking to someone on the  
18 telephone, I honestly don't know if it was Mr. Mahony or Mr. Fox, but I just  
19 confirmed to the person that I would get the submission in before the deadline,  
20 which was the 3rd December. That was my only correspondence or telephone call  
21 with the parties.

22 Q 28 So Mr. Wright was on the telephone to one of the parties, either Mr. Mahony or  
23 Mr. Fox?

24 A That's correct, yes.

25 Q 29 You were present when this conversation was taking place?

26 A I was, yeah.

27 Q 30 And you confirmed to the person who was on the telephone to Mr. Wright that you  
28 would do the submission?

29 A That's correct, yes.

30 Q 31 But apart from that contact with either Mr. Mahony or Mr. Fox, you dealt with

1 and took your instructions from Mr. GV Wright?

2 A Well, you could say that. In the sense there wasn't really any instructions as  
3 such only for that, if I would prepare the submission. There was no further  
4 consultation. I did confirm to Mr. Wright that I had it completed and  
5 submitted before the deadline.

6 Q 32 Did you confirm to Mr. Fox or Mr. Mahony that you had completed it and  
7 submitted it before the deadline?

8 A No, I did not.

9 Q 33 In your submission, there's a few matters I want to draw to your attention,  
10 Mr. Hogan, in your submission, if you could look at page 165 where you talk  
11 about the then current land use?

12 A Yeah.

13 Q 34 Now, you say, and this is December, 1991 when this is being prepared "the land  
14 is currently in use for the growing of barley." if you see -- if you look at  
15 paragraph 1.2 and go to the fourth sentence from the end.

16 A Yes, that's right, yes.

17 Q 35 Can you explain where you got that information from?

18 A Well I was aware, I know the area. I know there was some sort of tillage,  
19 probably barley, describing it as barley in the field is probably not -- I  
20 couldn't say that it was, that I was definite about it, you know.

21 Q 36 Well did you get any information from anybody that would allow you to state in  
22 the submission that the lands were being then used for the growing of barley?

23 A No, I did not, no.

24 Q 37 Were you aware or did anyone discuss with you any problems of vandalism in  
25 relation to, in particular Mr. Mahony's lands?

26 A No, no.

27 Q 38 If I could take you back up to paragraph 1.1 of that and on the second line you  
28 say "that the lands, the subject of this submission, comprised I think  
29 approximately 90 acres." Is that correct?

30 A Yeah, it does say 90 on the --

1 Q 39 Is that figure accurate?

2 A I am not sure. I don't know.

3 Q 40 You don't know.

4 A I don't know.

5 Q 41 Because --

6 A It doesn't seem to be correct.

7 Q 42 Because the figures the Tribunal have are lands of the order of 60 to 70 acres?

8 A I think that's more likely, yeah.

9 Q 43 Where did you get that figure from, Mr. Hogan?

10 A I can't really recall, all I can say is that due to time pressure and that,  
11 maybe it wouldn't be as comprehensive as it should be.

12 Q 44 I think you set out in the submission, and I don't propose to go through it in  
13 detail with you, Mr. Hogan, but you refer to other residential developments in  
14 the immediate locality as being the main reason why a development should be  
15 allowed on these lands.

16 A Yes, that's right.

17 Q 45 You also acknowledge that there is no piped sewerage available?

18 A That's right.

19 Q 46 And that all of the houses that had been built in the locality are in the main  
20 single houses on septic tanks?

21 A That's correct, yes.

22 Q 47 And you refer to the fact that there is a demand for low density residential  
23 in the area.

24 A Yes, that's right, yeah.

25 Q 48 But if I understand you correctly, when you came to prepare this submission,  
26 you did it, in effect, from your own knowledge of the area.

27 A Well, also I would have been aware that anyway high or mid density wouldn't  
28 have been allowed in the area. I was also, it was indicated by Mr. Wright also  
29 that the only development that would be considered here would be low density  
30 type.

1 Q 49 Mr. Wright told you the only thing the council would consider would be an  
2 application for low density residential?

3 A Yes, that's right.

4 Q 50 And you didn't visit the lands, you didn't do a site inspection?

5 A I didn't, due to time constraints, it wasn't possible.

6 Q 51 Right. Was the job that you were doing for the Wright family at that time a  
7 big job?

8 A Well, it was a big job to me but --

9 Q 52 That's what I mean, was it a big job to you?

10 A It was, yes.

11 Q 53 Right. After you had concluded this work, Mr. Hogan, and you had sent in a  
12 copy of the submission to Dublin County Council, did you provide a copy of the  
13 submission to anybody?

14 A I may have provided a copy to Mr. Wright but not to anybody else.

15 Q 54 Did you ever raise an invoice in connection with the work that you had done on  
16 preparing this submission?

17 A No, I did not.

18 Q 55 Did you ever seek to be paid from anybody, including Mr. Wright?

19 A No, I did not.

20 Q 56 Was it your position, as I understand what you are saying in your statement  
21 correctly, that because you were doing the relatively big job that you were  
22 doing for the Wright family is that you were happy to provide this service at  
23 the request of Mr. Wright?

24 A All I could say really -- that's correct -- but there was never an indication  
25 that I was to send an invoice to anybody, it was my own decision not to.  
26 There wasn't any -- I wasn't instructed or asked not to send any invoice.

27 Q 57 But you say in your statement, Mr. Hogan, to be fair to yourself, at page 950  
28 please, "In view of the ongoing working relationship with the Wright family and  
29 the outline nature of the planning submission" -- by the planning submission,  
30 are you referring there to the rezoning submission that you had made?

1 A I am, yes.

2 Q 58 "I did not issue any invoice or ask for any payment nor did I receive any  
3 payment for the submission from Messrs. Fox Mahony and anybody else.?"

4 A That's correct.

5 Q 59 So the reason that you didn't raise any invoice was because of the working  
6 relationship you had with the Wright family and, in particular, Mr. GV Wright?

7 A That, and also I may have possibly got some work from...

8 Q 60 From?

9 A If the submission had been successful down the road.

10 Q 61 It might have had a knock-on effect further down the road?

11 A That's right.

12 Q 62 But the fact of the matter was you did not invoice Mr. Mahony, Mr. Fox or Mr.  
13 Wright in connection with the preparation of this submission?

14 A That's correct, yes.

15 Q 63 You did not have any correspondence or communication with either Mr. Mahony or  
16 Mr. Fox?

17 A No, I did not.

18 Q 64 You received the map that is attached to the submission when it was left into  
19 your house, but you don't know who left it into your house?

20 A I don't know if it came from Mr. Mahony or Mr. Fox or the Wrights or GV Wright.  
21 I was just told at the time that -- I recall saying I would need a map to  
22 identify the lands.

23 Q 65 Who did you say that to?

24 A To Mr. Wright.

25 Q 66 And after you had made a request a map was dropped into your office?

26 A Yes.

27 Q 67 Can I have page 176 again please? That, I think, Mr. Hogan, is an extract from  
28 the 1991 Draft Development Plan as published by Dublin County Council?

29 A That's right.

30 Q 68 Is that right?



1 A That's correct, yes.

2 Q 69 And isn't it more likely that it was Mr. Wright who obtained this map, he being  
3 a councillor at the time?

4 A I mean, it's a public document so, it could have come from anybody but, yes, I  
5 mean, it's quite possible.

6 Q 70 And it's also, it was to Mr. Wright you made the request for the map?

7 A It was, yes.

8 Q 71 Thank you very much, Mr. Hogan. If you would answer any questions that any of  
9 the other parties may have.

10 A Thank you.

11

12 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. HOGAN:

13

14 MR. HOGAN: Mr. Hogan, your namesake, Gerard Hogan for Mr. Mahony.

15 I don't think very much turns on this very much, Mr. Hogan, but you have just  
16 confirmed with Ms. Dillon my clients had no direct contact with you with the  
17 exception perhaps of a telephone call, isn't that your position?

18 A That's my position, yes.

19 Q 72 That Mr. Mahony never instigated this, you never invoiced him and you had no  
20 correspondence with him?

21 A That's correct, yes.

22 Q 73 And Mr. Mahony will say he has no particular recollection of this application  
23 and doesn't believe that he ever spoke with you.

24 A As I said earlier, I spoke to one of the parties, I am not sure if it was Mr.  
25 Fox or Mr. Mahony, but it was one of them.

26 Q 74 Thanks very much.

27 A Thank you.

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29 CHAIRMAN: Mr. Montgomery? Mr. Kennedy?

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1 MR. KENNEDY: No questions.

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3 CHAIRMAN: Anybody else? Thank you very much, Mr. Hogan.

4 A Thank you.

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6 THE WITNESS THEN WITHDREW.

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8 MS. DILLON: Mr. Liam McGlynn, please.

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1 MR. LIAM MCGLYNN HAVING BEEN SWORN WAS EXAMINED AS FOLLOWS

2 BY MS. DILLON:

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4 MR. O'HIGGINS: Chairman and Members of the Tribunal, just before Mr. McGlynn  
5 takes the oath, I wonder could I just announce my presence, Micheal O'Higgins,  
6 instructed by Taylor & Buchalter, Solicitors, and we have been asked to appear  
7 for Mr. McGlynn.

8

9 CHAIRMAN: Are you looking for limited representation?

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11 MR. O'HIGGINS: No, I don't believe it will be necessary, Chairman, unless  
12 something unexpected arises, perhaps I may be permitted to make an application,  
13 but as matters stand, I don't propose to seek legal representation.

14

15 CHAIRMAN: All right.

16

17 Q 75 MS. DILLON: Good morning, Mr. McGlynn, I think I should outline before he  
18 gives his evidence the ruling of the Tribunal in connection with the planning  
19 and rezoning factual evidence; that what is required is that Mr. McGlynn's  
20 statement will be read to him, that he will confirm if that be the case that  
21 the contents of the statement and the maps which will be put up on screen are  
22 accurate and the only person who has made a request to be allowed cross-examine  
23 this witness is Mr. Gerard Hogan, Senior Counsel, on behalf of Mr. Dennis  
24 Mahony. In the light of the ruling by the Tribunal, that is the format I  
25 propose to take.

26

27 CHAIRMAN: All right.

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29 MS. DILLON: Good morning, Mr. McGlynn, I propose to read to you your  
30 statement and ask you to confirm whether or not the contents of that are

1 accurate. If we could have page 1013 please. At paragraph -- your statement  
2 is in connection with the Fox and Mahony lands at Drimnigh, Portmarnock. You  
3 say "From July 1997 to date, I have been employed as senior executive officer  
4 in the Planning Department, Fingal County Council. I had responsibility for  
5 the supervision, direction and control of staff engaged in the preparation of  
6 the 1998 County Development Plan review and, in particular, staff whose duties  
7 included:

8 A, to receive and record representations and circulate same to council staff  
9 and elected members of the council;

10 B, to receive motions which had been submitted by the councillors;

11 C, to prepare and circulate the agenda for each special meeting of the council  
12 to review the Development Plan;

13 D, to circulate the managers 'reports and/or the planning officers' reports to  
14 the councillors prior to the meeting.

15 E, to record the attendance of councillors at such special meetings;

16 F, to prepare the minutes of each meeting."

17 Do confirm that is an accurate statement of your position and duties?

18 A Yes, it is.

19 Q 76 "2 A, the Mahony land, the subject of the present inquiry, were zoned A, "to  
20 protect and improve residential amenity". The lands were subject to a  
21 specific objective "to provide for residential development on septic tanks at a  
22 density per hectare as shown on maps." The density shown on map number 8 of  
23 the Dublin County Council Development Plan 1993 was one per hectare, (2.5  
24 acres)." Could I have map 1019 please. Do you confirm that paragraph 2 A is  
25 accurate?

26 A It is accurate, yes.

27 Q 77 And on screen, Mr. McGlynn, in front of you, will come an extract from map 8 of  
28 the 1993 Development Plan in connection with the Mahony lands, and do you  
29 confirm that the portion that is Mr. Mahony's lands and which is identified as  
30 Mahony's lands and which is shaded a cream colour on that map is the part that

1 was zoned A with the density as shown on that map?

2 A That's correct, yes.

3 Q 78 And that density was one per hectare?

4 A On two and a half acres.

5 Q 79 2 B "The Fox lands, the subject of the present inquiry from the Tribunal were  
6 zoned B "To protect and provide for the development of agriculture" and B and  
7 G -- if we could leave the map on screen for the moment please, I'll go back  
8 to the start. "The Fox lands, the subject of the present inquiry from the  
9 Tribunal, were zoned B to protect and provide for the development of  
10 agriculture and B and G "to preserve a green belt between development areas in  
11 the Dublin County Council County Development Plan 1993." And you refer again  
12 to a map which is the map on screen?

13 A That's correct.

14 Q 80 And on that map, Mr. Fox's lands are shown west of the railway line as zoned B  
15 and east of the railway line as zoned B and G?

16 A That's correct.

17 Q 81 And that is B for agriculture and B and G is green belt?

18 A Yes.

19 Q 82 And you confirm that the contents of paragraph 2 B are accurate?

20 A They are.

21 Q 83 3. "The review of the Dublin County Council County Development Plan 1993  
22 commenced on the 5th October 1998 with the consideration of the draft plan and  
23 written statement by the elected members at a special meeting of the County  
24 Council. This draft was called the Fingal County Council Draft County  
25 Development Plan 1998." Do you confirm that that is accurate?

26 A Yes, this is accurate.

27 Q 84 4. "The lands, the subject of the present inquiry from the Tribunal, were the  
28 subject of an oral presentation to the elected members given on the 13th  
29 October 1998, page 628 of the minutes. The presentation related to the entire  
30 area of land of Malahide, Portmarnock, Baldoyle and Kinsealy and compromised

1 approximately all lands east of the M 1 motorway, the lands, the subject of the  
2 present inquiry, were included in this presentation." And you refer to exhibit  
3 2 which is page 1028.

4  
5 This is the extract from the meeting, Mr. McGlynn. The Tribunal pagination of  
6 the meeting commenced at page 1020 but the extract that you are referring to at  
7 paragraph 4 relates to the consideration of the draft plan for Portmarnock and  
8 Malahide.

9 A Yes, that's correct.

10 Q 85 And the amendment that I made from your written statement where you referred to  
11 all lands east of the M 1 motorway, in your original written statement you had  
12 west of the motorway, but you corrected that?

13 A I corrected that, yes.

14 Q 86 Do you confirm therefore the contents of paragraph 4 as amended are accurate?

15 A They are accurate.

16 Q 87 5a. "The lands in question which were proposed for rezoning were considered by  
17 the elected members at a special meeting of the County Council on the 15th  
18 October 1998. Page 644 of the minutes." Exhibits 3 and 3 A and exhibit 3 is  
19 internal Tribunal pagination, 1044 to 1070, and in particular we are looking at  
20 1048. Is this the consideration of the lands to which you refer?

21 A Yes, it is.

22 Q 88 Right. Paragraph 5b. "The manager, having regard to professional advice of  
23 the Planning Department, recommended that part of the lands known as the Mahony  
24 lands continue to be zoned A "To protect and improve residential amenity." The  
25 manager, having regard to the professional advice of the Planning Department,  
26 recommended that the density be increased from one house per hectare, (2.5  
27 acres) to 12 houses her hectare (2.5 acres). The existing area of lands zoned  
28 A south of Station Road and west of the railway line and the increased area be  
29 subject to a specific objective "to provide for residential development on  
30 septic tanks at density per hectare as shown on maps." This was shown as 12

1 her hectare on the Fingal County Council Draft Development Plan review 1998."  
2 Can I have 1071, please? Just to continue with paragraph 5b. "It was also  
3 proposed by the manager, having regard to the professional advice of the  
4 Planning Department, to increase the area of lands zoned A "to protect and  
5 improve residential amenity" and subject to the same specific and objective as  
6 outlined thereby rezoning part of the lands known as the 'Fox lands'. The  
7 residual part of the Fox lands west of the railway line remained B, to protect  
8 and provide for the development of agriculture and rural amenity." And you  
9 refer to exhibit 4, map 2 which is the map on screen?

10 A That's correct.

11 Q 89 Do you confirm that the contents of paragraph 5b are accurate? I think 5b  
12 will require some expansion so we can clarify what's being said there. If we  
13 take first the Mahony lands which are north of the Fox lands. What the manager  
14 was proposing was an increase in the density from one per hectare to 12 per  
15 hectare?

16 A That's correct.

17 Q 90 If we could just increase the Fox and Mahony portion of those lands on the  
18 screen and when the density is being increased, in the centre of the Mahony  
19 lands on screen, Mr. McGlynn, there is a little square in the centre that says  
20 S 12?

21 A That is a specific objective of 12 houses per hectare.

22 Q 91 Does the 'S' stand for septic tank.

23 A Yes.

24 Q 92 If we move southwards to the Fox lands which are the larger lands and move into  
25 the green belt, what the manager was proposing so far as the yellow portion  
26 east of the railway line is considered, those lands be zoned A1?

27 A That's correct.

28 Q 93 That portion of Mr. Fox's lands which are yellow and striped?

29 A Yes.

30 Q 94 And they are bisected from the other lands by the railway line and what was

1 being proposed there in connection with other lands that were also being  
2 rezoned was that these would be zoned A1 residential?

3 A A1 residential, yes.

4 Q 95 And if you move then west of the railway line on Mr. Fox's lands on the part  
5 that is shown white on the map, and that is now being changed by the manager  
6 from B to A?

7 A Correct.

8 Q 96 So that, in effect, the proposal west of the railway line was that Mr. Fox's  
9 lands would be zoned residential with a similar density?

10 A Exactly.

11 Q 97 So that Mr. Fox's lands, that portion that is coloured white was similar to Mr.  
12 Fox's lands be zoned residential with 12 houses to the hectare on septic tank.

13 A That's correct.

14 Q 98 A portion of Mr. Fox's lands were going to remain unzoned and remain B?

15 A Yes.

16 Q 99 And they are the lands that are coloured blue on the map that's on screen and  
17 are identified as B, where they are west of the railway line?

18 A Correct.

19 Q 100 And on east of the railway line, they are identified as H?

20 A Correct.

21 Q 101 What does 'H' stand for?

22 A H is to preserve the green belt.

23 Q 102 Right. So, in effect, what the manager was proposing here in this draft plan  
24 was that Mr. Mahony's density would be increased to 12 per hectare?

25 A Yes.

26 Q 103 A portion of Mr. Fox's lands which were agriculture would be rezoned to  
27 residential with a similar density?

28 A Yes.

29 Q 104 That the balance of those lands which are west of the railway line would be  
30 zoned B agriculture.



1 A Yes.

2 Q 105 That, insofar as Mr. Fox's lands were in the green belt, a portion of those  
3 would be zoned from green belt to A1 residential?

4 A Yes.

5 Q 106 And that the balance of those lands would remain special amenity lands or green  
6 belt and they are the H lands that are east of the railway line?

7 A Yes.

8 Q 107 Is that the correct expansion --

9 A That is absolutely correct.

10 Q 108 Of paragraph 5b?

11 A Yes.

12 Q 109 If we could leave that map on screen please and move on to deal with paragraph  
13 5c. "The manager, having regard to the professional advice of the Planning  
14 Department, recommended that part of the lands the subject of inquiry which are  
15 part of what has become known as the former Baldoyle race course lands, be  
16 recommended for rezoning to A1 to provide for new residential communities in  
17 accordance with the approved action area plans and subject to the provision of  
18 the necessary social and physical infrastructure. This comprises part of the  
19 lands -- east of the railway line, known as the Fox lands. The residual part  
20 of the Fox land east of the railway line were rezoned H to provide for a green  
21 belt and to provide for urban and rural amenities and agriculture -- with the  
22 specific objective of sensitive landscape." That's as you explained and is  
23 referenced to the map 1071 which is present on screen?

24 A That's correct.

25 Q 110 Can you confirm the contents of paragraph 5c are accurate?

26 A I do.

27 Q 1116, "The lands to the south of Station Road and east of the railway line formed  
28 part of the former Baldoyle race course lands had been fallow and derelict for  
29 many years. The rezoning of the lands at Portmarnock are intended to be part  
30 of a plan to permit the development of part of the lands adjoining Baldoyle

1 also. The council is to receive approximately 100 hectares, (250 acres) of  
2 lands between Portmarnock and Baldoyle east of the railway line and bounded by  
3 the Baldoyle Portmarnock road for recreational use."

4 A That's correct, yes.

5 Q 112And the second part of that paragraph "The proposals for all the Portmarnock  
6 lands were recommended by the manager, having regard to the professional advice  
7 of the planning director and having regard also to the:

8 A, improved public transport. The extension of the DART service to Malahide  
9 and the refurbishment of Portmarnock station and the provision of park and ride  
10 site beside that station. These have now been provided.

11 B, the provision of new drainage infrastructure i.e. the north interceptor  
12 sewer which is now in place."

13 Insofar as the north interceptor sewer is concerned, Mr. McGlynn, is it the  
14 position that where the zoning had been designated 12 on septic tanks, that  
15 that now is piped drainage?

16 A It's not piped yet but it will be, at present it's being collected on a tank  
17 drainage, a central tank, but that will be connected to the sewer in time.

18 Q 113Those lands will be connected to the north interceptor sewer in time?

19 A Yes.

20 Q 1147, "The first public display of Fingal County Council Draft Development Plan  
21 1998 took place from 23rd November 1998 to the 19th March 1999". Could I  
22 have 1072 please?

23 And this map deals with the subject lands that was put on public display.

24 A Yes, that is the map.

25 Q 115Now that, in effect, Mr. McGlynn, just to clarify it, it is exactly the  
26 proposals that have been put forward by the manager?

27 A Yes.

28 Q 116And that is what was put on public display?

29 A Yes, they were accepted without change by the managers.

30 Q 117Of the council, and put on public display. 8, "A submission from F L Benson &

1 Associates on behalf of Mrs. I. Slattery, owner of the lands in question, was  
2 deemed to have been received after closing date for receipt of representations,  
3 i.e. the 19th March 1999." Now when you say there, Mr. McGlynn, and just for  
4 accuracy, the owner of the lands in question, you are not referring to both  
5 parcels of lands?

6 A No, I am not referring to the Mahony lands.

7 Q 1189. "Arising from the public display of the Fingal Draft Development Plan 1998,  
8 no submission was received from the company known as Metworth Limited. A  
9 submission had been received from this company prior to the presentation of the  
10 first draft to the elected members on the 13th October 1998. There would  
11 appear to be some similarity between the submission from Metworth Limited and  
12 the draft plan as presented to the elected members. The manager's proposals  
13 in regard to the Mahony and Fox lands were based solely on the professional  
14 advice made to him by the Planning Department.

15 10, "The submissions received related in general to the former Baldoyle race  
16 course lands and did not directly refer to the lands the subject of the inquiry  
17 by the Tribunal."

18

19 11. "The second public display of the Fingal County Council Draft Development  
20 Plan 1998 took place from 19th July 1999 and the 24th August 1999." Map  
21 number 1073 please.

22

23 Again, Mr. McGlynn, the map that went on the second public display was  
24 identical to the map that went on the first public display which was in turn an  
25 acceptance by the council of the manager's proposals in connection with these  
26 lands.

27 A Yes, that is correct.

28 Q 119 Paragraph 12: "no submissions were received in respect of the lands in  
29 question following the second display. Therefore there was no alteration to  
30 the manager' s proposals between the first presentation of the proposed

1 rezoning to the elected members on the 15th October 1998 and the adoption of  
2 the plan in respect of the lands, the subject of inquiry by the Tribunal."  
3 Now, in relation to the date in your statement, Mr. McGlynn, of the 15th  
4 October 1998, in fact when you look at paragraph -- page 1020, you will see  
5 that the meeting was, as you have earlier stated in your statement, the 13th  
6 October. Or are you referring to a different meeting?

7 A No, the consideration of the Malahide Portmarnock map commenced on the 13th  
8 October, but that meeting dealt with the lands around Malahide mainly. It was  
9 on the 15th, if you can see it's a continuation of the meeting of the 13th, I  
10 actually got to deal with these lands.

11 Q 120And that was the other extract that we put up on screen earlier?

12 A Yes.

13 Q 12113 A, "the Fingal County Council Draft Development Plan 1998 was adopted by  
14 resolution of the elected members on the 19th October 1999 to be known as  
15 Fingal County Council County Development Plan 1999" And you referred there to  
16 exhibit 7 and 7 A, map 5 which is in fact the map at 1074, please. This is the  
17 final map.

18 A Yes, the entire map for the whole area.

19 Q 122And if we can just zoom in, as it were, on the portion that's identified as  
20 Mahony's lands and Fox's lands, it's correct, is it not, Mr. McGlynn, that the  
21 zoning as ultimately adopted Fingal County Council was that as originally  
22 proposed by the manager and as unchanged throughout the process?

23 A That is correct, yes.

24 Q 123And if we could have page 1076, Mr. Kavanagh, please, and this is the formal  
25 adoption by the council of the Fingal draft plan.

26 A Yes, that's the final resolution of the last meeting.

27 Q 124And that occurred on the 19th October 1999?

28 A Yes.

29 Q 125Paragraph 13 B, "the lands in Portmarnock and east of the railway line --"  
30 before I start this, could we have map number 1074 again please.

1

2 13 B "the lands in Portmarnock and east of the railway line zoned A1 were to be  
3 the subject of an action area plan. This plan has not been prepared to date.  
4 The lands zoned A1 are at the outer perimeter of the Public Safety Zones  
5 associated with Dublin Airport. The Public Safety Zones are the traffic routes  
6 from Dublin airport for aircraft landing and taking off. Accordingly the level  
7 of development permitted can be restricted. These zones are under review by  
8 the Department of Transport and a decision is awaited on the level of  
9 development that can be permitted on the lands zoned A1."

10

11 If we look at the map that's on screen, Mr. McGlynn, in relation to the public  
12 safety zones, there are red lines to the west of the screen

13 A Yes.

14 Q 126 If you see those?

15 A I see them.

16 Q 127 They are the safety lines for Dublin Airport, if I can call them that?

17 A They are the current outline of the public safety zones associated with the  
18 airport.

19 Q 128 14. "The lands in question have been the subject of four applications for  
20 planning permission, details of which are set out herein." -- " between 1993  
21 and 1999 -- A. Planning register reference F 96/0036 received on the 30th  
22 January 1996, applicant Miss Ita Slattery, proposed development, burial ground,  
23 decision refused, outline permission." That was an application in connection  
24 with the Mahony lands?

25 A That's correct.

26 Q 129 Which was refused. "B, planning register reference F 96A/0609 received 16th  
27 August 1996, applicant Ms. Ita Slattery, proposed development burial ground,  
28 decision refused by County Council and refused by An Bord Pleanala"?

29 A That's correct.

30 Q 130 Only in connection with the Mahony lands.

1 A That's correct.

2 Q 131"C Planning register reference F97B/0496, received 2nd October 1997, applicant  
3 Mrs. P Fox, proposed development, garage, decision granted with four  
4 conditions" and that's in connection with the Fox lands?

5 A That's correct.

6 Q 132"D, planning register reference F98A/0111, received 16th February 1998,  
7 applicant I. Slattery, proposed development burial grounds, decision granted by  
8 County Council, refused by An Bord Pleanala?

9 A That's correct.

10 Q 133I think that refusal by An Bord Pleanala was in March of 1999?

11 A Yes.

12 Q 134Which was immediately prior to the submission received, albeit out of time,  
13 from Mr. Frank L Benson on behalf of Mrs. Slattery?

14 A That's correct.

15 Q 135Do you confirm, Mr. McGlynn, that the contents of your statement subject to the  
16 amendments that you have made in paragraph 4 are accurate?

17 A Yes.

18 Q 136And that that represents an accurate zoning history of the Mahony and Fox lands  
19 from 1994 to 2000?

20 A Yes.

21 Q 137Thank you very much, Mr. McGlynn. Would you answer any questions that  
22 Mr. Gerard Hogan may have for you?

23 A Yes.

24 Q 138Thank you.

25

26 THE WITNESS WAS CROSS-EXAMINED BY MR. HOGAN:

27

28 Q 139Mr. McGlynn, Gerard Hogan for Mr. Dennis Mahony and just a few questions for  
29 you. The first is, I think, arising from what you told Miss Dillon, there was  
30 in fact no development on the lands between 1993 and 1999?

1 A On Mr. Mahony's lands?

2 Q 140 On Mr. Mahony's lands?

3 A No.

4 Q 141 Would you agree that there was a major change so far as the density was  
5 concerned in 1998 and 1999?

6 A Yes.

7 Q 142 And that that change to the density came solely as a result of a recommendation  
8 from the manager who, in turn, was acting on the basis of professional advice  
9 from the planners?

10 A Yes.

11 Q 143 And isn't it also the case that there were sound reasons which you have  
12 outlined in your statement for the manager's recommendations?

13 A Yes.

14 Q 144 There are sound reasons based on the orderly planning and development of the  
15 Portmarnock area, again in line with the manager's recommendation?

16 A Yes, I would agree with that statement.

17 Q 145 And isn't it also the case that the Fox lands were not the subject of the  
18 original rezoning in 1993?

19 A No.

20 Q 146 But you have just told Ms. Dillon, and you helpfully explained to her, that a  
21 substantial tranche of the Fox lands were independently rezoned from  
22 agricultural and agricultural green belt to residential at various densities,  
23 again on the recommendation of the manager in 1998 and 1999?

24 A Yes, that is correct.

25 Q 147 And so there's an example of adjoining lands which were rezoned on the basis  
26 entirely of professional advice and on the recommendation of the manager from  
27 agricultural to a residential zoning, albeit of different and varied densities?

28 A That is correct, yes.

29 Q 148 Thank you very much.

1 CHAIRMAN: Thank you very much, Mr. McGlynn

2 A Thank you, Chairman.

3

4 THE WITNESS THEN WITHDREW.

5

6 MS. DILLON: The next witness is Mr. John Mahony, who will be the final  
7 witness for today. Now we had indicated yesterday, in fairness to his  
8 solicitor and counsel, that we didn't anticipate that we would require him much  
9 before 12 o'clock, we seemed to have moved a little bit quicker.

10

11 CHAIRMAN: We can rise until --

12

13 MS. DILLON: He will be a very short witness.

14

15 MR. O'KEEFFE: Mr. Chairman, I can confirm he will be here in five minutes.

16

17 CHAIRMAN: That's fine.

18

19 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

20 AND RESUMED AS FOLLOWS:

21

22 MS. DILLON: Mr. John Mahony, please.

23

24 MR. JOHN MAHONY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

25 BY MISS DILLON:

26

27 Q 149MS. DILLON: Good morning, Mr. Mahony.

28 A Morning.

29 Q 150You were asked to provide a statement to the Tribunal in relation to a matter

30 which Mr. Dunlop had told the Tribunal that he understood you had been involved



1 in lobbying councillors. Now, in the course of his evidence before the  
2 Tribunal, Mr. Dunlop clarified that evidence, and if I can summarise it and if  
3 Mr. O' Keeffe wishes to correct me in any way, he will do so. As I understand  
4 what Mr. Dunlop has now told the Tribunal, is that in the run up to the  
5 confirming motion in late September, 29th September 1993, that he heard that  
6 you were involved in lobbying councillors. He said that he was told by  
7 Mr. Michael Joseph Cosgrave and Mr. Liam Creavan that there had been an  
8 approach of some description from you to them, whether by telephone or face to  
9 face, Mr. Dunlop was not aware. So can I ask you first of all in relation to  
10 Mr.--

11  
12 MR. O'KEEFFE: Excuse me, Mr. Chairman, if I can clarify on behalf of Mr.  
13 Mahony, I think Mr. Dunlop also clarified to the extent it may have only been  
14 an attempt to contact.

15 MS. DILLON: I was coming to that.

16  
17 MR. O'KEEFFE: I beg your pardon.

18 Q 151The question I was about to put to you, Mr. Mahony, did you ever contact or  
19 attempt to contact Mr. Michael Joseph Cosgrave?

20 A No.

21 Q 152Did you ever contact or attempt to contact by telephone or otherwise Mr. Liam  
22 Creavan?

23 A No.

24 Q 153Did you ever contact or attempt to contact Mr. Sean Gilbride?

25 A No.

26 Q 154In fairness to Mr. Dunlop, he was very unclear whether you had attempted to  
27 contact Mr. Gilbride.

28 A Probably.

29 Q 155Now, Mr. Dunlop says that you contacted him, that there may have been a  
30 telephone contact between the two of you.

1 A Yeah, my recollection is that I rang Frank Dunlop, I may or may not, but I  
2 think I did to see was it necessary for me to attend the vote on that date.

3 Q 156Yes.

4 A And I rang him to find out where it was and what time it was at.

5 Q 157As I understand from Mr. Hogan's cross-examination on behalf of your father,  
6 Mr. Dennis Mahony, Mr. Dennis Mahony will tell the Tribunal that he in fact was  
7 out of the country at the time of the vote on the 29th September 1993?

8 A That's correct.

9 Q 158In those circumstances, were you in effect keeping a watching eye, as it were,  
10 on proceedings on behalf of your father?

11 A That's correct, I was just asked to show my face at the meeting.

12 Q 159And who asked you to show your face at the meeting?

13 A It was suggested by my father to me that seeing as there was nobody else, since  
14 he was away, would I mind going down --

15 Q 160Did you have any discussions with Mr. GV Wright in connection with this matter?

16 A I met GV in the council offices on the day of the vote. That's the only time I  
17 spoke to him.

18 Q 161About the matter.

19 A I just, you know, I just met GV, I know GV all my life, I had some social  
20 conversation and asked him where should I go, where the vote is on, how is it  
21 going or how does he think it will go, that was the sum of the conversation.

22 Q 162But did you have that conversation with Mr. GV Wright, as best you recollect,  
23 Mr. Mahony, on the date of the vote on the 29th September?

24 A I would say on the day of the vote, yes.

25 Q 163Prior to the 29th September, did you ever have any discussions with Mr. GV  
26 Wright in connection with the matter?

27 A No.

28 Q 164Did you attend at the council meetings on the 29th September?

29 A I did.

30 Q 165Did you attend at the council meetings on any other occasion?

1 A No, it was the one and only time I was ever in City Council Offices.

2 Q 166 Do you remember meeting Mr. Dunlop on the 29th September at the meeting?

3 A I have a vague recollection of introducing myself to Mr. Dunlop because I never  
4 met him before, I think I saw him walking in and I went over and said "I am  
5 John Mahony, I am here to represent my father," and he said fine.

6 Q 167 You knew obviously that Mr. Dunlop had been retained by your father to look  
7 after this matter?

8 A I did.

9 Q 168 Prior to your father leaving the country, had you discussed the rezoning matter  
10 with your father?

11 A Possibly, yes.

12 Q 169 And what did you discuss with him?

13 A I would have absolutely no recollection. Just how is it going or whatever, I  
14 had no connection with the lands or, I had no involvement and I really didn't  
15 know what was going on so --

16 Q 170 All right.

17 A I had no great reason to discuss it with him.

18 Q 171 Did you have any conversation with Mr. Dunlop when you met him, that you can  
19 recollect, on the 29th September 1993?

20 A No, it was only exchanging pleasantries.

21 Q 172 Neither Mr. Creavan or Michael Joseph Cosgrave have indicated to the Tribunal  
22 that they discussed this matter with anybody other than Mr. Dunlop, in other  
23 words, to date they have not identified themselves as having spoken to you or  
24 have any communication with you.

25 A I wouldn't know them to speak to, wouldn't know what they look like.

26 Q 173 Thank you very much, Mr. Mahony, if you answer any questions anybody may have  
27 for you.

28

29 MR. HOGAN: No questions, Mr. Chairman.

30

1 MR. KENNEDY: No questions, Mr. Chairman.

2

3 MR. O'KEEFFE: I have no questions, Mr. Chairman.

4

5 CHAIRMAN: Thank you very much.

6 A Thank you.

7

8 THE WITNESS THEN WITHDREW.

9

10 MS. DILLON: That concludes the witnesses for today, Mr. Chairman. We will  
11 resume with Mr. Dennis Mahony on Tuesday week.

12

13 CHAIRMAN: Right. Adjourn until then, 10.30.

14

15 MS. DILLON: I am obliged to you

16

17 THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 4TH NOVEMBER 2003

18 AT 10.30 A.M.

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