

**THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY 1ST JULY 2004**

**AT 10.30 AM:**

CHAIRMAN: Morning Mr. Gallagher.

MR. GALLAGHER: Morning Sir.

MR. SREENAN: Chairman before Mr. Gallagher resumes the direct examination of Mr. Deane, can I just raise a matter of concern in relation to Mr. Gallagher's examination yesterday.

The Tribunal will remember that Mr. Gallagher examined Mr. Deane at some length about the dating, or rather more accurately the lack of dating of the agreements made on or about the 7th October 1988 between Merrygrove Estates and O'Callaghan Properties and the Celtic Nominees option agreement as well, and at one stage it was question 294, Mr. Gallagher put it to Mr. Deane:

"Now can you tell the Tribunal why it was that the date, the 7th October 1988 was never inserted on either of those agreements".

And Mr. Deane responded that the normal practice when you execute a contract for sale is that the purchaser signs first.

Now we did ask the Tribunal this morning to, Tribunal staff to produce to us the originals of those two agreements, and when they were produced it transpires that both of the original agreements which I have here, are dated.

And both have the date 7th October 1988 on them. And I think it is somewhat of unfair to Mr. Deane, to cross examine him at such length on an issue of the lack of dating of the agreements when the original agreements were in the possession of the Tribunal and the original agreements were dated.

10:41:58 1 CHAIRMAN: Well --

2

3 MR. GALLAGHER: I must say I hadn't been alerted by Mr. Sreenan to the fact  
4 that the original agreements were dated or indeed that he had examined them

10:42:12 5 this morning. I was at all times dealing with photocopies of documents which  
6 were undated, I was not aware that the original was dated, I was relying also

7 on a document which was produced and which was bound and I handed to Mr. Deane  
8 yesterday and in the witness box, which was according to the evidence of

9 Mr. Deane and earlier evidence, the original document signed or one of the

10:42:43 10 originals signed by Mr. Gilmartin and Mr. O'Callaghan. And that document did  
11 not have the date inserted in it.

12

13 So if in anyway I mislead the Tribunal or was unfair to Mr. Deane, I apologise.

14

10:42:58 15 CHAIRMAN: Well obviously if we had the, which apparently we had, the  
16 originals with the date, they should have been produced.

17

18 MR. GALLAGHER: Indeed, but of course, and the various copies that have been  
19 produced and furnished by Mr. Deane with his statement and indeed at an earlier

10:43:20 20 stage the documents he described as draft A, B, C, D, E etcetera, none of those  
21 contained or had the dates inserted in them. But if Mr. Sreenan tells me that

22 the original is there and that it was --

23

24 CHAIRMAN: Well apparently Mr. Sreenan obtain it from us.

10:43:36 25

26 MR. GALLAGHER: Of course I am not suggesting it was, obviously in a safe, it  
27 was requested by Mr. Sreenan, I wasn't aware it had been requested until this

28 morning and I didn't look at it because I didn't know but again I apologise if

29 that is the situation. I accept what Mr. Sreenan says about the dating of it

10:43:51 30 on the original. I don't want to see it --

10:43:54 1

2

MR. SREENAN: My concern Chairman, was simply that the Members of the Tribunal might have got the impression from the emphasis placed on this issue, which is something that took me by surprise at the time, that there was something

3

4

10:44:05 5

6

perhaps sinister about the non-dating of the agreements and it transpired that they were dated all along, but I accept what Mr. Gallagher says of course.

7

8

CHAIRMAN: Well we know the true situation now. All right.

9

10:44:16 10

11

MR. GALLAGHER: Mr. Deane please.

12

MR. LAWLOR: Chairman, could I just say that yesterday, least there be any misinterpretation of the information concerning Mr. Gilmartin's non availability, it's my further understanding that the man is facing a triple

13

14

10:44:31 15

16

bypass and I in no way would other than wish him a full recovery and I know everybody else would, I wouldn't like the record to stand that I in anyway was in a negative comment in that respect Chairman. Thank you.

17

18

19

CHAIRMAN: Thank you.

10:44:43 20

21

22

23

24

25

26

27

28

29

30

**JOHN DEANE RETURNS TO THE WITNESS BOX AND CONTINUES TO BE  
QUESTIONED BY MR. GALLAGHER AS FOLLOWS:**

- 10:44:43 1
- 2
- 3
- 4 Q. 1 MR. GALLAGHER: Morning Mr. Deane, yesterday before the Tribunal rose we had
- 10:44:55 5 dealt to some extent with the events leading up to the meeting on the 31st of
- 6 January 1989 and I want to come to that in a moment, but before I do so, just
- 7 for the purpose of completing the record and the sequence of events if I may, I
- 8 want to move on, we know that a meeting took place, there is dispute about what
- 9 happened and we'll deal with that in a moment, but subsequent to that --
- 10:45:26 10 A. Sorry what meeting are you referring to.
- 11 Q. 2 Meeting of the 31st of January 1989. Subsequent to that, the position was that
- 12 you and Mr. O'Callaghan acquired through your company, acquired the entire
- 13 shareholding of Merrygrove by the payment of 460,000 pounds damages to,
- 14 effectively to Mr. Gubay.
- 10:45:49 15 A. That is correct.
- 16 Q. 3 Isn't that right? And I think on the 14th March 1989 you applied to Dublin
- 17 Corporation seeking an extension of time to obtain planning permission and you
- 18 were seeking other changes in the contract in relation to the Fonthill Road and
- 19 the obligation that you were suggesting was on the Corporation to build the
- 10:46:15 20 Fonthill Road?
- 21 A. If I could have --
- 22 Q. 4 2251 please.
- 23 A. Yes that's correct.
- 24 Q. 5 You requested amendments to the contract. And on the 26th April 1989, the
- 10:46:35 25 Corporation replied to you 2320 please, they agreed to an extension of time for
- 26 the submission of a planning application until the 31st December 1989, isn't
- 27 that right?
- 28 A. That is correct.
- 29 Q. 6 And they rejected your request for an amendment of the contract, in other words
- 10:46:59 30 they were contending that the contractual obligation to build that portion of

- 10:47:03 1 the Fonthill Road and associated works, were the responsibility of the  
2 purchaser?
- 3 A. That is correct.
- 4 Q. 7 Now, subsequent -- sorry can you, can I ask you this question: What interest  
10:47:21 5 if any, did you believe that Mr. Gilmartin had in the lands at this time, this  
6 is in April, May of 1989?
- 7 A. Mr. Gilmartin would have had only an option, a right to exercise an option.
- 8 Q. 8 Yes. He had, did he have an equity in the lands?
- 9 A. Yes, I suppose you could say that insofar as --
- 10:47:50 10 Q. 9 An equitable interest in the same way that perhaps a contractual purchaser?  
11 A. It would be more or less the same, yes.
- 12 Q. 10 Yes. I think that on the 22nd of December 1989, Ambrose Kelly and Associates  
13 on behalf of your company, applied to Dublin County Council for planning  
14 permission for shopping covered mall, offices, library and car parking, 2629  
10:48:20 15 please.  
16 This is an extract from the planning register you will see that the planning  
17 application was submitted by the Ambrose Kelly Partnership on behalf of  
18 Merrygrove, the date it was received by the County Council was the 22nd of the  
19 12th 1989 and on the 28th of the 9th 1990 a decision was made to grant planning  
10:48:47 20 permission?  
21 A. That's correct.
- 22 Q. 11 Did you or did Mr. O'Callaghan consult with Mr. Gilmartin before that planning  
23 application was submitted and did you obtain his consent to that, to the  
24 submission of that planning application?
- 10:49:01 25 A. I don't recall having any discussion with Mr. Gilmartin, whether  
26 Mr. O'Callaghan did or not I couldn't actually say.
- 27 Q. 12 Well to the best of your knowledge or belief did he have any such discussion?  
28 A. Mr. O'Callaghan was in regular communication with Mr. Gilmartin, it may have  
29 happened it may not have happened I simply don't know.
- 10:49:17 30 Q. 13 To the best of your knowledge or belief did he have any such discussion?

10:49:20 1 A. I don't know.

2 Q. 14 May I have 4774 please? In July 1990 there was some, there were discussions  
3 involving Mr. O'Callaghan and Mr. Gilmartin?

4 A. That is correct.

10:49:46 5 Q. 15 And as a result Mr. Maguire wrote and said that he referred to a telephone  
6 conversation that you had with him and subsequent discussion with Tom  
7 Gilmartin. "He has indicated to us the following agreement with Mr. Owen  
8 O'Callaghan."  
9

10:50:08 10 "The company Merrygrove Limited is to be transferred to Barkhill Limited  
11 subject to an indemnity in relation to the any outstanding debts mortgages and  
12 debenture etcetera.  
13 If Tom Gilmartin Barkhill Limited were unable to discharge the balance of the  
14 purchase money by the 31st December 1990, then the company Merrygrove Estates  
10:50:29 15 will be transferred to Owen O'Callaghan. In the circumstances therefore we  
16 would be obliged if you would let us have the contract for the transfer of the  
17 shares".  
18

19 It would appear on a reading of that letter that agreement had been reached  
10:50:36 20 between Mr. O'Callaghan and Mr. Gilmartin.

21 A. I think that was Mr. Gilmartin's interpretation of it rather than an agreement.  
22 If my memory serves me right, I wrote back in response to that letter, setting  
23 out the difficulties that such an arrangement would actually put, would that  
24 arrangement would incur and suggesting that it wasn't a viable proposition.

10:50:58 25 Q. 16 Well I just want to establish, on the face of it it appear that is  
26 Mr. Gilmartin and Mr. Maguire believe that there had been an agreement between  
27 Mr. Gilmartin and Mr. O'Callaghan?

28 A. It would appear that Mr. Gilmartin had instructed Mr. Maguire in that way, yes.

29 Q. 17 May I have 4775 please. Now you responded on the 16th of July 1990, thanking  
10:51:25 30 them for their letter and saying:

10:51:28 1  
2 "The conversations between Mr. Gilmartin and Mr. O'Callaghan was based on the  
3 assumption that he would be happy with our advice on the issues arising should  
4 such a transaction take place.

10:51:38 5  
6 We can not advise Mr. O'Callaghan to proceed with any transaction along the  
7 lines indicated in your letter for the followings specific reason".  
8 And you give reasons why you say it cannot go on.

9 A. That's correct.

10:51:51 10 Q. 18 And I take it that there was no agreement executed along the lines suggested in  
11 the letter of Seamus Maguire of the 13th July 1990?  
12 A. No.

13 Q. 19 Now just to complete the history of the acquisition of those lands. I think  
14 that on the 9th June 1999, Merrygrove Estates issued proceedings against Dublin  
10:52:15 15 Corporation seeking specific performance of the agreement of 21st November  
16 1988?  
17 A. I am subject to dates certainly --  
18 Q. 20 3387 please.  
19 A. Certainly proceedings were issued.

10:52:31 20 Q. 21 This is, sorry that's a copy of the agreement. 4562 that's the copy of the  
21 summons from Merrygrove Estates against Dublin Corporation?  
22 A. That's correct.

23 Q. 22 Dated 9th June 1999?  
24 A. That's correct.

10:52:52 25 Q. 23 So the lands which had been the subject of the agreement of the Corporation and  
26 Merrygrove on the 21st November 1988 were not, the sale did not close until  
27 sometime in 1999 or 2000?  
28 A. That is correct.

29 Q. 24 And I think that in 2001, certain works were done and monies were released by  
10:53:19 30 Dublin Corporation out of the purchase monies to South Dublin County Council

10:53:23 1 for the work that was done on the Fonthill Road?

2 A. I have no direct evidence of that.

3 Q. 25 4750 well can you confirm that part of the monies paid to Dublin Corporation

4 included monies for works that were to be done on the Fonthill Road?

10:53:35 5 A. Merrygrove paid for the works which were done to Dublin Corporation.

6 Q. 26 And is it the position that at all material times you and Mr. O'Callaghan were

7 directors of Merrygrove?

8 A. Yes, I think that's correct. There was a period of time Merrygrove was a

9 subsidiary of Barkhill during the intervening period between the time of the

10:53:58 10 share purchase agreement, I think in 1991, and the purchase of Tom Gilmartin's

11 shares in 1996.

12 Q. 27 Well --

13 A. But in general that's correct.

14 Q. 28 Well then perhaps another way of putting it would be at all material times

10:54:15 15 yourself and Mr. O'Callaghan controlled Merrygrove?

16 A. No Merrygrove became a subsidiary of Barkhill in 1991 if my memory serves me

17 correct.

18 Q. 29 Were you a director of Barkhill?

19 A. No not at that time.

10:54:30 20 Q. 30 Did you become a director of Barkhill?

21 A. I became a director of Barkhill, I believe in 1998.

22 Q. 31 Were you a director of O'Callaghan Properties at that stage?

23 A. I think it may have been later before I became a director of O'Callaghan --

24 Q. 32 Pardon.

10:54:42 25 A. I think it may have been later before I became a director of O'Callaghan

26 Properties.

27 Q. 33 Did you become a director of O'Callaghan properties in 1991?

28 A. That's possible yes, I just don't know the dates, Chairman.

29 Q. 34 Now if we can just come back to the meeting of the 31st January 1989. In your

10:55:15 30 statement at page 4584 you say that:

10:55:20 1  
2 "As far as I can recall, I first met Tom Gilmartin at the offices of Seamus  
3 Maguire on the 21st January. I was involved in the drafting of this option  
4 agreement, it's negotiation with Seamus Maguire."

10:55:33 5  
6 I understood your evidence yesterday to be to the effect that you accepted that  
7 you had, you did not have any negotiations with Seamus Maguire. Mr. Maguire  
8 has told the Tribunal that he first met you and first met Mr. O'Callaghan on  
9 the 31st of January of 1989 and had no communication with you, that he  
10:55:50 10 believed, that he couldn't remember prior to that?

11 A. That is correct.

12 Q. 35 Can you explain why it is that you told the Tribunal that you had been involved  
13 in negotiations with Seamus Maguire prior to the 31st of January 1989?

14 A. I think the first time I met Seamus Maguire was on the 31st of January 1989. I  
10:56:15 15 cannot recall for certain but I believe I may have had a telephone conversation  
16 with him that I referred to in the letter of the 19th January and I think  
17 Mr. Maguire may have said also that we may have had a telephone conversation.  
18 It is that, I think I was alluding to when I was making that statement.

19 Q. 36 You, I think, attended at Mr. Maguire's office with a revised draft of the  
10:56:50 20 agreement, the option agreement, I think it's draft E which is to be found on  
21 page 3951, I don't know whether you have that folder?

22 A. Could I have the folder please?

23 Q. 37 I think 3951 is also to be found at page 4644, if we look --

24 A. Which tab.

10:57:12 25 Q. 38 Tab E.

26 A. Tab E, thank you. I don't seem to have a tab E, sorry I found it. Thank you.

27 Q. 39 This is draft E, which I understand was furnished by you some months ago to the  
28 Tribunal and if you look at, I think you will see that there are various  
29 amendments in handwriting?

10:57:50 30 A. That is correct.

- 10:57:50 1 Q. 40 And as I understand it, this is the document that you produced as the agreement  
2 that you understood had been reached between Mr. Gilmartin and Mr. O'Callaghan,  
3 is that right?
- 4 A. The principals of it were based on the agreement between Mr. Gilmartin,  
10:58:16 5 Mr. O'Callaghan. As I think I said yesterday some additional clauses in this  
6 were recommended by me to Mr. O'Callaghan and that's why those clauses ended up  
7 in the document.
- 8 Q. 41 But they had not been agreed at that stage?
- 9 A. No.
- 10:58:29 10 Q. 42 Tell me, did you tell Mr. O'Callaghan -- sorry did you tell Mr. Gilmartin or  
11 Mr. Maguire on that occasion or any prior occasion, that you were not only a  
12 solicitor acting in the matter but that you had an interest in the property,  
13 and that you were a partner with Mr. O'Callaghan in that and a number of other  
14 projects?
- 10:58:50 15 A. I don't believe I told them.
- 16 Q. 43 You don't believe you did?
- 17 A. Yes.
- 18 Q. 44 So they at all times believed that you were a solicitor with no personal  
19 interest in these lands?
- 10:58:58 20 A. At that time they certainly would have.
- 21 Q. 45 Sorry they would have --
- 22 A. Believed that I was a solicitor acting in that capacity only.
- 23 Q. 46 And that you had no personal interest in the lands?
- 24 A. That's what they would have believed at that time, certainly.
- 10:59:12 25 Q. 47 Now, we see that there were a number of amendments to this agreement. If we  
26 look at draft E, sorry draft I, which is also in the book, we'll see that this  
27 is a copy of the draft E document and this appears to have amendments which are  
28 in the handwriting of Seamus Maguire, as he has confirmed?
- 29 A. Sorry --
- 10:59:51 30 Q. 48 Draft I, if you look at I.

10:59:53 1 A. I, sorry. The document under tab E has my handwriting on it.

2 Q. 49 That's right?

3 A. The other one, I don't know whose handwriting that is.

4 Q. 50 Mr. Maguire identified it as his.

11:00:09 5 A. Grand.

6 Q. 51 Can you just confirm that it is a copy of draft E that you produced to

7 Mr. Maguire in his office on the 31st of January?

8 A. It certainly seems to be the same document.

9 Q. 52 Yes. That's -- I understand, my understanding. Now Mr. Gilmartin has said

11:00:31 10 that the document which is signed, was signed and was produced here which is to

11 be found at G, was not the document that was signed by him on the 31st, and I

12 will go through with perhaps greater particularity some of the points that he

13 made in the course of his evidence.

14 A. Could I actually have the original of the signed document, if that's available

11:01:13 15 please?

16 Q. 53 This is the one with the binding and the undated copies of the Merrygrove and

17 the Corporation contracts.

18 A. This is the document that Mr. Gilmartin signed.

19 Q. 54 You say that he signed that in your presence in the office of Seamus Maguire?

11:01:39 20 A. That is correct.

21 Q. 55 Mr. Gilmartin says that amendments were made to the draft that you produced,

22 that's draft E and that an amended draft was typed up in the office of

23 Mr. Maguire on the morning in question.

24

11:02:08 25 MR. SREENAN: No, Chairman, I don't think that Mr. Gilmartin said that. I

26 think he said that the draft was amended initialled and Mr. Deane took it away

27 and said he would tidy it up and send it back.

28

29 MR. GALLAGHER: Well according to Mr. Sreenan, said on the 19th of the 3rd of

11:02:24 30 this year that this document F was typed on the, in Mr. Maguire's office on the

11:02:31 1 basis of a last draft of Mr. Deane, I think it's page 463 -- sorry day 463 --  
2  
3 CHAIRMAN: In relation to what Mr. Gilmartin said. You were putting --  
4  
11:02:50 5 MR. GALLAGHER: Mr. Sreenan put it to Mr. Gilmartin that this was in fact typed  
6 in Mr. Maguire's office.  
7  
8 MR. SREENAN: That's correct Chairman but I think Mr. Gallagher inadvertently  
9 put to the witness Mr. Gilmartin said.  
11:03:05 10 Q. 56 Mr. Maguire said this was typed in his office.  
11 A. Sorry that is correct.  
12  
13 CHAIRMAN: That's correct?  
14 A. Yes that the document that I have upped tab F and I think the original of which  
11:03:18 15 is actually with the Tribunal, which is a four leafed A3 document, which has a  
16 couple of handwritten amendments made by me, was actually typed in Seamus  
17 Maguire's office on the day that the document was signed, namely 31st of  
18 January and that date actually appears at the top of the document.  
19 Q. 57 Yes. The document F is the document you say was typed in Mr. Maguire's office?  
11:03:49 20 A. Page 3957 is the one I am looking at, is that the right document.  
21 Q. 58 That's correct page 3957. And it also appears in your documents as 4652. If  
22 you look at --  
23 A. That document has my handwriting on it.  
24 Q. 59 Yes, if you look at 4652 it's in the same, under tab F?  
11:04:17 25 A. Tab F --  
26 Q. 60 If you move on --  
27 A. I have 3957.  
28 Q. 61 Do you see 4652?  
29 A. Yes, yes I have that.  
11:04:37 30 Q. 62 That is a document you produced with your third statement, furnished on the

11:04:42 1 16th June?

2 A. That's correct.

3 Q. 63 Can you say what's the handwriting, what's -- what words are written on the

4 left-hand side there?

11:04:49 5 A. That I think, is the notation that appeared on the yellow post it note which I

6 put on for the purposes of identifying the various drafts, to make it clear to

7 the Tribunal. That did not appear on the original. I think it says

8 "Engrossment prepared, I believe at Seamus Maguire's office but amended".

9

11:05:18 10 I was preparing Chairman, a list of the various drafts and I put yellow post it

11 notes on those various drafts to give them to my solicitor, I understand those

12 actual originals with the post it notes were then given to the Tribunal, so

13 those post it notes were put on by me, probably within the last three months or

14 so.

11:05:38 15 They were not on the original documents and that writing I believe was not on

16 the original document. In fact, in the Tribunal there is the original of that

17 document and it might be useful to have it produced.

18 Q. 64 All right. I want to put to you what Mr. Gilmartin said, some of what

19 Mr. Gilmartin said about this meeting and what transpired there. He said that

11:06:00 20 on day 458 page 57, question 356 he says that you took the document away

21 because:

22

23 "We had alterations and they were markings on that document. We initialled one

24 or two items on it and there was one particular paragraph which was taken out

11:06:16 25 of the document, which there was two lines drawn across and it was signed

26 initialled by both me and Mr. O'Callaghan. There was no signing and no dates

27 filled in on this document."

28

29 I should explain to you that Mr. Gilmartin was at that time looking at a

11:06:32 30 photocopy of the agreement at page, at E, which was the signed document which

11:06:44 1 did not, that's at 3951, which did not have the dates on it. Sorry, he was  
2 looking at the signed document G, 3960 which is a copy of the document at 2109,  
3 I know this is very confusing, but he was looking at a particular document that  
4 did not have the dates filled in.

11:07:14 5 A. Yes, and the original here is likewise the same.

6 Q. 65 Yes. He was looking at a copy of that. And he was suggesting that:

7  
8 "We initialled one or two items on it and there was one particular paragraph  
9 taken out of the document, which there were two lines drawn across and it was  
11:07:32 10 signed initialled by both me and Mr. O'Callaghan, there was no signings and no  
11 dates filled in it on this document". Now he says that the document at pages  
12 2109 -- which you will find at G 1 in that document, in that folder rather, was  
13 not the document he signed, to the best of his recollection. What do you say  
14 about that?

11:07:54 15 A. That's not correct. The document that I have here was the document  
16 Mr. Gilmartin signed on the day, there was no question of the document being  
17 taken away, amended, altered in anyway. They were signed on the day and that  
18 was it. Those documents were never amended subsequently.

19 Q. 66 On day 458 he acknowledged that the signature at page, on page 2112 is his  
11:08:18 20 signature, but he says that the content of the document was not what was agreed  
21 Mr. O'Callaghan or what they signed?

22 A. That's absolutely incorrect. The document as signed was the document as  
23 discussed as negotiated, as agreed as typed up in Seamus Maguire's office and  
24 signed by the parties there and then, in the presence of myself and  
11:08:39 25 Mr. Maguire.

26 Q. 67 He says that the agreement that he reached was one, and this is at question 819  
27 page 114 on day 363:

28  
29 "The agreement he reached was that the first payment of 1.35 million pounds was  
11:09:12 30 to be made on the 31st January 1990, the second payment of 1.35 million was to

11:09:12 1 be made on the 31st January 1991 or on the date of rezoning, if earlier than  
2 the 31st January 1991".

3 A. That's simply not correct.

4 Q. 68 He says that it was a lie to say that the final document was typed up in  
11:09:34 5 Mr. Maguire's office. Says that you said that you would take it away and type  
6 it up in accordance with what had been agreed. He says that his signatures is  
7 at page 2112 and he signed that document on the 31st January in Maguire's  
8 office but he says the agreement he sign had had dates on it in pen and there  
9 were alterations made?

11:09:56 10 A. No that simply is not correct.

11 Q. 69 I see. He insists that you took the document away and type it had up. He said  
12 that they had had no input into the composition of the agreement, that you took  
13 it away, you said you just tidied it up, but a different document came back?

14 A. That's an absolutely outrageous allegation and I totally reject that. The  
11:10:24 15 document was typed in Seamus Maguire's office on the 31st of January and it was  
16 signed by Mr. Maguire and myself as witnesses, and by Tom Gilmartin and Owen  
17 O'Callaghan on that day.

18 Q. 70 He says that on day 464, page 1 question 3 he says: "That the agreement was  
19 second payment of 1.35 million would be paid when lands were rezoned, and if  
11:10:50 20 not rezoned would be paid two years after the agreement. It was the final  
21 payment that was subject to the zoning".

22 A. That's not correct.

23 Q. 71 He says that the reason that he didn't pay the final 1.35 million to  
24 Mr. O'Callaghan or to Owen O'Callaghan Properties Limited was because it wasn't  
11:11:14 25 due and because O'Callaghan Properties was in total breach of the agreement  
26 having met with Sean Haughey and others on the 8th of March 1989.

27 A. That's simply doesn't stand up I'm afraid. It is not correct.

28 Q. 72 He says that when O'Callaghan Properties or Merrygrove in fact, applied for  
29 planning permission, he spoke to Mr. O'Callaghan who asked him to check the  
11:11:40 30 agreement and he telephoned Mr. Maguire and was advised that the agreement

- 11:11:44 1 wasn't what Gilmartin thought. That was on day 464.
- 2 A. I have no knowledge of any conversation he had with Seamus Maguire.
- 3 Q. 73 Now Mr. Maguire in -- Mr. Maguire in his evidence said that he had never met
- 4 you or met Mr. O'Callaghan prior to the meeting and he had no recollection of
- 11:12:17 5 meeting you and no note of or attendance of having spoken with you?
- 6 A. That's correct and I have no recollection of meeting him prior to that date
- 7 either.
- 8 Q. 74 Mr. Maguire said that there was a difference between, in the type face between
- 9 the document which he confirms was typed in his office, that is the document at
- 11:12:50 10 F, 3957 and the document which was signed which is at G 3960 and succeeding
- 11 pages, and he says, he explains that by saying that "it must have been typed on
- 12 a different machine". Can you assist the Tribunal in that regard?
- 13 A. No, I cannot Chairman. I recall the two documents being typed in Mr. Maguire's
- 14 office. I do not know who typed which document, but both were typed in his
- 11:13:23 15 office.
- 16 Q. 75 Were they typed in your presence?
- 17 A. I was in the building when they were being typed but I wasn't sitting watching
- 18 a typist typing them.
- 19 Q. 76 Did you draw the attention of the typist to the changes that you saw or that
- 11:13:34 20 you required to be made?
- 21 A. No, I draw Mr. Maguire's attention to those, not the typist's attention.
- 22 Q. 77 Was there any legal or other reason why the document which is on screen, which
- 23 is draft F, which is on page 3957 could not have been signed and initialled by
- 24 Mr. Gilmartin and by Mr. O'Callaghan in the form in which it appears there,
- 11:14:05 25 with the typos initialled at the side?
- 26 A. Absolutely no legal reason whatsoever why that could not have been done.
- 27 Q. 78 On the occasion that Mr, occasions indeed that Mr. Maguire gave evidence, his
- 28 attention was drawn to the fact that on page 3958, there was a space on the
- 29 single page or on that page for a signature by Mr. O'Callaghan on behalf of
- 11:14:41 30 O'Callaghan Properties and by Thomas Gilmartin. Whereas when one looked at the

- 11:14:46 1 document which was actually executed which is G and perhaps we can put the G is  
2 at 3960, we see that it is, the spacing is different and the name of Tom  
3 Gilmartin and the signature of Tom Gilmartin is to be found on 3963 which is at  
4 the top of a page, which is not the page on which Mr. O'Callaghan's signature  
11:15:21 5 appears?
- 6 A. That is correct.
- 7 Q. 79 It was put to Mr. Maguire that the original document which you have before you,  
8 which is in the black, which is bound with the black binder, has  
9 Mr. Gilmartin's signature on the reverse side of the page from  
11:15:47 10 Mr. O'Callaghan's?
- 11 A. That is correct.
- 12 Q. 80 Can you explain why it was that Mr. Gilmartin's signature was not put in at the  
13 bottom of page 3962 on that document?
- 14 A. If you look at the original you will see that the, it actually wouldn't fit  
11:16:06 15 without being squashed up.
- 16 Q. 81 You see 3962 on screen, perhaps we can go to the bottom of that? Can we scroll  
17 that up just a little please to the bottom of the page, to the very bottom of  
18 the page? Do you say that there was no space on that for the --
- 19 A. I am just simply making a comment. That if you take the amount of space taken  
11:16:43 20 here and try and put that on the first page it simply won't fit properly. In  
21 other words if you take the page I have here, and after my name you type in  
22 signed sealed and delivered there is virtually no space left for the witness to  
23 sign, it's, it is just simple practical matter. Furthermore, on rate of deeds  
24 title it wouldn't be unusual to have two witnesses because you would be  
11:17:06 25 swearing a memorial, so it wouldn't be unusual for a secretary to leave room  
26 for two witnesses to sign.
- 27 Q. 82 I see. But no such space was left for such signatures on the original which  
28 appears to have been typed according to Mr. Maguire and to you, in his office?
- 29 A. That's correct, yes, that is correct.
- 11:17:28 30 Q. 83 And apart from that can you give me any explanation as to why they appear on

- 11:17:34 1 different sides of the same page?
- 2 A. I can't give an explanation, I assume the secretary who type it had was laying
- 3 it out and would have laid it out in that fashion.
- 4 Q. 84 Mr. Maguire says that the first he heard that the agreement for sale had been
- 11:17:53 5 changed to an option agreement was when you and Mr. O'Callaghan arrived at his
- 6 office?
- 7 A. Obviously I can't comment on that.
- 8 Q. 85 Yes. And he says that about two years after the agreement Mr. Gilmartin phoned
- 9 him and Mr. Maguire confirmed that there was no provision for zoning in the
- 11:18:14 10 rezoning in the agreement which meant that Mr. Gilmartin was very exposed and
- 11 had to pay 3.5 million by the 31st October whether or not the zoning came
- 12 through?
- 13 A. As far as I am concerned the document we have in front of us was the document
- 14 which Mr. Gilmartin signed. He was well aware of the contents of the document
- 11:18:35 15 and I don't understand how he could have been surprised two years later. And I
- 16 would also like to say that the first time I heard that there was anything
- 17 wrong with this document Chairman, was when I read it in the press, it having
- 18 been said at this Tribunal.
- 19
- 11:18:49 20 JUDGE FAHERTY: Could I ask you Mr. Deane was there ever any discussion about
- 21 staged payments in the negotiations?
- 22 A. Yes, there are staged payments in the document. There was an option agreement,
- 23 one payment if I could just refer to the document --
- 24
- 11:19:03 25 JUDGE FAHERTY: Yes I know, there was a down payment and then to be paid
- 26 A. There were two payments then after that. They were the staged payment, yes.
- 27
- 28 JUDGE FAHERTY: That it was to be paid by October '89 is that -- I don't have it
- 29 to hand now.
- 11:19:16 30 A. One payment was to be made by October 1989 and the second payment by January

11:19:22 1 31st 1990 judge.  
2  
3 JUDGE FAHERTY: 1990 yes. The document, the initial contract or discussions  
4 between Dublin Corporation and Merrygrove as I understand it, and I think we  
11:19:38 5 saw the document briefly yesterday, did provide for staged payments then by  
6 Merrygrove to Dublin Corporation, a down payment of 300,000 I think and then  
7 1.35 million or 1.5 or something, if they got zoning and the balance on the  
8 anniversary of that zoning, is that correct?  
9 A. There were certainly payments relating, I think to planning judge, if I -- if  
11:20:06 10 I'm correct.  
11  
12 JUDGE FAHERTY: Planning maybe it was.  
13 A. I would need to refer to the document.  
14  
11:20:11 15 MR. GALLAGHER: Yes the Dublin Corporation is planning.  
16  
17 JUDGE FAHERTY: Yes planning permission. Yes  
18 A. That's correct. But --  
19  
11:20:17 20 MR. GALLAGHER: Sorry --  
21  
22 JUDGE FAHERTY: My question was obviously there were documents in existence  
23 which provided, which referred to planning and for the balance to be paid on  
24 the anniversary of planning?  
11:20:30 25 A. Yes there were certainly a contract between Dublin Corporation and Merrygrove  
26 which provided that the payment to Dublin Corporation would be made in stages,  
27 a down payment as you correctly point out, and a payment on planning and a  
28 payment after planning. That was that document separate and complete, you then  
29 have this document which is totally different.  
11:20:51 30

- 11:20:51 1 JUDGE FAHERTY: Yes, I understood that you, you and Mr. O'Callaghan acquired the  
2 shareholding in Merrygrove in early '89
- 3 A. That is correct yes.  
4
- 11:21:01 5 JUDGE FAHERTY: So that if this deal with Mr. O'Callaghan didn't go through and  
6 you had to close with Dublin Corporation, you and Mr. O'Callaghan would be back  
7 to the agreement between --
- 8 A. Absolutely. That is correct.  
9
- 11:21:15 10 JUDGE FAHERTY: So you wouldn't have to pay the balance until planning was  
11 obtained, is that correct? And then had another period to pay --
- 12 A. Yes, absolutely that's correct.  
13
- 14 JUDGE FAHERTY: The next balance.
- 11:21:26 15 A. That's correct.  
16
- 17 Q. 86 MR. GALLAGHER: Those terms are just for the record to be found on page 3394.  
18 Just on that Mr. Deane, is it the position that Merrygrove had a contractual  
19 arrangement with Dublin Corporation to buy these lands for 3 million pounds  
20 subject to conditions in relation to planning?
- 11:21:48 21 A. That is correct.
- 22 Q. 87 And is it the fact that the sale did not close until some 12 years later?
- 23 A. That is correct.
- 24 Q. 88 And is it the fact that the sale only closed after proceedings were issued by  
11:22:05 25 Merrygrove to secure specific performance of this agreement by Dublin  
26 Corporation?
- 27 A. That is correct.
- 28 Q. 89 What consideration was paid to Dublin Corporation 12 years later for these  
29 lands?
- 11:22:15 30 A. The consideration due under the contract and interest at the contract rate from

11:22:20 1 the, from a date right up until the date of actual closing -- I would guess but  
2 there was some 7 million in interest paid.

3 Q. 90 I see of the. But the contract price remains the same?  
4 A. It would yes, but there was an interest clause in that.

11:22:38 5 Q. 91 Now, the agreement with Merrygrove and with the Corporation, O'Callaghan  
6 Properties Merrygrove the Corporation, required that a deposit of 300,000  
7 pounds be paid, is that correct?  
8 A. Sorry which -- which contract are we talking about.

9 Q. 92 The contract with the Corporation required --  
11:23:08 10 A. Dublin Corporation and Merrygrove.

11 Q. 93 Dublin Corporation yes, 300,000 pounds deposit, is that correct?  
12 A. That is correct.

13 Q. 94 And was the Merrygrove or Gubay, Mr. Gubay or one of his companies, paid that  
14 money by O'Callaghan Properties, that 300,000 pounds, in effect?

11:23:30 15 A. In effect the 300,000 was paid by O'Callaghan Properties to Mr. Gubay as a  
16 deposit, and he in turn, paid that money on to Dublin Corporation as a deposit  
17 on his contract, that's correct.

18 Q. 95 So it was funded by O'Callaghan Properties in the first instance?  
19 A. Yes that was the arrangement.

11:23:46 20 Q. 96 And is it correct then that that 300,000 pounds plus an additional 500,000  
21 pounds was paid over by Mr. Gilmartin to O'Callaghan Properties on the 31st of  
22 January 1989?  
23 A. Yes 800,000 was paid.

24 Q. 97 So did that mean that in effect, Mr. Gilmartin was financing the deposit and  
11:24:06 25 pay, his money was effectively used to pay the deposit of 300,000 pounds to  
26 Dublin Corporation?  
27 A. No that's not correct. It was effectively refunding if you want to put it that  
28 way, the money that O'Callaghan properties had already paid.

29 Q. 98 Yes, but effectively O'Callaghan Properties were out of money, out of 300,000  
11:24:26 30 pounds for a very short time?

- 11:24:27 1 A. It wasn't described as that.
- 2 Q. 99 I appreciate that. But effectively, O'Callaghan Properties were out of funds,  
3 out of 300,000 pounds for a very short time up to the 31st January 1989, when  
4 they received 800,000 pounds?
- 11:24:39 5 A. That's correct.
- 6 Q. 100 And they received an additional 500,000 pounds at that stage?
- 7 A. They got 800,000.
- 8 Q. 101 And that 800,000 pounds was non refundable?
- 9 A. That's correct.
- 11:24:50 10 Q. 102 So that, just to understand this, does that mean that up to the closing of the  
11 sale with Dublin Corporation, and Merrygrove following the issue of specific  
12 performance proceedings, that O'Callaghan Properties and Merrygrove, had only  
13 been out of their 300,000 pounds for a very short time?
- 14 A. Yes, they were, that is correct.
- 11:25:19 15 Q. 103 And no other monies had been paid to Dublin Corporation over that 12 year  
16 period?
- 17 A. That is correct.
- 18 Q. 104 And that in effect the 300,000 pounds had come from Mr. O'Callaghan's part of  
19 Mr. Gilmartin's 800,000 pounds?
- 11:25:34 20 A. That's a wrong interpretation. Sorry I don't agree.
- 21 Q. 105 Well it was, the 300,000 pounds that O'Callaghan Properties, Merrygrove had  
22 paid was reimbursed on the 31st January 1989 by Mr. Gilmartin, is that correct?
- 23 A. No I don't accept that. I accept some sum of 800,000 was paid by Mr. Gilmartin  
24 by way of an option consideration on this document. And that is what was paid.
- 11:25:54 25 Q. 106 Yes. But having received that it meant that O'Callaghan Properties were then  
26 no longer out-of-pocket in relation to the 300,000?
- 27 A. If you marry the two together yes that is --
- 28 Q. 107 But they are related to the same lands and same series of transactions so it  
29 was only natural to marry them together?
- 11:26:11 30 A. No I don't think so. You are paying for an option you pay 800,000 for an

- 11:26:15 1 option, that's a transaction that stands on it's own feet.
- 2 Q. 108 Mr. Deane didn't the agreement that was signed on the 31st of January require
- 3 that efforts would be made in the event of Mr. Gilmartin exercising the option
- 4 to procure his best, to use his best efforts to procure the refund to
- 11:26:35 5 O'Callaghan Properties on or before the 31 November 1989 of the sum of 300,000
- 6 pounds?
- 7 A. Absolutely, that's precisely why I am making the point that the first 800,000
- 8 was not a refund of this 300,000. It was a separate obligation on foot of the
- 9 contract.
- 11:26:49 10 Q. 109 Indeed. But I am suggesting that they were all linked and that the contract
- 11 specifically refers to the refund of 300,000?
- 12 A. It does and it was to be done by a different date, so it was not comprised in
- 13 the original 800,00 pounds payment.
- 14 Q. 110 Now the effect of the contract as it appears, signed and this is a document we
- 11:27:14 15 have looked at G, is to be found on 2109, to be found the same also at page
- 16 3960, was that Mr. Gilmartin was, had an option to acquire the interest of
- 17 O'Callaghan Properties in a contract with Merrygrove, through Merrygrove with
- 18 Dublin Corporation, isn't that correct?
- 19 A. Yes that's correct.
- 11:27:48 20 Q. 111 The cost of that option to Mr. Gilmartin is set out on pages 3960 and 3961 in
- 21 tab G. The cost was 800,00 pound which was non refundable, isn't that right?
- 22 A. Yes, the 800,000 would not be refundable, that is correct.
- 23 Q. 112 And then an option up to and including the 31st October 1989 to purchase for
- 24 the sum of 2.7 million all the estate, right and interest of the vendor in the
- 11:28:29 25 said agreement for sale, subject to the terms and conditions therein contained?
- 26 A. That is correct.
- 27 Q. 113 And the rights and interest of the vendor in the said agreement for sale, I
- 28 take it you would way was the right to exercise the option that Merrygrove had
- 29 to purchase the Neilstown lands from Dublin Corporation for the sum of 3
- 11:28:48 30 million pounds?

- 11:28:48 1 A. It was a right to step into the shoes of O'Callaghan Properties in relation to  
2 it's arrangements on foot of it's contract with Mr. Gubay.
- 3 Q. 114 And it was a right to purchase, to exercise the option that Merrygrove had to  
4 purchase the Neilstown lands from Dublin Corporation for the sum of 3 million  
11:29:06 5 pounds, isn't that right?
- 6 A. Yes, that ultimately would have happened.
- 7 Q. 115 Isn't that what the right, the right that this contract recites, when you look  
8 at it, when you ask what right was being given to Mr. O'Callaghan, or to  
9 Mr. Gilmartin? It was a right to exercise an option, isn't that right?
- 11:29:31 10 A. It was a right to acquire the interests of O'Callaghan in a contract.
- 11 Q. 116 To exercise the option?
- 12 A. To, and ultimately acquire the lands, yes.
- 13 Q. 117 Yes. and for, in order to acquire the lands, if Mr. Gilmartin had unlimited  
14 resources and had proceeded immediately to carry out and exercise the option  
11:29:52 15 within the time agreed, he would have had to pay 6.5 million, is that correct?
- 16 A. Effectively, yes.
- 17 Q. 118 I see. Just so that I am clear on this, because mathematics are not my strong  
18 point. Mr. Gilmartin was being asked, was agreeing according to this agreement  
19 to pay 6.5 million in order to acquire the Neilstown lands, in circumstances  
11:30:28 20 where O'Callaghan Properties had expended 300,000 pounds as a deposit and in  
21 circumstances where 800,000 pounds had been paid to O'Callaghan Properties by  
22 Mr. Gilmartin on the 31st of January 1989 in respect of a series of interlinked  
23 transactions relating to those Neilstown lands?
- 24 A. I think you might be doubling up on the 800,000 there, but in effect yes.
- 11:30:57 25 Q. 119 No but that was the fact. I appreciate that that 800,000 pounds became part,  
26 was part of the 3.5 million I accept that. But I am saying the 300, I am  
27 relating the 800,000 pounds to the 300,000 pounds deposit that had been paid?
- 28 A. In effect O'Callaghan Properties were taking a profit out of the transaction,  
29 that's effectively what they were doing.
- 11:31:18 30 Q. 120 Not only were they taking a profit it would seem, correct me if my mathematics

11:31:23 1 are wrong in this, it would seem they had expended in the first instance  
2 300,000 as a deposit, and they had subsequent to this agreement, they expended  
3 460,000 pound in order to acquire the share capital of Merrygrove, isn't that  
4 right?

11:31:40 5 A. That's right.

6 Q. 121 And they received 800,000 pounds from Mr. Gilmartin on the 31st of January?  
7 A. That is correct.

8 Q. 122 So if you look at those figures you come to a total of expenditure of 760,000  
9 pounds as against 800,000 pounds paid by Mr. Gilmartin?

11:32:01 10 A. That is correct.

11 Q. 123 And if Mr. Gilmartin wanted to exercise the option he then had to pay a further  
12 2.7 million?  
13 A. That is correct.

14 Q. 124 And that gave him a right, a contractual right to acquire the lands from Dublin  
11:32:15 15 Corporation on the terms set out in the agreement of the 21st November 1988?

16 A. Yes.

17 Q. 125 And that would have involved him in the expenditure of a further 3 million  
18 pounds?  
19 A. That's correct.

11:32:30 20 Q. 126 Mr. Maguire, in his evidence, said that he understood the agreement to be as  
21 follows: Tom Gilmartin -- this is at on day 495 at page 108 question 33 -- 633  
22 to 637, I am summarising what I understand his answer to be. He says he  
23 understood the final agreement to be as follows.  
24 A, Tom Gilmartin was buying a contract that O'Callaghan's company had.  
11:33:06 25 B, he was paying 3.5 million pounds for that.  
26 C, for that 3.5 million pounds he was to get the land the subject of the  
27 Merrygrove contract.  
28 D, the Merrygrove contract was 3 million pounds contract, that's the Merrygrove  
29 and Dublin Corporation, and O'Callaghan Properties was getting an extra 500,000  
11:33:26 30 pound to do the deal.

11:33:30 1 A. I don't think that -- if that's what he said, I disagree with him.

2 Q. 127 That is what he said he understood the agreement to be. And in --

3 A. In essence what he is saying, if I understand you and what he is saying

4 correctly is that O'Callaghan Properties were handing over the site for nothing

11:33:49 5 to Tom Gilmartin.

6 Q. 128 They were getting a profit of 500,000.

7 A. Because they had to paid Mr. Gubay 500,000 pounds.

8 Q. 129 No they didn't pay Mr. Gubay 500,000 at that stage, they paid damages

9 subsequently.

11:33:59 10 A. The arrangement was Mr. Gubay was making a 500,000 pound profit out of the

11 transaction, he bought from Dublin Corporation for 3 million, he was selling on

12 for 3.5 million, he was making 500,000 pounds. It was commuted to 460,000 in

13 the without prejudice discussions, which ultimately lead to a settlement. So

14 if Mr, if I understand you correctly and understand correctly what Mr. Maguire

11:34:25 15 is saying.

16 Mr. Maguire is saying that O'Callaghan Properties would have got in from Tom

17 Gilmartin 3.5 million. They would have had to pay 3 million to Dublin

18 Corporation, they would have paid 500,000 as it was to be at the time the

19 agreement was signed therefore O'Callaghan Properties would have made nothing

11:34:43 20 out of the transaction. O'Callaghan Properties would have handed this site to

21 Tom Gilmartin for free, so he would have got it for tree and they would have

22 made no profit and they would have also suffered a substantial loss because

23 O'Callaghan Properties would have had legal fees on the acquisition, legal fees

24 on the sale, agents fees on the sale and architectural, engineering and other

11:35:04 25 fees leading to the planning application.

26

27 So if you add that up you will say legal fees on acquisition were 30,000, legal

28 fees on the sale would have been 35, being one per cent, the agent fees was

29 agreed at two percent, that would be 70,000, there you have the bones of

11:35:22 30 140,000, and add to that your planning and engineering and other fees could be

11:35:27 1 another 150. So effectively they are saying they were giving the site to Tom  
2 Gilmartin for free and suffering a loss of the bones of 300,000 pounds. That  
3 was -- no matter what they say that was not the deal.

4 Q. 130 But can I just remind you of the memo of the 4th of the 11th 1988 from  
11:35:46 5 Mr. O'Callaghan which he, copied to you where he pointed out that he was  
6 advised and everybody appeared to accept that the Gilmartin site which had come  
7 on the horizon, over the horizon at this stage, the spectre of the site had  
8 come over the horizon at this stage, was a much better site and that there were  
9 difficulties in relation to access to the Fonthill Road and if you were going  
11:36:10 10 to develop the site, then those issues of access had to be addressed?

11 A. There is no doubt that Tom Gilmartin had a far superior site, that is without  
12 question. But it did not have the zoning.  
13 O'Callaghan Properties site had the zoning. And Mr. Gilmartin contacted Mr.  
14 O'Callaghan with a view to buying out the site and there is no doubt whatsoever  
11:36:35 15 in my mind that O'Callaghan Properties were making a profit out of this deal  
16 and that is the way the documents were structured and I have no doubt at the  
17 time that is the way everybody understood it to be.

18 Q. 131 Well Mr. Maguire has said -- I take it that you have read the transcript of  
19 Mr. Maguire's evidence?

11:36:54 20 A. Yes, I have.

21 Q. 132 And you are aware that what, of what he has said and what I have quoted to you  
22 as having been said by Mr. Maguire?

23 A. I think there are, on a number of different occasions there were potentially a  
24 number of different explanations, I think in response to Mr. Sreenan he  
11:37:13 25 appeared to clear up the matter in response to you he went back again to the --

26  
27 CHAIRMAN: Sorry, Mr. Gallagher I may be wrong now, but in fairness Mr. Deane  
28 my understanding of Mr. Maguire's position at the end of the day, was that he  
29 accepted basically Mr. Deane's interpretation of the contract, but that it  
11:37:33 30 wasn't what he believed --

11:37:35 1  
2 MR. GALLAGHER: It wasn't what was intended.  
3  
4 CHAIRMAN: But he did accept that that's, that the agreement as eventually  
11:37:44 5 signed by Mr. Gilmartin stated in effect what Mr. Deane says.  
6  
7 MR. GALLAGHER: But he accepts on a reading of the agreement this is what it  
8 says, but he says it was not what was intended  
9  
11:37:58 10 CHAIRMAN: Yes  
11  
12 MR. GALLAGHER: And he has explained what was intended and what he understood  
13 the agreement --  
14  
11:38:04 15 CHAIRMAN: I am just pointing out in fairness to Mr. Deane, ultimately  
16 Mr. Maguire accepted that the agreement stated much, much as what Mr. Deane is  
17 saying.  
18  
19 MR. GALLAGHER: Indeed I am coming to that, I acknowledge that he did say as he  
11:38:18 20 Mr. Deane has said, that in answer to Mr. Sreenan, he acknowledged that the  
21 agreement was one which involved the acquisition of the interest, the estate  
22 title and interest of O'Callaghan Properties in the transactions.  
23  
24 CHAIRMAN: So what Mr. Maguire is effectively saying is that he misinterpreted  
11:38:42 25 the agreement.  
26  
27 MR. GALLAGHER: Well he said, on day 499 that there was no question of  
28 Mr. Gilmartin paying more than 3.5 million pounds or having to pay a second 3.5  
29 million pounds or anything of that nature. In other words he had paid 800,000  
11:39:01 30 pounds and if he paid a further 2.7 million the Corporation lands were his.

11:39:07 1  
2 CHAIRMAN: Yes but he accepted that the contract as it transpired --  
3  
4 MR. GALLAGHER: Of course. Mr. O'Neill accepted that the contract as it  
11:39:16 5 appears, required a payment of in excess of 6 million, 6.5 million pounds.  
6 Mr. Maguire disagreed with that, but he I think did later accept that that is  
7 how the contract read and that is what is required but he said it wasn't what  
8 was intended.  
9  
11:39:38 10 Q. 133 MR. GALLAGHER: I am, I want to turn if I may to, just before I leave that. Can  
11 you, your position and your evidence as I understand it, Mr. Deane, is that  
12 contrary to what Mr. Gilmartin says, the agreement was signed in Mr. Maguire's  
13 office, you did not take away any documents to be typed up or retyped or  
14 anything of that nature?  
11:40:12 15 A. That is correct.  
16 Q. 134 And the provisions of the contract did require on a true reading, that if  
17 Mr. Gilmartin was to acquire the Neilstown lands that he would have to pay a  
18 total of 6.5 million pounds, 3 million to the Corporation and 3.5 million to  
19 O'Callaghan Properties?  
11:40:36 20 A. That is correct, that was the arrangement that was the deal and I am satisfied  
21 that was what was in the document.  
22 Q. 135 Did you ever hear of, hear allegations of corruption or anything associated  
23 with corruption or with the planning process involving corruption or demands  
24 for money in Dublin in or about that time?  
11:41:09 25 A. No the only incident I was ever aware of was the incident that occurred in  
26 Buswells Hotel.  
27 Q. 136 Right. Would you tell the Tribunal what you recall about the incident in  
28 Buswells Hotel?  
29 A. I recall Chairman, meeting in Tom Gilmartin's office in Stephens Green with  
11:41:35 30 Mr. O'Callaghan. After that meeting we left the offices, we walked down to

11:41:44 1 Buswells Hotel. Mr. O'Callaghan pointed out Mr. Finbarr Hanrahan to  
2 Mr. Gilmartin. We didn't go over to him, I wasn't introduced to him,  
3 Mr. Gilmartin went to one side of the room with Mr -- Mr. Gilmartin went to one  
4 side of the room with Mr. Hanrahan, Mr. O'Callaghan and I went to the bar. He  
11:42:10 5 sat there, I believe we had coffee, after a relatively short period of time  
6 maybe five or ten minutes, Mr. Gilmartin got up, left the room.  
7  
8 Mr. O'Callaghan followed him out of the room, I paid for the coffee, and went  
9 outside and I saw Mr. Gilmartin and Mr. O'Callaghan on the pavement outside the  
11:42:30 10 hotel, I could see from Mr. Gilmartin's face that something clearly was wrong.  
11 I said what had happened, Mr. O'Callaghan told me that Mr. Gilmartin had said  
12 to him that he had been asked by Mr. Finbarr Hanrahan for 100,000 pounds for  
13 his support. And I think after that Mr. O'Callaghan and Mr. Gilmartin left  
14 together and I went back to the airport to get a flight home that evening.

11:43:05 15 Q. 137 Why, what was the purpose was your meeting with Mr. Gilmartin?  
16 A. I can't recall Chairman, what the purpose of that meeting was or any of the  
17 circumstances in relation to that meeting, I can simply recall being there and  
18 leaving and going down to the hotel.

19 Q. 138 Were you there in your capacity as partner of Mr. O'Callaghan?  
11:43:29 20 A. I can't recall why I was there, or the circumstances discussed.

21 Q. 139 You had travelled from Cork presumably?  
22 A. That is correct.

23 Q. 140 Can you say, tell the Tribunal what was the purpose of your travelling from  
24 Cork?  
11:43:45 25 A. No, I just do not remember any other thing in relation to that day other than  
26 that incident.

27 Q. 141 How did you travel from Cork?  
28 A. I believe I travelled by plane.

29 Q. 142 I see.  
11:43:55 30 A. It would be normal for me to come up on an early plane around 8 o'clock go home

11:44:00 1 on the half six or six o'clock.

2 Q. 143 Do you have a diary or any memorandum or note or attendance of anything that  
3 may have happened at that meeting?

4 A. No I don't.

11:44:08 5 Q. 144 Have you any correspondence from Mr. Gilmartin or Mr. O'Callaghan or anybody  
6 else setting up that meeting?

7 A. No I don't.

8 Q. 145 Do you -- were you aware that Mr. O'Callaghan had met Mr. Gilmartin in December  
9 of 1988?

11:44:31 10 A. Yes I was, I was aware of that.

11 Q. 146 You had never met Mr. Gilmartin?

12 A. I had never met Mr. Gilmartin until the 31st January 1989.

13 Q. 147 When do you say this meeting took place, approximately?

14 A. I can't say when it took place but all I can say is I, my belief is it took  
11:44:58 15 place after the 31st January 1989.

16 Q. 148 Mr. Gilmartin has fixed this date as the 28th of December of 1988 to the best  
17 of his recollection?

18 A. I think that date is extremely unlikely.

19 Q. 149 Why do you say it's extremely unlikely?

11:45:24 20 A. Well two reasons. Basically first of all is, I always take the week after  
21 Christmas for holidays, I generally work very long hours and holidays are very  
22 important to me. And I wouldn't break my holidays simply to go to Dublin for  
23 Mr. O'Callaghan to point out somebody to Mr. Gilmartin.

24

11:45:45 25 The second reason is that it seems to me that the purpose of Mr. Gilmartin  
26 meeting Mr. Hanrahan was to solicit support for his Quarryvale development.  
27 And I can't believe that prior to signing of the option agreement when the two  
28 sites were in effect in competition with each other that Mr. O'Callaghan would  
29 in effect have been assisting Mr. Gilmartin to meet somebody and the purpose of  
11:46:11 30 the meeting would have been detrimental to the interests of O'Callaghan

- 11:46:15 1 Properties. So for those two reasons I put the meeting as being post 31st  
2 January 1989.
- 3 Q. 150 But they weren't in competition surely in circumstances where if Mr. Gilmartin  
4 succeeded in getting rezoning of the lands and that was the intention, the  
11:46:31 5 expectation, that he would proceed to acquire the Neilstown option and give an  
6 profit of 3.5 million to O'Callaghan Properties?
- 7 A. That deal was signed on the 31st of January 1989 and for that reason I am  
8 suggesting exactly as you have said. That it only, the interests only became  
9 similar after that date, prior to that they were in conflict.
- 11:46:52 10 Q. 151 I see. In any event, according to the evidence that the Tribunal has heard,  
11 Mr. Gilmartin told Senator William Farrell on the, I think the 14th January  
12 about a demand he says was made by Mr. Hanrahan?
- 13 A. I have no knowledge of that.
- 14 Q. 152 So if that evidence is correct, it meant that the meeting that you referred to  
11:47:27 15 must have taken place before the 14th of February of 19 -- sorry I may have  
16 said the 14th of January inadvertently, it was the 14th of February 1989. If  
17 that evidence is correct, it meant that the meeting with Mr. Hanrahan, which  
18 you were a witness and were present at, in a sense that you were physically  
19 present in Buswells Hotel, must have taken place before that date?
- 11:47:57 20 A. That, you mean before the 14th -- just to get the date correct.
- 21 Q. 153 14th February 1989.
- 22 A. Yes obviously that must be the case, if that is correct.
- 23 Q. 154 So one way or the other you met Mr. Gilmartin twice within a very short space  
24 of time?
- 11:48:16 25 A. If that date, those dates tie up, yes.
- 26 Q. 155 Now can you tell the Tribunal, explain to the Tribunal how it is that you  
27 recall clearly what transpired at the meeting of Mr. Maguire on the 31st  
28 January, and you cannot recall anything about the meeting you had with  
29 Mr. Gilmartin in his office in or about the same time?
- 11:48:46 30 A. Well I have a lot of documentary evidence on the basis of what was discussed at

- 11:48:46 1 the meeting of the 31st January 1989. It was a serious meeting at which issues  
2 were discussed, documents adjusted and retyped and that documentary evidence is  
3 all there, which I can base my recollection.  
4
- 11:49:00 5 I have no recollection of what that meeting was, it obviously was not something  
6 of such importance that it stuck in my mind.
- 7 Q. 156 Well how do you recall that Mr. O'Callaghan was with you at that meeting?  
8 A. I recall -- what I recall on that day was relating to the incident at Buswells  
9 Hotel, it was the one and only time I have ever been in that situation. It was  
11:49:26 10 an extraordinary demand as told to me and it's something certainly I would not  
11 forget.
- 12 Q. 157 Well just leading up to it, how do you recall that Mr. O'Callaghan was with you  
13 at the meeting with Mr. Gilmartin, in Mr. Gilmartin's office earlier that day?  
14 A. I just simply do recall it.
- 11:49:47 15 Q. 158 You do recall it and you are quite clear about that?  
16 A. I am quite clear about that.
- 17 Q. 159 But you cannot recall anything that was said or anything that was discussed or  
18 the purpose of the meeting or who set it up?  
19 A. No I can't.
- 11:49:58 20 Q. 160 But you do recall that you went to Buswells Hotel?  
21 A. I do.
- 22 Q. 161 You say that you went to Buswells Hotel with, in the company as I understand it  
23 of Mr. Gilmartin and Mr. O'Callaghan?  
24 A. That is correct.
- 11:50:13 25 Q. 162 And you went there because Mr. Hanrahan was to be pointed out by  
26 Mr. O'Callaghan to Mr. Gilmartin, is that correct?  
27 A. That is correct.
- 28 Q. 163 Why did you go along to that meeting, what role were you going to play at this  
29 meeting in --  
11:50:31 30 A. Absolutely none.

- 11:50:32 1 Q. 164 Why did you go along to that meeting?
- 2 A. I was with Mr. O'Callaghan that afternoon and I simply stayed with him until it
- 3 was time for me to go back on my flight.
- 4 Q. 165 Mr. Gilmartin says that he entered the hotel alone?
- 11:50:55 5 A. I disagree with that.
- 6 Q. 166 He says that you were in the hotel and that Mr. O'Callaghan was in the hotel,
- 7 Mr. Lawlor was in the hotel and Mr. Ambrose Kelly was in the hotel?
- 8 A. I disagree that.
- 9 Q. 167 Mr. Finbarr Hanrahan was in the hotel?
- 11:51:10 10 A. Mr. Hanrahan was in the hotel when I arrived with Mr. O'Callaghan and
- 11 Mr. Gilmartin.
- 12 Q. 168 Had you met Mr. Ambrose Kelly prior to the date of this meeting?
- 13 A. Yes, I have known Mr. Ambrose Kelly since the early 1980s.
- 14 Q. 169 I see. Was he the architect who has acted for O'Callaghan Properties and
- 11:51:34 15 associated companies since the early 1980s?
- 16 A. That is correct.
- 17 Q. 170 So you would be very friendly with him?
- 18 A. I would.
- 19 Q. 171 And you were at that time?
- 11:51:42 20 A. Yes.
- 21 Q. 172 And it would be perfectly normal for you to meet him in Dublin at that time?
- 22 A. It would.
- 23 Q. 173 Was he in fact preparing drawings and designs for structures for O'Callaghan
- 24 Properties or associated companies at that time?
- 11:51:56 25 A. Yes, I believe he would have been involved in the planning drawings for the
- 26 Neilstown site.
- 27 Q. 174 Did you have any discussion or meeting with Mr. Kelly on that occasion in
- 28 relation to the Neilstown site or any other site?
- 29 A. Not that I recall on that occasion.
- 11:52:20 30 Q. 175 Do you have any diary which would indicate the date on which this meeting took

- 11:52:25 1 place or any record of any description?
- 2 A. No I don't.
- 3 Q. 176 Mr. Gilmartin says that he entered this hotel, that he went down to the bar and
- 4 that you were there. What do you remember about entering the hotel, had you
- 11:52:46 5 ever been in the hotel before?
- 6 A. I don't know whether I had or not, it was not -- I could have been in there on
- 7 the basis of meeting with Hamilton Osborne King on a reasonably regular basis
- 8 and their offices are close to that hotel, so it's possible I have I was.
- 9 Q. 177 But do you have a recollection of being in the hotel before this meeting?
- 11:53:06 10 A. No, I don't.
- 11 Q. 178 So far as you recall this is the first time you were in the hotel?
- 12 A. That is possible, yes.
- 13 Q. 179 But you could have been you said, you have no recollection of being in the
- 14 hotel?
- 11:53:18 15 A. No, but I could have been.
- 16 Q. 180 Yes but it is unlikely that you would have been in the hotel if you cannot
- 17 recall it?
- 18 A. That is correct.
- 19 Q. 181 Yes. So the probability is that you weren't in the hotel prior to this
- 11:53:31 20 occasion, you went into the hotel you say with Mr. Gilmartin and
- 21 Mr. O'Callaghan, what were you told was the purpose of going to the hotel?
- 22 A. My understanding was that Mr. Gilmartin was arranging to meet Mr. Hanrahan to
- 23 solicit support for his Barkhill, sorry his Quarryvale development.
- 24 Q. 182 When did he tell you that?
- 11:53:55 25 A. As I say, I can remember no more about the meeting or the incident other than
- 26 what I have told you.
- 27 Q. 183 When did Mr. Gilmartin tell you that he was arranging to meet Mr. Hanrahan to
- 28 solicit a report, support for the Quarryvale development?
- 29 A. I don't know did he tell me, that's my understanding of what this was about.
- 11:54:14 30 Q. 184 Who gave you that understanding?

- 11:54:16 1 A. I don't know. It was either Mr. O'Callaghan or Mr. Gilmartin and I am not sure  
2 which of the two of them did.
- 3 Q. 185 I see. Was there any reason why you went to the bar with Mr. O'Callaghan as  
4 you have described?
- 11:54:33 5 A. As far as I was concerned I had no hand, act or part in the meeting and that's  
6 why I stayed away from it.
- 7 Q. 186 Well you were in the bar?
- 8 A. That is correct.
- 9 Q. 187 Why did you stay away from the meeting if it was simply to solicit support for  
11:54:50 10 a particular project?
- 11 A. It had absolutely nothing to do with me.
- 12 Q. 188 Were you introduced to Mr. Finbarr Hanrahan?
- 13 A. No I was not.
- 14 Q. 189 Had you ever been introduced to Mr. Finbarr Hanrahan?
- 11:55:05 15 A. No.
- 16 Q. 190 Did you know of Mr. Finbarr Hanrahan?
- 17 A. Not before that date, other than the memo that Mr. O'Callaghan sent around in,  
18 I think it was November '88 where he mentioned Mr. Finbarr Hanrahan's name in  
19 connection with the Cooldrinagh site.
- 11:55:21 20 Q. 191 He mentioned that he was, your main supporter in Dublin for the Cooldrinagh  
21 project?
- 22 A. That is what the note said, yes.
- 23 Q. 192 Did you believe that to be correct?
- 24 A. Yes.
- 11:55:31 25 Q. 193 Did you not feel it was appropriate to meet Mr. Hanrahan to thank him for his  
26 support?
- 27 A. No, I had never met him and didn't meet him then and as far as I was concerned  
28 it was a meeting by Mr. Gilmartin with Mr. Hanrahan it had nothing to do with  
29 myself or Owen O'Callaghan or O'Callaghan Properties.
- 11:55:50 30 Q. 194 Yes. Now what happened when Mr. O'Callaghan or Mr. Gilmartin entered the room?

- 11:55:57 1 A. The three of us he entered together. Mr. O'Callaghan pointed out Mr. Hanrahan  
2 to Mr. Gilmartin and Mr. Gilmartin went over to Mr. Hanrahan.
- 3 Q. 195 Did Mr. O'Callaghan give you any explanation as to why he didn't bring  
4 Mr. Gilmartin over to meet Mr. Hanrahan and say to Mr. Hanrahan Finbarr this is  
11:56:20 5 Tom Gilmartin going to develop Quarryvale, he want to have a chat with you  
6 about --
- 7 A. No he didn't.
- 8 Q. 196 He didn't give you any explanation for that?
- 9 A. No.
- 11:56:27 10 Q. 197 Did you find it unusual that somebody who is effecting an introduction would do  
11 so by nodding in the direction of somebody who was in another part of the  
12 building?
- 13 A. I didn't think it was strange or odd at the time, no.
- 14 Q. 198 How long did that, did Mr. Gilmartin and Mr. Hanrahan remain in conversation,  
11:56:50 15 approximately?
- 16 A. Five to ten minutes perhaps.
- 17 Q. 199 Did you hear what they said or did you see what they did?
- 18 A. No. I was considerable distance away from them, so I was unable to hear any of  
19 the conversation.
- 11:57:04 20 Q. 200 When you say a considerable distance I take it you were, the bar of the  
21 Buswells as I recall it is not all that large, you would be some 15, 20 feet  
22 perhaps?
- 23 A. Yes.
- 24 Q. 201 What happened after the conversation ended?
- 11:57:22 25 A. Which conversation is that.
- 26 Q. 202 The conversation Mr. Hanrahan and Mr. Gilmartin?
- 27 A. Mr. Gilmartin left the bar and as I have already told you Mr. O'Callaghan then  
28 left, I paid for the coffee, I left at that stage and went out.
- 29 Q. 203 Mr. Gilmartin has told the Tribunal that a conversation took place in the  
11:57:44 30 manner that you have indicated, he spoke with Mr. Hanrahan hand, he says that

11:57:49 1 Mr. Hanrahan asked him for monies, for a 100,000 pounds. 50,000 pound to be  
2 paid up front. You have told the Tribunal that you remember this particular  
3 meeting because, I may have misunderstood what you were implying or saying,  
4 that it was rather shocking event?

11:58:18 5 A. Absolutely.

6 Q. 204 So far as you were concerned?

7 A. That is correct.

8 Q. 205 What shocked you about it?

9 A. Quite frankly, I couldn't believe that somebody would ask for a 100,000 pounds  
11:58:29 10 for support. The first time I ever heard of it, and I was totally shocked by  
11 it.

12 Q. 206 And was the fact that you had seen it and seen the meeting take place and that  
13 you were told immediately afterwards about this demand, was that what really  
14 shocked you?

11:58:44 15 A. Yes, that I was -- the whole circumstances of it, yes.

16 Q. 207 And that you were physically present in the room when this alleged demand was  
17 made is that correct?

18 A. That is correct.

19

11:58:56 20 CHAIRMAN: Sorry Mr. Gallagher I think we better give the stenographer a few  
21 minutes of a break. If we just rise for about ten minutes.

22

23 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED**

24 **AGAIN AS FOLLOWS:**

11:59:20 25

26 MR. LAWLOR: Chairman, is there any indication how long Mr. Gallagher might be?

27

28 CHAIRMAN: I think he will be finished shortly.

29

12:17:34 30 MR. GALLAGHER: Shortly I would hope, yes.

- 12:17:37 1
- 2 Q. 208 MR. GALLAGHER: Mr. Deane is there anything else you recall about the meeting in  
3 Buswells Hotel that you can recall?
- 4 A. Not that I can recall.
- 12:17:50 5 Q. 209 Mr. Gilmartin says that, he got up from his discussion with Mr. Hanrahan and  
6 walked out, and that as he walked out Mr. O'Callaghan said to him "Did he tap  
7 you?" and Mr. Gilmartin's reply is "What do you think?"
- 8 A. Yes, that did not happen.
- 9 Q. 210 That did not happen?
- 12:18:18 10 A. No.
- 11 Q. 211 In what circumstances did you become aware of the alleged demand for 100,000  
12 pounds and from whom?
- 13 A. I have already described that to you. That the, it was outside on the street,  
14 outside Buswells Hotel. That Mr. O'Callaghan told me that he had been told by  
12:18:39 15 Tom Gilmartin of the alleged demand.
- 16 Q. 212 Well, did you not speak to Mr. Gilmartin at that time?
- 17 A. No, there was no conversation after that, that I can recall.
- 18 Q. 213 Did you ever seek confirmation from Mr. Gilmartin that such a demand had been  
19 made?
- 12:19:00 20 A. No.
- 21 Q. 214 Did you ever discuss it with him in anyway?
- 22 A. I believe Mr. Gilmartin may have mentioned it subsequently, but the details of  
23 that I don't recall in detail.
- 24 Q. 215 Can the Tribunal take it that as far as you are concerned and so far as your  
12:19:22 25 memory goes, immediately after this meeting, you spoke with Mr. O'Callaghan who  
26 had just spoken with Mr. Gilmartin and Mr. O'Callaghan conveyed to you that  
27 Mr. Hanrahan had made a demand from Mr. Gilmartin for 100,000 pounds?
- 28 A. Mr. O'Callaghan told me that Tom Gilmartin had told him.
- 29 Q. 216 Yes.
- 12:19:47 30 A. That a demand had been made for that sum of money, yes.

- 12:19:50 1 Q. 217 And in connection with what?
- 2 A. My understanding was in, for his support for the Quarryvale project.
- 3 Q. 218 And I think you told us just before the break that you were shocked at this?
- 4 A. Absolutely.
- 12:20:06 5 Q. 219 Did you suggest that anything be done about this, in terms of reporting it to  
6 the Garda authorities or anything of that nature?
- 7 A. No, I did not.
- 8 Q. 220 Are you aware that there was an investigation by the Garda authorities into  
9 complaints and allegations that were being made by Mr. Gilmartin in March of  
10 1989?
- 11 A. Yes.
- 12 Q. 221 Were you interviewed by the Gardai in connection with that?
- 13 A. No.
- 14 Q. 222 Were you aware that Mr. O'Callaghan had been interviewed by the Gardai?
- 12:20:43 15 A. Yes.
- 16 Q. 223 Did you advise Mr. O'Callaghan in relation to his interviewing, or his meetings  
17 with the Gardai?
- 18 A. No.
- 19 Q. 224 Did you advise Mr. O'Callaghan to inform the Gardai that, of the events that  
12:21:02 20 you had witnessed and had been described to you in relation to the meeting in  
21 Buswells Hotel?
- 22 A. I didn't give Mr. O'Callaghan any advice in relation to that police interview.
- 23 Q. 225 Did you feel that -- did you make any approach to the Gardai yourself to convey  
24 information to them or what you knew about that?
- 12:21:19 25 A. No I did not.
- 26 Q. 226 Did you ask Mr. O'Callaghan or advise Mr. O'Callaghan that he should encourage  
27 Tom Gilmartin to assist the Gardai and assist them, in particular with the  
28 information he had in relation to his conversation with Mr. Hanrahan?
- 29 A. No, I did not advise Mr. O'Callaghan in relation to that matter.
- 12:22:16 30 Q. 227 Just one other issue. I just want to deal with if I may for a second, that's

12:22:36 1 all I have to ask at this stage. Thank you.

2

3 CHAIRMAN: I presume Mr. Sreenan you want to wait until last?

4

12:22:43 5 MR. SREENAN: Yes Chairman.

6

7 CHAIRMAN: Mr. Barniville?

8

9 **THE WITNESS WAS QUESTIONED BY MR. BARNIVILLE AS FOLLOWS:**

12:22:47 10

11 Q. 228 MR. BARNIVILLE: Yes Chairman, I have a few questions. Mr. Deane I appear for  
12 Mr. Gilmartin and I have a couple of questions for you.

13 You have heard I think Mr. Gilmartin's evidence or at least you have read the  
14 transcript of the evidence given by Mr. Gilmartin to the Tribunal, isn't that  
15 right?

12:23:00

16 A. Yes that's correct.

17 Q. 229 I take it you have read it fairly carefully?

18 A. Yes I have read it.

19 Q. 230 And I think you are aware that there are a number of differences between the  
20 evidence which you have given to the Tribunal and the evidence given by  
21 Mr. Gilmartin, isn't that correct?

12:23:08

22 A. That is correct.

23 Q. 231 And I think Mr. Gallagher has brought you through quite a number of those  
24 differences in the course of his examination of you, isn't that right?

12:23:20

25 A. That is correct.

26 Q. 232 And he has referred on those occasions to what Mr. Gilmartin's evidence is in  
27 those disputed areas, isn't that right?

28 A. Yes.

29 Q. 233 And I think in those areas of difference, you have not accepted with

12:23:36 30

Mr. Gallagher, you have not accepted in your answers to Mr. Gallagher that

- 12:23:39 1 Mr. Gilmartin is correct in what he says in those disputed issues, isn't that  
2 right?
- 3 A. That is correct.
- 4 Q. 234 And I take it you maintain that your evidence is correct and that that's the  
12:23:49 5 evidence that the Tribunal should accept?
- 6 A. Absolutely.
- 7 Q. 235 I also take it then, if I were to go through each of those areas of dispute  
8 with you now and to put to you specifically, on each of those areas what  
9 Mr. Gilmartin's evidence is, and ask you to agree with that, you are not going  
10 to do that I think, isn't that right?
- 11 A. No I am not.
- 12 Q. 236 I think my powers of persuasion are not such as to persuade you I think on each  
13 of those disputed areas that you are incorrect and that Mr. Gilmartin is  
14 correct, isn't that right?
- 12:24:08 15 A. No I am satisfied I am correct in those issues.
- 16 Q. 237 I take it ultimately you accept that it's, if the Tribunal decides it necessary  
17 to decide on the conflict of any of these issues, it's a matter for the  
18 Tribunal to decide having heard all of the evidence, isn't that right?
- 19 A. Absolutely.
- 12:24:38 20 Q. 238 I am Chairman, I am conscious that the Tribunal has previously given a  
21 direction that it doesn't want parties to engage in unnecessarily repetitive  
22 cross-examinations and to that extent, I am going make the cross-examination  
23 very brief I hope the Tribunal will appreciate that.  
24
- 12:24:54 25 CHAIRMAN: Certainly.
- 26 Q. 239 MR. BARNIVILLE: I think Mr. Deane there are two central areas of dispute  
27 between your evidence and Mr. Gilmartin's evidence and I think they may perhaps  
28 be summarised as the Buswells Hotel meeting and the circumstances in which the  
29 agreement of the 31st January 1989 was entered into, isn't that right?
- 12:25:14 30 A. That's right.

- 12:25:15 1 Q. 240 They would be the two central areas of dispute.
- 2 A. Yes.
- 3 Q. 241 In relation to the Buswells Hotel meeting, you are aware that Mr. Gilmartin is
- 4 of the belief and has given evidence to the Tribunal that that meeting took
- 12:25:26 5 place on the 28th of December 1988, isn't that right?
- 6 A. Yes I am aware of that.
- 7 Q. 242 You disagree with that?
- 8 A. I think that's most unlikely, for the reasons I gave earlier.
- 9 Q. 243 Mr. Gilmartin is quite certain the meeting occurred on that date because he
- 12:25:40 10 said that was the date Mr. O'Callaghan had requested the meeting to take place.
- 11 You don't accept that?
- 12 A. I don't accept that.
- 13 Q. 244 If Mr. O'Callaghan had asked you to travel to Dublin during that week,
- 14 appreciating that it was the week after Christmas, would you not have done so?
- 12:25:55 15 A. It would, even with Mr. O'Callaghan it would want to be something very serious
- 16 before he would even ask me, let alone expect me to go to Dublin during that
- 17 period.
- 18 Q. 245 Now, Mr. Gilmartin has given evidence that he met with Mr. O'Callaghan earlier
- 19 in the day, that is before the meeting with Mr. Hanrahan and he thinks that
- 12:26:16 20 meeting was also in Buswells Hotel at 11 o'clock that morning. Do you agree or
- 21 disagree with that?
- 22 A. I have no knowledge of any meeting with Mr. O'Callaghan or and Mr. Gilmartin at
- 23 11 o'clock on the 28th December.
- 24 Q. 246 And Mr. Gilmartin also says that he had an arrangement himself to meet with
- 12:26:33 25 Mr. Hanrahan at Buswells Hotel at 4.30 that afternoon, and that he didn't tell
- 26 Mr. O'Callaghan about that. I take it you don't accept that?
- 27 A. I don't accept that.
- 28 Q. 247 Mr. Gilmartin says he arrived on his own and didn't arrive in your company or
- 29 in Mr. O'Callaghan's company and that he had no arrangement to meet you, again
- 12:26:51 30 you don't accept that?

- 12:26:52 1 A. That's not correct.
- 2 Q. 248 And that when he arrived you were there in Buswells Hotel and in your company  
3 were Mr. Lawlor, Mr. Kelly and Mr. Hanrahan also?
- 4 A. That is not correct. Mr. O'Callaghan, Mr. Gilmartin and I arrived together.
- 12:27:06 5 Q. 249 Yes, that's your evidence and you are aware Mr. Gilmartin has given evidence to  
6 the contrary to the Tribunal?
- 7 A. I am aware of that yes.
- 8 Q. 250 And that Mr. Gilmartin then proceeded to meet with Mr. Hanrahan and to leave  
9 and we have heard and Mr. Gallagher put to you what Mr. Gilmartin's evidence as  
10 to what was said to Mr. O'Callaghan on his way out of Buswells Hotel. Again  
11 there seems to be a clear dispute between yourself and Mr. Gilmartin in  
12 relation to that, isn't that right?
- 13 A. Yes I don't agree with what he said.
- 14 Q. 251 And Mr. Gilmartin says that he didn't say to Mr. O'Callaghan that at that  
15 particular meeting that Mr. Hanrahan had asked for a 100,000 pounds to support  
16 Quarryvale but that he told Mr. O'Callaghan of that sometime later?
- 17 A. It happened on the day of the meeting.
- 18 Q. 252 In any event, I take it that you are aware and you can confirm to the Tribunal  
19 that at some stage whether it was at that meeting, I know you say it was at  
12:27:59 20 that meeting, or sometime shortly thereafter Mr. Gilmartin did tell  
21 Mr. O'Callaghan that he had received a request for 100,000 thousand pounds from  
22 Mr. Hanrahan to support the Quarryvale project?
- 23 A. Yes.
- 24 Q. 253 So there is clearly a dispute between yourself and Mr. Gilmartin as to what  
12:28:17 25 occurred in relation to the Buswells Hotel meeting and I think we accept, we  
26 both accept that's a matter that the Tribunal may, if it decides it necessary,  
27 ultimately have to decide, isn't that right?
- 28 A. Yes.
- 29 Q. 254 Just turning briefly to the agreements, the option agreement that was entered  
12:28:33 30 into on the 31st of January 1989, and Mr. Maguire's office. Again you have

12:28:39 1 heard I think and you have been examined closely by Mr. Gallagher on the  
2 circumstances in which that agreement was entered into. You have given your  
3 evidence I think you have heard or you are aware of what Mr. Gilmartin's  
4 evidence is, isn't that right?

12:28:51 5 A. Yes, I am aware of what he said yes.

6 Q. 255 I think you are aware that Mr. Gilmartin has given evidence of his belief that  
7 the agreement produced and numbered here 2109, was not the agreement that he  
8 signed on that occasion, that was his belief and that's the evidence he has  
9 given to the Tribunal, isn't that right?

12:29:09 10 A. I believe that is what he has said to the Tribunal.

11 Q. 256 And you have given evidence clearly that you disagree that?

12 A. Absolutely and totally.

13 Q. 257 And that you reject an allegation that the agreement was in anyway altered?

14 A. Absolutely.

12:29:20 15 Q. 258 And Mr. Gilmartin's evidence is to the contrary to the Tribunal, so again you  
16 accept there is a dispute between you, which if the Tribunal decides it's  
17 necessary to decide, is a matter for the Tribunal, isn't that right?

18 A. I am absolutely satisfied that the agreement signed there is the one --

19 Q. 259 Absolutely. So you say.

12:29:36 20 A. No question in my mind.

21 Q. 260 That's your evidence and you are aware that Mr. Gilmartin's evidence is to the  
22 contrary?

23 A. I am aware of that.

24 Q. 261 And that ultimately if the Tribunal decides it necessary it's a matter for the  
12:29:50 25 Tribunal to decide?

26 A. Oh, yes.

27 Q. 262 Sorry Chairman, if you just bear with me just for one moment. I have no  
28 further questions, thank you very much.

29

12:30:00 30 CHAIRMAN: Mr. Redmond? Do you want to ask --

12:30:03 1

2

**THE WITNESS WAS QUESTIONED BY MR. REDMOND AS FOLLOWS:**

3

4 Q. 263 MR. REDMOND: Yes Your Worship, thank you very much. Good morning Mr. Deane

12:30:09 5

A. Good morning.

6 Q. 264 In the case of when your client, your client Mr. O'Callaghan decided to, you

7 know turn his back on the Cooldrinagh possibility and he entered into

8 negotiations with Mr. Gubay and acquired the interest in Merrygrove, at that

9 stage it was his intention I take it, to carry out development there?

12:30:40 10

A. That is correct.

11 Q. 265 No question about that?

12 A. No question what so ever.

13 Q. 266 The site was a difficult one, he had a very serious onerous covenant about

14 building, but nonetheless he was prepared to go ahead, you know he did with

12:30:57 15

speculation he wanted to get on and build it?

16 A. That's correct.

17 Q. 267 Well in relation to the Blanchardstown contract or the agreement at the end of

18 December, who initiated the discussions, two businessmen who were well versed

19 in property matters, your client and Mr. Gilmartin, who, how did it come about?

12:31:25 20

A. I believe the initial discussions for the agreement was 31st January 1989 came

21 about initially by, were initially instigated by Mr. Gilmartin.

22 Q. 268 Fair enough. That's okay. Well, now insofar as reaching agreement, did they

23 talk man to man or did they use valuers? I mean the essential part of the

24 agreement is the amount of money they had to pay?

12:31:52 25

A. That was agreed between Mr. O'Callaghan and Mr. Gilmartin face-to-face.

26 Q. 269 So and the position then was Mr, your client Mr. O'Callaghan was, he was

27 certain in his mind that he was getting something in the region of 6 million,

28 is that so?

29 A. He was making a profit on the transaction.

12:32:11 30

Q. 270 Yes but at the end of the day, and there would have been, very difficult to see

12:32:19 1 how there could be such ambiguity or, about you know the other man thinking  
2 that was 3 million?  
3 A. Well I agree with you.  
4 Q. 271 But I mean, but it wasn't -- the agreement wasn't negotiated with third  
12:32:33 5 parties, it was man to man?  
6 A. That is correct.  
7 Q. 272 And would you accept that they were both seasoned operators in the property  
8 world?  
9 A. Yes.  
12:32:45 10 Q. 273 Both of them?  
11 A. Yes.  
12 Q. 274 Fair enough. Now if the figure was in the region of 6 million, it meant that  
13 Mr. Gilmartin was paying over 200,000 an acre for the land, divided by 30, give  
14 or take?  
12:33:10 15 A. Yes that would be correct.  
16 Q. 275 Yes.  
17 A. Yes, I think so.  
18 Q. 276 Yes I just, this is coming up to January, assuming you know, the agreement was  
19 signed in January, so I suppose it would have been in the previous, in the  
12:33:26 20 earlier months that they were -- but the figure was 200,000. Now I may and  
21 this is by agreement.  
22 Now I mention that figure because I mean, at the very same time Mr. Gilmartin  
23 was arguing that he was dragooned into paying 40,000 an acre to Dublin  
24 Corporation, but the figures anyway, they -- the agreement mainly related, if  
12:33:57 25 the option had been exercised, it would have meant he had the land at 6 million  
26 and that was 200,000 an acre?  
27 A. Yes.  
28 Q. 277 Now the agreement it refers to -- the agreement refers to the contract which  
29 your client had taken over from Gubay with Dublin Corporation?  
12:34:29 30 A. That's correct.

- 12:34:29 1 Q. 278 The initial payment had been made.
- 2 A. Yes.
- 3 Q. 279 And the next covenant or the next requirement I think, was to apply for a
- 4 planning permission by a certain date?
- 12:34:39 5 A. Yes.
- 6 Q. 280 And the, I think the conditions also require that it be in accordance with the
- 7 Development Plan, in other words they were to apply for town centre uses,
- 8 shopping and etcetera, that was the --
- 9 A. Yes.
- 12:34:53 10 Q. 281 Your client at that stage he retained Mr. Kelly, were they working on the
- 11 drawings then?
- 12 A. They were.
- 13 Q. 282 They were. So that was the intention. But the agreement, it was aimed at not
- 14 making that planning application in the appropriate time?
- 12:35:14 15 A. Yes, the agreement provided that there was, an effort was to be made to obtain
- 16 an extension of time from the vendors within which to apply for planning.
- 17 Q. 283 And then the agreement also if you did get that extension of time to the 31st
- 18 of October you weren't to make it, an application in that time, in other words
- 19 I presume you make it at the closing date?
- 12:35:39 20 A. The contracts says not to make the application before 31st October 1989, so not
- 21 before that date.
- 22 Q. 284 Not before that date?
- 23 A. That's correct.
- 24 Q. 285 So I mean, and yeah. What was the objective of that covenant, very odd. I
- 12:36:00 25 mean the two of them, they both agreed it. Can you recall was that put forward
- 26 by the Gilmartin side?
- 27 A. I think Mr. Gilmartin, I can't actually recall although my initial
- 28 instructions, I would need to look at them again to be sure, but I think the
- 29 emphasis was that Mr. Gilmartin did not want the planning application to
- 12:36:25 30 proceed until such time as he had exercised the option agreement if he was

12:36:29 1 going to exercise the option, he would then be in control of the situation and  
2 he would take it forward. If he didn't exercise the option clearly it was the  
3 contract with the Corporation were then, a matter for O'Callaghan Properties  
4 and they would have to proceed with the planning application.

12:36:45 5 Q. 286 Yes. But did it in anyway relate to his activities in relation to Quarryvale,  
6 I mean the whole reason for the agreement was Quarryvale. Wasn't that the  
7 reason he was spending the extra money?

8 A. Absolutely.

9 Q. 287 So the question arises, how and why did Mr. Gilmartin decide, though he says he  
12:37:09 10 didn't, to spend 6 million for securing control of Neilstown? When at the same  
11 time, at this very time, he was doing, well he had just completed his  
12 negotiations with the valuer and the Corporation as a body, the manager and  
13 council, they hadn't approve it had, but he was he was at that stage.  
14

12:37:35 15 So he must have had an objective in entering an agreement with very onerous  
16 financial requirements in relation to the adjoining town, official town centre.  
17 I am putting the question did Mr. O'Callaghan ever say, what was the strategy  
18 involved. It had to be done for some reason, what was behind it?

19 A. My understanding is that Mr. Gilmartin did not want a planning application to  
12:38:07 20 be lodged for the Neilstown site until such time as he had decided whether or  
21 not to exercise the option.

22 Q. 288 I see. So that we have public land here, it has gone before the Dublin  
23 Corporation, they have agreed it, there are certain covenant, reasonable ones  
24 to achieve development, get a planning application, get started, and in this  
12:38:32 25 case there was a contract between two developers not to proceed with it?

26 A. I think --

27 Q. 289 Even looking for, you know for an extension --

28 A. I think the actual original contract with Dublin Corporation and Merrygrove  
29 provided that planning permission was to be lodged within I think a period of  
12:38:52 30 two months or such further period as the local authority may allow, so I think

12:38:57 1 it was reasonable for anybody to go back to the local authority and say look I  
2 would like to get the time extended.

3 Q. 290 Well, insofar as my own cross-examination is concerned I certainly, having read  
4 the papers, I didn't appreciate that Mr. Gilmartin was involving himself in a  
12:39:12 5 contract where the value of the lands was 200,000 an acre. The Corporation's  
6 valuer agreed, sorry no he didn't agree, I think there were tenders submitted  
7 for this one it wasn't agreed, no it wasn't agreed. But however, obviously he  
8 thought the lands were valued at that price, at that rate. That's all really.  
9 I just wanted to find, obviously when Mr. Gilmartin was being cross examined by  
12:39:43 10 me, I didn't know about the 6 million, I would have certainly raised it. But  
11 however, thank you very much.

12 A. Thank you.

13

14 CHAIRMAN: Mr. Lawlor?

12:39:55 15

16 **THE WITNESS WAS QUESTIONED BY MR. LAWLOR AS FOLLOWS:**

17

18 Q. 291 MR. LAWLOR: Chairman thank you. Mr. Deane you have describe the Quarryvale  
19 site as being excellent and superior to the Balgaddy site, is that your view?

12:40:05 20 A. That is my view, yes.

21 Q. 292 Well would that view be qualified by the physical square footage that one could  
22 put on either site?

23 A. I think the main asset of the Quarryvale site was it's location on the junction  
24 of the, what I think is the M50 and the N4, I think that's a prime location.

12:40:29 25 Q. 293 Yes but --

26 A. That's the particular asset.

27 Q. 294 But to capitalise on the prime location the relativity of the square footage  
28 you could get on it would generate revenue from shopping. So if you have a  
29 quarter of a million square feet on a prime location and 1.5 million square  
12:40:46 30 feet not comparing like with like are you?

- 12:40:48 1 A. Absolutely not.
- 2 Q. 295 So it was a prime location on the basis of you getting a regional centre. If
- 3 you were to get the same square footage on the Neilstown site, to generate the
- 4 same floor space, either site were a toss up really?
- 12:41:04 5 A. No, I don't think so. I think the Gilmartin site was always superior because
- 6 it would attract tenants more easily, and the probability is you would actually
- 7 get higher rent so my judgement would be it would be more valuable on a square
- 8 foot by square foot basis.
- 9 Q. 296 And even though the physical access to it is actually more traffic congested
- 12:41:25 10 because of it's prime location, because of the shortage of distance for access
- 11 and so forth, so on a traffic basis, the Balgaddy site, if the Fonthill Road
- 12 had been in was an easier access and better traffic flow site, would you agree?
- 13 A. Certainly, if the Fonthill Road had been in it would have mainly made a major
- 14 difference to the Balgaddy site. You know physically that a huge amount of
- 12:41:52 15 infrastructure was put in the by Barkhill to make, to deal with the traffic
- 16 issues there.
- 17 Q. 297 I do. You see, that's the point. I have you have to put that in for a quarter
- 18 of a million square feet seems to be completely out of sync requirement?
- 19 A. Absolutely, it would.
- 12:42:08 20 Q. 298 The infrastructure that had to go in to open up the Liffey Valley centre with
- 21 quarter of a million square feet, was a financial nightmare pour the developer
- 22 as it transpired?
- 23 A. If that was all you could get on the Liffey Valley site yes, but obviously the
- 24 Liffey Valley site was 180 acres, it had the opportunity for other categories
- 12:42:26 25 of uses on it therefore you would, obviously it made more economic to put the
- 26 infrastructure on that basis, but if it was just a shopping centre of 250,000
- 27 square feet, then it would have become less viable, still viable but less.
- 28 Q. 299 Is it your evidence on the retail site the capping that was inserted into the
- 29 written statement exists to this day?
- 12:42:48 30 A. No it doesn't exist to this day as I understand it.

- 12:42:51 1 Q. 300 The cap has been lifted?
- 2 A. The cap has been lifted, yes.
- 3 Q. 301 But with restrictions never to the extent of what was proposed by
- 4 Mr. Gilmartin?
- 12:42:59 5 A. I am open to correction Chairman, but I don't believe there is any cap on
- 6 Liffey Valley or Quarryvale at this present point in time. There are however
- 7 regional studies which indicate the level of retail space that would be
- 8 appropriate to put in Liffey Valley which falls way short of the 1.5 million
- 9 square feet.
- 12:43:20 10 Q. 302 That's the point. Mr. Gilmartin in his evidence, you would have attended a
- 11 number of meetings at Allied Irish Bank, bank centre with your client and
- 12 without him possibly on many occasions, is that correct?
- 13 A. That is correct.
- 14 Q. 303 Now are you aware that Mr. Gilmartin's sworn evidence here is at that, I was in
- 12:43:37 15 attendance and you were in attendance at the same time not maybe at meetings
- 16 but in the physical presence of the bank, did you ever meet me in Allied Irish
- 17 Bank centre?
- 18 A. Not that I can recall.
- 19 Q. 304 Did you ever see me there can you recall?
- 12:43:49 20 A. No.
- 21 Q. 305 No. You are aware that Mr. Gilmartin's evidence is that I was in Buswells
- 22 Hotel, did you ever meet me in Buswells Hotel?
- 23 A. No.
- 24 Q. 306 You never, did you ever see me in Buswells Hotel?
- 12:44:08 25 A. Not that I can recall.
- 26 Q. 307 I see. Thank you Mr. Deane.
- 27
- 28 Could I just say Mr. Chairman, it's worthy of investigation but the bar as
- 29 described, didn't physically exist in the building, I have checked with
- 12:44:25 30 Buswells and until recent renovations were completed in the last four or five

12:44:30 1 years when the Quinn Group took possession of the building, the bar has been  
2 described by Mr. Gilmartin wasn't physically even in existence but maybe the  
3 Tribunal would like to inquire into the matter. Thank you.

12:44:41 5 CHAIRMAN: Mr. Sreenan?

6  
7 **THE WITNESS WAS QUESTIONED BY MR. SREENAN AS FOLLOWS:**

8  
9 Q. 308 MR. SREENAN: Mr. Deane, in relation to the meeting in Buswells firstly, at  
12:44:51 10 which the Finbarr Hanrahan meeting with Mr. Gilmartin occurred, can you confirm  
11 again that neither Mr. Lawlor nor Mr. Kelly was physically present in Buswells  
12 to your knowledge at any time preceding, during or after that meeting?

13 A. As far as I am concerned they were not there.

14 Q. 309 There was a reference made in a report, prepared by Superintendent Burns and  
12:45:25 15 forwarded to the Assistant Commissioner, to an interview that he had with  
16 Mr. O'Callaghan. I appreciate you weren't present at that interview and the  
17 subsequent record created by Inspector Burns of that interview was the subject  
18 of cross-examination with him, I just want to ask you one discreet question  
19 which bears on part of that report. You I take it, would have been in contact  
12:45:55 20 with Mr. O'Callaghan on a fairly regular basis in 1988/1989?

21 A. Yes.

22 Q. 310 Would you have been in contact with him on a daily basis at that time?

23 A. Most probably.

24 Q. 311 Yes. Did he ever suggest to you that Pdraig Flynn had asked him to step aside  
12:46:13 25 from the Balgaddy project in order to allow Quarryvale to go ahead?

26 A. No.

27 Q. 312 Can I ask you to look at document 4554, that again is a photocopy of a document  
28 on your file and the original is in the possession of the Tribunal. Now there  
29 is a deposit receipt, apparently clipped to that letter from Ivor Fitzpatrick &  
12:46:51 30 Company to you in the sum of 800,000 pounds. Can you tell us what is that

- 12:46:57 1 deposit receipt referring to, and does it have anything to do with the letter  
2 to which it is attached?
- 3 A. That deposit receipt is relating to the 800,000 pounds paid by Tom Gilmartin on  
4 foot of the option agreement of the 31st of January of 1989. It has no  
12:47:18 5 relevance whatsoever to the document, the letter from Ivor Fitzpatrick and I  
6 believe it is clipped on to it to avoid being lost in the file.
- 7 Q. 313 Again in relation to the Balgaddy site, to turn to that, under the Merrygrove  
8 contract with Dublin Corporation certain works were to be carried out by the  
9 purchaser in relation to the Fonthill Road, isn't that correct?
- 12:47:45 10 A. That is correct.
- 11 Q. 314 Could you just clarify for the Tribunal what was the extent of those works, did  
12 it involve the purchaser constructing the entire of the Fonthill Road?
- 13 A. No. They were quite limited works. If I could just find the plan, sorry  
14 Chairman. I don't know how best to do this, but --
- 12:48:22 15 Q. 315 Does the plan have a Tribunal reference number on it Mr. Deane?
- 16 A. Not on this particular one.
- 17 Q. 316 Right.
- 18 A. It may be on another one.
- 19 Q. 317 Could you just describe for the record what document is that plan a part of?
- 12:48:36 20 A. This document, this plan is part of the, actually it seems to be attached to  
21 the option agreement. It's part of the Dublin Corporation contract. The  
22 contract between Dublin Corporation and Merrygrove.  
23
- 24 MR. GALLAGHER: I think perhaps 3396.
- 12:49:02 25 A. Yes.
- 26 Q. 318 MR. SREENAN: Yes, is that the same?
- 27 A. If that could be rotated yes.
- 28 Q. 319 Is that the same plan?
- 29 A. That is the plan.
- 12:49:07 30 Q. 320 Okay.

- 12:49:09 1 A. And the areas which are basically the road going north to south the heavy black  
2 line, there is a little bit of road going as you would say east/west.
- 3 Q. 321 Right.
- 4 A. And there is a small bit of road going in a sort of arc, they were the roads to  
12:49:28 5 be built and the intention at that time was, that if you go to the top of the  
6 north/south road you will see there is a roundabout, the old road went where  
7 those dotted lines are and connected all the way out to where it says Lucan  
8 Newlands Road. And that was the old road that went over the old railway bridge  
9 that was in that location.
- 10 The intention of the local authority was that a new road would be built and I  
11 think you can see, if you look under the L where Neilstown is, you can see  
12 there an area that says road reservation.
- 13 Q. 322 Yes.
- 14 A. We see road reservation. Now again, if that could just be taken off the screen  
12:50:12 15 for a moment, the new road then was to be connected from the top roundabout to  
16 the heavy black dot in the middle is a new roundabout to be constructed at the  
17 entrance to the Neilstown lands and the road was to continue on down along the  
18 road reservation for maybe another mile or certainly two miles probably. So it  
19 was a small area of land.
- 12:50:33 20 Q. 323 So do you I understand therefore from your evidence, that the part of the road  
21 that was to be constructed by the purchaser under the Merrygrove contract was  
22 the part that appears on the that plan, shaded in a heavy black colour and in a  
23 lighter grey colour?
- 24 A. Yes.
- 12:50:53 25 Q. 324 You were asked about the proceedings that were issued by Merrygrove Estates  
26 against O'Callaghan Properties Limited on the 6th February 1989, following upon  
27 the correspondence from Ivor Fitzpatrick & Company, the front page of the writ  
28 is at 4596. I would just like to draw your attention and the attention of the  
29 Tribunal to the relieves claimed in that writ, which is to be found at page  
12:51:24 30 4598. And I think those reliefs are confined to a claim for damages for breach

- 12:51:35 1 of contract and do not include a claim for rescission?
- 2 A. That is correct.
- 3 Q. 325 Yes. And a number of the drafts of the agreement to turn to the agreement of
- 4 the 31st January 1989 between Mr. Gilmartin and O'Callaghan Properties Limited,
- 12:51:50 5 a number of drafts of the agreement as copied by the Tribunal and appearing on
- 6 the screen and the Tribunal brief, has descriptions on the left-hand side, for
- 7 example "Draft A" which is at page 4620 has "Draft A purchase agreement not an
- 8 option."
- 9
- 12:52:17 10 Draft B, then 4625 has written "Draft B changes from sale and purchase
- 11 agreement to an option". Can you just confirm again for the purposes of
- 12 absolute clarity, that those descriptions of the various drafts were put on
- 13 post it stickers, the stickers contain your writing and they were attached to
- 14 the documents for the purposes of assisting the Tribunal in understanding the
- 12:52:47 15 progression of the drafting of the agreement?
- 16 A. That is correct.
- 17 Q. 326 And they were attached by you within the past few weeks for that purpose?
- 18 A. That is correct.
- 19 Q. 327 Again turning to draft E, page 4644 we have seen the copies of this draft that
- 12:53:15 20 contained your handwriting and Mr. Maguire's handwriting, is it your evidence
- 21 that over the period of this agreement which you describe as being of some
- 22 hours, I think starting at 10.30 in the morning and finishing in the early
- 23 afternoon, that the terms of the agreement were negotiated and hammered out
- 24 between the respective sides by reference to the text of draft E?
- 12:53:41 25 A. That is correct.
- 26 Q. 328 And does your handwriting on that draft reflect the negotiations that took
- 27 place and the agreements that were made in terms of altering the draft?
- 28 A. That is correct.
- 29 Q. 329 And was Mr. Gilmartin fully involved in those negotiations?
- 12:54:02 30 A. He was.

- 12:54:03 1 Q. 330 And as far as you could tell, did he understand what he was negotiating about?
- 2 A. I believe he fully understood.
- 3 Q. 331 And I think included in those negotiations which we can see from page 4645 was
- 4 negotiation on the timing of the payments in respect of the exercise of the
- 12:54:26 5 option?
- 6 A. That is correct.
- 7 Q. 332 And if we look at clause 1 on that page, we see that the original date up to
- 8 which the option could be exercised was in draft E as drafted by you, the 30th
- 9 of June 1989?
- 12:54:46 10 A. That is correct.
- 11 Q. 333 And that seems to have been changed in the course of negotiations to the 31st
- 12 of July 1989 first, and then the 31st of October 1989?
- 13 A. That is correct.
- 14 Q. 334 And the same change appears to have been made to clause 2 on the same page
- 12:55:05 15 dealing with the manner in which the option could be exercised?
- 16 A. Yes that's correct.
- 17 Q. 335 At whose request were those changes to the timing of the option date made?
- 18 A. At Mr. Gilmartin's request.
- 19 Q. 336 Right. And again going over to the next page, which is page 4646 which refers
- 12:55:33 20 to the way in which the option is to be exercised, clause C, there requires as
- 21 part of the exercise of the option, the handing over to the vendor of a bank
- 22 guarantee, guaranteeing the payment of 1.35 million pounds to the vendor on or
- 23 before the, on the original date in draft E as produced by you, was 31st
- 24 December 1989, that was changed in the course of negotiations to the 31st
- 12:56:02 25 January 1990. At whose request was that change made?
- 26 A. At Mr. Gilmartin's request.
- 27 Q. 337 And all of the other changes that we see to that agreement, including on the
- 28 next page 4647 the deletion of the option whereby the Gilmartin lands could
- 29 have been acquired for one pound by the vendor, were all of those changes the
- 12:56:43 30 result of requests made by Mr. Gilmartin and Mr. Maguire?

- 12:56:47 1 A. Yes.
- 2 Q. 338 And were they all agreed to by yourself and Mr. O'Callaghan?
- 3 A. That is correct.
- 4 Q. 339 And do all of those changes then find their way through to the draft which was,  
12:57:01 5 or the engrossment that was typed up in Mr. Maguire's office which starts on  
6 page 4652?
- 7 A. Yes, that's correct.
- 8 Q. 340 And the only changes that is we see in handwriting to this are the  
9 typographical changes on the first page in clauses two and three and going to  
10:57:27 10 the next page 4653, the date of planning permission there in clause four shall  
11 not lodge an application for planning permission before, it was typed in as  
12 30th November 1989 and that was again changed to reflect the option date 31st  
13 October 1989?
- 14 A. That is correct.
- 12:57:59 15 Q. 341 And again with those minor alterations made to the engrossment, do I understand  
16 that the agreement for execution was then typed up in counterparts, starting on  
17 4655 and executed by the parties?
- 18 A. That is correct.
- 19 Q. 342 And was Mr. Gilmartin, at the time of execution as far as you were aware,  
12:58:25 20 absolutely clear about what he was agreeing to?
- 21 A. Yes, I believe he was.
- 22 Q. 343 And you have said in your statement but I don't think it has come out otherwise  
23 in response to questions and answers, that Mr. Maguire specifically advised  
24 Mr. Gilmartin in your presence on two occasions I think, that the agreement  
12:58:47 25 should be made subject to planning permission?
- 26 A. That is correct.
- 27 Q. 344 And that Mr. Gilmartin rejected Mr. Maguire's advice in your presence and in  
28 front of Mr. O'Callaghan?
- 29 A. That is correct.
- 12:58:59 30 Q. 345 And said that that was not part of the agreement that Mr. O'Callaghan shouldn't

- 12:59:04 1 have to wait for his money?
- 2 A. That is correct.
- 3 Q. 346 Now under the drafts of the agreement, apart from draft A, what Mr. Gilmartin  
4 was getting was an option?
- 12:59:25 5 A. Sorry could you repeat that?
- 6 Q. 347 Apart from draft A, under the other drafts of the agreement and indeed under  
7 the agreement as executed by Mr. Gilmartin, what he was getting was an option?
- 8 A. That is correct.
- 9 Q. 348 And he was paying 800,000 pound for that option?
- 12:59:43 10 A. That is correct.
- 11 Q. 349 And if he exercised the option he would have to pay 2.7 million pounds as  
12 consideration for what he was getting on foot of the option?
- 13 A. That is correct.
- 14 Q. 350 And what he was getting on foot of the option was the interest that O'Callaghan  
15 Properties had in the contracts with Merrygrove?
- 16 A. That is correct.
- 17 Q. 351 And indeed under draft A, what he was doing was acquiring for 3.5 million  
18 pounds, the same interests which O'Callaghan properties had in the agreements  
19 with Merrygrove?
- 13:00:22 20 A. That is correct.
- 21 Q. 352 And Mr. Gallagher drew your attention to the uncertainty in relation to this  
22 matter in Mr. Maguire's evidence, and there is a lot of evidence from  
23 Mr. Gilmartin on this and we'll be addressing the Tribunal in due course on it  
24 and it will be suggested there was no ambiguity in Mr. Gilmartin's mind, but I  
13:00:49 25 just want to draw your attention to what Mr. Gilmartin said in his statement to  
26 the Tribunal about this very issue, page 587 of the brief.
- 27
- 28 He says at paragraph 16: "I met with Mr. O'Callaghan in the Royal Dublin Hotel.  
29 Mr. Lawlor had arranged the meeting. At the meet building O'Callaghan informed  
13:01:17 30 me that he intended building on the Neilstown site and he produced a drawing.

13:01:22 1 He indicated that his plans, including the construction of a shopping centre of  
2 approximately 300,000 square feet on the Neilstown site and that he was only  
3 prepared to sell his interest for 7 million pounds.

4 He also informed me that he had purchased Mr. Gubay's interest in the site for  
13:01:38 5 500,000 pounds."

6  
7 So it seems at the start of the negotiations Mr. O'Callaghan was saying to  
8 Mr. Gilmartin, according to Mr. Gilmartin, I have purchased the Gubay interest  
9 for 500,000 pounds and I am only prepared to sell it to you for 7 million  
13:01:52 10 pounds. He goes on to say, Mr. Gilmartin says:

11  
12 "It was eventually agreed that I would pay Mr. O'Callaghan the sum of 3.5  
13 million pounds in return for which, I would acquire Merrygrove Estates limited,  
14 the company which owned the option over the Neilstown site. We shook hands on  
13:02:14 15 the agreement which involved the payment of 3.5 million in the following  
16 tranches".

17  
18 Now it would seem there that Mr. Gilmartin is saying that what he was getting  
19 for his 3 and a half million was the company which had the contracts and which  
13:02:32 20 in turn would then have to perform the contracts in relation to the Neilstown  
21 site.

22 A. That is correct.

23  
24 CHAIRMAN: All right Mr. Sreenan it's now just gone one o'clock. We'll sit  
13:02:44 25 again at five past two. All right?

26  
27 MR. SREENAN: Yes, thank you Chairman.

28  
29 CHAIRMAN: Is there --

13:02:51 30

13:02:51 1 MR. SREENAN: Chairman I do in fact only have one or two more questions if it  
2 would be --

3  
4 CHAIRMAN: There are a couple of questions that I think we'll be asking, so I  
13:03:02 5 expect we'll be maybe in total about another 15 or 20 minutes.

6  
7 MR. SREENAN: Very well.

8  
9 CHAIRMAN: Thank you.

13:03:13 10

11 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

**THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:**

**THE WITNESS CONTINUES TO BE QUESTIONED BY MR. SREENAN AS FOLLOWS:**

- 13:03:15 1
- 2
- 3
- 4
- 13:21:34 5 Q. 353 MR. SREENAN: Mr. Deane, you told us this morning that the first time you heard
- 6 of the allegation that yourself and Mr. O'Callaghan were supposed to have
- 7 falsified the written agreement of the 31st of January 1989, was a few weeks
- 8 ago, when you read the newspaper reports of Mr. Gilmartin's testimony?
- 9 A. That is correct.
- 14:12:06 10 Q. 354 How many times would you have met Mr. Gilmartin over the years?
- 11 A. From 1989 until 1996, I would have met Mr. Gilmartin on regular basis, perhaps
- 12 three or four times a year.
- 13 Q. 355 So were are talking about a period of what some seven years?
- 14 A. That is correct.
- 14:12:29 15 Q. 356 So something between 21 and 28 times?
- 16 A. Something like that.
- 17 Q. 357 In what context would you have met him?
- 18 A. In the context of Barkhill business, Mr. Gilmartin was a director of that and I
- 19 attended a lot of directors meetings and had other meetings with Mr. Gilmartin
- 14:12:48 20 regarding funding for Barkhill.
- 21 Q. 358 How many times would you have met Mr. Maguire?
- 22 A. Perhaps a similar number because Mr. Maguire attended the vast majority of the
- 23 Barkhill board meetings.
- 24 Q. 359 And did either Mr. Maguire or Mr. Gilmartin ever say to you that the agreement
- 14:13:05 25 of the 31st of January 1989 had been falsified or altered in anyway?
- 26 A. Absolutely not.
- 27 Q. 360 Thank you.
- 28
- 29 CHAIRMAN: Mr. Deane just, I have just one thing I wanted to ask you. When
- 14:13:24 30 you had the meeting on the 31st January in Mr. Maguire's office, that

14:13:30 1 presumably lasted for some hours, did it?

2 A. It did indeed Chairman.

3

4 CHAIRMAN: During that meeting presumably you were all sitting around a table

14:13:38 5 or --

6 A. At some stages yes, particularly when the document or draft E was being

7 re-negotiated, we were all in the same room together.

8

9 CHAIRMAN: All right were there occasions when Mr. Maguire and Mr. Gilmartin

14:13:52 10 left to go into another room for the purposes of Mr. Maguire advising

11 Mr. Gilmartin, do you remember if that did happen from time to time?

12 A. That did happen, yes.

13

14 CHAIRMAN: Or did he give you, give him advice on the spot so to speak?

14:14:03 15 A. In relation to the question of whether documents should be subject to planning,

16 he gave that advice in my presence, and in the presence of Owen O'Callaghan and

17 Tom Gilmartin. In relation to the negotiation as each clause was being

18 discussed, they would be conversation between Mr. Gilmartin and Mr. Maguire in

19 which Mr. O'Callaghan and I would have heard the conversation as to whether

14:14:32 20 that was acceptable, this is not acceptable and so on.

21

22 CHAIRMAN: Did he on occasion take Mr. Gilmartin out of the office or out of

23 the room you were in?

24 A. Yes. There was one --

14:14:41 25

26 CHAIRMAN: For the purpose of talking privately to him?

27 A. There was one occasion Chairman, when I recall, I recall the when the document

28 had been negotiated and was retyped and that I, the one that I made a few

29 handwritten typographical amendments to, when that document was produced Owen

14:15:01 30 O'Callaghan and I went through that document separately to Mr. Gilmartin and

14:15:06 1 Mr. Maguire. In other words they were not present with us at that time. So  
2 they had that opportunity, what they did during that time obviously I can't  
3 say, but they were certainly on their own during that period.  
4

14:15:17 5 CHAIRMAN: Did the four of you break up on good terms at the end of the  
6 meeting?

7 A. Absolutely. Yes. Very good terms.  
8

9 JUDGE FAHERTY: Mr. Maguire, when presumably you got the telephone call or got  
14:15:32 10 instructions rather, from Mr. O'Callaghan to draw up an agreement, which I  
11 think you faxed sometime in mid January to Mr. Maguire. Were you aware at that  
12 stage that Mr. O'Callaghan had been suggesting to Mr. Gilmartin a joint venture  
13 agreement in Mr. Gilmartin's Quarryvale project?

14 A. Yes, I was.  
15

14:15:55 16 JUDGE FAHERTY: And were you aware of Mr. Gilmartin's response to that?

17 A. As I recall Mr. O'Callaghan made a number of proposals to Mr. Gilmartin which I  
18 think, one included buying him out and one included joint venture. To  
19 effectively resolve the impasse that was there between the two sides,  
14:16:15 20 Mr. Gilmartin turned down those approaches.  
21

22 JUDGE FAHERTY: Thank you.  
23

24 MR. LAWLOR: Chairman could I just one question I forgot this morning?  
14:16:24 25

26 JUDGE KEYS: Mr. Deane could I just ask you, when did you first find out that  
27 Mr. Finbarr Hanrahan was Mr, one of Mr. Callaghan's main supporters in the  
28 Lucan area?

29 A. The first time I can recall that was shortly before I would say the note of  
14:16:44 30 the, before the note of the 4th of November I think 1988.

14:16:50 1  
2 JUDGE KEYS: So you knew before the meeting in Buswells that Mr. O'Callaghan,  
3 Buswells I should say, that Mr. O'Callaghan had some dealings with  
4 Mr. Hanrahan?

14:17:08 5 A. I knew Mr. Hanrahan had been supportive of the Cooldrinagh.

6  
7 JUDGE KEYS: Yes, but wouldn't that imply there had been some communication  
8 between both Mr. O'Callaghan and Mr. Hanrahan at that stage, if he was  
9 supporting his ventures?

14:17:19 10 A. I am not certain judge, whether those discussions with Mr. Hanrahan happened  
11 directly between Mr. Hanrahan and Mr. O'Callaghan or whether it was Mr. Paul  
12 Smithwick the solicitor for the vendor or somebody on that side, as it were,  
13 conducted those discussions.

14  
14:17:38 15 JUDGE KEYS: Yes but for Mr. O'Callaghan to have a main supporter in Lucan that  
16 would strongly suggest he must have had some communication with Mr. Hanrahan in  
17 order to obtain that support, isn't that correct?

18 A. It would suggest that I can't verify that for you.

19  
14:17:52 20 JUDGE KEYS: You knew of that anyhow by the time the meeting involving  
21 Mr. Hanrahan and Mr. Gilmartin in Buswells Hotel, isn't that correct?

22 A. Yes I did.

23  
24 JUDGE KEYS: And your evidence as I understand it is that when you heard what  
14:18:06 25 Mr. O'Callaghan had, well when Mr. O'Callaghan told you what Mr. Gilmartin had  
26 said to him in relation to Mr. Hanrahan you were shocked and very much taken  
27 aback?

28 A. Absolutely.

29  
14:18:15 30 JUDGE KEYS: Did you not then, advise Mr. O'Callaghan or decide yourself that

14:18:23 1 the substance of this allegation should be investigated further, not either  
2 through the police, but just through your own resources?

3 A. No, I didn't advise Mr. O'Callaghan on that.

14:18:35 5 JUDGE KEYS: Did it not dawn on you that here you had an allegation which was of  
6 corruption, bribery call it what you may, relating to an individual true or  
7 false, who was closely connected in some way with Mr. O'Callaghan who was your  
8 business partner, isn't that correct?

9 A. That is correct. That allegation was made against Mr. Hanrahan.

14:18:57 10  
11 JUDGE KEYS: Yes and the type of business Mr. O'Callaghan and yourself entailed  
12 would be applying for planning permissions or rezoning of certain areas of  
13 lands, isn't that correct?

14 A. That's correct.

14:19:06 15  
16 JUDGE KEYS: And despite this allegation being made by Mr. Gilmartin to  
17 Mr. O'Callaghan and related to you, and you are in business with  
18 Mr. O'Callaghan on, I think a 50/50 basis, is that correct?

19 A. That's correct.

14:19:21 20  
21 JUDGE KEYS: That none of you took any steps to find out whether in fact there  
22 could be any truth in these allegations?

23 A. These were serious allegations and I decided that I was not going to repeat  
24 allegations to anybody, of that nature. They were far too serious, either they  
14:19:37 25 were true in which case an attempt at bribery had taken place or they were  
26 untrue in which case it was grossly defamatory.

27  
28 JUDGE KEYS: I am asking why didn't you even discuss that with Mr. O'Callaghan?

29 A. We certainly discussed the incident.

14:19:51 30

14:19:51 1 JUDGE KEYS: When you discussed the incident, did you discuss the merits of the  
2 allegations and how it may effect you in some way?  
3 A. We certainly discussed the allegations and the view we took at the time was we  
4 were not party to those allegations, certainly if any such representation had  
14:20:09 5 been made to O'Callaghan Property, it is would have been firmly rejected.  
6  
7 JUDGE KEYS: But the reason I ask this, were you not concerned for some time in  
8 the future that if you continued to engage the support of Mr. Hanrahan and on  
9 the off chance that there may be some truth in the allegations, that would  
14:20:26 10 reflect on yourselves and the name of your company?  
11 A. Absolutely.  
12  
13 JUDGE KEYS: Yet, despite that risk nobody decided investigate the matter a  
14 little further, either discreetly or otherwise to find out whether there was  
14:20:37 15 any truth or foundation in the allegations at all, is that your evidence?  
16 A. That is a fact. And, but just if I might add to that, shortly after these  
17 allegations took place, the police came to Mr. O'Callaghan and basically told  
18 him that Tom Gilmartin was not prepared to stand over those allegations by way  
19 of signing a statement.  
14:20:57 20  
21 JUDGE KEYS: Well do you know whether Mr. O'Callaghan told the Gardai that  
22 Mr. Gilmartin had told him about the incident in Buswells, do you know that?  
23 A. I don't know that judge.  
24  
14:21:08 25 JUDGE KEYS: Did they come and talk to you?  
26 A. Sorry.  
27  
28 JUDGE KEYS: Did they even approach you?  
29 A. No nobody approached me.  
14:21:15 30

14:21:15 1 JUDGE KEYS: Even though they would have known you were present at the meeting  
2 in Buswells Hotel and that Mr. O'Callaghan had told you about the allegation  
3 which Mr. Gilmartin had made in relation to seeking a 100,000 pounds payment  
4 for support of rezoning certain lands?

14:21:31 5 A. The Gardai never approached me.

6  
7 JUDGE KEYS: You didn't consider when you heard Mr. O'Callaghan, that  
8 Mr. O'Callaghan was approached, that maybe you should also corroborate in some  
9 way, what was going on and assist the Gardai by volunteering to talk to them?

14:21:47 10 A. As far as I was concerned at that point in time, if Mr. Gilmartin himself was  
11 not prepared to stand over the allegations, then in my mind there was serious  
12 doubt.

13  
14 JUDGE KEYS: I don't think that was it, he wasn't prepared to make a statement,  
15 not a question of not standing over them. As I understand the situation I am  
16 subject to correction, he wasn't prepared to make a statement. The allegation  
17 was out, you knew about the allegation as far back as 1989, after the 31st  
18 January 1989.

19 What I am concerned about is how come nobody specially when the Gardai started  
14:22:00 20 investigating, there were very few people to come forward who had some  
21 knowledge that there were these allegations in the open, to help the Gardai in  
22 their investigations?

23 A. I certainly wouldn't repeat a hearsay allegation to anybody.

24  
14:22:33 25 JUDGE KEYS: But even to the Gardai?

26 A. No.

27  
28 JUDGE KEYS: I see. Thank you very much.

29

14:22:38 30

14:22:38 1

2

**THE WITNESS WAS FURTHER QUESTIONED BY MR. LAWLOR AS FOLLOWS:**

3

4

Q. 361 MR. LAWLOR: Sorry I didn't appreciate what Judge Keys was going to ask, I just wanted to put Finbarr Hanrahan's letter to you Mr. Deane please, because you do say in your own statement that Mr. Gilmartin was visibly annoyed when you left the meeting isn't that right, in Buswells?

14:22:42 5

6

7

8

A. When I saw him out in the street after the meeting he had with Mr. Hanrahan, he was visibly annoyed.

9

14:23:02 10

11

Q. 362 If we can have 4080 please? Just on the actual date of the meeting, I will just read the second paragraph:

12

13

"Firstly I cannot understand why Mr. Gilmartin claims to have met me on

14

December 28th 1988 as this was an impossibility. I was on holiday with my wife

14:23:23 15

16

and family in my parents old home in Kerry at that time. I am not disputing

17

meeting Mr. Gilmartin, but I did not meet him on December 28th 1988 of that I am certain."

18

19

Would you agree Mr. Deane that yourself, Mr. O'Callaghan's statement,

14:23:42 20

21

Mr. Kelly's evidence, my questioning, that none of us were in Buswells on

December 28th 1988, is that your --

22

A. I certainly wasn't.

23

Q. 363 If you just go to the next page please, 4081? In the earlier part

24

Mr. Gilmartin has been persistently ringing Mr. Hanrahan's home and he

14:24:09 25

26

reluctantly met him. "I entered the bar in Buswells alone and he joined me on

his own. I did not take notice of any other patrons in the bar. Our

27

conversation was short."

28

You concur with that you said five to ten minutes, isn't that right?

29

A. That's correct.

14:24:25 30

Q. 364 "He showed me his documents. I told him his proposal of 1.5 million square

14:24:32 1 feet of retail shopping was more suited to a large urban area in the UK or  
2 large European city rather than a small city like Dublin."

3  
4 Just on that point, did you discuss with or would you have assumed that  
14:24:49 5 Mr. Gilmartin's proposal had any viable possibility of succeeding?

6 A. No I didn't believe it did.

7  
8 CHAIRMAN: Sorry, Mr. Lawlor I understood when you said you had a question, it  
9 was one matter that was -- you can't have a second run at it.

14:25:05 10 Q. 365 MR. LAWLOR: Yeah well the one matter now is as follows. "Mr. Gilmartin became  
11 incensed. His manner turned threatening and abusive. He told me I would be  
12 sorry for refusing to support his scheme. We parted on bad terms as a result  
13 of his aggressive and bullying behaviour towards me".

14 Could that be why he was annoyed do you think. He was told that this local  
14:25:30 15 councillor for the Lucan electoral area was not going to support Westpark, is  
16 that a basis of possible annoyance?

17 A. Could be.

18 Q. 366 Well Chairman, I don't see why the counsel who spent a full day, half a day  
19 yesterday and this morning questioning Mr. Deane and failed to put that to the  
14:25:50 20 witness, now I would further ask that you would indulge yourself in  
21 adjudicating on Mr. Gilmartin's immunity, because he is the only man in this  
22 country that has immunity in this country at this Tribunal and it's high time  
23 the matter was addressed.

24  
14:26:05 25 CHAIRMAN: Mr. Lawlor it's not a matter for us to address.

26  
27 MR. LAWLOR: Of course it is, who is it to address it then?

28  
29 CHAIRMAN: It's a matter for the DPP.

14:26:13 30

14:26:13 1 MR. LAWLOR: No no the Sole Member sought immunity, you have to revisit it.  
2  
3 CHAIRMAN: Mr. Lawlor that's not going to be addressed by the Tribunal.  
4  
14:26:20 5 MR. LAWLOR: So you are happy to allow Mr. Gilmartin's immunity stand are you?  
6 Is that what your position is?  
7  
8 CHAIRMAN: It's a fact of life.  
9  
14:26:28 10 MR. LAWLOR: It's not a fact of life, it's a fact of responsibility on a your  
11 two colleagues to address the matter.  
12  
13 CHAIRMAN: Mr. Lawlor we won't be addressing the matter.  
14  
14:26:38 15 MR. LAWLOR: Even though Mr. Gilmartin's evidence is falling down like nine  
16 pins here every day you are prepared to sit and indulge one big allegation made  
17 this morning were contracts were interfered with --  
18  
19 CHAIRMAN: Mr. Lawlor you have been warned in correspondence and from the  
14:26:52 20 bench about your behaviour, you will be disbarred from cross-examination if you  
21 continue.  
22  
23 MR. LAWLOR: Is it acceptable --  
24  
14:26:59 25 CHAIRMAN: Is that clear?  
26  
27 MR. LAWLOR: Two original contracts were put here yesterday. That issue this  
28 morning and the acceptance of Counsel for the Tribunal raising original  
29 contracts with no dates on them and there is no retribution from Counsel for  
14:27:14 30 the Tribunal, no?

14:27:15 1

2 CHAIRMAN: Mr. Deane has his own counsel here. So.

3

4 MR. LAWLOR: It's a responsibility of Mr. Gallagher.

14:27:22 5

6 CHAIRMAN: Mr. Lawlor I have -- I am telling you to stop now.

7

8 **THE WITNESS WAS FURTHER QUESTIONED BY MR. GALLAGHER AS FOLLOWS:**

9

14:27:26 10 Q. 367 MR. GALLAGHER: Sir, there is one or two questions I had wished to ask this  
11 witness. And perhaps arising from the question that has been put by Mr. Lawlor  
12 it might be appropriate to revisit very briefly, the occasion of the meeting in  
13 Buswells Hotel.

14 Did Mr. Gilmartin tell you on that occasion that he was annoyed because

14:27:52 15 Mr. Hanrahan had refused to support his proposal?

16 A. No.

17 Q. 368 Was it your belief at that time that Mr. Gilmartin was annoyed because he had  
18 been told by Mr. Hanrahan that he would not support his proposal?

19 A. That was my belief at that time.

14:28:09 20 Q. 369 Sorry.

21 A. That was my belief at that time.

22 Q. 370 That Mr. Gilmartin was annoyed because he had been told by Mr. Hanrahan that  
23 Mr. Hanrahan would not support his proposal?

24 A. Mr. O'Callaghan reported that to me and I believed it at that time.

14:28:22 25 Q. 371 You didn't say anything about that in your original evidence. You told the  
26 Tribunal as I understood your evidence, that Mr. Gilmartin had told  
27 Mr. O'Callaghan that Mr. Hanrahan had requested 100,000 pounds?

28 A. That's correct.

29 Q. 372 And that he was annoyed about that?

14:28:40 30 A. That's correct.

14:28:40 1 Q. 373 And you were shocked by this?  
2 A. Absolutely.  
3 Q. 374 Is that the position?  
4 A. That's the position as it was.

14:28:45 5 Q. 375 Yes. Were you told by anybody that Mr. Hanrahan had refused to support the  
6 Quarryvale proposal on that occasion?  
7 A. No.  
8 Q. 376 Are you clear on that?  
9 A. I am absolutely clear.

14:28:59 10 Q. 377 All right. Now, I mentioned earlier to you, I drew your attention to a letter  
11 that you wrote to Mr. Seamus Maguire on the 16th July 1990 that's 4775.  
12  
13 I mentioned to you briefly and I didn't take you through it in great detail but  
14 there is one portion of that, that I want to draw your attention to, it's on  
15 screen, do you see paragraph A2?  
16 A. Yes.

17 Q. 378 You are given reasons why you are advising Mr. O'Callaghan not to go ahead with  
18 what he had discussed with Mr. Gilmartin. You said "More importantly the  
19 Corporation may rescind the contract and sell the land to other parties, whom  
14:29:45 20 as your client is well aware are only too anxious to buy in order to frustrate  
21 your client's plans".  
22  
23 Now what were you referring to and to whom were you referring in that sentence?  
24 A. At this stage I cannot be certain, but I believe it may well have been Green  
14:30:07 25 Properties.  
26 Q. 379 Mr. Lawlor asked you about the area of retail shopping space that was being  
27 spoken about in or about this time for the Quarryvale development of 187 acres  
28 or whatever, could you assist the Tribunal by telling the Tribunal  
29 approximately and I know you may not have the exact figures available to you,  
14:30:47 30 can you tell the Tribunal what's the gross square footage of the developments

- 14:30:56 1 in Quarryvale as of this date in general terms?
- 2 A. That would be impossible to answer. There are a number of different aspects to
- 3 that development currently on site, you have the shopping centre, you have
- 4 retail park west, retail park east the motor malls, office block B, office
- 14:31:13 5 block C, so I would find it impossible to try and put a size on that.
- 6 Q. 380 They are clearly a mix of uses in that area?
- 7 A. Absolutely.
- 8 Q. 381 Was a mix of uses envisaged at the time we are talking about in 1989?
- 9 A. Well in 1989 that would have been Mr. Gilmartin's plan in 1989. I understand
- 14:31:33 10 he wanted to put one and a half million square feet of shopping and 500,000
- 11 square feet of retail warehousing plus other uses.
- 12 Q. 382 I see. It would be possible I take it to obtain the information as to the
- 13 total build on that Quarryvale site under the various headings to date?
- 14 A. It would.
- 14:31:58 15 Q. 383 And anticipated, planned --
- 16 A. Planned would be much more difficult but certainly the existing uses there
- 17 would be no problem whatsoever in getting the current areas.
- 18 Q. 384 Could you arrange to have that provided through your solicitors to the
- 19 Tribunal?
- 14:32:11 20 A. Absolutely.
- 21 Q. 385 Thank you very much.
- 22
- 23 JUDGE FAHERTY: Mr. Deane, sorry there's one thing I wanted to ask you, you
- 24 answered Mr. Lawlor earlier when he was cross-examining you never met him in
- 14:32:27 25 Buswells or don't recall seeing him in Buswells as I understand it. Nor had
- 26 you recalled seeing him in the office of AIB I think.
- 27 A. That's correct.
- 28
- 29 JUDGE FAHERTY: At this period 1988/89?
- 14:32:38 30 A. I took that question to relate to the date of the Buswells meeting.

14:32:42 1  
2 JUDGE FAHERTY: That's what I wanted to ask you, did you have meetings with  
3 Mr. Lawlor at that period? Generally? Or had you met Mr. Lawlor?  
4 A. No, I think the first time I met Mr. Lawlor was maybe February 1991, sorry  
14:33:02 5 March/April 1991, I think that was the first time I met Mr. Lawlor.  
6  
7 JUDGE FAHERTY: Were you aware that Mr. O'Callaghan appeared to be meeting  
8 Mr. Lawlor, at least met him on one occasion in 1988?  
9 A. Yes I would have been aware of that.  
14:33:15 10  
11 JUDGE FAHERTY: Did you know why Mr. O'Callaghan was meeting Mr. Lawlor?  
12 A. Not at that time no.  
13  
14 JUDGE FAHERTY: You are saying you met Mr. Lawlor in 1991?  
14:33:22 15 A. I think that was the first time I met him was in March/April of 1991.  
16  
17 JUDGE FAHERTY: I just wanted to clarify that in light of your answers to  
18 Mr. Lawlor. Thank you.  
19  
14:33:33 20 CHAIRMAN: Thank you very much  
21 A. Thank you Chairman.  
22  
23 **THE WITNESS THEN WITHDREW.**  
24  
14:33:37 25 MR. QUINN: Mr. Corcoran please.  
26  
27 I appear on behalf of Mr. Corcoran with Mr. Michael P O'Higgins, instructed by  
28 Daniel Spring & Company, I am seeking limited representation at this stage and  
29 Mr. Corcoran is just coming in. Thank you.  
14:33:55 30

14:33:55 1 CHAIRMAN: Granted.

2

3 MR. BARNIVILLE: Chairman, I wonder while we are waiting for Mr. Corcoran, I  
4 just received and I think everybody, I mean no criticism of this, received

14:34:14 5 Mr. Corcoran's statement this morning, Mr. Gilmartin because he is not here for  
6 the reasons the Tribunal knows, hasn't seen that statement, so an issue may  
7 arise and I may need to rely on the direction or the ruling given by the  
8 Tribunal yesterday, I just want to make that clear at this stage.

9

14:34:26 10 CHAIRMAN: All right.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

**JOHN CORCORAN, HAVING BEEN SWORN WAS EXAMINED AS**

**FOLLOWS BY MR. QUINN:**

14:34:26 1  
2  
3  
4 Q. 386 MR. QUINN: Thank you Mr. Corcoran. Mr. Corcoran you are here in response to a  
14:34:49 5 request from the Tribunal and I think you have provided a statement which is to  
6 be found at brief pages -- 4810 to 48?

7 A. Whose speaking.

8 Q. 387 To 4813. Sorry your statement is to be found at 4810 to 4813 of the brief, I  
9 propose to read your statement and ask you one or two questions arising out of  
14:35:09 10 that, if that's okay with you.

11  
12 "This statement is being prepared in response to a from Ms. Marcelle Gribbin,  
13 solicitor to the Tribunal to Donal Spring my solicitor, dated 28th June 2004,  
14 seeking my statement concerning the proposed purchase of Corporation lands at  
14:35:24 15 Irishtown in 1988/189.

16 For the purpose of complying with the question I have been provided with a  
17 large volume of documentation comprising in the main, transcripts of relevant  
18 evidence heard before the Tribunal. In the short time available to prepare  
19 this statement, I propose to set out briefly as best I can my role in the  
14:35:39 20 matters in issue.

21  
22 I founded Green Property Company Limited now Green Property PLC in 1964  
23 (hereinafter Green Property). Green Property was a property and development  
24 company which in the late 1970s and early 1980s developed a number of sites  
14:35:55 25 throughout Dublin including the buildings on St. Stephen's Green, the north  
26 side shopping centre, Waterford shopping centre and dozens of industrial units.  
27 Green Property had acquired property in Blanchardstown towards the end of the  
28 1970s for the purpose of developing a town centre and spent the next 15 years  
29 organising the infrastructure and developing this project.

14:36:10 1 During the course of the work I, as managing director, had occasion to attend  
2 at Dublin County Council offices for the purpose of entering into discussion  
3 concerning provision of roads and services relevant to the project. It was  
4 during this project that I came in contact with Mr. Redmond. To the best of my  
14:36:24 5 recollection I did not attend any Dublin County Council offices on more than  
6 five or six occasions.

7  
8 I did meet with Mr. Redmond in 1985 when Green Property advertised a position  
9 related to the project management of infrastructure for the Blanchardstown  
14:36:39 10 project.

11  
12 Mr. Redmond applied for the job and was interviewed by me at Green Property  
13 offices and offered the position on the assumption that Mr. Redmond would be  
14 available in September 1985, when he intended to resign from his position in  
14:36:54 15 Dublin County Council.

16 As it transpired Mr. Redmond did not resign his position and thus the offer was  
17 never taken up. My only contact thereafter with Mr. Redmond was limited to my  
18 contact with him at Dublin County Council offices.

19  
14:37:04 20 During the late 1980s negotiations were ongoing with major tenants to take the  
21 majority of the space to anchor the town centre at Blanchardstown. During the  
22 course of these extension self negotiations involving, what for Green Property  
23 was an enormous investment, it came to the attention of the company and the  
24 proposed tenants that there were proposals in being for 3 million square feet  
14:37:23 25 shopping complex on the Galway Road/M50.

26  
27 My colleagues and I were absolutely shell shocked at this development. Green  
28 Property a public company, with institutional shareholders, had by this stage  
29 invested approximately 10 million pounds and 15 years in this project. We all  
14:37:37 30 understood that the reality of the situation was that if this new shopping went

14:37:42 1 ahead that the Blanchardstown scheme was going fail.

2

3 At this time the rumour in the business community was that Mr. Gilmartin was

4 buying lands from Dublin Corporation in Irishtown to complete his land

14:37:51 5 acquisition holding for the purposes of the Quarryvale development.

6

7 When I heard about this I contacted George Redmond by telephone at his offices

8 on the 2nd March 1989, and I asked him was this correct. He told me that it

9 was. I asked George Redmond if contracts had been signed and George Redmond

14:38:06 10 told me that they not been signed. Given the inevitable implication which

11 would ensure for the Blanchardstown development if Mr. Gilmartin proceeded to

12 acquire these lands, I asked Mr. Redmond if it was open to Green Property to

13 make an offer for these lands and he indicated that I should make contact with

14 the chief valuer's office and tell him of Green Property's intention.

14:38:25 15

16 That afternoon I wrote to Mr. McLoone, the chief valuer and I informed him of

17 Green Property's interest in these lands and I inquired as to whether a tender

18 process would be put in place. A copy of this letter was sent by me to Frank

19 Feeley the Dublin City and County Manager. On the 9th March 1989, I received a

14:38:41 20 letter from Mr. Paddy Morrissey, the Deputy City and County Manager, informing

21 me that a copy of my letter to Mr. Feeley had been copied to him and inviting

22 me to come to attend his office on the 14 March 1989 to discuss this matter.

23

24 When I arrived in City Hall for that meeting, Mr. Morrissey was present with

14:38:59 25 Mr. Sean Haughey. This was the first and last occasion on which he met

26 Mr. Haughey. I was asked at this meeting why did I want to purchase the land.

27 Mr. Morrissey and Mr. Haughey asked me did I not realise that they had a

28 gentleman's agreement to sell the land to Mr. Gilmartin. I recall that I

29 replied saying "What has a gentlemen's agreement got to do with the matter when

14:39:19 30 you are dealing with public property".

14:39:21 1  
2 I told the two gentlemen that Green Property wanted the lands for industrial  
3 purposes. The meeting ended inconclusively. I immediately returned to my  
4 office and wrote to Mr. Morrissey confirming Green Property's from in the land  
14:39:34 5 concerned.

6  
7 Having received no response to my correspondence of the 14th March 1989, I  
8 wrote again to Mr. Morrissey on the 12th April 1989. As no tender  
9 documentation has been furnished to me, I made a formal offer for the lands  
14:39:46 10 subject to negotiation and contract in an effort to advance matters on behalf  
11 Green Property.

12 By correspondence dated 14 April 1989 Mr. Morrissey acknowledged receipt of my  
13 letter of the 14 March 1989 and 12 April 1989 respectively, and advised me that  
14 the matter raised were being examined and would contact me in due course.

14:40:04 15  
16 I subsequently received letter from Dublin Corporation dated 21st April 1989,  
17 informing me that the lands at Irishtown were advertised in the newspaper of  
18 that date and further informed me that the tender documents would be furnished  
19 in the next couple of days. In due course Green Property tendered for the said  
14:40:22 20 lands by tender dated 19th May 1989.

21  
22 We were informed that we were unsuccessful on 5th July 1989. At no time during  
23 the process from 2nd March 1989 to the 5th July 1989, did I have further  
24 contact with Mr. George Redmond in relation to the matter. I further say that  
14:40:36 25 in response to a letter received from the Tribunal dated 18th June 2004, that I  
26 had no contact in relation to these land at Irishtown with Mr. John  
27 Prendergast, Mr. Pdraig Flynn or any other public official representative.

28  
29 Prior to December 1988 did I have some limited contact with Mr. Liam Lawlor in  
14:40:55 30 relation to Mr. Gilmartin's proposed development at Quarryvale. Mr. Lawlor

14:40:59 1 assured that Mr. Mr. Gilmartin's plans whatever they were would in the have any  
2 adverse consequences to the Blanchardstown project as the proposed development  
3 amounted to no more than 300,000 square feet but subsequent events proved this  
4 not to be the case. Dated 30 June 2004".

14:41:15 5  
6 Mr. Corcoran is that your evidence to the Tribunal in relation to those issues?

7 A. Yes it is.

8 Q. 388 Mr. Corcoran you were familiar by 1988/89 with Mr. Redmond as you have outlined  
9 in your statement, isn't that right?

14:41:25 10 A. Correct.

11 Q. 389 I think in 1985 Mr. Redmond had written to you putting himself forward for a  
12 post that had come vacant in Green Properties in relation to the development at  
13 Blanchardstown, isn't that right?

14 A. The reality was he answered an advertisement we had in the paper, we had  
15 advertised for a project manager for the scheme at Blanchardstown and  
16 Mr. Redmond applied.

14:41:43 17 Q. 390 Yes if we can have 1244 this is a letter of 18th July '85, and he indeed refers  
18 to the post recently advertised and he says that he was at that time Dublin  
19 local authority manager with responsibility for County Dublin, isn't that  
20 right?

21 A. That's right yes.

22 Q. 391 You knew and understood at all times Mr. Redmond was somebody who had  
23 responsibility for County Dublin, isn't that right, as manager?

24 A. I knew he had tremendous knowledge and he was very capable man and when I got  
14:42:17 25 his application I thought this was a treasure, this was something wonderful for  
26 Green Property Company.

27 Q. 392 Yes. If he can have 1246 please, there appears to be a draft agreement signed  
28 between you and Mr. Redmond and I am just wondering if you would look at that  
29 document and if you would confirm that in fact it has been signed on the bottom  
14:42:38 30 left-hand side by Mr. Redmond and on the bottom right-hand side by someone on

- 14:42:43 1                   behalf of Green, is that you?
- 2           A.           That's my own signature.
- 3           Q. 393       And that agreement appears to offer Mr. Redmond the position at a salary of
- 4                   20,000 per annum, isn't that right?
- 14:42:53 5           A.           Yes.
- 6           Q. 394       And for a period of five years?
- 7           A.           Yes.
- 8           Q. 395       Now there is also a document 1247, which is a more formal letter from you to
- 9                   Mr. Redmond of the 26th November '85 and that letter appears to offer
- 14:43:10 10           Mr. Redmond the same position at a salary of 25,000 per annum for a period of
- 11                   four years, if we look at paragraph five?
- 12          A.           Yes.
- 13          Q. 396       Can I ask you how did you or Green Properties come to offer Mr. Redmond the
- 14                   same position on two separate occasions in 1985?
- 14:43:28 15          A.           I can't recollect.
- 16          Q. 397       You can't recollect. Was that post taken up by somebody else?
- 17          A.           No, we couldn't find anybody that could do the work, so we subsequently used
- 18                   professional firms in Dublin.
- 19          Q. 398       Now you had occasion to meet with Mr. Redmond then thereafter, isn't that
- 14:43:46 20                   right?
- 21          A.           I met Mr. Redmond once in my office when I interviewed him.
- 22          Q. 399       Yes. Well you must have been both present to have signed that draft contract
- 23                   was that, did you offer him the job after you interviewed him?
- 24          A.           I can't recollect.
- 14:44:02 25          Q. 400       I see. Now it is the case that in 1988 and 1989, Green Properties had
- 26                   announced their intention to develop their Blanchardstown centre, isn't that
- 27                   right?
- 28          A.           Yes we announced it for 20 years.
- 29          Q. 401       Yes. It had been on the pipeline, isn't that right?
- 14:44:21 30          A.           Correct.

- 14:44:21 1 Q. 402 And then at some stage Green learned of Mr. Gilmartin's interest in Quarryvale?
- 2 A. Correct.
- 3 Q. 403 I think the other designated or zoned town centre was in Neilstown/Balgaddy?
- 4 A. Correct.
- 14:44:36 5 Q. 404 I think Mr. Gubay initially, and then Mr. O'Callaghan acquired that interest?
- 6 A. I am not aware of that.
- 7 Q. 405 You weren't aware of that?
- 8 A. I knew it was owned by Mr. Sharkey.
- 9 Q. 406 Mr. Sharkey had lands in Neilstown/Balgaddy but the Corporation also had lands
- 14:44:50 10 in Neilstown/Balgaddy and it would appear around 1988 that Mr. Gubay had
- 11 acquired the Corporation interest and had entered into an agreement with
- 12 Mr. O'Callaghan?
- 13 A. I had no recollection, no knowledge of that.
- 14 Q. 407 Okay. But sometime thereafter, certainly before December 1988 you say in your
- 14:45:09 15 statement, that you spoke with Mr. Lawlor about Mr. Gilmartin's intentions for
- 16 Quarryvale, is that right?
- 17 A. Yes, I spoke to Mr. Lawlor about it.
- 18 Q. 408 Can I ask you how you came to speak to Mr. Lawlor about Mr. Gilmartin's
- 19 intentions?
- 14:45:24 20 A. Mr. Lawlor had come in and out of my office some one or two or three times a
- 21 year, and he came to advise us and I got advice from him, he was knowledgeable,
- 22 he told me what was going on and --
- 23 Q. 409 He kept you informed?
- 24 A. Well yes, if I had, if I wanted to know something he would tell me.
- 14:45:42 25 Q. 410 Would he come by prior appointment or was it his --
- 26 A. Usually by appointment but probably as a result of a telephone call, as I
- 27 recollect and he would say I will be going into the Dail at 11 o'clock, can I
- 28 call in for a cup of tea, something like that.
- 29 Q. 411 He would take the initiative in informing you?
- 14:46:01 30 A. I can't recollect that.

- 14:46:02 1 Q. 412 We know that Mr. Lawlor knew that Mr. O'Callaghan had acquired Mr. Gubay's  
2 interest in the Corporation site in Neilstown, he appears to have told  
3 Mr. Gilmartin this on the 2nd November 1988, do you recall Mr. Lawlor telling  
4 you that?
- 14:46:19 5 A. No.
- 6 Q. 413 Would you have been interested?
- 7 A. Wouldn't have the slightest interest in it.
- 8 Q. 414 I see. Can you date more accurately, the meeting you had with Mr. Lawlor when  
9 he told you about Mr. Gilmartin's intentions for Quarryvale?
- 14:46:39 10 A. It was an ongoing thing. It just rolled and rolled. I can't pinpoint a date  
11 or I can't pinpoint a discussion, it was something that was going on, it was  
12 worry to Green Property Company. We had put 15 years of work and the company's  
13 future depended on the success of Blanchardstown and obviously anything that  
14 threatened the success of Blanchardstown was something of great concern to me.
- 14:47:00 15 Q. 415 Could Mr. Lawlor have been telling you over a period about Mr. Gilmartin and  
16 updating you on Mr. Gilmartin's proposals for Quarryvale?
- 17 A. Mr. Lawlor told me not to be worrying about Quarryvale, that it was 300,000  
18 square feet or thereabouts and it wasn't going to be a threat to  
19 Blanchardstown. And of course naturally I was happy with that and had no  
20 reason to --
- 14:47:23 21 Q. 416 To doubt him?
- 22 A. No.
- 23 Q. 417 Now Mr. Lawlor at the Tribunal here, has put it on several occasions to  
24 Mr. Gilmartin that he advised Mr. Gilmartin that his 1.5 million square foot  
14:47:36 25 development in Quarryvale was too large or too great and was unlikely to be  
26 successful and certainly conveyed the impression to the Tribunal that he knew  
27 that Mr. Gilmartin's development was going to be in the order or in the region  
28 of 1.5 million square feet?
- 29 A. Or more.
- 14:47:54 30 Q. 418 Or more. But he told you or chose to tell you that it was only going to be

- 14:47:58 1 300,000 square feet?
- 2 A. That's what he told me and subsequently he proved to be correct because that is
- 3 what the council passed.
- 4 Q. 419 Yes. Now one of the ways of interfering with a development in Quarryvale would
- 14:48:13 5 be for green to acquire land in Quarryvale that might otherwise be used for the
- 6 development there, isn't that right?
- 7 A. Two aspects to that one was you purchased the land or endeavours to purchase
- 8 the land and stymie the development.
- 9 Q. 420 Yes.
- 14:48:27 10 A. The other aspect to it was, that was the important one as far as we were
- 11 concerned, we weren't going to go out and spend 5 million pounds in Quarryvale
- 12 and just sit and look at the land, if we had acquired the land we were
- 13 unsuccessful, but if we had been successful and acquired the land Gilmartin
- 14 would have to sit down and talk with you and while his scheme -- what he was
- 14:48:50 15 going to do would have ruined Blanchardstown, at least he would have to treat
- 16 with us and we would become partners in the scheme at Quarryvale and would have
- 17 protected our finance position.
- 18 Q. 421 Yes. In your statement you have referred to the fact that you learned at some
- 19 stage that Mr. Gilmartin was about to acquire or had acquired Corporation lands
- 14:49:18 20 in Quarryvale, isn't that right?
- 21 A. I heard that in the street.
- 22 Q. 422 Yes. And having heard that you rang Mr. Redmond, isn't that right?
- 23 A. I didn't know it was true, I had to find out if it was true. There was no
- 24 point in running off chasing hares if there was no truth in it.
- 14:49:34 25 Q. 423 Yes. Did you know the Corporation had land for sale in Irishtown?
- 26 A. No.
- 27 Q. 424 Did you know Mr. McLoone, Mr. McLoone the chief valuer?
- 28 A. I met him in the course of the property company business, yes.
- 29 Q. 425 You would have, in fact I think some of the land in Blanchardstown was bought
- 14:49:54 30 from the Corporation, isn't that right?

14:49:55 1 A. Correct yes.

2 Q. 426 Had you met Mr. McLoone in that context?

3 A. I can't remember. I think it was a man called Mr. Michael Lucy I dealt with.

4 Q. 427 But you knew that the Corporation or the County Council had a chief valuer and

14:50:08 5 property division, isn't that right?

6 A. Oh, yes.

7 Q. 428 But it was Mr. Redmond that you chose to ring within the Corporation in 1989,

8 isn't that right?

9 A. Correct.

14:50:18 10 Q. 429 To ascertain the thinking within the Corporation, County Council?

11 A. Mm-hmm.

12 Q. 430 Did you explain to Mr. Redmond your difficulty or your fears when I say your

13 fears, Green Property's fears in relation to Mr. Gilmartin's development in

14 Quarryvale?

14:50:35 15 A. Yes I did.

16 Q. 431 In a statement Mr. Redmond made to CAB which is at 1050 he deals with that

17 conversation which he had with you. If I could just refer you to a portion of

18 that statement just at the centre of what we see on the screen he says as

19 follows "At the time of the Gilmartin proposals were being talked about in

14:50:55 20 property circles.

21

22 MR. REDMOND: Excuse me, Mr. Quinn has introduced into the discussion here a

23 statement I made to CAB in 1999 which was not, which is not my statement to -

24 which is not my statement to the Tribunal. I gave the copy of that statement

14:51:18 25 to the Tribunal but insofar as the, insofar as this Tribunal is concerned, I

26 have made my formal statement to the Tribunal.

27

28 Now, that particular statement was made to CAB, in it's capacity as my

29 inspector of taxes. And it was made in, with certain promises in relation to

14:51:43 30 my final assessment. And it's a matter which will be considered by the court

14:51:48 1 of criminal appeal on next Monday morning. And my own feeling Your Worship, is  
2 that it should not be, it's not my statement to this Tribunal, it's a statement  
3 in relation to - I mean I think it is fairly innocuous incidentally but on a  
4 technicality, a legal technicality, I don't think it should be allowed.

14:52:12 5  
6 As I say, it's the main subject matter that statement of the court of criminal  
7 appeal on Monday.

8  
9 CHAIRMAN: But is it, are you saying that you don't, that you that you  
10 withdraw information that was in that statement.

11  
12 MR. REDMOND: I haven't read it first, I don't know what is in it. But  
13 whatever --

14  
15 CHAIRMAN: Do you, are you familiar with the document that Mr. Quinn is  
16 dealing with?

17  
18 MR. REDMOND: It's my statement. Can I read it?

19  
20 MR. QUINN: I should say Sir there was only one portion of the statement I wish  
21 to refer to. Only two sentences in the statement. They are to be found if I  
22 just read them --

23  
24 CHAIRMAN: Just before you go any further --

14:52:59 25  
26 MR. QUINN: We'll printout a copy of the page for Mr. Redmond and I will come  
27 back to it.

28  
29 CHAIRMAN: If we take it off the screen for a moment.

14:53:13 30

14:53:13 1 MR. QUINN: I will return to it in a moment.

2

3 MR. REDMOND: Your Worship what I've said is what I've said it's innocuous, but

4 I just feel in view of the fact that the document was, this statement was an

14:53:25 5 essential feature of an appeal case next week, that it shouldn't be --

6

7 CHAIRMAN: But it's only in relation to one piece of information that's

8 contained in it. Now if you want we can rise for a few minutes while Mr. Quinn

9 points out to you what he intends to refer to.

14:53:40 10

11 MR. REDMOND: If he let's me see it yes and I can read it.

12

13 MR. QUINN: I don't think it will be necessary to rise Sir, I will just show

14 Mr. Redmond what I intend to refer to and move on to something else in the

14:53:52 15 meantime rather than wasting --

16

17 CHAIRMAN: All right Mr. Quinn will come back to it.

18 Q. 432 MR. QUINN: In any event Mr. Corcoran --

19

14:54:30 20 MR. REDMOND: No objection whatsoever.

21 Q. 433 MR. QUINN: I am just going to put to you Mr. Corcoran what Mr. Redmond has said

22 on a previous occasion, in relation to that communication and contact that you

23 had with him and I just want to get your comments on it.

24

14:54:47 25 Mr. Redmond has said, dealing with that communication he has said that you

26 having contacted him and expressed your concern about what was happening he

27 told you that the lands had been sold or were being, a figure of 40,000 per

28 acre had been agreed with the chief valuer. Then he went on to say "Obviously

29 taken aback he asked me if there was anything he could do. I suggested as the

14:55:11 30 lands were mostly industrial and if he was interested in competing for the

14:55:15 1 lands he should make the, that known to the Corporation". In other words  
2 Mr. Redmond and I understand he has no objection to my putting this to you, has  
3 said on a previous occasion that when you contacted him, and to inquire if it  
4 were true that the Corporation were selling lands, that he told you that the  
14:55:35 5 lands had been sold or a figure of 40,000 per acre had been agreed with the  
6 valuer and that you, taken aback by this asked him if there was anything that  
7 you could do.  
8 A. That's correct yes.  
9 Q. 434 And he made the suggestion to you that you could, that there were industrial  
14:55:53 10 lands and you should contact the valuer?  
11 A. Correct.  
12 Q. 435 Is that a correct --  
13 A. Yes.  
14 Q. 436 Yes. Now, I think you did contact the valuer on the 2nd of March 1989, isn't  
14:56:10 15 that right, you formally wrote to the chief valuer and also wrote to the County  
16 Manager, isn't that correct?  
17 A. Correct.  
18 Q. 437 Was that also on the recommendation of Mr. Redmond, that you would write to  
19 Mr. Feeley as well as Mr. McLoone?  
14:56:19 20 A. I can't recollect if Mr. Redmond told me, but it would be something that I  
21 would do. I might accept -- it was very important, you have to remember this  
22 is very important for Green Property Company. I wanted to make sure that the  
23 boss of the Corporation and the County Council knew what we wanted to do, so I  
24 sent it to Mr. McLoone and I sent it to his boss Mr. Feeley.  
14:56:40 25 Q. 438 Yes. Did you also announce that Blanchardstown centre was about to go ahead in  
26 or around that time, was that also part of the strategy?  
27 A. Correct. We commenced building roads.  
28 Q. 439 Now you have dated that conversation that you say you had with Mr. Redmond on  
29 the same day that you wrote to the valuer and to Mr. Feeley, what I wish to ask  
14:57:07 30 you is could that conversation with Mr. Redmond have been prior to the second

- 14:57:12 1 of March 1989?
- 2 A. It could have been, but I was so concerned about it, I spoke with Mr. Redmond,
- 3 I asked him was the land available, were they wanted to sell it. He said yes.
- 4 And I immediately wrote, I wouldn't leave it for a day. It wouldn't be my,
- 14:57:31 5 it's not my style. I get on, if he said the land was available, if you want to
- 6 buy it write to the Corporation, I would have put the telephone down to
- 7 Mr. Redmond and picked up the dictating machine immediately.
- 8 Q. 440 Could it be that Mr. Redmond rang you and said that that land was about to be
- 9 sold by the Corporation or the council?
- 14:57:49 10 A. I have known George Redmond for many years and I have no recollection of that
- 11 he ever rang me.
- 12 Q. 441 Yes. You don't believe he rang you at this time?
- 13 A. I don't believe that he did.
- 14 Q. 442 You see Mr. Gilmartin was able to tell Mr. Feeley and Mr. Haughey, if we can
- 14:58:08 15 have 2199 please, on the 24th February 1989 that Mr. Redmond was about, had
- 16 informed Mr. Morrissey, he was the other representative of the council, to go
- 17 back on an agreement concerning the price of the Corporation lands at
- 18 Irishtown?
- 19 A. I have no recollection of it, it wouldn't be of any interest to me.
- 14:58:32 20 Q. 443 Mr. Gilmartin also told Mr. Feeley and Mr. Haughey that Mr. Redmond was about
- 21 to take up employment with you on his retirement?
- 22 A. We said here, he applied for a job in '85.
- 23 Q. 444 Yes we have dealt with that?
- 24 A. He didn't take it up. It was dropped that was the end of it.
- 14:58:55 25 Q. 445 Did he ever work for you?
- 26 A. No.
- 27 Q. 446 Mr. Morrissey in evidence said in response to Mr. Redmond, said that he
- 28 believed Mr. Redmond worked for you for three days.
- 29
- 14:59:04 30 JUDGE FAHERTY: That was Mr. McLoone, I thought?

- 14:59:07 1 Q. 447 MR. QUINN: Sorry Mr. McLoone?
- 2 A. I have no recollection, he certainly didn't work for me I never saw him in my
- 3 office after the interview in '85.
- 4 Q. 448 Yes. If we can have day 486 page 85. We know that Mr. Redmond retired
- 14:59:30 5 ultimately in June 1989, so you say that he didn't come to work with you in
- 6 June '89 or at any time?
- 7 A. I never saw him in my office.
- 8 Q. 449 Well apart from in the office?
- 9 A. I have no recollection of it. I can't believe that if he worked for us his
- 14:59:45 10 name would be on the books and he would have all the documentation which, to do
- 11 with taxes and employment generally.
- 12 Q. 450 Could he have worked as a consultant for you perhaps?
- 13 A. No he did not.
- 14 Q. 451 Was there any suggestion then in 1989 that Mr. Redmond was going to work for
- 15:00:03 15 Green Property?
- 16 A. Not with -- no.
- 17 Q. 452 No contact by Mr. Redmond of you?
- 18 A. I have no recollection of a contact.
- 19 Q. 453 No suggestion that you might take him on now that he was definitely going to
- 15:00:16 20 retire in '89?
- 21 A. I have no recollection of it.
- 22 Q. 454 Mr. McLoone's evidence was that he was told he thought by Mr. Redmond that he
- 23 was going to work for Green Property when he retired?
- 24 A. That I don't know about.
- 15:00:26 25 Q. 455 You can see the coincidence Mr. Corcoran, of Mr. Gilmartin in February 1988 --
- 26 A. Excuse me.
- 27 Q. 456 You can see the coincidence of Mr. Gilmartin in February 1989 telling the
- 28 Corporation that Mr. Redmond was about to go to work for Green Property's when
- 29 he had already been offered employment three years previously by the same
- 15:00:51 30 company?

- 15:00:51 1 A. Well Mr. Gilmartin, the man I never met in my life, I have never seen him. But  
2 I have no control over anything he would say.
- 3 Q. 457 Now, I think you had a meeting then on the 14th March 1989 with Mr. Morrissey  
4 and Mr. Haughey, if we can have 2253 please? And you were able to tell  
15:01:15 5 Mr. Morrissey and Mr. Haughey I think at that meeting, that the roads contract  
6 had already been placed by the County Council in relation to Blanchardstown,  
7 isn't that right?
- 8 A. I can't recollect that.
- 9 Q. 458 If we can have paragraph two please just the last portion of paragraph two.  
15:01:33 10 You are recorded hereby --
- 11 A. This is a minute of the meeting is it?
- 12 Q. 459 That's correct. They record you as follows "He had confirmed with Mr. George  
13 Redmond that road contract was placed by County Council". Do you see that?
- 14 A. Yes.
- 15:01:48 15 Q. 460 Were you in regular contact with Mr. Redmond throughout the period in question?
- 16 A. Well regular would be the wrong word. If I wanted to know something.
- 17 Q. 461 Yes, was he another source of information in the way that Mr. Lawlor was?
- 18 A. He certainly was. More technical. We were dealing with serious matters, we  
19 were investing hundreds of millions of pounds, the Navan road wasn't even built  
15:02:11 20 and we wanted to know what the schedules were, when I wanted to know something  
21 I found Mr. Redmond, very receptive, he was polite, he was informative and he  
22 was knowledgeable and he was, yes he was a source of great help.
- 23 Q. 462 In the same way that Mr. Lawlor was?
- 24 A. Sorry.
- 15:02:26 25 Q. 463 In the same way that Mr. Lawlor was?
- 26 A. To a similar degree yes but Mr. Redmond would have a lot more technical  
27 knowledge.
- 28 Q. 464 Now, I think then that you put in, there was ultimately the site was advertised  
29 for sale, isn't that right, on the 21st April 1989, 2308 and I think the  
15:02:46 30 Corporation advised you in fact that they were accepting tenders?

- 15:02:48 1 A. Yes I was happy about that, they put it up for sale.
- 2 Q. 465 And you put in a tender, isn't that correct, Windar Limited in relation to the  
3 property?
- 4 A. Correct.
- 15:02:56 5 Q. 466 But accompanying your tender you also put in a letter of the 19th May 1989, if  
6 we can have 3711 please, where you made another offer or an alternate offer on  
7 the property, isn't that right?
- 8 A. Correct.
- 9 Q. 467 I think that was an offer of an additional 7 million pounds on the basis that  
10 it had planning permission for retail and business services?
- 11 A. Correct.
- 12 Q. 468 Would it be fair to say that you, Green Properties, were anxious to acquire  
13 this land either as industrial lands or as retail lands?
- 14 A. Our primary objective, what we really wanted to do was to stop Quarryvale. If  
15:03:39 15 we couldn't stop Quarryvale we wanted to be part of Quarryvale. Get rid of it  
16 is what we wanted, but if we couldn't get rid of it we wanted to be part of it.
- 17 Q. 469 And I think your tender wasn't successful and your deposit was returned. Can I  
18 just ask you one other question Mr. Corcoran, on, there is a reference of a  
19 meeting with Mr. Flynn on the 10th May 1989, if we can have 3304 please? This  
15:04:12 20 is a Leinster House admissions book diary and it has "Mr. Corcoran for the  
21 Minister for the Environment" then if I can have 2334 please? This is  
22 Mr. Flynn's diary for 10th May 1989. 3 pm meeting John Corcoran, do you see  
23 that?
- 24 A. I do.
- 15:04:31 25 Q. 470 Did you have a meeting on the 10th May 1989 with Mr. Flynn?
- 26 A. I can't deny it that's the evidence but I have no recollection.
- 27 Q. 471 Yes. Could you have discussed your interest in the Quarryvale lands, the  
28 Irishtown lands with the Minister at that meeting?
- 29 A. I can't -- I wouldn't, it wouldn't be my interest, it would be my anxieties. I  
15:04:54 30 was a managing director of a public company.

15:04:57 1 Q. 472 Yes but can the Tribunal take it, that it's almost certain that whatever else  
2 you may have discussed at that meeting you would have discussed your anxieties  
3 and Green's anxieties over the Quarryvale lands?

4 A. If I was asked to guess what was discussed I suspect that I would be trying to  
15:05:13 5 get him to find a way to get it reduced.

6 Q. 473 Yes.

7 A. From the millions of square feet that it was. That would be a sensible thing  
8 for me to do. But I can't recollect what went on at the meeting.

9 Q. 474 Can I --

15:05:26 10 A. Nor have I any recollection of the meeting.

11 Q. 475 Can I ask you finally did Mr. Lawlor ever tell you that he had been asked by  
12 Mr. Flynn or Mr. McSharry or indeed by any government Minister to look after  
13 Mr. Gilmartin in relation to the Quarryvale site or lands?

14 A. He didn't say that to me.

15:05:42 15 Q. 476 Yes. Thank you very much Mr. Corcoran.

16

17 CHAIRMAN: Mr. Barniville you want to reserve your position?

18

19 MR. BARNIVILLE: Chairman, I am, at the moment I don't think I will have any  
15:05:51 20 questions for this witness but I just want to reserve.

21

22 CHAIRMAN: Mr. Redmond do you want to ask?

23

24 **THE WITNESS WAS QUESTIONED BY MR. REDMOND AS FOLLOWS:**

15:06:03 25

26 Q. 477 MR. REDMOND: Yes. Good afternoon Mr. Lawlor, sorry I beg your pardon  
27 Mr. Corcoran. The announcement that in circa, sorry are you having difficulty  
28 hearing me?

29 A. Try -- now I can.

15:06:11 30 Q. 478 You are all right. The announcement by the Green Property Company that they

- 15:06:18 1 were about to commence works apparently it was made sometime around '88/89 is  
2 that your recollection?
- 3 A. About '88/89 yes.
- 4 Q. 479 '88/89. Now would you agree that the development, the town centre development  
15:06:38 5 was totally dependant on the completion of the Navan Road?
- 6 A. That is correct.
- 7 Q. 480 That's indisputable?
- 8 A. Absolutely.
- 9 Q. 481 Indisputable. And would you agree that the Clonmel Industries commence the  
15:06:56 10 construction of that road in 1988?
- 11 A. I can't recollect but --
- 12 Q. 482 Would you accept my statement that that is what the position was?
- 13 A. Yes.
- 14 Q. 483 Yes. So that and incidentally some of your land was required for the  
15:07:12 15 construction of the road?
- 16 A. I recollect it took five or six acres from us.
- 17 Q. 484 Not alone that, but even that take cut you away from the old road?
- 18 A. Correct.
- 19 Q. 485 So it was impossible to do anything?
- 15:07:23 20 A. Correct.
- 21 Q. 486 So is it true to say then that your company, your public company seeing that  
22 the road was started then started their own works?
- 23 A. Correct.
- 24 Q. 487 And that was the appropriate time to start?
- 15:07:36 25 A. Correct.
- 26 Q. 488 That's it. Insofar as the offer, you made your tender offer and that was not  
27 successful, Mr. Gilmartin's offer was something more than that. As far as you  
28 know your own view, did you get professional valuers to advise you as to what  
29 you should put in?
- 15:08:03 30 A. I think yes. Our value was as much as we could afford to pay, that came into

- 15:08:11 1 it as well, our ability to pay for it.
- 2 Q. 489 Yes, but your feeling was, in your view value, your figure as far as I know was
- 3 something in the 60s, 60 something. But it was of that value at that stage in
- 4 your opinion?
- 15:08:27 5 A. Yes.
- 6 Q. 490 In your opinion.
- 7 A. No, I think the truth of the matter is if I had had 10 million pounds in the
- 8 bank I would have put 10 million pounds on that land, I didn't have it.
- 9 Q. 491 But now getting back to the letter which associated, which was associated with
- 15:08:43 10 your tender, it offered 11.5 million subject to getting permission for
- 11 shopping?
- 12 A. Mm-hmm.
- 13 Q. 492 Was itself evidence to you and to your colleagues in the company and to the
- 14 professional advisers if that sort of permission evolved, that the land was
- 15:09:02 15 certainly worth in the region of 11 million?
- 16 A. And all the rest.
- 17 Q. 493 And all the rest. And would you be surprised that it was Mr, that
- 18 Mr. Gilmartin's objective and in fact he had offers to sell, if he did get the
- 19 permission to sell 50 per cent of it for 40 million?
- 15:09:23 20 A. I have no recollection.
- 21 Q. 494 But would you say that we are talking about realistic figures?
- 22 A. Yes.
- 23 Q. 495 And your giving us that information at that time you were the managing director
- 24 of the biggest property company in the State?
- 15:09:40 25 A. Well I don't know about that.
- 26 Q. 496 Isn't that true?
- 27 A. Well it was a good property company.
- 28 Q. 497 Oh don't be modest. I don't think -- do you recall in '85 when I applied for
- 29 the job, incidentally I had forgotten completely about that application, but do
- 15:09:59 30 you recall my at some stage ringing you and telling you that I was remaining in

15:10:06 1 my post?

2 A. I don't recall that but you didn't come.

3 Q. 498 Yes. Thank you Your Worship.

4

15:10:10 5 CHAIRMAN: Mr. Lawlor.

6

7 **THE WITNESS WAS QUESTIONED BY MR. LAWLOR AS FOLLOWS:**

8

9 Q. 499 MR. LAWLOR: Good afternoon Mr. Corcoran. I don't know whether you are aware  
15:10:20 10 of the evidence of Mr. Tom Gilmartin to the Tribunal, Mr. Corcoran, but he has  
11 conveyed the position in evidence that it was your interference through  
12 Mr. Redmond telling you, that Mr. Gilmartin was negotiating for the acquisition  
13 of the local authority lands in Quarryvale and that he has conveyed the  
14 impression that this was a spurious inquiry on your company's behalf to show an  
15:10:53 15 interest in the acquisition of these lands. Are you aware of that?

16 A. Well I read some of the, some of his evidence.

17 Q. 500 Hmm --

18 A. I wasn't aware of it at the time.

19 Q. 501 Could we have day 459 page 40 please. This, Mr. Corcoran is Mr. Gilmartin  
15:11:18 20 giving evidence to the Tribunal and on line 13 there, question.

21

22 "Did you tell him that the recent announcement by Mr. Corcoran that the  
23 Blanchardstown centre was going ahead was to stymie you, and that you felt that  
24 Mr. Redmond was advising Mr. Corcoran, whom you believed was going to employ  
15:11:38 25 Mr. Redmond when he retired shortly?" Mr. Gilmartin answered "Yes it was out.

26 That's a little bit out of context because I had no fear of the Blanchardstown

27 site whatsoever. As a matter of fact, I said if they didn't build it, that I

28 would bring in someone that would. So the context of that was that

29 Mr. Redmond -- Mr. Corcoran had been talking about the Blanchardstown site for

15:12:04 30 years and years, but all of a sudden he announced he was starting this because

- 15:12:10 1 Mr. Redmond notified him of my intentions."  
2  
3 Now what's your response to what Mr. Gilmartin is claiming there in his  
4 evidence, Mr. Corcoran?
- 15:12:21 5 A. With regard to Green Property Company starting the Blanchardstown scheme, as  
6 Mr. Redmond said a few moments ago, we got down and started work when the Navan  
7 Road construction was started and that was the issue that we were waiting for.
- 8 Q. 502 Yes and did Mr. Gilmartin's assertions that you hadn't started for other than  
9 infrastructural deficient reasons is wrong?
- 15:12:48 10 A. Well --
- 11 Q. 503 You couldn't build a town centre that's there today without the infrastructure  
12 going around it and that was out of your control, it was in the hands of  
13 government and local authority, isn't that right?
- 14 A. It was more than that Mr. Lawlor. The issue -- you have to understand when you  
15 are constructing a shopping centre that's costing somewhere between one and 200  
16 million, you have to speak to the major space users the Roches stores, Tescos  
17 and Quinnsworth of this world and they have to sign contracts to take the  
18 space, and until they are prepared to sign contracts and take the space we  
19 can't raise the money from the banks. And as a result of their not going to  
20 sign contracts until they see the roads going in, when the roads going in and  
21 we have plans and all ducks in a row they sign up and the thing goes ahead.
- 22 Q. 504 So the suggestion that you were just now making an announcement to frustrate  
23 Mr. Gilmartin's intentions is incorrect?
- 24 A. Absolutely.
- 15:13:42 25 Q. 505 Page 459 -- day 459 page 57. It's just to clear up this point, it's about  
26 Mr. Redmond, 1985 was the discussion about employment, isn't that right, so  
27 Mr. Gilmartin's claims in 1989/90 bear no basis in fact?
- 28 A. It's news to me.
- 29 Q. 506 Yes. Well lots of things Mr. Gilmartin say that's news to us all. Could I  
30 have day 459 page 90 please? In that transcript Mr. Corcoran you are telling

15:14:41 1 Mr. Haughey, I think Mr. Morrissey that you want to, Mr. Corcoran said he  
2 wanted the land at Coldcut to use for a park for hi-tech industries. Would you  
3 agree with me that would have been consistent with the previous successful  
4 achievements of your company, probably pioneering business parks in the greater  
15:15:04 5 Dublin area and that the Coldcut lands would have formed part of that  
6 possibility?  
7 A. Yes but I -- when I would be speaking with Mr. Morrissey and Mr. Haughey I  
8 would have said that, but I also knew in the back of my mind that we may have  
9 to use that land in partnership with Gilmartin to get in on the gravy train  
15:15:22 10 that was going to be Quarryvale, but yes, if Gilmartin went away and left the  
11 land there we could build hi-tech parks, we had the ability to do it.  
12 Q. 507 You were unsuccessful in your bid as we both know for the lands?  
13 A. Mm-hmm.  
14 Q. 508 But you will agree and tell the Tribunal that your company did go and do just  
15:15:42 15 that on the Fonthill Road in that area?  
16 A. We bought --  
17 Q. 509 From the Corporation?  
18 A. They bought a 100 acres of land subsequently from the Corporation in that area.  
19 Q. 510 Which is today a very successful --  
15:15:53 20 A. Sure.  
21 Q. 511 Could I have page 2256 please? Just in the third paragraph Mr. Corcoran, there  
22 is reference there "You did indicate to me you were in negotiations with local  
23 landowner with a view to disposing of this land".  
24  
15:16:22 25 You go on to refer to your town planning consultant Mr. Garth May who compiled  
26 an ownership map, Mr. Garth May was your company's town planning?  
27 A. Consultant.  
28 Q. 512 Just to digress for a minute, my contact with you. Could you just tell the  
29 Tribunal that it would be consistent with my interest and the same  
15:16:48 30 compatibility with the late Brian Lenihan, the late Jim Mitchell and Thomas

15:16:53 1 MacGiolla that everybody was interested who represented Blanchardstown in your  
2 project, it was the single biggest possibility in our constituency and we all  
3 had a very deep rooted interest in you commencing and succeeded would that be  
4 correct?

15:17:07 5 A. That is absolutely correct.

6 Q. 513 You would have discussed the matter with the late Brian Lenihan, possibly Jim  
7 Mitchell and the other members?

8 A. Many times.

9 Q. 514 So my contact and discussions with you were no different from the other public  
15:17:22 10 figures in the area?

11 A. And very helpful indeed.

12 Q. 515 I hope so. But we all had an interest in seeing Green Properties start the  
13 Blanchardstown town centre and that interest would have been a major political  
14 significance to any elected representative?

15:17:33 15 A. Correct.

16 Q. 516 Could I just have day 460 page 28 please? Now that's again Mr. Gilmartin  
17 giving evidence and at the outset there was reference there on line 8, you will  
18 see that at 2347 you tendered the sum of 5.1 million pound and that worked out  
19 at 72,000 pounds an acre. Then if we can go down to line 23 A please? It's  
15:18:25 20 just Mr. Corcoran, Mr. Gilmartin had received a formal written letter from the  
21 chief valuer offering that land to him at 40,000 pounds an acre. Were you  
22 aware of any of that?

23 A. No they wouldn't be telling me that.

24 Q. 517 No. But you weren't aware that possibly from Mr. Gilmartin's point of view you  
15:18:44 25 could see where his frustrations could arise in that he had received an offer,  
26 now he felt that it was, rules were changing?

27 A. Sure.

28 Q. 518 But down on line 28 Mr. Gilmartin's answering a question we'll just put the  
29 question "This meant therefore that you were paying something of the order of  
15:19:05 30 31,000 to 32,000 pounds per acre to Dublin Corporation more than you had agreed

15:19:09 1 with Mr. McLoone and more than he felt was answer: Yes it was based.  
2 Question: Was the reasonable price.  
3 Answer: Yes it was based on the propaganda, smoke screen that was put out by  
4 Redmond and Mr. John Corcoran, that they were prepared to pay over 60,000 an  
15:19:27 5 acre for the land and because I had so much money invested and because I  
6 believed in the scheme, I came to the conclusion that I had to go about 70 odd  
7 thousand an acre, but certainly the land was not worth it because of the  
8 almighty risk I was taking. Not only the conditions -- it may well have been  
9 if it had zoning but since it was being sold just as industrial land it was one  
15:19:56 10 hell of a risk".  
11  
12 60, 70 thousand pounds an acre was it good or bad value, Mr. Gilmartin thinks  
13 he should have got it for 10 to 20 an acre?  
14 A. If it's going to be zoned for commercial shopping centre that's a cheap price,  
15:20:13 15 70 thousand.  
16 Q. 519 You put a conditional offer in that if it was going to receive that zoning you  
17 would pay 11 or 12 million pounds?  
18 A. Sure.  
19 Q. 520 If we can just have day 4803 please. Yes page 4803, and this Mr. Corcoran is a  
15:20:38 20 note Mr. From Mr. Edward Kaye, you may be familiar with the name, you might  
21 have done business with him, he is in the Corporation Banking section at Allied  
22 Irish Bank, bank centre. In the last paragraph Mr. Kaye is making a file note  
23 of a discussion with Mr. Gilmartin, if we can have the lower -- "I asked  
24 questioned him in relation to the price being paid for the Corporation land.  
15:21:01 25 He said that the price paid really reflected a competitive situation between  
26 himself and Green Property and but for interference by Green, he could have got  
27 the sites substantially cheaper". Do you believe that to be the case?  
28 A. I have no reason to doubt it.  
29 Q. 521 You did say that you were rather surprised when the senior management in the  
15:21:27 30 Dublin Corporation suggested that there was some form of gentleman's agreement

15:21:33 1 with Mr. Gilmartin, when you were at your meeting and negotiated your interest  
2 in wanted to bid, do you recall that?

3 A. I do. I recall it very well.

4 Q. 522 And it was surprising to you was it?

15:21:46 5 A. I never heard of such a thing before.

6 Q. 523 Nor I. Now if we can just have day 460 page 34? Now if we can just have line  
7 10 there, we'll go to 7A the answer to the question, this is Mr. Gilmartin in  
8 attendance at Mr. McLoone's office in the Dublin Corporation, I believe. I am  
9 open to clarification and correction.

15:22:29 10

11 "I was in Dublin Corporation. I had a meeting there in connection with -- the  
12 land hadn't gone through at that time and I was notified that there was further  
13 interference in the land and that the Corporation was considering -- I think  
14 Derek Brady and others were considering withdrawing the land completely because  
15:22:47 15 of the controversy that was raging around, connected with Corcoran and George  
16 Redmond etcetera. And I was highly upset. So I was in Mr. McLoone's office on  
17 the evening, I think it was around the 2nd June and we discussed the matter.  
18 So I told Mr. McLoone about the demands for money. I also told him about the  
19 suggestion that if I gave a donation to Fianna Fail that it might smooth the  
15:23:11 20 problems out, that it would sort out the problems. He said to me "They'll take  
21 your effing money and tell's still do nothing for you" he said. "You know  
22 that" he says. I said to him "Well Christ I have to do something because I  
23 have an awful lot at stake here".  
24

15:23:32 25 Now it's suggested here having gone through the tender process Mr. Corcoran  
26 that you still seem according to Mr. Gilmartin to have the ability to interfere  
27 to get a principal officer, Mr. Derek Brady to possibly withdraw concluding the  
28 tendering process. Did you have any such suggested influence or involvement or  
29 knowledge of what Mr. Gilmartin is claiming is your interference in his  
15:23:54 30 commercial affairs?

- 15:23:55 1 A. I had no knowledge or no involvement whatever. It was nothing to do with me.
- 2 Q. 524 But even though Mr. Gilmartin's tender was now working it's way through to the
- 3 process of approval in the Corporation you didn't continue to in anyway
- 4 interfere in the process as claimed by Mr. Gilmartin?
- 15:24:10 5 A. There is no point.
- 6 Q. 525 If we can have page 4813 please, this is your own statement Mr. Corcoran sorry,
- 7 just down the bottom there "Prior to December '88, I did have some limited
- 8 contact with Mr. Liam Lawlor in relation to Mr. Gilmartin's proposed
- 9 development at Quarryvale. Mr. Lawlor assured me that Mr. Gilmartin's plans,
- 10 whatever they were, would not have any adverse consequences for Blanchardstown
- 11 project as the proposed development amounted to no more than 300,000 square
- 12 feet. Subsequent events proved this not to be the case".
- 13
- 14 I thought earlier your evidence was that, are you of the opinion that the
- 15 300,000 plus square footage was granted substantially larger, I am not, I just
- 16 want you to tell the Tribunal what you mean there?
- 17 A. When I spoke to you about it, I didn't know what Gilmartin was doing, when I
- 18 met you on the occasion when you came to my office, I would always ask you what
- 19 was going on in Blanchardstown, or in Quarryvale.
- 15:25:41 20 Q. 526 Sure.
- 21 A. You said you shouldn't worry about it, just for bet it about it, don't worry
- 22 about that scheme, that scheme is only going to be 300,000 square feet, that's
- 23 what you said to me.
- 24 Q. 527 Yes. That would have arisen from my trying to advise Mr. Gilmartin that the
- 15:25:58 25 scheme he were posed was totally out of sync and would not be approved by
- 26 myself as one of the leading elected members and in my opinion of my other
- 27 colleagues and their attitude. No Mr. Corcoran can you tell this Tribunal that
- 28 you would have very competently presented your knowledgeable objections to the
- 29 Quarryvale project to the 7 elected councillors in the Dublin 15 area,
- 15:26:27 30 expressing that if the Westpark proposal that Mr. Gilmartin's brochure which

15:26:32 1 you would have been knowledgeable about, was to progress, that the centre that  
2 they were lobbying you to commence would not be constructed?

3 A. Correct.

4 Q. 528 So could you elaborate for the Tribunal, that I telling you that was really  
15:26:48 5 reflecting back what you wanted and conceded that had we should support in  
6 North Clondalkin, for a project?

7 A. That's correct.

8 Q. 529 Didn't you explain to the elected members that you had no objection to a  
9 project for North Clondalkin providing it was a level playing pitch with your  
15:27:04 10 project and Tallaght?

11 A. Correct.

12 Q. 530 You did lobby us for the tax designation?

13 A. Yes.

14 Q. 531 Which Tallaght had been granted and which we failed to secure for either  
15:27:14 15 project?

16 A. Correct.

17 Q. 532 But can you put any semblance of reason on why a town centre developer would  
18 want to build 1.5 million square feet on the west side of Dublin, was there any  
19 relativity with need, catchment, shopping ability?

15:27:35 20 A. Oh well, if it was as big as it was envisaged by Mr. Gilmartin it would have  
21 wiped away Blanchardstown would never have been built, Tallaght would struggle  
22 and would have a traumatic effect on downtown Dublin and would suck retail  
23 business from all over the city and bung up the roads, the Galway Road. That's  
24 what would have happened, that was how I saw what was going to happen.

15:28:00 25 Q. 533 Could I just inform you that Professor Lichfield retained by Mr. Gilmartin  
26 reported the very same information to him?

27 A. I would agree with that.

28 Q. 534 But I just want you to tell the Tribunal, because Mr. Gilmartin in his evidence  
29 has suggested it was for corruption reasons and bribery reasons that his  
15:28:18 30 project was frustrated, you were a very interested party in his project as well

- 15:28:23 1 as your own, would it be your evidence that the only reason Mr. Gilmartin's  
2 project didn't proceed is that the elected councillors and management correctly  
3 were opposed to the scale and size of his scheme?
- 4 A. Correct.
- 15:28:39 5 Q. 535 And that whatever other claims or frustrations or roadblocks or skullduggery  
6 that was put up in front of Mr. Gilmartin, would you say that the 7 councillors  
7 that you lobbied in Dublin 15 would never have voted for Westpark as  
8 Mr. Gilmartin envisaged it based on the dialogue you had with these  
9 councillors?
- 15:28:59 10 A. They would have difficulty with their electors, if they voted for Quarryvale  
11 and Blanchardstown didn't go ahead.
- 12 Q. 536 Serious difficulties?
- 13 A. Yes.
- 14 Q. 537 Which they did. Now if we can just have page 766 please? A very short letter  
15:29:19 15 you wrote Mr. Gilmartin and told us after a meeting in the Chairman's office,  
16 Mr. Corcoran that you would like to thank you "For receiving us on Monday  
17 morning last to discuss the question for Lucan Clondalkin rezoning. We got a  
18 very fair hearing and came away from the meeting happy that reasonableness  
19 would prevail.
- 15:29:37 20  
21 I now understand that a new motion is being drafted in connection with moving  
22 the Neilstown site to Quarryvale site and I am happy with this.  
23  
24 I will probably see you tomorrow in the chamber".
- 15:29:49 25 Do you remember that meeting Mr. Corcoran
- 26 A. Yes I do.
- 27 Q. 538 And I and Councillors Ryan, McGuinness and possibly, well the Chairman the late  
28 Tom Boland. Now that is a letter of the 15th of May 1991 which reflects the  
29 last paragraph in your statement would you agree with that?
- 15:30:09 30 A. Mm-hmm.

15:30:09 1 Q. 539 That that was compatible, I don't know whether you can remember or not, but I  
2 was the one that organised the meeting, because we were faced with having to  
3 take a decision on Quarryvale, and unless Green Property Company was satisfied  
4 with our intentions, you were going to be hostile and be opposed to what the  
15:30:27 5 council was likely to decide is that the --

6 A. Yes that's what was said in the letter.

7 Q. 540 Do you remember me asking you to write that letter to the Chairman at the end  
8 of the meeting so that we had it factual that you were now -- could I further  
9 put it to you that the zoning on Quarryvale would never have been coloured only  
15:30:45 10 for that letter, would you accept that we decided to try and bring  
11 compatibility between the two projects.

12

13 MR. QUINN: Mr. Lawlor knows that he has now strayed into Quarryvale two.

14

15:30:56 15 MR. LAWLOR: Yes we are but I tell you why Chairman, because this witness is  
16 here at my request and insistence.

17

18 CHAIRMAN: He is hereby the Tribunal --

19

15:31:05 20 MR. LAWLOR: No no he is not

21

22 CHAIRMAN: Mr. Lawlor you asked that he be here. And we then decided he would  
23 be. Anyway there will be no argument about it. Mr. Corcoran will be a witness  
24 in the second phase. There will be no conclusions and this has been pointed  
15:31:19 25 out time and time again. About any of the evidence, either phase one or phase  
26 two until both phases are completed. So no one is at any disadvantage because  
27 of the Tribunal has decided that some evidence should more properly be taken in  
28 the second phase.

29

15:31:33 30 MR. LAWLOR: Thank you for that Chairman and I tell you why I do because your

15:31:38 1 correspondence doesn't reflect that so that's the position now. That's fine.  
2 But that's not what I was informed when I asked that Mr. Corcoran be brought  
3 here, because I felt first the man was maligned and wronged by Mr. Gilmartin.  
4

15:31:49 5 CHAIRMAN: Well Mr. Lawlor he is here now and that's our decision.  
6

7 MR. LAWLOR: I am very pleased that the man has had a chance to put on the  
8 record the truth of what happened in Quarryvale.

9 Q. 541 Could I just have page 2365 finally Mr. Corcoran. This is a minute of a  
10 meeting Mr. Gilmartin, maybe we'll have the first page sorry first, just to set  
11 the scene for Mr. Corcoran page 2364, that Mr. Corcoran is the attendance of  
12 Mr. Gilmartin and his team in Buswells Hotel on the 25th May 1989 and they are  
13 discussing the project and what they have to try and achieve etcetera, you will  
14 be familiar with Mr. Kiaran O'Malley's name and Mr. John Higgins of Ove Arup  
15 and partners. The other names don't mean much possibly Seamus Maguire the  
16 solicitor, other persons were architects from Belfast, Taggarts and etcetera.  
17 On the next page please, 2365, the meeting is discussing the retention of  
18 senior counsel to assist them on their way and under the name Tom Smith, it's  
19 not appropriate, you see that?

15:33:14 20 A. Yes I do.

21 Q. 542 Now would you agree with me that's because your company had retained Mr. Tom  
22 Smith SC to advise on the planning aspects and the legal aspect related to the  
23 planning, Donal Spring solicitors appointed Mr. Tom Smith SC to advise you on  
24 whether our motion was sustainable in planning law etcetera, do you recall  
15:33:41 25 that?

26 A. Yes we employed Mr. Smith.

27 Q. 543 Can you recall the advice you got on the planning aspects from him?

28 A. Yes, I'm not certain but my recollection is that he said that it would be  
29 impossible to cap the Quarryvale, if it was zoned as it was, as Mr. Gilmartin  
15:34:02 30 wanted it, a million and a half square feet, I think Mr. Smith said that

15:34:06 1 legally it would be impossible to cap it, to keep it, keep the lid on it, keep  
2 it down at a reasonable size, that was what my recollection is.

3 Q. 544 Could I put it to you that it's not quite the correct recollection, I  
4 understand that time has passed. That Mr. Smith gave this legal advice after  
15:34:26 5 we had achieved what was in your letter putting the cap on it and he felt that  
6 the cap couldn't be insisted upon in planning law?

7 A. Yes.

8 Q. 545 That the cap that we wanted to put on it couldn't be sustained in law and that  
9 somebody later could overturn it in courts or An Bord Pleanala or where ever?

15:34:46 10 A. I recollect that was what he said.

11 Q. 546 Yeah okay. I just in conclusion Mr. Corcoran, do you recall that when you  
12 lodged for your planning application that Green Property was probably in excess  
13 not to the scale of Mr. Gilmartin in the square footage that you were  
14 requesting the council to agree to in Blanchardstown, and that Mr. Prendergast  
15:35:12 15 wasn't quite enthusiastic about the size that you were looking for, which was  
16 in the region of I think half a million square feet, would that be right?

17 A. I --

18 Q. 547 Roughly?

19 A. Roughly, yes probably.

15:35:23 20 Q. 548 And could I further put it to you that the reason you were granted it was that  
21 the elected members in their anxieties to support your project to get the  
22 scheme going, made a very strong case on the floor of the chamber to the  
23 manager and he agreed with conditions to grant you a permission so that while  
24 you weren't trying to do what Mr. Gilmartin has claimed he could do and drive a  
15:35:45 25 coach and four through the planning the County Development Plan, that Green  
26 Property ambitions were slightly greater than the planners would have wished  
27 would you recall that?

28 A. Yes I do.

29 Q. 549 And that here we were supporting your square footage slightly larger than  
15:36:01 30 envisaged and supporting Mr. Gilmartin's project eventually a lot smaller than

15:36:05 1 he wanted, so there was a reasonable consistency in our policy of what we were  
2 trying to achieve out in west Dublin at the time, would you agree with that?  
3 A. I would.

4 Q. 550 Thank you Mr. Corcoran.

15:36:15 5  
6 CHAIRMAN: Ms. McGrath do you want to ask your client.

7  
8 MS McGRATH: No thank you, Sir

9  
10:36:21 10 **THE WITNESS WAS FURTHER QUESTIONED BY MR. QUINN AS FOLLOWS:**

11  
12 Q. 551 MR. QUINN: There were just two matters I wanted to clarify with you  
13 Mr. Corcoran arising out of that last question from Mr. Lawlor where you got  
14 planning permission with the assistance of the council members, when did that  
15 planning permission issue?

15:36:34 15  
16 A. I can't tell you but I can tell you that we had at least three planning  
17 applications for Blanchardstown, there was one and then there was another and  
18 then we subsequently put --

19 Q. 552 When was the last application can I ask you?

15:36:49 20 A. I can't tell you.

21 Q. 553 When did you construct, when did Blanchardstown open?

22 A. Blanchardstown opened when I left Green Property Company, I am not sure but --

23 Q. 554 '93/94 and when did the construction commence?

24 A. The construction commenced for the roads and all of that, in 1989.

15:37:08 25 Q. 555 No the shopping centre when did the shopping centre commence?

26 A. It would have taken two years.

27 Q. 556 So commenced sometime around 1991?

28 A. 1991 yes.

29 Q. 557 Not 1988 when it was announced?

15:37:20 30 A. No no.

- 15:37:20 1 Q. 558 Do you know the current size of the shopping centre in Blanchardstown?
- 2 A. I don't, no. I do know it's very profitable.
- 3 Q. 559 Finally, I may have misunderstood your response to Mr. Lawlor, did you say
- 4 that, did I understand you to say when you expressed an interest with
- 15:37:38 5 Mr. Morrissey and Mr. Haughey in the lands in Irishtown, that is the
- 6 Corporation in Irishtown, you weren't aware that a price of 40,000 an acre had
- 7 been agreed between Mr. McLoone and Mr. Gilmartin?
- 8 A. I have no recollection of that.
- 9 Q. 560 The reason I put that to you is that again Mr. Redmond in that telephone
- 15:37:57 10 conversation appears to suggest that he had told you that 40,000 per acre had
- 11 been agreed with Mr. Gilmartin?
- 12 A. Somebody told me if I knew, but I don't know where it came from.
- 13 Q. 561 Okay thank you very much Mr. Corcoran.
- 14
- 15:38:09 15 JUDGE FAHERTY: Just one question Mr. Corcoran, had Green Property purchased
- 16 lands for it's project at Blanchardstown from the Corporation at any time?
- 17 A. Yes we did in the 70s.
- 18
- 19 JUDGE FAHERTY: Yes. Just there was a note in when you met Mr. Morrissey and
- 15:38:24 20 Mr. Haughey, and in your discussions, they make reference to the fact that
- 21 Green Property had bought land that didn't go to public advertisement, is that
- 22 correct?
- 23 A. No that was a different thing. It was zoned, the lands in Blanchardstown, in
- 24 Blanchardstown, we originally in 1972 we bought a farm from a Mr. Robert Moran
- 15:38:50 25 and it had 60 or 70 acres of land some of it which was subsequently taken for
- 26 the Navan Road and the entire area had been zoned as a town centre. And the
- 27 Corporation sold us the land that we wanted it complete the construction of the
- 28 town centre.
- 29
- 15:39:11 30 JUDGE FAHERTY: Yes they suggest as much in the memo I understand that. But

15:39:15 1 they didn't advertise it by public tender?

2 A. No no.

3

4 JUDGE FAHERTY: It was sold by private treaty

15:39:21 5 A. Correct.

6

7 JUDGE FAHERTY: I just wanted to clarify that. Thank you very much.

8

9 CHAIRMAN: Thank you very much for your time Mr. Corcoran.

15:39:27 10 A. Thank you.

11

12 **THE WITNESS THEN WITHDREW.**

13

14 MR. QUINN: Thank you Mr. Corcoran. Now Mr. McLoone please.

15:39:33 15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

**MICHAEL MCLOONE, HAVING BEEN PREVIOUSLY SWORN, RETURNS TO  
THE WITNESS BOX AND IS QUESTIONED AS FOLLOWS:**

15:39:33 1  
2  
3  
4 Q. 562 MR. QUINN: Thank you Mr. McLoone you have been very patient. I know you have  
15:39:56 5 been here on several occasions since you last gave evidence with a view to  
6 having your evidence resumed. I know you were here most of today as well, I'm  
7 sorry we didn't get to you before now. Hopefully we can finish you this  
8 evening.

15:40:09 10 CHAIRMAN: Mr. McLoone just, Mr. Quinn is here to be cross examined by  
11 Mr. Redmond and Mr. Lawlor.

12  
13 MR. QUINN: Thank you Mr. Lawlor has to finish his cross-examination and I  
14 think Mr. Redmond has one or two questions for him as well.

15:40:22 15  
16 CHAIRMAN: All right.

17  
18 **THE WITNESS WAS QUESTIONED BY MR. LAWLOR AS FOLLOWS:**

15:40:22 20 Q. 563 MR. LAWLOR: Mr. McLoone, can we just have page 2005 please. We'll very  
21 quickly go through this, it has been trawled in different ways I don't want to  
22 be repetitive that is your letter of offer as you will recall Mr. McLoone to  
23 Mr. Gilmartin, do you agree with that?

24 A. Yes.

15:40:40 25 Q. 564 And then we have, if we can have 2049, which is Mr. Gilmartin's acceptance,  
26 right? Isn't that right?

27 A. Yes.

28 Q. 565 Now why was Mr. McLoone's or Mr. Gilmartin's offer not then given effect, you  
29 having put it out?

15:41:03 30 A. I don't know. I think possibly I reported it. I don't know.

- 15:41:14 1 Q. 566 But the point you see Mr. Gilmartin has made a very serious allegations about  
2 interference and so forth, we have an offer made by you, and we have an  
3 acceptance of the offer, did Mr. Gilmartin not follow it up or did he change  
4 the ground rules and want to put options in, or did Mr. Morrissey reject your  
15:41:37 5 recommendation to Mr. Gilmartin?  
6 A. I don't think so. I am sure that I recommended, in relation to the County  
7 Council one it would be to Tom Doherty in Dublin County Council I would have  
8 made the recommendation to and it would be to --  
9 Q. 567 This is to Mr. Gilmartin, Mr. McLoone?  
15:41:56 10 A. I would have advised him that I had recommended, I would have recommended, I  
11 would have recommended the settlement terms.  
12 Q. 568 But could I just make the point to you, do you see why Mr. Gilmartin might get  
13 terribly frustrated and upset that the chief valuer puts land on offer to him,  
14 he accepts it and then it's not acceptable?  
15:42:19 15 A. Yeah, I would say that it was because of possibly maybe Mr. Corcoran's  
16 interest.  
17 Q. 569 No not at this stage Mr. McLoone. This is back in December of 1988 -- 20th  
18 December 1988, you put out two offer letters one on the council's behalf and  
19 one on the Corporation. There is nobody involved, it's just you and  
15:42:39 20 Mr. Gilmartin negotiating and you put a formal written offer to the man?  
21 A. Right.  
22 Q. 570 And on the 16th January he accepts the offer?  
23 A. Yes.  
24 Q. 571 "Further to your letter of the 20th December, I hereby confirm that subject to  
15:42:53 25 contract I accept the terms and conditions outline there had in to purchase  
26 your interest in the above lands". Then he points out who his solicitor is, "I  
27 hope that this will enable to you progress this matter further at your earliest  
28 convenience" etcetera etcetera. Now couldn't Mr. Gilmartin genuinely believe  
29 at the time that he had the agreement subject to contract at that stage?  
15:43:13 30 A. Yes, yes.

- 15:43:15 1 Q. 572 But why did it not happen then?
- 2 A. I would say that I recommended it had and anyway to my principals and at that
- 3 time, I am sure that it would have went through only for other people, I would
- 4 say only for Green Property's interest.
- 15:43:32 5 Q. 573 But that's not the case. That's not fact Mr. McLoone. The facts are that the
- 6 Green Property interest didn't surface for many months later. You are in a
- 7 situation here now on the 20th January that Mr. Gilmartin is accepting your
- 8 written offer and the deal didn't go through, did he not follow it up or did
- 9 you withdraw the offer or what happened?
- 15:43:53 10 A. I didn't withdraw the offer no, I recommended the offer I think to my
- 11 principals. I never withdrew the offer.
- 12 Q. 574 But what, I thought you had given evidence to the Tribunal that Mr. Morrissey
- 13 didn't accept the terms that you had offered, is that right?
- 14 A. No. Yes Mr. Morrissey came back afterwards and said that at one stage sometime
- 15:44:13 15 later that he felt that the property was worth more or something, I think he
- 16 said that here I think, but he didn't say it to me.
- 17
- 18 MR. QUINN: I think document 2000 might assist?
- 19 Q. 575 MR. LAWLOR: You see "I refer to your draft letter of the 2nd inst to
- 15:44:37 20 Mr. Gilmartin regarding the sale of lands. As I mentioned in our telephone
- 21 conversation do I not think the terms set out should provide for such an
- 22 extended payment". You put out an offer which your superior then having
- 23 consulted -- why didn't you consult with him before you put the offer out and
- 24 not have this man --
- 15:44:57 25
- 26 MR. QUINN: That's not the evidence Sir.
- 27 A. No from that assumption there that letter it would appear that he accepted the
- 28 sum, the consideration but he didn't accept the phasing, that was the
- 29 construction I would have put on it.
- 15:45:12 30 Q. 576 MR. LAWLOR: Your manager didn't accept?

15:45:13 1 A. That was the construction, he accepted the consideration but not the phasing of  
2 it.

3 Q. 577 But the point I am just trying to convey to you, is that you should have got  
4 your clearance before putting it on offer to a third party.

15:45:27 5 A. No I never saw --  
6

7 MR. QUINN: Sorry Mr. McLoone, Mr. Lawlor is not being fair to this witness,  
8 the evidence of the witness to date is the letter which is to be found at 1993,  
9 which is a draft of a letter to Mr. Gilmartin was never sent to Mr. Gilmartin,  
10 but that it was given to Mr. Morrissey and Mr. Morrissey's response was, is to  
11 be found at document 2000 which is the letter of the 13th December 1988 and it  
12 was following on that, that a further letter was sent to Mr. Gilmartin on, or a  
13 letter for the first time was sent to Gilmartin on the 19th December 1988 and  
14 that's at 2002

15:46:07 15  
16 CHAIRMAN: Which indicated that the sale would proceed.  
17

18 MR. QUINN: Yes. That's correct.  
19

15:46:15 20 MR. LAWLOR: Sorry, all I can do is go on what's in front of me here. There is  
21 a letter to Mr. Gilmartin from the chief valuer putting the land on offer to  
22 him and there is an acceptance of the offer on the 16th January 1989, is that  
23 right or wrong?  
24

15:46:30 25 MR. QUINN: It's incorrect. What --  
26

27 MR. LAWLOR: Where is the incorrectness in it.  
28

29 MR. QUINN: It is not for me to advise Mr. Lawlor. But the evidence as I  
15:46:39 30 understand it from Mr. McLoone, has been that the letter of the 2nd of December

15:46:44 1 1988 which is to be found at document page 1993 and 1994 was never sent to  
2 Mr. Gilmartin.  
3  
4 MR. LAWLOR: I am not talking about letters that weren't sent Chairman. I am  
15:46:57 5 talking about a letter that was sent.  
6  
7 CHAIRMAN: Mr. Quinn bring us through from there on. That's the letter --  
8 that letter didn't go out to Mr --  
9  
10 MR. QUINN: No and Mr. Morrissey --  
11  
12 CHAIRMAN: When is the first letter that goes out?  
13  
14 MR. QUINN: There is a letter at 2002 of the 19th December 1988 which goes to  
15:47:17 15 Mr. Gilmartin which reflects Mr. Morrissey's concerns and I think addresses  
16 those concerns in relation to the payment of the consideration.  
17  
18 CHAIRMAN: Right.  
19  
20 MR. LAWLOR: I am back to the point I am at, I don't understand what the  
21 interjection is.  
22  
23 CHAIRMAN: Just to clarify it.  
24  
25 MR. LAWLOR: Just but --  
26  
27 CHAIRMAN: Well on the 19th December there is the first letter that goes out  
28 to Mr. Gilmartin.  
29  
30 MR. LAWLOR: Could we put that up please if it's a day before the letter I am

15:47:45 1 dealing with?

2

3

CHAIRMAN: So on the previous day --

4

15:47:47 5 MR. LAWLOR: Chairman there are two local authorities Corporation and Council,  
6 so now we have a 19th December letter on behalf of the Corporation who owns the  
7 substantial acreage out there 68, and the following day we have a letter  
8 offering 12.4 acres on the same basis and we have Mr. Gilmartin happily saying  
9 I have a deal with the Corporation and he writes back and tells the chief  
10 valuer his solicitor to give effect to the deal is there and done. Now that  
11 did not happen. And the reason it didn't happen or why did it not happen then.  
12 We have an agreement with Mr. Gilmartin.

13

14

MR. REDMOND: Your Worship.

15:48:30 15

16

MR. LAWLOR: He didn't follow it did he.

17

18

CHAIRMAN: Just let Mr. McLoone --

19

A. We had an agreement. I felt that there were a settlement terms agreed with

15:48:39 20

21

Mr. Gilmartin which would be acceptable. I think then that there was some  
interference as some people approached Mr. Morrissey maybe and Mr. Feeley. I  
don't know.

22

23

Q. 578 Well it's just as far as I am concerned Mr. Gilmartin had the land accepted  
there was nobody interfering in anything and what's claimed interference didn't  
come until some months later if Mr. Gilmartin had got his contracts done and  
dusted in January, he could have concluded his business?

15:49:00 25

26

27

A. No he could not, for the disposal of land it would have to go before the  
development committee and then before the full council. So the earliest it  
could have went would be possibly maybe March.

28

29

15:49:19 30

Q. 579 But did you not put it forward then on receipt of that letter?

15:49:22 1 A. All I do was recommendation to the principal officer, they then make their,  
2 they put it on the agenda for the development committee and then if it's passed  
3 there, they bring it to the Council and they have to have so many days notice  
4 before they get it. I think it's in the order of ten days, so possibly it  
15:49:42 5 would have been March would have been the earliest time which the disposal of  
6 the land could have came up.

7 Q. 580 But is it your evidence to the Tribunal that there was inappropriate  
8 interference in this transaction?

9 A. I don't know what interference there was. I don't know what interference there  
15:50:00 10 was. But you would want to ask Mr. Morrissey that.

11 Q. 581 Mr. McLoone your evidence is there was interference, your evidence and your  
12 statement is reciting what you perceived to be the interference, you put it in  
13 writing to the Tribunal, are you desisting now from the fact that there was no  
14 interference?

15:50:20 15 A. No I would say that there was interference from Mr. Redmond I would say.

16 Q. 582 Can you tell the Tribunal, it's inappropriate, there was something wrong, can  
17 you explain what you mean by interference, if a manager responds to a property  
18 owner ringing up asking, as you got 20 calls a day asking you about land and do  
19 you have it for sale, can it be bought and there is a competitor interested, is  
15:50:42 20 that interference, is there something wrong with that is there?

21 A. Not necessarily.

22 Q. 583 Why have you conveyed that?

23 A. I think it was very good price at the time. I thought it was a good price.  
24

15:50:51 25 CHAIRMAN: Sorry Mr. McLoone we are really interested in knowing whether you  
26 think there was improper interference. Interference isn't necessarily in  
27 itself improper. As long as you are clear, that's the question

28 A. I wouldn't say that maybe improper if people were prepared to pay more, let  
29 them. I wouldn't have considered that improper if they were prepared to pay  
15:51:14 30 more.

- 15:51:15 1
- 2 CHAIRMAN: But that might be the result of improper, Mr. Lawlor is asking you
- 3 is it your evidence that there was improper interference as against proper
- 4 interference?
- 15:51:25 5 A. Well, I can't differentiate between proper and improper interference. Like if
- 6 there is a deal done and somebody else comes along and makes a higher offer it
- 7 could be regarded as sharp practice all right.
- 8
- 9 CHAIRMAN: But it would depend how the interference took place.
- 15:51:46 10 A. Yes. I would have thought maybe that it could have been Mr. Redmond possibly
- 11 that would have got on to Mr. Morrissey and said the property was worth far
- 12 more.
- 13 Q. 584 MR. LAWLOR: Mr. McLoone do you still want to fly in the sworn evidence of
- 14 Mr. Morrissey on oath in the box where you are, where he said there was no
- 15:52:07 15 interference, are you now still trying to convince the Tribunal that there was
- 16 some improper influence, because the only man that could be interfered in the
- 17 exercise of his duty in this matter was Mr. Morrissey?
- 18 A. Mr. Morrissey never ever came up to me and told me I was paying too much for
- 19 land at any stage, ever. In this case here I was asked the year before.
- 15:52:27 20 Q. 585 I am not asking?
- 21 A. I am telling you --
- 22 Q. 586 I am not asking you about.
- 23 A. I am telling you -- I was asked could we take 18,000 I thought it was 18,000,
- 24 it could have been 20, for the subject lands, I said no it is worth more than
- 15:52:41 25 that we could get at least 25. And that was within 12 months.
- 26 Q. 587 I ask the question again, the manager had a had the responsibility for
- 27 formalising the disposal of public lands on your advice or none advice, here on
- 28 sworn evidence has stated there was no interference, are you still trying to
- 29 convince the Tribunal on Mr. Gilmartin's behalf that there was interference?
- 15:53:10 30 A. If it was, it was the first time that Mr. Morrissey ever did it if he felt

15:53:15 1 that, you know -- I would say that there was interference because Mr. Morrissey  
2 wouldn't have done it otherwise. There was interference of one type or  
3 another.

4 Q. 588 So he didn't give truthful evidence here when he said there was no interference  
15:53:30 5 from the witness box.

6  
7 MR. QUINN: I think it's inappropriate for this witness to -

8 A. I am giving you my opinion.

9 Q. 589 MR. LAWLOR: I am not asking you, I am putting to you and I will call up the  
15:53:40 10 number and show you that Mr. Morrissey said there was no interference, are you  
11 prepared to accept Mr. Morrissey's sworn evidence or are you not?

12 A. I am not.

13 Q. 590 You are not?

14 A. No.

15:53:48 15 Q. 591 So you are still making the claim?

16 A. Yes.

17 Q. 592 Now could you tell us what you discussed with Mr. Gilmartin during your  
18 telephone calls when he was obviously, this Tribunal was set up and you and him  
19 were collaborating?

15:54:00 20 A. I never collaborated.

21 Q. 593 What you were going to say to this Tribunal?

22 A. I never collaborated with Mr. Gilmartin at any time.

23 Q. 594 You stated it had here, you said it was of great help to you?

24 A. In remembering what happened.

15:54:11 25 Q. 595 Yeah.

26 A. What happened.

27 Q. 596 Tell us what you discussed what happened that was of great assistance?

28 A. There were various matters. There was well don't think that I have forgotten  
29 the one about where he said that you demanded the 200,000 off him. But there  
15:54:40 30 would be various other matters.

- 15:54:41 1 Q. 597 Is it your evidence that you believed Mr. Gilmartin's allegations?
- 2 A. Well I would say I did at the time, I would say I did.
- 3 Q. 598 You did.
- 4 A. Yeah I did.
- 15:54:50 5 Q. 599 So there is the two of you now in the country that are compatible?
- 6 A. No --
- 7 Q. 600 Well --
- 8
- 9 CHAIRMAN: He is trying to give his evidence we have to decide
- 15:54:59 10 Q. 601 MR. LAWLOR: I know that Chairman, but I mean this witness was able to recite in
- 11 his statement, seek strictly and confidential that it wouldn't be circulated
- 12 and recite all of Mr. Gilmartin's hearsay evidence without one shred of
- 13 evidence, he has a senior management Mr. McLoone, you have them coming into
- 14 this witness box, Mr. Feeley, Mr. Morrissey, Mr. Prendergast, all pointing out
- 15:55:23 15 that they exercised their functions in a correct and proper way and that there
- 16 is no allegation of interference other than your standing alone claiming within
- 17 the Dublin Corporation, that there was something untoward about you failing and
- 18 the Corporation getting 31,000 pound an acre more than your recommendation,
- 19 through so called interference. Not a great achievement from the chief valuers
- 15:55:50 20 point of view, was it?
- 21 A. Mr. Corcoran said only a few minutes ago the reason he went in so high was he
- 22 would do anything to protect Blanchardstown. That was an offer over and above
- 23 what was open market was, no other offer only the two offers came, that was
- 24 totally different, that wasn't be realistic offer he made as such.
- 15:56:09 25 Q. 602 Do you think the 71,000 pound was a realistic offer?
- 26 A. To prevent, as he said it was to prevent it.
- 27 Q. 603 But sure why didn't you put it properly to tender in the first day, why were
- 28 you entering into this one off situation with such a substantial tract of
- 29 public owned property?
- 15:56:25 30 A. We did the same thing in Blanchardstown with Mr. Corcoran.

- 15:56:28 1 Q. 604 No no you didn't, I will put that question now that Judge Faherty put if a town  
2 centre owner owned three quarter of it an the local authority wanted something  
3 done on it and they put independent valuers and both concluded that the value  
4 was right in order to conclude the assembly of the site one portion of it not  
15:56:46 5 in the town centre developers ownership was sold direct without tendering,  
6 would that not make any logic to you now?  
7 A. No it should have been put up to public tender.  
8 Q. 605 But you the other shouldn't, is that what you are saying?  
9 A. You can sell to adjoining owners without going to public tender.  
15:57:06 10 Q. 606 What.  
11 A. There is a policy you can sell to adjoining owner without going to public  
12 tender.  
13 Q. 607 Isn't that what was done in Blanchardstown?  
14 A. Possibly. About I never knew this area was going to go for a town centre, I  
15:57:19 15 valued it on the basis of the zonings that were there.  
16 Q. 608 Mr -- you are contradicting your own evidence. Mr. McLoone you told this  
17 Tribunal that you thought it would be a magnificent town centre?  
18 A. I did yes.  
19 Q. 609 But you have just said you didn't have any knowledge?  
15:57:33 20 A. No I said, the zonings were against it. I wasn't valuing it on the basis of a  
21 town centre the zonings were against that. But I always felt it would have  
22 made a great town centre.  
23 Q. 610 But the man was being advised by the chief valuer to buy it?  
24 A. I wasn't advising anybody to buy it, I was approached and instructed by  
15:57:54 25 Mr. Morrissey to open negotiations for the disposal of it.  
26 Q. 611 Mr. McLoone you told Mr. Gilmartin you thought it was a fantastic site that was  
27 your evidence.  
28 A. I did yes, yes I did.  
29 Q. 612 To appreciate Mr. Gilmartin's point of view, just to try and on objective on  
15:58:08 30 his behalf, you offer him the land, you are telling him it's a fantastic site,

15:58:12 1 you are a very senior officer in the local authority system in Dublin, and  
2 genuinely the man believed as he did with Ministers, that he was being told and  
3 encouraged to achieve his Westpark proposal, would you accept that with the  
4 wisdom of hindsight now if you had been a bit more cautious and conservative in  
15:58:33 5 your discussions with Mr. Gilmartin his expectations mightn't have been quite  
6 so high, could you accept that?  
7 A. No. I would say Mr. Gilmartin had plenty of consultants on his own side.  
8 Q. 613 Look where they lead him to. Where did he get to Mr. McLoone, he ran into  
9 sand?  
15:58:52 10 A. You said here the last day if he had one million 800,000 extra, he would have  
11 had control of the whole place.  
12 Q. 614 Yes but he still wouldn't have get Westpark proposal would he?  
13 A. He obviously that was a huge proposal.  
14 Q. 615 Sorry.  
15:59:02 15 A. That was a huge proposal that he put in.  
16 Q. 616 But you know without being a planner, working in the local authority, that what  
17 Mr. Gilmartin envisaged for Westpark was wholly unrealistic in size, location  
18 excellent, necessity excellent, but size totally wrong, do you agree with that?  
19 A. I agree at that particular time, but I would say now they are expecting that  
15:59:25 20 now.  
21 Q. 617 Well they are still there with their cap and they still haven't got it any  
22 further. So could I just put it to you Mr. McLoone that if we can have 4758  
23 please? That's this famous map, now what's your recollection or your memory of  
24 what maps you dealt with regarding the Quarryvale lands?  
16:00:08 25 A. In relation to the Quarryvale lands I dealt with, in relation to the, there was  
26 a portion that was zoned residential and it was developed for residential  
27 development and --  
28 Q. 618 I just want to call up, it's just that Mr. John Higgins, do you recall? Did  
29 you prepare any maps or did you have anything to do with mapping for the area?  
16:00:51 30 A. No, no.

- 16:00:52 1 Q. 619 Well I just can't lay my hand on the letter, it's there somewhere we'll get it  
2 in a moment, Mr. John Higgins of Ove Arup and partners has informed the  
3 Tribunal by writing and in evidence that Mr. Gilmartin advised him to make  
4 contact with you, as you were providing him with all the appropriate ownership  
16:01:10 5 of land and mapping, are you familiar with that?  
6 A. No.  
7 Q. 620 Well do you believe it ever happened?  
8 A. I don't, I saw it, I read it though but I don't believe it ever happened.  
9 Q. 621 Why would Mr. Higgins of Ove Arup make that statement, most competent  
16:01:26 10 professional in this whole area of roads, design and mapping, and Mr. Gilmartin  
11 you see has claimed as you are aware Mr. McLoone that much earlier than that,  
12 totally up announced and non requested and not even knowing what the meeting  
13 was about, that the then manager Mr. Redmond was able to produce a reference  
14 map like that and hand it to him in May 1988, and did Mr. Gilmartin show you  
16:01:51 15 any map with all these references and ownerships?  
16 A. I have no recollection.  
17 Q. 622 If I could have 3509? Just in the last section of that there -- we are  
18 innocent Chairman.  
19  
16:02:15 20 He was trying to purchase lands and property which would eventually become part  
21 of the overall site. This is work was undertaken by Arup Ireland Limited  
22 involved liaising with Michael McLoone the chief valuer of Dublin Corporation,  
23 was able to supply data regarding land holdings and Folio numbers in the whole  
24 of the Quarryvale area from his records Exhibit 5". So could we have exhibit 5  
16:02:42 25 if there is such a thing? So what's your view on that Mr. McLoone?  
26 A. Wait until we get exhibit 5 first.  
27 Q. 623 Is it in the brief, is there a number on it? Where does it exist? It's here  
28 in the -- here Mr. Higgins is claiming that you actually gave him a document  
29 from his records?  
16:03:21 30 A. Yeah I see that, yeah.

16:03:22 1 Q. 624 From your records Mr. McLoone you gave --  
2 A. I never had Folio numbers, I wouldn't have had them.  
3 Q. 625 The point I am making is that Mr. Gilmartin got what he claims from  
4 Mr. Redmond, he didn't need to be paying professional fees for all this  
16:03:39 5 referencing and detail, this is much later where he is you know, having to  
6 assemble the information. Mr. Gilmartin has claimed that he had earlier and so  
7 when you went out to show him the Balgaddy site even though you had negotiated  
8 a contract with another town centre developer at the time, and you were showing  
9 him Quarryvale surely you were producing some maps or giving him some maps --  
16:04:02 10 A. I would have had a map of the area, yes I would have, yeah.  
11 Q. 626 So where did you get that map or did you --  
12 A. We would have had, we'd have had maps of the, of the local authority land and  
13 in that area, but it wouldn't have been a reference map.  
14 Q. 627 So are you suggesting that what Mr. Higgins is claiming here is incorrect?  
16:04:27 15 A. Well it may have been in relation to afterwards when there was a dispute in  
16 relation to the lands like.  
17  
18 MR. QUINN: 3528  
19 A. I came fairly late, there was a dispute in relation to, with Dublin Corporation  
16:04:43 20 at the time.  
21 Q. 628 MR. LAWLOR: Could I just say to you that when Mr. Gilmartin purports, as is  
22 recited in your statement, that he was with you in his office prior to his  
23 visit to the Custom House, we have a schedule of the dates of which you  
24 operated to, I know it's not in the transcript but it is referred to, I will  
16:05:08 25 just recall it for you and conclude on that point Mr. McLoone.  
26  
27 Tenders were opened on the 19th that May 1989. The 22nd May Mr. McLoone  
28 reports. 24th May the official order was made. The 26th May the committee  
29 approved it. And on the 31st of May the report was prepared for the city  
16:05:31 30 council.

16:05:31 1  
2 Now would you suggest to the Tribunal that that was neck breaking excellence.  
3 19th May to the 31st May this land is now going to the first available council  
4 meeting which took place on the 12th June. Would you agree that that was the  
16:05:50 5 position?  
6 A. Yeah I think that the council have to be given is it ten working days notice of  
7 an agenda.  
8 Q. 629 Yes to confirm your point we'll have day 490 page 96. Just at the bottom just  
9 to concur with the point you have just made Mr. McLoone at 29A, there was a  
16:06:19 10 legal obligation on the Corporation to give ten days notice. Ten clear days of  
11 the disposal, this is Mr. Feeley's evidence. So I am pretty sure -- sorry if  
12 you talk on, just go over the page -- "On the 2nd of June that the dye was cast  
13 at that stage the matter was going before the council. I suppose it was always  
14 possible that we would come to the City Council and we could say we have this  
16:06:53 15 item on the agenda but for one reason or another we don't want to sell it.  
16 That's theoretically possible.  
17 Question: Sure.  
18 Answer: But I have to reason to believe.  
19 Question: But can you understand Mr. McLoone entertaining this sort of  
16:07:09 20 allegation in his own domain here, suggesting that his principal officer might  
21 be going to withdraw the lands completely on the 2nd of June and the meeting is  
22 scheduled for the 12th and the ten day notice would be in the works at that  
23 stage and he is dissuading or suggesting to Mr. Gilmartin shouldn't go, they  
24 will take your effing money and still do nothing for you.  
16:07:34 25 Answer: No I don't understand it. I don't know why it should be so.  
26 Question: If I could have day that".  
27 This Mr. Feeley is Mr. McLoone's evidence again and he is stating, he is  
28 talking about Mr. Madden there, former Minister -- now could you just tell the  
29 Tribunal what the discussion you had with Mr. Gilmartin on that day?  
16:07:57 30 A. I don't recall the discussion I had with Mr. Gilmartin on that day.

- 16:08:04 1 Q. 630 You have no recollection of that discussion?  
2 A. I would say, it's possible, I know that I said they will take your money and do  
3 nothing for you, I possibly said that. But I don't know, I have no  
4 recollection other than that. But I could have said that is correct I have no  
16:08:18 5 recollection it have.  
6 Q. 631 Did you suggest to him did he know anybody he could go and lobby?  
7 A. I possibly did say to him that if he knows somebody he can trust.  
8 Q. 632 And that turned out to be the Taoiseach the then Minister for Labour he went to  
9 and the Taoiseach asked Mr. Joe Burke, councillor Burke to look into the  
16:08:36 10 matter, are you familiar with that?  
11 A. I understand that's what happened.  
12 Q. 633 And are you --  
13 A. I didn't know who he was going to, he never told me who he was going to lobby.  
14 Q. 634 But can you tell the Tribunal why you thought it was necessary?  
16:08:47 15 A. Because I think Gilmartin felt it wasn't going to go through.  
16 Q. 635 But this is, I am asking for your evidence, not what you thought Mr. Gilmartin  
17 was thinking?  
18 A. Mr. Gilmartin said to me he thought it wasn't going to go through, I would have  
19 said to him go and get somebody that you can trust to try and push it forward.  
16:09:01 20 Q. 636 But did you not explain to him that he already, it was in the works, it was  
21 going to be sold to him, agreed, tender recommended, date all set out?  
22 A. He may have come in and he may have had felt it was going to be pulled. I  
23 don't know.  
24 Q. 637 But did you not sort of explain to him that that really couldn't happen, that  
16:09:18 25 now the dye is cast as the City Manager said?  
26 A. I think them things do happen, have happened at times in relation to land.  
27 Q. 638 Really.  
28 A. Yes.  
29 Q. 639 Could you tell the Tribunal about what happened because they are investigating  
16:09:33 30 the matters?

- 16:09:33 1 A. I can't recall any offhand but I do believe there were cases disposals were  
2 going through and they were pulled for another month or something.
- 3 Q. 640 I think you better be more specific, you mention the council, you are here now  
4 Mr. McLoone giving sworn evidence on the foot of a statement made up of hearsay  
16:09:53 5 allegations, you haven't been able to substantiate, could you substantiate one  
6 allegation for the Tribunal. Just give an example of where you can help the  
7 Tribunal?
- 8 A. You will often see where property is going through or maybe, they are not  
9 passed and it could have been stopped that way.
- 16:10:08 10 Q. 641 No it could because you mightn't get to the agenda, you mightn't get through  
11 the agenda, you don't get --
- 12 A. But it could be turned down too.
- 13 Q. 642 Of course it could yeah. But I mean did you believe, you were an  
14 experienced --
- 16:10:20 15 A. I wasn't experienced in relation to the councillors, I had no input with the  
16 councillors I knew very very few of them. Very few of them.
- 17 Q. 643 On the 31st of May, Mr. McLoone, the committee had approved the recommendation  
18 and it was now scheduled for the full date on the 12th June and on the 2nd June  
19 you are entertaining Mr. Gilmartin's fantasies about how his land could be  
16:10:43 20 frustrated having the public tender?
- 21 A. Obviously he felt it wasn't going to go through.
- 22 Q. 644 But had you any reason to believe?
- 23 A. I had no reason to believe other than --
- 24 Q. 645 Did you say that to him?
- 16:10:53 25 A. Possibly did, I don't recall.
- 26 Q. 646 So you knew then that everything was okay but he should still go and do  
27 something?
- 28 A. I don't know he obviously had heard something.
- 29 Q. 647 You think he was wrong in that?
- 16:11:05 30 A. I don't know.

16:11:06 1 Q. 648 But sure the record says he was wrong Mr. McLoone, do you understand, that on  
2 the 12th, days later, the council without discussion endorsed the sale, so  
3 would you now with the wisdom of hindsight agree that Mr. Gilmartin's claims  
4 that there was going to be interference where wrong?

16:11:25 5 A. It depends on what had to be done in the meantime, maybe Mr. Burke will be able  
6 to put light on that.

7 Q. 649 Mr. Burke's evidence was that there was nothing done it was all agreed?

8 A. O.k.

9 Q. 650 So there was no problem but you perceived based on Mr. Gilmartin's concerns  
16:11:38 10 that there could have been a problem, is that right.?

11 A. If Mr. Gilmartin said to me he felt it wasn't going to go through I would have  
12 possibly believed him, yeah.

13 Q. 651 You believed an awful lot didn't you?

14 A. I believed --

16:11:53 15 Q. 652 Yes. Thanks Mr. McLoone.  
16

17 CHAIRMAN: All right now Mr. Redmond, you cross examined him, Mr. McLoone on  
18 the last occasion.  
19

16:12:02 20 MR. REDMOND: Sorry  
21

22 CHAIRMAN: You cross examined Mr. McLoone on the last occasion.  
23

24 MR. REDMOND: I didn't complete.

16:12:09 25

26 CHAIRMAN: Could you indicate how long you might be tomorrow morning?  
27

28 MR. REDMOND: Tomorrow morning? Excuse me Your Worship what time is it now?  
29

16:12:19 30 CHAIRMAN: It's ten past four.

16:12:21 1

2

MR. REDMOND: Sorry I didn't realise. Am I to be very precise?

3

4

JUDGE FAHERTY: You indicated Mr. Redmond a period of time. I think you had

16:12:32 5

indicated a time previously but I am not sure, on the last occasion.

6

7

MR. REDMOND: I would think something, a little bit over an hour. That's my --

8

now but I am not a lawyer and I am very bad at judging these things, but I

9

promise that I will keep to the point.

16:12:53 10

11

CHAIRMAN: All right half ten Mr. McLoone tomorrow. Sorry that you are back

12

but these things happen. All right. And you will start in the morning then.

13

14

MR. REDMOND: Oh, I will but of course you know about my appearance here. I

16:13:09 15

16

have no control, I try to get here but I am in other people's hands. But if I

17

am not here at that time I will be here later.

18

CHAIRMAN: All right.

19

16:13:27 20

**THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,**

21

**FRIDAY 2ND JULY 2004 AT 10.30 AM.**

22

23

24

25

26

27

28

29

30