

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

28TH NOVEMBER, 2006, AT 10.30 A.M.:

CHAIRMAN: Good morning, today the Tribunal commences a new module called Pennine Holdings. It concerns lands situated at Baldoyle in North County Dublin.

It is anticipated that the duration of this Module will be in the region of two to three weeks. Mr Des O'Neill, Senior Counsel, on behalf of the Tribunal will shortly read an opening statement in which he will outline in greater detail the subject matter of the Module. Any party wishing to make a formal reply to the opening statement may apply to do so. There is no requirement on any party to reply to the opening statement. And the absence of a reply in no way suggests that a party necessarily agrees with anything or everything stated in the opening statement.

In the past or in past Modules the invitation to formally reply to the opening statement has rarely been taken up by parties.

In relation to legal representation, it should be noted that unless otherwise stated a grant of legal representation is a grant of legal representation limited to the extent, as is appropriate and necessary, for that party to participate in the public hearings for the purposes of protecting his or her interests. Unless otherwise provided, such a grant of limited representation will be for a solicitor, one Junior Counsel and one Senior Counsel. It should be noted that a grant of representation is not a guarantee of an award of costs to any party.

I now invite any party wishing to apply for a grant of representation to do so

10:37:48 1 providing as the application is made the names of the solicitor and counsel in
2 each case.

3
4 Any party wishing to delay or defer making an application until after the
10:37:58 5 opening statement or indeed at any time in the course of the public hearings
6 may do so

7
8 Are there any parties here wish to make an application.

9
10:38:07 10 MR O'TUATHAIL: Seamus O Tuathail on behalf of Senator Lydon with Gerard
11 Humphreys instructed by Edge Manning & Co applying for limited representation.

12
13 CHAIRMAN: All right. Granted. Thank you.

14
10:38:19 15 MR. BURKE: David Burke on behalf of the Hand Family with Cormac O'Dulachain
16 instructed by Vivian Matthews Solicitors. I apply for a grant of legal
17 representation.

18
19 CHAIRMAN: All right, granted.

10:38:30 20
21 MR BURKE: Greatly obliged.

22
23 MS SMITH: Mairead Smith with Mr Breffni Gordon instructed by Sean Costello &
24 Company Solicitors. If I could apply for representation on behalf of
10:38:38 25 Councillor Fox.

26
27 CHAIRMAN: Certainly.

28
29 MS. SMITH: If I might also Chairman apply for representation on behalf of Ms
10:38:41 30 Joan Clarke who is also a witness before this Tribunal in the coming days. And

10:38:46 1 the same representation.

2

3 CHAIRMAN: All right. Granted.

4

10:38:51 5 MS BARRY: Fiona Barry, William Fry.

6

7 I am applying for representation on behalf of Brendan Hickey and David

8 Shubotham and we are instructing John Gordon, Senior Counsel.

9

10:39:00 10 CHAIRMAN: All right, thank you, granted.

11

12 MS GORE GRIMES: Caroline Gore Grimes, Gore and Grimes Solicitors applying for

13 representation on behalf of John Byrne and Smithfield Properties Developments

14 Limited. There is no counsel being instructed at present.

10:39:09 15

16 CHAIRMAN: All right. Granted. Thank you. Now, Mr. O'Neill.

17

18 MR. O'NEILL: Good morning, Mr. Chairman, Members of the Tribunal.

19

10:39:18 20 In this Module the Tribunal will inquire into attempts made by Pennine Holdings

21 Limited to rezone approximately 400 acres of land at Baldoyle as part of the

22 review of the 1983 Dublin County Development Plan.

23

24 The review process for Dublin County commenced in 1987 and concluded with the

10:39:40 25 adoption of the Dublin County Development Plan in December 1993. As part of

26 the review process, the elected members considered the working papers and maps

27 presented by the Council's professional staff. The county was divided into

28 specific areas. Each represented by a separate map and written statement. The

29 elected members considered these Draft Development Plan maps and the written

10:40:05 30 statements in advance of their meetings.

10:40:08 1
2 On a number of occasions throughout this process the members were advised that
3 any variations proposed to the draft written statement and maps would require
4 the submission of a written motion, signed by the elected members proposing it
10:40:22 5 and accompanied where necessary by a location map for inclusion on the agenda
6 of the relevant Council meetings.

7
8 Baldoyle and Portmarnock fell to be considered as map No. 8.

9
10:40:35 10 The opportunity for elected members to make representations in relation to the
11 proposed rezoning of Baldoyle arose in advance of the consideration by the
12 Council of map No. 8 at the Council's special meeting on the 8th of June 1990.
13 At that meeting the Council deferred consideration of map 8 until the meeting
14 of the 22nd of June 1990. On the 22nd of June 1990 the Council noted that the
10:41:03 15 Baldoyle lands were intended to be zoned B and G, to preserve the green belt
16 between development areas. The fact that this intended zoning was recorded as
17 having been noted indicates that the Council members present had agreed that
18 the Council's staff's draft proposal would be accepted by them without the
19 necessity of there being a vote on the issue.

10:41:27 20
21 A further opportunity to make submissions was afforded to elected members in
22 advance of the first public display of the Dublin County Draft Development Plan
23 1991. Councillors were advised that a wrap up agenda for any proposed change
24 would be held and that motions to alter the draft were to be received by the
10:41:48 25 8th of February 1991. This period was further extended to the 15th of February
26 1991.

27
28 No motions were submitted by any of the elected members in relation to the
29 Pennine Baldoyle lands in advance of the Draft Plan going on public display.

10:42:06 30

10:42:06 1 The public display period lasted from the 2nd of September 1991 until the 3rd
2 of December 1991. In this phase Pennine Holdings Limited made representations
3 to the Council. These representations were circulated to all elected members
4 and came for subsequent consideration at special meetings of the Council.

10:42:30 5
6 In view of the large number of applications received in respect of the county
7 as a whole, Baldoyle motions did not come to be considered until the 20th of
8 April 1993.

10:42:43 10 The Pennine Holdings motions were considered at meetings of the Council on the
11 20th of April, the 27th of April, the 4th of May and the 6th of May 1993.

12
13 The attempts by Pennine Holdings to have the lands rezoned as part of the
14 review process were unsuccessful at the conclusion of the review of the 1983
10:43:06 15 Dublin County Development Plan, the Council adopted a plan which showed these
16 lands to be zoned B and G, to preserve a green belt between development areas
17 of Portmarnock and Baldoyle.

18
19 The Pennine Holdings rezoning application is one of the rezoning applications
10:43:24 20 which Frank Dunlop says involved payments being made by him to councillors for
21 their support for the rezoning proposal. Mr. Dunlop will give evidence to the
22 Tribunal that he paid money to councillors for their support for Pennine
23 Holdings rezoning, including payments to councillors Larkin, Hand, Fox, Liam
24 Cosgrave, and Don Lydon and that part of an earlier payment which he made to
10:43:50 25 Councillor O'Halloran during the course of the Development Plan related to his
26 support for Baldoyle.

27
28 The first three of these councillors are dead. The remaining councillors deny
29 that they were the recipients of any corrupt payments from Mr. Dunlop.

10:44:08 30 Mr. Liam Cosgrave has denied receiving any corrupt payments from Mr. Dunlop.

10:44:14 1 Correspondence with him from the Tribunal since July of this year has been
2 unanswered in relation to the queries put to him regarding the Baldoyle lands.
3 In his dealings with the Tribunal to date Mr. Cosgrave has denied that any of
4 the payments he did receive from Mr. Dunlop were anything other than political
10:44:31 5 donations.

6
7 Councillor Tony Fox denies ever having been given any money from Frank Dunlop
8 whether for political purposes or otherwise. Councillor Lydon has acknowledged
9 the receipt of 1,000 pounds paid by Frank Dunlop as a political donation to him
10:44:49 10 in support of his Senate campaign in 1993. But he denies that any payment was
11 made for his support on any rezoning motion.

12
13 Councillor O'Halloran denies the receipt of any payments for his vote from
14 Frank Dunlop.

10:45:03 15
16 As part of the inquiry in this Module the Tribunal will examine the
17 circumstances in which Pennine Holdings Limited came to make an application to
18 rezone these lands. At all material times, the lands were in the legal
19 ownership of the companies controlled by Mr. John Byrne, a well known Dublin
10:45:21 20 property developer.

21
22 The Pennine Holdings Limited rezoning applications were made by Pennine
23 holdings Limited with Mr. Byrne's consent. Mr. Byrne said that he had no
24 beneficial ownership in Pennine Holdings Limited. That company had reached
10:45:38 25 agreement with his company's Endcamp Limited and Melvin Securities Limited,
26 which provided that Pennine Holdings Limited would have an option to purchase
27 250 of the 400 acres which were to be the subject of the rezoning application.

28
29 This option agreement was formalised on the 4th of November 1991. It was
10:46:04 30 exercisable until the 25th of January 1996. It allowed Pennine Holdings

10:46:10 1 Limited to purchase the land at 30,000 pounds per acre if the option was
2 exercised before the 25th of January 1995. And at 37,500 pounds per acre, if
3 the option was exercised after the 25th of January 1995.
4

10:46:29 5 The option could be exercised in parts, the minimal initial tranche to be 50
6 acres. The option price per acre probably represented 50 percent of the value
7 of the land and allowed for a gross profit of seven and a half million pounds
8 to be made by the option holder on that basis. The option holder, Pennine
9 Holdings Limited, had the total responsibility for the application for rezoning
10 of the lands, including the 150 acres which was to be retained by Mr. Byrne's
11 company and developed for use as a golf course and hotel.
12

13 The cost of securing rezoning and planning permission were to be borne by
14 Pennine Holdings Limited. Effectively the option would only be exercised in
10:47:16 15 the event that the lands were rezoned for development. And it proved to be the
16 case that the option was allowed to lapse when the rezoning application proved
17 unsuccessful.
18

19 In seeking to understand why Mr. Byrne granted Pennine Holdings Limited an
10:47:33 20 option over his lands in 1991 the Tribunal will examine the evidence in
21 relation to Mr. Byrne's ownership of the lands and prior applications to have
22 these lands rezoned. In particular it will examine the role played by Mr. Liam
23 Lawlor in attempts to develop and rezone these lands and his relationship with
24 Pennine Holdings Limited.

10:47:57 25
26 Mr. Frank Dunlop says that the genesis of the idea for rezoning the 400 acres
27 of Baldoyle was Mr. Liam Lawlor's. He will say that Mr. Liam Lawlor arranged
28 the initial meeting between Mr. Dunlop and Mr. John Byrne in late 1990, early
29 1991. This took place at the office of Davy Stockbrokers and was attended by
10:48:22 30 Mr. David Shubotham and Mr. Brendan Hickey. The exact date of the meeting

10:48:27 1 cannot be fixed with precision but it was probably held in the early part of
2 1991. Stemming from that initial meeting, Mr. Shubotham and Mr. Brendan
3 Hickey, through Davy Hickey Properties Limited, agreed to involve themselves in
4 the project. In the statement of Mr. Frank Dunlop received by the Tribunal on
10:48:49 5 the 22nd of November 2006, Mr. Dunlop states "I do not believe that other than
6 a general expression of interest by DHPL, that any commitments were given at
7 the first meeting."

8
9 The extent of their involvement will be inquired into in this Module. It
10:49:10 10 appears that Davy Hickey Properties Limited provided the money to Mr. Dunlop
11 which Mr. Dunlop subsequently paid to councillors for their support. Mr.
12 Dunlop says that he did not account for this expenditure to Davy Hickey
13 Properties Limited and that its principals were unaware of the fact that he had
14 used this money to bribe councillors.

10:49:33 15
16 The Tribunal will seek to establish what relationship existed as between
17 Mr. John Byrne, Mr. Liam Lawlor, Mr. Frank Dunlop, Mr. David Shubotham
18 Mr. Brendan Hickey and Davy Hickey Properties Limited in connection with the
19 proposed rezoning of the Baldoyle lands.

10:49:53 20
21 Mr. John Byrne's involvement with the Baldoyle lands. The information
22 available to the Tribunal indicates that Mr. Byrne acquired the lands between
23 Baldoyle and Portmarnock which had formally been the Baldoyle Race Course, over
24 a period in the 1960s and 1970s. Companies controlled by him eventually owned
10:50:15 25 a holding comprising some 511 acres of land at Baldoyle, Portmarnock. In the
26 course of the 1970s and 1980s Mr. Byrne's companies endeavoured to seek
27 planning permission to develop these lands for residential development.
28 However, Mr. Byrne's own attempts to do so proved unsuccessful. On the 17th of
29 December 1984, An Bord Pleanala refused permission for Endcamp Limited to
10:50:47 30 develop the lands. That was Mr. Byrne's last soul application. His subsequent

10:50:52 1 attempts to rezone the Baldoyle lands all involved intermediaries who had been
2 introduced to him by Mr. Liam Lawlor.

3
4 By December 1985 Mr. Byrne had commenced dealings with Mr. Jim Kennedy in
10:51:07 5 relation to the Baldoyle Lands. Initially this association between them was
6 limited to an attempt to develop approximately 12 acres of land adjacent to
7 Willie Nolan Road, Baldoyle. This land was zoned residential but did not have
8 planning permission for development. The company which made the planning
9 application for these lands was Edington limited. There was no public

10:51:34 10 identification of Mr. Byrne or Mr. Kennedy having any shareholding in this
11 company. By the summer of 1986 Mr. Kennedy and Mr. Byrne's association
12 increased. Mr. Kennedy had agreed through an as yet unnamed company, to
13 acquire an option over 80 to 100 acres of Mr. Byrne's lands at Baldoyle. The
14 initial oral agreement took place at a meeting attended by Mr. Byrne,
10:52:03 15 Mr. Kennedy and Mr. Lawlor which had been organised by Mr. Liam Lawlor to take
16 place at Mr. Byrne's home at Fenit, County Kerry.

17
18 The terms of this option agreement were not reduced to writing until the 4th of
19 November 1988. In the meantime, the Edington planning application to build
10:52:23 20 houses at Willie Nolan Road progressed through Dublin County Council and An
21 Bord Pleanala.

22
23 The option holding company named in the agreement was Bauval, an Isle of Man
24 company. The terms of the 1988 option granted to Bauval Limited provided it
10:52:44 25 could be exercised in tranches of not less than ten acres by Bauval Limited or
26 its nominees.

27
28 If the option holder chose to exercise his right to purchase, the price per
29 acre provided for in the option agreement was 20,000 pounds per acre.

10:53:04 30

10:53:04 1 Bauval's nominees exercised the option on three occasions. On the 6th of
2 December 1989 in respect of 11.96 acres through Sabre Developments Limited. On
3 the 24th of January 1991 in respect of 13.74 acres by Cara Sports Limited and
4 on the same date by Sabre Developments Limited in respect of 10.24 acres.

10:53:34 5
6 The exercise of the first option was followed by an immediate sale on to a
7 builder with a profit of over 140 percent to the option holder. Mr. Byrne's
8 company received approximately one-third of the consideration paid for the land
9 which was sold in the first exercise of the option.

10:53:56 10
11 The last two exercises of the 1988 Bauval option gave rise to protracted
12 litigation between the option holders and Mr. Byrne's company which were not
13 resolved within the period of Mr. Byrne's ownership of the lands. Mr. Byrne
14 sold all his interest in the Baldoyle lands in 1995 and 1998. The ultimate
10:54:19 15 purchaser of the lands Mr. Byrne's companies purchased both the option holder's
16 interests and the grantor's interests, thereby bringing the matter to a close.

17
18 The planning applications which were brought in respect of the zoned lands,
19 which were the subject of the Bauval option, were brought in the name of
10:54:39 20 Edington Limited, a company which Mr. Byrne said was his. The information
21 available to the Tribunal suggests that Mr. Liam Lawlor was involved in
22 advancing the interests of Edington Limited with Dublin County Council. His
23 apparent involvement included writing letters to the Council which purported to
24 come from Mr. Byrne's home address at Simmonscourt Lodge, Simmonscourt Avenue,
10:55:06 25 Dublin, but which were in fact drafted and typed by Mr. Liam Lawlor before
26 being furnished to the Council.

27
28 Mr. Lawlor also drafted the letters emanating from the engineer who was
29 supposedly engaged by Mr. Byrne, Edington. Mr. Lawlor's then associate
10:55:26 30 Mr. Bill Riordan was meeting with the council officials claiming to be the

10:55:32 1 representative of Mr Byrne.
2
3 Mr. Byrne said that he has never met with or had any dealings with Mr. Riordan.
4 It appears that Mr. Byrne's involvement in the affairs of Edington was minimal.
10:55:43 5 And that Mr. Byrne appears to have allowed Mr. Lawlor and Mr. Kennedy to use
6 his name when advancing the interests of Edington Limited to the Council
7
8 Mr Byrne has indicated to the Tribunal that he believed that Mr. Lawlor was
9 representing Mr. Kennedy's interests and that he was unaware of the financial
10:56:01 10 arrangements which existed between Mr. Lawlor and Mr. Kennedy.
11
12 The documents available to the Tribunal indicate that Mr. Byrne and Mr. Lawlor
13 were continuing to have dealings in relation to the Bauval option over 100
14 acres of Baldoyle when negotiations commenced with Pennine Holdings Limited for
10:56:23 15 the granting of an option over the remaining 400 acres in 1991. Mr Byrne
16 acknowledged that his introductions to the person who would subsequently be
17 involved in the Pennine Holdings options were made by Mr. Lawlor. Mr. Byrne
18 said that he believed Pennine Holdings Limited was a company owned by Davy
19 Hickey Properties Limited. Davy Hickey's principals say that Pennine was owned
10:56:53 20 by Frank Dunlop. Liam Lawlor said that it was owned 10 percent by Frank Dunlop
21 until Davy Hickey's Properties Limited disposed of their interest, after which
22 Frank Dunlop had 100 percent of Pennine Holdings.
23
24 Initially Frank Dunlop said that he formed Pennine Holdings and that Davy
10:57:13 25 Hickey funded the option and paid all expenses. Regarding the setting up of
26 Pennine. Mr. Dunlop states had in his recent statement "I cannot accurately
27 recall the sourcing of the company Pennine Holdings Limited. I believe it was
28 a shelf company provided either by Eugene F Collins solicitors or another
29 unnamed party. I do not know precisely of the beneficial ownership of Pennine
10:57:38 30 Holdings in the period from its incorporation in early 1991 to December 1993"

10:57:48 1
2 In his statement to the Tribunal Mr. Byrne said that after the option agreement
3 was entered into with Pennine Holdings he had no further dealings whatsoever in
4 the efforts of Pennine Holdings Limited to achieve rezoning of the lands.

10:58:03 5 However, the information available to the Tribunal suggests that Mr. Byrne and
6 his advisors were in frequent contact with Mr. Dunlop, Mr. Lawlor and Davy
7 Hickey Properties Limited in connection with the Baldoyle lands throughout the
8 period in which the rezoning application was being made.

9
10:58:24 10 The Tribunal will seek to establish whether Mr. Byrne has endeavored to
11 distance himself from his actual involvement in connection with the development
12 and attempted rezoning of the Baldoyle lands and if so why.

13
14 Mr. Liam Lawlor's involvement with the Baldoyle lands. In documents generated
10:58:44 15 from 1986 onwards Mr. Liam Lawlor can be shown to be identified with the
16 Baldoyle lands of Mr. Byrne. This involvement appears to have continued
17 throughout the period encompassing the review of the Dublin County Development
18 Plan which culminated in the adoption of the 1993 plan, which includes all the
19 Pennine Holdings involvement with the lands.

10:59:08 20
21 In his initial contacts with the Tribunal Mr. Byrne's belief was that the
22 initial introduction of Mr. Kennedy to him by Mr. Lawlor took place at a
23 meeting at Fenit, Co Kerry in late July/August 1986. Mr. Byrne has since
24 acknowledged that he was in error in this since the available documentation
10:59:31 25 established that Mr. Kennedy was already involved with Mr. Byrne since December
26 1985 through the company Edington. It seems likely that it was Mr. Lawlor who
27 involved Mr. Kennedy with Baldoyle but that this occurred in 1985 and not 1986.

28
29 The first recorded involvement of Mr. Lawlor himself with Baldoyle appears to
10:59:55 30 date from 1981. Mr. Byrne has told the Tribunal that as a result of a meeting

11:00:01 1 with Mr. Lawlor in Fenit in the summer of 1986, Mr. Kennedy's companies were
2 ultimately granted the option over 100 acres of Mr. Byrne's lands in Baldoyle.
3
4 The major obstacle to develop 789 of these lands was the absence of sewage
11:00:21 5 capacity and the risk of flooding. The information available to the Tribunal
6 suggests that Mr. Lawlor was involved in seeking to have these impediments
7 removed through his involvement with Dublin County Council sanitary services
8 Department, both directly and through engineers supposedly acting on behalf of
9 Mr. Byrne.

11:00:41 10
11 Mr. Lawlor is also recorded in documents as being involved in attempts to
12 resolve disputes which arose in connection with the 100 acres option between
13 the option holders and Mr. Byrne.
14

11:00:54 15 Mr. Lawlor in previous evidence before the Tribunal acknowledged that he
16 received 335, 000 pounds as his share of the proceeds of the sale of the option
17 holders rights in respect of one parcel of the Baldoyle lands exercised by
18 Sabre Developments under the Bauval option.
19

11:01:15 20 It is clear that Mr. Lawlor's involvement in the Bauval option lands was
21 primarily to advance his own financial interests.
22

11:01:34 23 Mr. Dunlop and Mr. Byrne both agree that Mr. Lawlor set up the initial meeting
24 which resulted in the Pennine options agreement being reached. However, it is
25 not apparent what benefit, if any, Mr. Lawlor received or was to receive for
26 having done so on this occasion or from whom such benefit, if any, was to be
27 received.
28

11:01:52 29 Mr. Byrne Mr. Hickey and Mr. Shubotham all say that Mr. Lawlor had no
30 involvement with Pennine Holdings.

11:01:55 1
2 The Pennine Holdings option agreement was reduced to writing by the companies
3 on the 4th of November 1991. In statements provided to the Tribunal Mr. Lawlor
4 denied that he had any interest in Pennine Holdings Limited, although he
11:02:12 5 acknowledged that he had set up the meeting with Davy Stockbrokers where the
6 parties had first met. In his dealings with the Tribunal Mr. Lawlor did not
7 reveal to the Tribunal the fact that he was a person who had a substantial
8 involvement with the plans and proposals formulated in relation to these lands.
9
11:02:33 10 He stated that he knew that the parties had entered into some form of business
11 relationship arising from his introduction but that he was not a party to it
12 and stated that to the best of his knowledge, the business relationship never
13 advanced to finality.
14
11:02:50 15 The information available to the Tribunal suggests that Mr. Lawlor was involved
16 in all aspects of the Pennine Holdings rezoning attempts, including drafting
17 motions to be put in the names of others to the Council, attending strategy
18 meetings at David Shubotham's office and at Frank Dunlop's offices selecting
19 the professional advisors to be used and attending meetings with Mr. Byrne and
11:03:16 20 also with his legal advisors.
21
22 In this Module the Tribunal will inquire into Mr. Lawlor's role in Pennine
23 Holdings Limited, his involvement with Mr. Byrne, Mr. Dunlop, Mr. Hickey and
24 Mr. Shubotham and his attempts to have the Pennine Holdings option lands
11:03:35 25 rezoned in 1993.
26
27 Brendan Hickey and David Shubotham's involvement with the Baldoyle lands.
28 Until mid 1990 Mr. Brendan Hickey had pursued a career in the construction and
29 property development industry as an employee. Mr. Shubotham was a director of
11:03:57 30 Davy stockbrokers and also involved in property development as a director and

11:04:02 1 shareholder of companies in that sector.
2
3 In mid 1990 a company called Davy Hickey Properties Limited was formed.
4 Mr. Hickey became a director of this company with his wife and two directors of
11:04:18 5 Davy Stockbrokers, Ciaran McLoughlin and Brendan Dowling. Its shareholders
6 were Mr. Hickey and Mulroy Securities Limited. Mulroy was a company which held
7 its shares in Davy Hickey Properties on behalf of a number of employees of
8 Goodbody Stockbrokers and a number of clients of that firm. It was apparently
9 the intention of Mr Hickey and Mr. Shubotham that Davy Hickey Properties
11:04:44 10 Limited would benefit from the commercial and technical expertise of Mr Hickey
11 and from the access to finance available through Mr. Shubotham to potential
12 investors in projects to be undertaken by Davy Hickey Properties Limited.
13
14 It seem that is both Mr. Shubotham and Mr. Hickey were attendees at the meeting
11:05:05 15 which took place in early 1991 with Mr. John Byrne, Mr. Frank Dunlop and
16 Mr. Liam Lawlor, although both Mr Hickey and Mr Shubotham have no recollection
17 of Lawlor being involved in the Baldoyle lands.
18
19 Mr. Hickey has informed the Tribunal that Davy Hickey Properties Limited's
11:05:24 20 involvement, such as it was, commenced after Frank Dunlop approached Davy
21 Hickey Properties and indicated that he could get an option over the Baldoyle
22 lands subject to planning permission and/or rezoning. He said that it was
23 agreed that a limited amount of money and time would be invested by Davy Hickey
24 Properties to see if the concept of the development of the lands might be taken
11:05:50 25 further. The services of consultant engineers, town planners were engaged and
26 a leisure/park company was retained to design a golf course scheme.
27
28 Mr. Dunlop in his PR capacity was charged to go and assess the mood of
29 residents and local councillors to the proposal. Mr. Hickey states that
11:06:17 30 notwithstanding his views that the concept was a good concept, the reaction of

11:06:17 1 those approached by Mr. Dunlop was largely unfavourable and when this became
2 clear, Davy Hickey Properties Limited lost interest in the project. He does
3 not say when this happened.
4

11:06:30 5 He states that Mr. Dunlop was paid 10,000 pounds in January 1992 and 1,530
6 pounds in May 1992. Mr. Hickey has no recollection of ever meeting Mr. Liam
7 Lawlor in relation to the Baldoyle lands. He states that he is unaware of
8 Mr. Lawlor having had any role in the attempted rezoning of the lands or any
9 beneficial interest in the outcome had the lands been rezoned. Mr. Hickey says

11:07:01 10 his own involvement with the lands included helping Mr. Dunlop and his
11 solicitors in negotiating the option with Mr. John Byrne and engaging and
12 working with architects and town planners to address the infrastructure and
13 environmental problems connected with the site as part of Davy Hickey's
14 feasibility study on the project. Other than this, Mr. Hickey says he had no
15 involvement in the lands or in Pennine Holdings Limited.
16

17 Mr. David Shubotham recalls a meeting having taken place with Mr. John Byrne in
18 early 1991 in relation to the Baldoyle lands. His understanding was that Mr.
19 Dunlop had an ability to obtain an option over these lands. He does not
20 believe that Mr. Liam Lawlor had any involvement whatsoever. His own

11:07:48 21 involvement including -- included the setting up of a bank account in the name
22 of East View Partnership to account for the expenses of the initial studies and
23 to keep a record of the costs in the event that the project progressed. He
24 paid the sum of 5,000 pounds, which represented the consideration for the
11:08:14 25 purchase of the Pennine Holdings option. He says that Davy Hickey Properties
26 involvement was to fund the feasibility study. And in the light of the issues
27 identified in that study he decided not to proceed further with the matter.
28

29 There are significant differences between the accounts of events given to the
11:08:34 30 Tribunal by Mr. Hickey and Mr. Shubotham and the accounts of events given to

11:08:39 1 the Tribunal by Frank Dunlop and John Byrne. They include the fact that
2 Mr. Byrne said that he was first approached by Brendan Hickey and it was he who
3 was interested in obtaining or acquiring the option over his lands not Frank
4 Dunlop. Frank Dunlop initially stated that it was Brendan Hickey who first
11:08:58 5 went to John Byrne at the suggestion of Liam Lawlor to obtain the option over
6 the lands and not him.

7
8 Mr. Dunlop later stated that he did not recall whether Mr. Lawlor approached
9 Mr. Byrne regarding the option or whether Mr. Lawlor introduced Mr. Hickey to
11:09:17 10 Mr. Byrne.

11
12 Frank Dunlop confirms that the plan to rezone the Baldoyle lands was solely
13 Liam Lawlor's genesis in that he brought the lands to Davy Hickey properties
14 and he had a substantial involvement in the plans and proposals formulised in
11:09:35 15 relation to rezoning the lands. Mr. Hickey and Mr. Shubotham say that Liam
16 Lawlor had no role to play in Baldoyle.

17
18 Mr Dunlop says that the negotiations for the option were carried out
19 exclusively by Brendan Hickey and that he had no role in it. But Mr. Hickey
11:09:53 20 says that he only assisted Mr. Dunlop in his option agreement negotiations.

21
22 Although Liam Lawlor, in his correspondence with the Tribunal, denied having
23 any involvement in the Pennine Holdings rezoning, he did state that he arranged
24 an introductory lunch or meeting at Davy Stockbrokers at which Mr. Shubotham
11:10:18 25 Mr. Hickey, Mr. Dunlop and Mr. Byrne and himself were in attendance. This is
26 apparently not recalled by either Mr. Hickey or Mr. Shubotham.

27
28 The documentation available to the Tribunal from the limited amount of
29 available documentation surrounding the Pennine Holdings rezoning application
11:10:39 30 includes telephone records and diaries of Frank Dunlop and contemporaneous

11:10:45 1 correspondence from solicitors and others.
2
3 This documentation suggests that Mr. Hickey and Mr. Shubotham were involved
4 with the Baldoyle lands from 1991 until 1993. And that their involvement was
11:11:00 5 not limited to considering an initial feasibility study. Documents record that
6 Mr. Byrne's solicitors were informed by Mr. Lawlor and Mr. Dunlop in June 1993
7 that Davy Hickey properties were no longer involved in the project.
8
9 In correspondence with the Tribunal Mr. Lawlor inferred that Davy Hickey
11:11:24 10 Properties cessation of involvement in the Baldoyle project was associated with
11 what he described as "the controversial circumstances associated with the Irish
12 Sugar Company flotation".
13
14 The motions to have the Pennine Holdings lands at Baldoyle rezoned took place
11:11:46 15 in April and May 1993 and received extensive publicity. Davies were publicly
16 identified with the project in the Irish Independent of the 27th of April 1993.
17 The day upon which the adjourned motion to rezone the Pennine option of lands
18 was to be heard.
19
20 This article claimed that the consortium behind Frank Dunlop included three
21 directors of Davy's and its members stood to make 10 million pounds profit if
22 the land was rezoned.
23
24 Davy's were at that time the Government stockbrokers engaged in selling some 25
11:12:27 25 million shares in Greencore on behalf of the Irish Government. The Minister
26 for Finance was informed that these shares had been successfully placed with
27 Irish and overseas investors but was not informed that the directors of Davy's
28 and connected companies themselves controlled some 19 million pounds of these
29 shares after the sale. This revelation caused dealing in the shares to be
11:12:53 30 suspended and a Stock Exchange inquiry and an inquiry by the Attorney General

11:12:59 1 followed. Press coverage in the first week of May 1993 on the Greencore issue
2 was highly critical of the behaviour of Davy's directors and made specific
3 reference to the fact that Davy Hickey, which was described as the property
4 investment arm of Davy's, had expressed an interest in the Pennine Holdings
11:13:20 5 plan to build a major scheme on the old Baldoyle Race Course if it was rezoned.
6

7 The role of Davy's in the placing of Greencore shares was the subject of
8 extensive adverse comment in the media at the time. As was the role of
9 councillors in connection with the motions to rezone the Pennine Holdings
11:13:42 10 lands. It is not known whether this publicity triggered Davy Hickey's
11 withdrawal of interest in the Pennine Holdings rezoning application. According
12 to Mr. Lawlor, Frank Dunlop's interest in Pennine was 10 percent before Davy
13 Hickey's properties pulled out and 100 percent thereafter.
14

11:14:03 15 A note prepared by John Byrne's solicitor on the 11th of May 1993 records that
16 Frank Dunlop was to remove Brendan Hickey and David Shubotham from the Pennine
17 board, thus perhaps suggesting that Mr. Byrne believed that Pennine had been a
18 Davy company to that point. No documents are available to the Tribunal
19 recording Davy Hickey properties decision to terminate its interest in becoming
11:14:30 20 involved in the Pennine Holdings option lands. The documents which are
21 available to the Tribunal indicate that Davy Hickey properties paid invoices
22 submitted by the architects and lawyers engaged in the project in June and
23 August 1993. Thereby suggesting that their involvement terminated by that
24 time.

11:14:54 25
26 Frank Dunlop's phone records and diaries record considerable contact between
27 Mr. Hickey and Mr. Shubotham and Mr. Liam Lawlor with Mr. Frank Dunlop
28 throughout 1991, 1992 and 1993.
29

11:15:10 30 Mr. Dunlop, Mr. Shubotham and Mr. Hickey had areas of common interest at that

11:15:16 1 time which went beyond the Pennine Holdings option lands. City West was a
2 project in which Mr. Dunlop was engaged by Davy Hickey properties to support a
3 Section 4 motion to rezone the lands which was brought before Dublin County
4 Council, the application was successful.

11:15:35 5
6 City West, according to Frank Dunlop, was another project which had been
7 identified to Davy Hickey Properties by Liam Lawlor. Frank Dunlop says that
8 Mr. Lawlor was a frequent attendee at business meetings which took place in the
9 offices of Davy Stockbrokers at which both the project at Baldoyle and the
11:15:57 10 project at City West were discussed. Mr. Hickey acknowledges that Mr. Lawlor
11 attended at a number of meetings in relation to City West but infers that
12 Mr. Lawlor attended only in his capacity as a public representative.

13
14 Mr. Dunlop's records appear to suggest that Mr. Dunlop was also in attendance
11:16:16 15 at the Pennine Holdings meetings at Davy Stockbrokers offices which is contrary
16 to what is said by Mr. Hickey and Mr. Shubotham. The question arises as to
17 whether Davy Hickey Properties Limited was involved in the rezoning process or
18 whether its involvement was limited to preparing a feasibility study to decide
19 whether to become involved. The evidence available to the Tribunal indicates
11:16:43 20 that Mr. Hickey was involved in negotiating the option which allowed Pennine
21 Holdings to bring the rezoning application. The consideration of 5,000 pounds
22 paid for the granting of the option to Mr. Byrne's company -- sorry. the
23 granting of the option by Mr. Byrne's company was paid in full by Davy Hickey
24 properties. All the professional consultants engaged to prepare the reports
11:17:10 25 on the project which would form the Pennine Holdings application for rezoning
26 were paid by Davy Hickey Properties.

27
28 The solicitors who were engaged to set up Pennine Holdings Limited were
29 suggested by David Shubotham and all of their fees incurred between 1991 and
11:17:28 30 1993 were paid by Davy Hickey Properties.

11:17:32 1
2 In April 1993 Frank Dunlop circulated the local councillors with a letter
3 indicating that the role of Brendan Hickey was as Managing Director of Davy
4 Hickey Properties, which was appointed as the management/development consultant
11:17:51 5 for the Pennine project. It was not suggested that their involvement was
6 limited to conducting a feasibility study for the purpose of establishing
7 whether to become involved at all.

8
9 In this Module the Tribunal will endeavour to ascertain the nature and extent
11:18:06 10 of Mr. Hickey and Mr. Shubotham's involvement with the attempts to rezone the
11 Pennine option lands and the nature and extent of their dealings with Mr. Liam
12 Lawlor in the context of any proposed development of the lands.

13
14 The corporate entities which will be examined in the Pennine Holdings/Baldoyle
11:18:29 15 Module. In the course of the evidence adduced in this Module reference will be
16 made to the following entities.

17
18 Endcamp Limited and Melvin Securities Limited. These companies were the owners
19 of the lands at Baldoyle throughout the period in question. They were
11:18:45 20 controlled by Mr. John Byrne and were represented by Gore and Grimes
21 Solicitors. These companies were the grantors of the option to Pennine
22 Holdings Limited in November 1991.

23
24 Pennine Holdings Limited. This is a limited liability company formed by Eugene
11:19:05 25 F Collins & Co. solicitors on behalf of its promoters in April 1991. It was
26 the vehicle intended to take the option once it was negotiated with Mr. Byrne's
27 company. The initial directors and shareholders of the company were solicitors
28 in the firm of Eugene F Collins & Co. The negotiations for the acquisition of
29 the option from Mr. Byrne were concluded prior to the end of August 1991. The
11:19:36 30 draft option agreements had been settled by the respective solicitors and were

11:19:40 1 in a position to be engrossed and sealed by the respective companies by the end
2 of August.

3
4 At this point steps were put in hand to have the original nominee shareholders
11:19:54 5 and directors retire in favour of the actual owners and directors of Pennine.
6 Eugene F Collins & Company's files are not available to the Tribunal but
7 certain correspondence passing from the firm to Mr. Hickey is, however,
8 available from which the solicitors understanding of the ownership of the
9 Pennine Holdings Limited in August 1991 may be ascertained.

11:20:21 10
11 On the 22nd of August 1991 Anthony Collins, senior partner of Eugene F Collins
12 & Co, wrote to Mr. Brendan Hickey at Davy Hickey Properties Limited in relation
13 to Pennine Holdings Limited. In his letter he confirmed that the present
14 directors and secretary were acting on Mr. Hickey's instructions and that the
11:20:44 15 shares in the company were being held for him and his nominee. Mr. Collins
16 noted that Brendan Hickey and David Shubotham were both willing to act as
17 directors of the company. And he enclosed forms for them to complete so that
18 their registration as directors of the company Pennine Holdings Limited could
19 be completed in the Companies Office.

11:21:08 20
21 Mr. Collins also drew Mr. Hickey's attention to the discussions which he had
22 had with him and with Mr. Shubotham in relation to a shareholders agreement.
23 He felt that this should now be dealt with in the reasonably near future. A
24 copy of this letter was later forwarded on to Frank Dunlop. On its face this
11:21:31 25 correspondence acknowledges that Eugene F Collins staff members, who were the
26 directors to that date, were acting as the nominees of Mr. Hickey. That
27 Pennine Holdings Limited was owned by Mr. Hickey and that it was intended that
28 Mr. Hickey and Mr. Shubotham would be the directors of the company. Mr. Hickey
29 says that this was never the case and never their intention.

11:21:57 30

11:21:57 1 He says that on receipt of the correspondence above referred to he contacted
2 Mr. Frank Dunlop and told him that there appeared to be some confusion with the
3 solicitors about the company and that Pennine Holdings Limited was his, that is
4 Mr. Dunlop's company, since it was the company that was going to take the
11:22:17 5 option.

6
7 Minutes of a meeting of Pennine Holdings Limited held on the 2nd of September
8 1991 record that Mr. Frank Dunlop and his associate Mr. Ciaran O'Byrne, were
9 the new directors of Pennine Holdings. Form B 10 was filed with the companies
11:22:37 10 registration office on the 19th of September 1991. Mr. Hickey treats the
11 appointment of Mr. Dunlop and Mr. O'Byrne as directors as evidence of a
12 correction of the apparent error on the part of the solicitors as to who their
13 clients were. No explanation has been furnished as to how Eugene F Collins
14 could have proceeded to engage with Mr. Hickey and Mr. Shubotham for months in
11:23:05 15 the mistaken belief that they were their clients if in fact Mr. Dunlop was
16 their client.

17
18 The publicly recorded information in relation to the ownership of Pennine
19 Holdings Limited was that Mr. Dunlop and Mr. O'Byrne held one share each. Mr.
11:23:22 20 Dunlop in his statement said that Davy Hickey properties had agreed to become
21 involved in the Baldoyle Race Course lands, however, they were only prepared to
22 do so if the land was rezoned. Accordingly, he formed Pennine Holdings
23 Limited.

24
11:23:37 25 It appears, however, that in fact Eugene F Collins formed Pennine and they did
26 so in the belief that Mr. Hickey was their client. Mr. Dunlop in his statement
27 has made no reference to the company solicitors believing that Mr. Hickey was
28 ever their client or to any steps taken by him to rectify that situation if
29 that is what in fact occurred.

11:24:02 30

11:24:02 1 Mr. Hickey continued to have direct dealings with Eugene F Collins solicitors,
2 even after Mr. Dunlop and Mr. O'Byrne had become directors of Pennine Holdings
3 Limited in September 1991. Davy Hickey Properties paid for legal advice which
4 had been provided by Eugene F Collins & Co. Solicitors between the 19th of
11:24:26 5 December 1991 and the 31st of March 1993. In the total amount of 3,318 pounds.

6
7 Again, the file in relation to this matter is not available to the Tribunal.
8 However, details of the solicitors charges appear in statements of account in
9 relation to the advices. From this documentation it is apparent that they were
11:24:52 10 engaged between those dates to advise on a partnership agreement.

11
12 The first invoice dated the 25th of November 1992 was raised in respect of the
13 period from the 17th of December 1991 to the 24th of November 1992. Davy
14 Hickey was recorded as being the client and the subject matter was shown to be
11:25:18 15 a partnership agreement. The invoice was sent to J & E Davy at 49 Dawson
16 Street, Dublin 2. The nature of the work was described as and I quote
17 "professional fees to cover all work done in relation to the partnership
18 agreement between the 17th of December 1991 and the 24th of November 1992
19 including considering draft of similar partnership agreement, discussing same
11:25:47 20 with you and redrafting this agreement, subsequently discussing same and
21 providing further draft together with commentary".

22
23 The fees charged for this service was 2,305.05. The bill was not discharged
24 until the 5th of July 1993, some eight months later. In the meantime, further
11:26:12 25 invoices for the same sum issued. On its face the original fee note indicates
26 that Eugene F Collins client was Davy Hickey. However, the later invoices bill
27 Pennine Holdings Limited for the same service and show that firm as the client.

28
29 A further invoice in respect of additional work carried out between the 25th of
11:26:36 30 November 1992 and the 31st of March 1993 was furnished by Eugene F Collins on

11:26:44 1 the 14th of June 1993. The detail of the work done was stated to be
2 "professional fees to cover all work in relation to the partnership agreement
3 and other ancillary matters between the 25th November 1992 and the 31st of
4 March 1993, including considering a memo of some time before, discussing the
11:27:09 5 same with Brendan Hickey, redrafting the documents and advising generally in
6 relation to it."

7
8 Again, this appears to suggest that Brendan Hickey was considered to be a
9 client of Eugene F Collins at this time. The fee advice note names Pennine
11:27:31 10 Holdings as the client and the document is addressed to Davy Hickey Properties.
11 There is no documentation available to the Tribunal which identifies the
12 partners who were to be involved in the partnership agreement or which
13 quantifies the shareholdings which they were to have in whatever corporate
14 identity or entity rather was the subject of the partnership agreement upon
11:27:54 15 which Eugene F Collins had advised between December 1991 and March 1993.

16
17 It is clear, however, that this partnership, if formed, was intended to give
18 effect to the wish of the individuals who were to be engaged in the Pennine
19 Holdings rezoning application to have their respective interests protected in a
11:28:16 20 legally binding agreement.

21
22 Mr. Hickey's recollection is that there was some initial discussion regarding
23 some form of a partnership which would have come in to effect in the event that
24 Davy Hickey properties had decided to become involved in the project. But
11:28:35 25 since they did not do so, the partnership was never finalised. His
26 understanding was that a form of partnership agreement was prepared by Eugene F
27 Collins and circulated. But he does not remember what it contained. No
28 details as to who the intended partners were to have been have been provided to
29 the Tribunal.

11:28:58 30

11:28:58 1 If Mr. Hickey's account of events is accurate it would appear to follow that
2 Davy Hickey Properties had agreed to expend an undefined sum of money in
3 connection with the possible future involvement in the Pennine option lands
4 without having had any agreement in place to provide for what would happen in
11:29:17 5 the event that Pennine Holdings Limited was successful in its rezoning
6 application.

7
8 If Davy Hickey Properties had no shareholding in Pennine Holdings Limited and
9 no legally binding agreement with its owners in place to provide for Davy
11:29:33 10 Hickey Properties Limited's involvement in the project, Pennine Holdings
11 Limited could have freely contracted with other investors in the event that
12 their own rezoning application was successful.

13
14 Equally it would appear that on that account of events there was no mechanism
11:29:52 15 through which Davy Hickey Properties Limited could recover their initial
16 expenditure incurred in paying the professional fees of the consultants used to
17 achieve this rezoning.

18
19 The publicly available documents filed in the Companies Office record Mr.
11:30:08 20 Dunlop and Mr. O'Byrne as the shareholders of Pennine in which case Mr. Dunlop
21 was a 50 percent shareholder at a minimum and a 100 percent shareholder if Mr.
22 O'Byrne was holding his share as a nominee for Mr. Dunlop. It appears that
23 when seeking to raise finance from AIB bank in May 1992 Mr. Dunlop indicated
24 that his assets included 8 percent in Baldoyle. The only asset with which he
11:30:40 25 is known to be associated with in Baldoyle is Pennine Holdings Limited. If his
26 interest was limited to 8 percent in 1992, he must have been holding his
27 registered 50 percent shareholding or the balance thereof in trust for or as
28 nominee for others.

29
11:31:00 30 As stated already Mr. Liam Lawlor in his communication with the Tribunal stated

11:31:04 1 that Mr. Dunlop's interest in Pennine Holdings was 10 percent initially and
2 only became 100 percent once Davy Hickey Properties had pulled out of the
3 venture. The Tribunal will seek to establish in this Module who the parties
4 behind Pennine Holdings were.

11:31:22 5
6 The East View Partnership. In December 1991 a bank account in the name of the
7 East View Partnership was opened with the transfer of funds of 10,000 pounds
8 from the account of Davy Hickey Properties Limited. Between February and
9 September 1992 the expenditure of East View Partnership Limited was 26,596
11:31:46 10 pounds. The last expenditure on this account was in September 1992. The
11 account was maintained in overdraft until 1998 when the overdraft was cleared
12 by City West Limited.

13
14 Mr. Shubotham says that he set up this account in the name of East View
11:32:06 15 Partnership to account for the expenses of the initial studies and to keep a
16 record of the costs if the project progressed or aborted. Since these were the
17 expenses incurred by an existing company, Davy Hickey Properties Limited, it's
18 difficult to understand why it was necessary to set up a separate account out
19 of the company to deal with these matters.

11:32:29 20
21 CHAIRMAN: Mr Shubotham says that no partnership was ever formed.

22
23 It has not been possible to trace the ultimate recipients of the funds paid by
24 these partnerships. It is not known why East View Partnerships' liability was
11:32:47 25 satisfied by City West.

26
27 City West Limited. Mr. Hickey say that City West Limited was incorporated to
28 act as the legal owner of the City West property. Its directors were
29 Mr. Hickey, Mr. Ciaran McLoughlin and Mr. David Shubotham. He say it existed
11:33:07 30 to simplify the management of the project in legal terms. The beneficial

11:33:14 1 ownership of the property as opposed to the legal ownership was with the
2 partners in the City West partnership.

3
4 Mr. Hickey says that the partners in the City West partnership overlapped to a
11:33:26 5 considerable degree with those persons who had interests in Davy Hickey
6 Properties through Mulroy securities. Davy Hickey Properties has a beneficial
7 interest in City West, as does Frank Dunlop. These interests are believed to
8 be continuing.

9
11:33:45 10 If those parties had chosen to use the City West ownership structure as a model
11 or precedent for an agreed development of the Baldoyle lands, presumably they
12 would have used a limited company to hold the legal ownership of the property
13 behind which there would be a partnership representing the shareholdings in the
14 companies or individuals who would actually own the project.

11:34:13 15
16 According to the statements of events given to the Tribunal by Mr. Dunlop,
17 Mr. Hickey and Mr. Shubotham, Pennine Holdings Limited did not occupy such a
18 role in relation to the Baldoyle option lands and no partnership existed behind
19 the Pennine Holdings Limited interest.

11:34:34 20
21 Payments and alleged payments to and from Frank Dunlop which will be the
22 subject of inquiry in this Module.

23
24 The payment of 10,000 pounds to Frank Dunlop, Shefran Limited, said to have
11:34:48 25 been paid on the 6th of January 1992. Mr. Dunlop says that 10,000 pounds was
26 paid to his company, Shefran Limited, on the 6th of January 1992. In
27 correspondence with the Tribunal Mr. Brendan Hickey confirmed that this is so.
28 There is no record available to the Tribunal of this sum having been received
29 in the accounts of Shefran Limited or Frank Dunlop. And there is no copy
11:35:16 30 available of any invoice from Shefran to companies associated with Mr. Brendan

11:35:22 1 Hickey seeking payment for this sum.
2
3 There is no contemporaneous documentation recording that this sum was paid by
4 Davy Hickey Properties Limited. The bank account of East View Partnership,
11:35:36 5 however, shows that that account was debited with the sum of 10,000 pounds on
6 the 24th of February 1992. This debit record may represent the payment by the
7 East View Partnership to Frank Dunlop of the sum of 10,000 pounds.
8
9 Mr. Dunlop has told the Tribunal that the sum of 10,000 pounds was sought by
11:36:02 10 him from Mr. Hickey in connection with the Pennine Holdings Baldoyle rezoning
11 project. Mr. Dunlop says that he told Mr. Hickey that this money was required
12 for expenses, which would include such items as printing etc. However, the
13 documents which are available to the Tribunal indicate that Mr. Dunlop invoiced
14 separately for printing expenses incurred in relation to Baldoyle. And
11:36:30 15 accordingly, these sums not paid by Mr. Dunlop out of the 10,000 pounds payment
16 made in January or possibly February 1992.
17
18 Mr. Hickey has not provided any explanation to the Tribunal as to why this
19 10,000 pounds was paid to Mr. Dunlop in the first instance. He does not
11:36:52 20 identify Mr. Dunlop's role in the project as one where Mr.-- sorry, he does
21 identify Mr. Dunlop's role in the project as one where Mr. Dunlop was to
22 "assess the mood of the residents and local councillors to the proposal". But
23 he does not say that he was to be paid by Davy Hickey Properties for doing so.
24
11:37:17 25 Mr. Dunlop say that is he did not account to Mr. Hickey for any part of the
26 expenditure of the 10,000 pounds received by him to pay expenses.
27
28 It seems, therefore, that Mr. Hickey paid the 10,000 pounds to Mr. Dunlop
29 without establishing what it was intended to be expended on and without
11:37:34 30 subsequently checking with Mr. Dunlop to see how it was in fact expended.

11:37:41 1
2 Mr. Dunlop said that he used part of this 10,000 pounds to pay six councillors
3 1,000 pounds each for their support in attempting to rezone the Pennine
4 Holdings Baldoyle lands. But that he did not disclose this fact to Mr. Hickey
11:37:58 5 or to Mr. Shubotham. In his most recent statement he says some of this money
6 may have been paid to councillors. Mr. Hickey and Mr. Shubotham say they have
7 no knowledge of any monies being sought from them to be paid to politicians in
8 relation to the Pennine holding option lands by Mr. Dunlop.
9

11:38:20 10 In the context of the 10,000 pounds payment made to Mr. Dunlop in connection
11 Pennine Holdings, two other round sum payments of 20,000 pounds each and
12 another payment of 10,000 pounds will be inquired into.
13

14 It is agreed by Mr. Hickey and Mr. Dunlop that Mr. Dunlop had been used earlier
11:38:43 15 as a conduit to pay money to politicians on behalf of City West. It is agreed
16 that on the 6th of June 1991 Frank Dunlop's company, Shefran, was paid 20,000
17 pounds which it is said was to be expended by Mr. Dunlop on payments to
18 councillors on behalf of City West. Both Mr. Hickey and Mr. Dunlop say that
19 these monies were to be used by Mr. Dunlop to make legitimate political
11:39:16 20 donations in the run up to the Local Elections to be held later that month. It
21 is also agreed that on the 11th of November 1992 Shefran Limited was paid a
22 further 10,000 pounds to be expended on behalf of City West in payments to
23 politicians.
24

11:39:35 25 Mr. Hickey and Mr. Dunlop say that these monies were to be paid as legitimate
26 political donations in the run up to the 1992 General Election. Mr. Dunlop
27 says that these two payments were made by cheques payable to Shefran, that the
28 cheques were either lodged or cashed and that the funds were used as "a
29 confluence of funds available for distribution to councillors". He says he may
11:40:04 30 have used part of the November 1992 payment of 10,000 pounds personally.

11:40:12 1
2 City West had been the beneficiary of a Council decision to rezone its lands as
3 a material contravention of the then existing Dublin County Development Plan.
4 However, it should be pointed out that both of the payments referred above post
11:40:26 5 dated that successful Section 4 motion which had been brought on the 11th of
6 March 1991.

7
8 It is not known how, if at all, Mr. Dunlop accounted to Mr. Hickey or City West
9 for his expenditure of the 20,000 pounds and 10,000 pounds raised from City
11:40:48 10 West for payments to politicians. It seems unlikely that he did so if such
11 funds formed part of a confluence, as stated by Mr. Dunlop. Particularly if he
12 had spent part of it on himself.

13
14 There is no contemporaneous documentation available to the Tribunal showing how
11:41:09 15 the 10,000 pounds said to have been paid to Mr. Dunlop in respect of the
16 Pennine Holdings Baldoyle expenses was treated in the accounts of the donor.

17
18 In the accounting exercise carried out in 2001 on behalf of Mr. Hickey to
19 enable him to comply with the Tribunal's requests for information in relation
11:41:30 20 to payments to Mr. Dunlop, each of the payments is shown as a payment to
21 Shefran Limited. In relation to the two payments said to be made for political
22 purposes, only one invoice has been made available to the Tribunal. This
23 relates to the payment of 10,000 pounds made on the 11th of November 1992.
24 This Shefran invoice was addressed to Davy Hickey Properties and it's payment
11:42:02 25 for "refresher facilities vis-a-vis professional strategic communications and
26 education". It is not known why the parties chose to treat what is said to
27 have been a payment intended to be a political donation from City West to
28 politicians in this manner.

29
11:42:22 30 In his most recent statement Mr. Dunlop now says that he may have used part of

11:42:27 1 this payment personally. It is agreed by Mr. Hickey and Mr. Dunlop that three
2 of these payments were sought from Davy Hickey by Mr. Dunlop, namely, the City
3 West 20,000 pounds payment in June 1991. The Pennine 10,000 pounds payment in
4 January 1992. And the City West 10,000 payment in November 1992.

11:42:55 5
6 Mr. Hickey has not indicated why he chose to make the two political donations
7 through Mr. Dunlop rather than directly to the politicians involved. It is not
8 clear why Mr. Hickey chose to treat the 10,000 pounds payment in respect of
9 Pennine Holdings future expenses as a payment to Shefran. Subsequent invoices
11:43:20 10 raised by Mr. Dunlop in relation to his actual expenditure on the Pennine
11 Baldoyle project were sent to Mr. Hickey at Davy Hickey Properties in the name
12 of Frank Dunlop & Associates Limited and not Shefran Limited and were treat in
13 the Davy Hickey's records as payments to Frank Dunlop & Associates.
14

11:43:42 15 The Tribunal will inquire into the circumstances surrounding the 10,000 pounds
16 payment in relation to Pennine Holdings to establish whether some or all of the
17 money was paid to politicians and if so, on whose instructions.
18

19 Payment of 20,000 pounds by David Shubotham to Frank Dunlop debited on the 16th
11:44:04 20 of March 1993 to David Shubotham's account. David Shubotham has told the
21 Tribunal that he paid Frank Dunlop the sum of 20,000 pounds in March 1993 in
22 circumstances where Frank Dunlop had raised the question of payment for work
23 carried out in respect of City West. Mr. Shubotham says that he made this
24 payment of 20,000 pounds to Frank Dunlop from his own personal funds as a
11:44:33 25 goodwill payment because he didn't believe that a request for that amount to
26 City West would have been well received because the question as to whether or
27 not City West would be a success was far from assured at that time. The
28 Tribunal will inquire into this payment because it was made at a time which
29 coincides with the timing of the submission to Dublin County Council of the
11:44:57 30 motions to rezone the Pennine Holdings lands from green belt to development

11:45:03 1 lands.
2
3 David Shubotham was only one of many investors in the City West project. And
4 it is not clear as to why he should have taken on the burden of a 20,000 pounds
11:45:13 5 payment to Mr. Dunlop from his personal funds. It is not known what became of
6 the proceeds of this 20,000 pounds payment to Mr. Frank Dunlop. It is known
7 that the payment was also made by cheque payable to Shefran Limited. The only
8 significant financial accretion recorded by Frank Dunlop at that time was the
9 lodgement of 12,000 pounds cash to his account at the Irish National Building
11:45:43 10 Society on the 15th of March 1993. And the lodgement of 1,000 pounds cash to
11 his bank account at AIB, College Street, Dublin, on the same date.
12

13 The first motion received by Dublin County Council to rezone the Pennine
14 Holdings option lands was received on the 12th of March 1993. It was signed by
11:46:07 15 councillors Creaven, MJ Cosgrave, Gilbride and Gallagher. The Tribunal will
16 inquire into the circumstances of the payment of 20,000 pounds to Mr. Dunlop
17 and the expenditure of that sum by him in the context of payments to
18 politicians.
19

11:46:24 20 The identified role of councillors in proposing motions to vary the zoning
21 status of the Pennine Holdings lands following the period of public display of
22 the 1991 Draft Development Plan which showed the lands zoned as green belt.
23

24 On the 12th of March 1993 Dublin County Council received a signed motion and
11:46:48 25 signed accompanying map showing proposed changes in the zoning of the Pennine
26 Holdings options lands and part of the Bauval option lands. The motion and map
27 were signed by councillors Liam Creaven, Sean Gilbride, Cyril Gallagher and MJ
28 Cosgrave. This was the first motion brought by councillors seeking to alter
29 the zoning of the Pennine Holdings lands as part of the review process. It
11:47:15 30 should be noted that only one of the councillors to whom Mr. Dunlop says he

11:47:20 1 paid money for their support is shown as a signatory to this motion, namely,
2 Councillor Cyril Gallagher.

3
4 This motion was listed for discussion before the special hearing of the Council
11:47:33 5 convened for the 20th of April 1993. The motion was given the council
6 reference No. 145 G1. In advance of the meeting of the 20th of April 1993 a
7 second motion and map were signed by Councillors Liam Creaven and Michael J
8 Cosgrave and listed for the same special meeting. This motion was allocated
9 the Council reference 145 G2.

11:48:03 10
11 This second motion differed in its detail from the first motion in a number of
12 ways but was also a proposal which if adopted would have altered the zoning
13 from green belt to development. It is not known why these changes to the
14 original motion were made by the proposing councillors. Presumably it was to
11:48:23 15 reflect Pennine Holdings Limited specific requests that motions in these terms
16 be lodged. According to Frank Dunlop, the motions were drafted by Liam Lawlor
17 and himself and then signed by the councillors at Frank Dunlop's request.

18
19 For ease of reference in this opening I shall refer to these motions by the
11:48:45 20 last digit in the Council reference attributed to them.

21
22 Both motion No. 1 and motion No. 2 were listed for hearing at the special
23 meeting of the Council to take place on the 20th of April 1993. At the meeting
24 the first motion was withdrawn by Councillor Creaven who then proposed the
11:49:05 25 second motion, two. In advance of dealing with the second motion and an
26 amendment to it was proposed, which was signed by councillors Creaven, MJ
27 Cosgrave and Gilbride. The amended motion was then proposed by Councillor
28 Cosgrave and seconded by Councillor Creaven. The second motion, two, in its
29 amended form, provided for a finite number of houses to be built in the areas
11:49:32 30 intended to be zoned for residential development. Whereas the original text of

11:49:38 1 motion two had provided for "new high quality housing" without quantifying the
2 number of houses. The amendment provided for "not more than 450 new houses on
3 approximately 75 acres at Baldoyle with access from the coast road and not more
4 than 450 houses on approximately 75 acres at Portmarnock".

11:50:08 5
6 The proposals contained within the amended motion two, were explained to the
7 elected members by the Deputy Dublin Planning Officer. The minutes record that
8 following discussion disorder broke out in the chamber. As a result of which
9 the meeting was adjourned until the 27th of April 1993. The amended motion
11:50:28 10 two, was again scheduled for discussion at the meeting on the 27th of April

11 1993. But on that occasion Councillor MJ Cosgrave, seconded by Councillor
12 Creaven, proposed that the motion be deferred for further consideration to a
13 date not later than the 15th of May 1993. This motion to defer was voted upon
14 and passed by 37 votes to 33. Councillors Liam Cosgrave, Tony Fox, Cyril
11:51:00 15 Gallagher, Don Lydon and John O'Halloran all voted in favour of deferral of the
16 motion.

17
18 No reason for Councillor MJ Cosgrave and Creaven seeking the deferral of the
19 motion on the 27th of April 1993 has been given by them to the Tribunal. Frank
11:51:20 20 Dunlop says this was because of the ongoing technical difficulties. But it is
21 noted that the hearing date of the motion coincides with the publication in the
22 Irish Independent newspaper of the article claiming that Mr. Dunlop, three
23 directors of Davy Stockbrokers and a number of prominent business people, stood
24 to make 10 million pounds profit if the motion to rezone was successful.

11:51:46 25
26 The motion to defer, brought in the name of councillors MJ Cosgrave and
27 Creaven, to defer consideration of their substantive motion to not later than
28 the 15th of May 1993 was to have serious and unforeseen consequences for the
29 promoters of the Pennine Holdings rezoning project.

11:52:07 30

11:52:07 1 Councillor David Healy had also listed a motion for consideration before the
2 Council on the 20th of April 1993 proposing that "all the lands shown zoned B
3 and G on the Draft Plan between Baldoyle and Portmarnock retain this zoning".
4 This was adjourned until the 27th of April 1993. At the meeting of the 27th of
11:52:32 5 April 1993 Councillor Healy was not seeking to defer his motion and he insisted
6 that it was put before the members. This motion had the Dublin County Council
7 reference No. 1451. It was heard after Councillor Cosgrave and Councillor
8 Creaven's motion to defer their motion had passed. The motion was proposed by
9 Councillor Healy and seconded by Councillor Gordon. It was carried by 43 votes
11:53:03 10 in favour, three against and 23 abstaining. Councillor Larkin was one of those
11 who voted against and councillors Liam Cosgrave, Tony Fox, Cyril Gallagher and
12 Tom Hand abstained. Councillor Lydon was not present for the vote.
13
14 As a result of the passing of Councillor Healy's motion to retain the existing
11:53:27 15 green belt status of all of the lands shown so designate in the Draft Plan, the
16 Manager advised the elected members that the earlier motion of councillors
17 Cosgrave and Creaven which had been deferred to not later than the 15th of May
18 1993 now fell. In view of the councillors -- sorry. In view of the Council's
19 Standing Orders the consequences of the passing of Councillor Healy's motion
11:53:55 20 was that no Councillor could now propose a motion which would have had the
21 effect of rescinding Councillor Healy's motion until a period of six months
22 from the date upon which Councillor Healy's motion was passed and had elapsed
23 except under special circumstances. Unless three quarters of the members
24 present at a Council meeting which was attended by not less than 50 percent of
11:54:22 25 the elected members of the Council agreed to the proposal being considered it
26 was not possible to reopen the issue of rezoning the Baldoyle green belt lands.
27 Therefore, if the Manager's advices to the Council were correct regarding
28 Mr. Cosgrave and Mr. Creaven's motion falling, the opportunity for bringing a
29 further motion to rezone the Pennine holdings lands before the 27th of October
11:54:50 30 1993 was remote.

11:54:52 1
2 Immediately following upon the passing of Councillor MJ Cosgrave's motion to
3 defer until not before the 15th of May 1993, Councillors John O'Halloran and
4 Liam Cosgrave had proposed that the Council would consider a motion that all
11:55:08 5 decisions relating to Baldoyle Portmarnock would be deferred until a site
6 meeting was held on Mr. Byrne's lands so as to allow the councillors to view
7 the lands which were the subject of the rezoning proposals. The Chairman of
8 the meeting on the 27th of April, Councillor Therese Ridge, ruled that this
9 intended motion was out of order and it was therefore not put to the members
11:55:33 10 for their vote.

11
12 At the next special meeting of the Council held on the 4th of May 1993
13 Councillor O'Halloran called into question the validity of the meeting of the
14 27th of April 1993 and the decisions taken at that meeting. He proposed a
11:55:51 15 motion which was seconded by Councillor Gilbride, proposing that "Dublin County
16 Council resolves that a site meeting be held on the lands between Baldoyle and
17 Portmarnock subject of motions No. 51, that's the Healy motion and 5(g)(ii), as
18 amended, the Cosgrave Creaven motion, of the Draft Development Plan review
19 agenda prior to any decision regarding future uses of these lands and that a
11:56:21 20 further report be made to the appropriate Development Plan meeting.

21
22 Following discussion this motion was deferred for further consideration to the
23 meeting scheduled to take place on the 6th of May. On the 6th of May their
24 previously advised motion was sought to be amended by Councillor O'Halloran and
11:56:44 25 Gilbride so as to provide for the addition of the words "the site visit to take
26 place on Tuesday the 18th of May 1993".

27
28 The Manager advised the elected members that the intended motion was out of
29 order. However, after an adjournment due to disorder in the chamber, the
11:57:03 30 Chairman, Councillor Therese Ridge ruled that because there was a doubt as to

11:57:07 1 the correctness of her decision, when ruling on the motion proposed by
2 Councillor O'Halloran and Liam Cosgrave on the 27th of April, she was ruling
3 that the Council -- sorry, that the motion now before the Council was in order
4 but that all decisions taken in relation to the matter would be referred to the
11:57:27 5 law agent for advice. She directed that a vote be taken. Councillors
6 O'Halloran and Gilbride's amended motion was carried 33 in favour, four against
7 and one abstention. Those voting in favour included councillors Liam Cosgrave,
8 Tony Fox, Cyril Gallagher, Tom Hand, Jack Lydon -- sorry, Jack Larkin and Don
9 Lydon. Apparently councillors from the Labour Party, the Progressive Democrats
11:57:56 10 and Democratic Left walked out of the meeting claiming that the vote was
11 illegal.

12
13 The passing of Councillor O'Halloran, Councillor Gilbride's motion reopened the
14 issue of the green belt and allowed for an opportunity to revisit the zoning of
11:58:20 15 the Pennine Holdings option lands to arise. Any further consideration of the
16 subject matter of motion No. 2 was dependent, however, upon the law agents'
17 advice as to whether the Council's decision on the 27th of April 1993 was valid
18 coming down in favour of those claiming the decisions to be invalid.

19
11:58:38 20 The law agent sought counsel's opinion on the validity of the matters
21 pronounced upon at the meeting of the 27th of April 1993. Counsel advised that
22 the decision of the 27th that Councillor Cosgrave and Gilbride's motion had
23 fallen, that is motion two, as a consequence of Councillor Healy's motion being
24 passed, was valid. Consequently, no further motions or other applications to
11:59:04 25 have the Pennine Holdings lands rezoned could be brought before the Council for
26 six months unless the members followed the procedure already outlined.

27
28 On the 29th of September 1993 the zoning as originally proposed by the
29 Council's staff in the draft put on public display in September 1991 was
11:59:27 30 adopted. As a result, the Pennine Holdings lands were zoned as green belt in

11:59:33 1 the Dublin County Development Plan 1993. Pennine Holdings attempted rezoning
2 had failed without Councillor Cosgrave, Creaven and Gilbride's motion ever
3 being put to a vote because of the operation of the Council's Standing Orders
4 and not as a result of a majority vote against it.

11:59:55 5
6 Steps taken by Mr. Frank Dunlop and those involved in the Pennine Holdings
7 zoning applications immediately following upon the meeting of the 27th of April
8 1993 at which the Manager advised that the Pennine Holdings rezoning motion had
9 fallen. It was obvious to those involved in the attempts to rezone the Pennine
12:00:17 10 Holdings option lands that the decision of the Council of the 27th of April
11 would have to be challenged or else interpreted by the council in a way which
12 allowed for the Cosgrave, Creaven, Gilbride motion, No. 2, to be rezoned-- to
13 rezone to be hard. This would involve Chairperson, Councillor Ridge, in
14 revisiting her decision not to allow Councillor O'Halloran's motion to be
12:00:46 15 heard.

16
17 The Tribunal has available to it the diary and telephone message records of
18 Frank Dunlop for 1993 which appear to show the following attempts made by
19 persons to contact Mr. Dunlop in the period between the 27th of April and the
12:01:03 20 subsequent Council meetings held on the 4th and 6th of May.

21
22 On the 27th of April 1993 the following persons were seeking to contact Frank
23 Dunlop by telephone that day. Brendan Hickey sought to contact him in advance
24 of the meeting. Therese Ridge, deputy Chairman of the council sought to
12:01:26 25 contact him at 2:05 in the afternoon of the meeting. Liam Lawlor phoned
26 seeking to speak to him at 2:15. David Shubotham and Brendan Hickey both
27 endeavoured to contact him in the afternoon. Councillors Tom Hand and Betty
28 Coffey requested him to phone them at home that evening. John Byrne's
29 solicitor, John Gore Grimes, requested that he phone him at home that evening.

12:01:52 30 On Wednesday the 28th of April Tom Hand, Ciaran McLoughlin of Davy's and Liam

12:01:58 1 Lawlor sought to contact him. On the 29th Liam Lawlor, Michael Cosgrave and
2 Brendan Hickey sought to contact him. On the 30th Brendan Hickey tried to
3 contact him urgently. On the 4th of May Councillor Tom Hand tried to contact
4 him in advance of the Council meeting that day. Liam Lawlor endeavoured to
12:02:18 5 contact him at midday. And councillors MJ Cosgrave, John O'Halloran and
6 Therese Ridge contacted him later that afternoon. On the 5th of May Councillor
7 John O'Halloran, Liam Lawlor, Sean Gilbride, Therese Ridge and Michael J
8 Cosgrave tried to contact him. The Tribunal will seek to establish why these
9 persons were trying to contact Mr. Dunlop at this time and whether the Pennine
12:02:44 10 Holdings attempts to rezone the Baldoyle lands were the subject of their
11 subsequent contacts.

12
13 The Tribunal also has copies of documents prepared at that time which record
14 the steps intended to be taken by the promoters of the project and by
12:03:01 15 councillors to address the problems created by the Healy motion.

16
17 On the 6th of May Mr. Dunlop received an opinion from counsel on the validity
18 of the David Healy motion decision. This expressed the opinion that the Healy
19 motion should not have been heard in view of the decision taken earlier on
12:03:26 20 Councillor MJ Cosgrave and Creaven's deferral motion. And that Councillor
21 O'Halloran was entitled to have his motion for deferral considered.

22
23 On the same day the Chairperson acknowledged at the Council meeting that she
24 may have been in error in her decision on the 27th of April in refusing to
12:03:46 25 allow Councillor O'Halloran's motion to be put.

26
27 Documents in the possession of the Tribunal show that following upon the
28 receipt of this opinion and the Council meeting of the 6th of May a meeting
29 took place between the solicitor acting for Mr. John Byrne and Mr. Dunlop and
12:04:08 30 Mr. Liam Lawlor. This meeting took place on morning Friday 8th of May 1993.

12:04:16 1 It was decided at that meeting that letters would be drafted over the weekend
2 and that Mr. Lawlor and Mr. Dunlop would come back to Mr. Gore Grimes the
3 following Monday, the 11th of May, when he would check the legal implication of
4 these letters. It appears that the letters themselves were to be drafted
12:04:34 5 either by Liam Lawlor or Frank Dunlop or both of them. The content of the
6 proposed letters is not set out in Mr. Gore Grimes attendance. However, it
7 appears from his next attendance on Tuesday the 11th of May 1993 that the
8 letters were intended to be letters to be written by MJ Cosgrave to the
9 Chairperson Therese Ridge, and from the Chairperson back to him on the subject
12:05:01 10 of the Pennine motion No. 2.

11
12 The Tribunal has obtained documents which appear to match the description of
13 those referred to in these attendances and at these meetings.

12:05:14 15 An analysis of the motions brought in the attempted rezoning of the Pennine
16 Holdings lands shows that the following councillors were involved in signing
17 the motions submitted to the Council. Councillors Liam Creaven, Michael J
18 Cosgrave and Sean Gilbride, Cyril Gallagher, John O'Halloran and Liam Cosgrave.
19 Of these councillors, Frank Dunlop claims to have paid only three. Councillors
12:05:42 20 Cyril Gallagher, Councillor John O'Halloran and Councillor Liam Cosgrave.

21
22 Four of the councillors who are alleged by Mr. Dunlop to have been paid by him
23 were not signatories to any motion. These are councillors Larkin, Hand, Fox
24 and Lydon.

12:06:00 25
26 The role of the three councillors who were allegedly paid money by Frank Dunlop
27 for their support was as follows. On the 12th of March 1993 Councillor Cyril
28 Gallagher signed motion No. 1 together with Councillors Creaven, Michael Joe
29 Cosgrave and Sean Gilbride. This motion was withdrawn by Councillor Creaven at
12:06:23 30 the meeting on the 20th of April 1993 and Councillor Gallagher did not sign any

12:06:30 1 further motion.
2
3 On the 27th of April 1993 Councillor O'Halloran proposed and Councillor Liam
4 Cosgrave seconded a motion seeking to have decisions relating to the Baldoyle
12:06:44 5 Portmarnock area deferred until a site meeting to be held in that area to allow
6 all councillors to view the lands proposed for rezoning had taken place. This
7 motion was ruled out of order by the Chairman, Councillor Ridge and Councillor
8 Liam Cosgrave did not propose any further motion.
9
10 On the 6th of May Councillor O'Halloran proposed and Councillor Gilbride
11 seconded an amendment to the motion that the site visit take place by the
12 addition of the words "the site visit to take place on Tuesday the 18th of May
13 1993". The Manager advised that the motion was out of order. However, the
14 Chairman ruled that because of a doubt as to the correctness of her decision
12:07:32 15 when ruling on the motion proposed by Councillor O'Halloran and Liam Cosgrave
16 on the 27th of April, she was now ruling that the motions before the Council
17 were in order. But that that decision taken in relation to the matters would
18 be referred to the law agent for advice.
19
12:07:48 20 The motion of Councillor O'Halloran and Sean Gilbride was carried. Mr. Frank
21 Dunlop says that this motion had either been prepared by him or prepared on
22 advice provided by him. And that Mr. Liam Lawlor was involved with him in
23 connection with the drafting and/or advice given to Councillor O'Halloran in
24 respect of this motion.
12:08:11 25
26 Councillor O'Halloran has informed the Tribunal that the motion was originally
27 prepared and executed by him exclusively without the assistance of any other
28 party and in accordance with his stated belief at the time that the councillors
29 should first inspect the lands before voting on proposing to rezone.
12:08:33 30

12:08:33 1 The councillors Creaven and MJ Cosgrave were signatories to the two motions
2 listed for hearing on the 20th of April 1993. The substantive motion which was
3 intended to secure the rezoning of the Pennine Holdings options land was that
4 proposed to be dealt with on the 27th of April 1993 by councillors Creaven, M
12:08:56 5 J, Cosgrave and Sean Gilbride but which was deferred at their request and never
6 voted upon by the Council.

7
8 Mr. Dunlop does not claim that any payments were made by him to any of these
9 three councillors for their support for the Pennine Holdings rezoning attempts.
12:09:14 10 Although he does say that with the input of Mr. Liam Lawlor, he prepared the
11 motion and obtained the councillors' signatures prior to being lodged with the
12 Council.

13
14 Councillor Gilbride acknowledges that he was asked by Frank Dunlop to sign a
12:09:31 15 motion in relation to the Pennine option lands and that he did so. He does not
16 say that he had any role in the preparation of the motion other than the
17 signing of the motion when it was presented to him by Mr. Frank Dunlop for his
18 signature.

19
12:09:47 20 Councillor Creaven does not say that Frank Dunlop played any role in relation
21 to the preparation of the motion.

22
23 Councillor MJ Cosgrave says that Frank Dunlop prepared the motion with his
24 help. However, he does not detail the help which he, Mr. Cosgrave, provided to
12:10:10 25 Mr. Dunlop for this or vice versa.

26
27 The details of the alleged payments made by Mr. Frank Dunlop to elected
28 representatives for their support in relation to the Pennine Holdings rezoning
29 applications. Mr. Dunlop alleges that payments to elected representatives were
12:10:29 30 made from the 10,000 pounds which he had received in January 1992 from

12:10:34 1 Mr. Brendan Hickey to meet expenses. In his latest statement to the Tribunal
2 he indicated that some of these funds may have been paid to councillors. While
3 Mr. Dunlop has always maintained that Davy Hickey Properties were not advised
4 as to the ultimate application of the 10,000 pounds paid by them to him, his
12:10:54 5 earlier statements do not contain the reservation that the payments may have
6 been made to politicians.

7
8 In earlier statements Mr. Dunlop said that the 10,000 pounds was given to him,
9 by him to councillors in relation to Baldoyle and is that it was only parts of
12:11:12 10 the money paid to councillors in respect of Baldoyle.

11
12 Mr. Dunlop quantified his payment to councillors Larkin, Gallagher, Hand, Fox,
13 Liam Cosgrave and Don Lydon in the sum of 1,000 pounds each. He did not
14 quantify the sum paid to Councillor John O'Halloran, saying that part of the
12:11:34 15 sum which he paid to Mr. O'Halloran during the course of the Development Plan
16 related to his support for Baldoyle.

17
18 In his most recent statement Mr. Dunlop say that is Mr. O'Halloran was paid a
19 composite sum of 5,000 pounds for his support during the preparation of the
12:11:51 20 Development Plan, partly in return for his support for the Baldoyle rezoning.

21
22 The payments alleged to have been made to councillors Larkin, Gallagher, Hand,
23 Fox, Cosgrave and Lydon were said to have been paid either immediately before
24 any vote took place relating to the Baldoyle lands or during the course of
12:12:13 25 their consideration by the Council. Payments were said to have been made by
26 and large in the environs of Dublin County Council. The window period thereby
27 created between the date of the preparation of the first motion and the last
28 motion runs from March 1993 until October 1993, which was the date of the
29 adoption the plan.

12:12:38 30

12:12:38 1 There is no documented record of Mr. Dunlop having received payment of 10,000
2 pounds in January 1992 from Davy Hickey Properties, although there is the
3 record of a payment of that sum from the accounts of East View Partnership in
4 February 1992, which may be connected with Mr. Dunlop.

12:12:59 5
6 The first motion in respect of which payment was said to have been made by Mr.
7 Dunlop was not brought for at least 14 months after the money had been received
8 by Mr. Dunlop from Davy Hickey Properties Limited or East View Partnership.
9

12:13:17 10 There is no documentary record of any link between the 10,000 pounds paid in
11 1992 and any funds lodged to the accounts of any councillors named by Mr.
12 Dunlop as having been the recipients of the sum of 1,000 pounds from him in
13 connection with the Pennine Holdings rezoning application.
14

12:13:40 15 Examination of the accounts of the councillors who were said to have received
16 1,000 pounds each by Mr. Dunlop or from Mr. Dunlop reveals that on the 20th of
17 April 1993 a sum of 1,000 pounds was lodged to Mr. Jack Larkin's saving account
18 at AIB bank. As Mr. Larkin is deceased, no explanation for the source of this
19 lodgement is available. The date coincides with the date of the first hearing
12:14:12 20 date of the Pennine Holdings rezoning motion. The motions effecting Pennine
21 Holdings lands were adjourned until the 27th of April 1993. The accounts of
22 Councillor Cyril Gallagher show that as of the 26th of April 1993 the sum of
23 1,000 pounds was lodged to his An Post account. As Councillor Gallagher is
24 deceased, no explanation for this lodgement is available to the Tribunal.

12:14:43 25
26 Between the 6th of April 1993 and the 2nd of June 1993 Councillor Tom Hand
27 purchased saving certificates to a total value of 38,040 pounds. Saving
28 certificates to the value of 15,740 pounds were purchased on the 24th of May
29 1993, 5,040 pounds purchased on the 6th of April 1993. Certificates to the
12:15:20 30 value of 12,260 pounds were purchased on the 7th of April 1993. And

12:15:28 1 certificates to the value of 5,000 pounds purchased on the 2nd of June 1993.
2
3 The composition of the sums used for these funds used to make these investments
4 is not known. And no individual 1,000 pounds component can be identified.

12:15:49 5
6 Councillor Hand is dead. His solicitors have advised the Tribunal that they do
7 not have accounts of the late Mr. Tom Hand and were not therefore in a position
8 to reconcile his funds.
9

12:16:02 10 Mr. Liam Cosgrave kept no specific records of the sources of funds lodged to
11 his account. In the period of review he purchased saving certificates to the
12 amount of 1,000 pounds on two occasions. On the 1st of June 1993 and the 16th
13 of June 1993. The source of these investments cannot be ascertained.
14

12:16:28 15 Councillor Lydon's accounts for the window period do not record any individual
16 lodgement of 1,000 pounds. Lodgements in excess of that amount were made on
17 three occasions and are attributed to Senate expenses. Lodgements made on the
18 8th of June 1993 for 400 pounds and the 9th of June 1993 for 638 pounds are
19 unspecified as regards their source.

12:16:58 20
21 Councillor John O'Halloran lodged 2,000 pounds to his T.S.B. account on the
22 15th of March 1993. And 11,060 pounds to his account on the 22nd of March
23 1993. He lodged 310 pounds to his account on the 30th of April 1993.
24

12:17:19 25 Councillor O'Halloran cannot recall the details of any of these lodgements.
26 And there is no documentation concerning the lodgements other than the bank
27 statements themselves.
28

29 While the councillors bank records allow for the possibility of their having
12:17:36 30 been paid the sum of 1,000 pounds. There are no documentary records

12:17:40 1 establishing this to be the case.
2
3 The alleged payment of 25,000 pounds by Mr. Frank Dunlop to Mr. Liam Lawlor in
4 November 1992.

12:17:51 5
6 Mr. Dunlop has told the Tribunal that demand for money was made of him by
7 Mr. Lawlor at the time of the 1992 General Election. And that in response
8 thereto he paid Mr. Lawlor the sum of 25,000 pounds. He says that this sum was
9 paid to Mr. Lawlor for his co-operation on a number of projects which were
12:18:13 10 current at that time, one of which was the Pennine Holdings Baldoyle rezoning
11 application.
12
13 Consideration of Mr. Dunlop's accounts show that the sum of 55,000 pounds was
14 withdrawn in cash from AIB College Street, Dublin, on the 13th of November
12:18:33 15 1992. It was sourced from the account of Mr. and Mrs. Dunlop at AIB bank
16 Rathfarnham Road, Dublin. This may have been the source of the funds said to
17 have been paid to Mr. Lawlor. However, there is no record of any lodgement of
18 any of these funds to the account of Mr. Lawlor.
19

12:18:55 20 In this Module the Tribunal will seek to inquire into whether or not the
21 payments above were in fact made to councillors and Mr. Lawlor and if so,
22 whether they amount to corrupt payments made in connection with the rezoning of
23 the Pennine Holdings Baldoyle Lands. The Tribunal will also seek to establish
24 the extent of knowledge of persons other than Mr. Dunlop of the making of any
12:19:20 25 such payments.
26
27 The events referred to in this opening statement occurred in the main over 13
28 years ago. Part only of the documentation generated at the time of these
29 events is available to the Tribunal. The memory of witnesses on the issues and
12:19:35 30 the detail may be effected by the lapse of time since the occurrence of these

12:19:41 1 events. There are, however, fundamental differences in the accounts given to
2 date by the witnesses to the Tribunal.

3
4 This opening statement identifies matters upon which issues arise as to the
12:19:53 5 nature of the transactions involving the parties who will be referred to in the
6 hearing. In this opening statement these matters are referred for the purpose
7 of identification of the issues with which the Tribunal is concerned in this
8 Module.

9
12:20:08 10 Listeners to this opening statement should note that it is not intended as an
11 Indictment of any person. It does not represent any preliminary finding of
12 fact by the Tribunal in relation to any of the parties named.

13
14 Insofar as any inferences arise or opinions are express in this opening, they
12:20:26 15 are my own and not those of the Tribunal.

16
17 That concludes the opening.

18
19 CHAIRMAN: All right. Thank you, Mr. O'Neill. We'll rise until half past
12:20:36 20 twelve. And I think we then will take the first witness.

21
22 MR. O'NEILL: Thank you.

23
24 **THE TRIBUNAL THEN ADJOURNED FOR A**
12:20:58 25 **SHORT BREAK AND RESUMED AS FOLLOWS:**

26
27 MR. MURPHY: There were two witnesses listed originally for today,
28 Mr. Chairman. Unfortunately Mr. Byrne is not available. And so the only
29 witness who will be heard today will be Mr. Anthony Collins who, will be my
12:41:34 30 first witness.

12:41:35 1
2 Mr. Collins, could you come forward to the witness box, please?
3
4 **MR. COLLINS, HAVING BEEN SWORN, WAS QUESTIONED**
12:41:39 5 **BY MR. DES O'NEILL AS FOLLOWS:**
6
7
8 CHAIRMAN: Good afternoon Mr. Collins
9 A. Good afternoon.
12:42:05 10
11 MR. O'NEILL: Good afternoon Mr. Collins. I'm not sure if you are familiar
12 with the procedure here before the Tribunal. But the documentation which will
13 be referred to in the course of your examination will be shown on screen here
14 and also on the small screen in front of you. And if you need to see a
12:42:20 15 physical copy of a document, we'll try and produce it for you.
16
17 You are, Mr. Collins, a practising solicitor, senior partner I think in Eugene
18 F Collins solicitors, is that so
19 A. Correct.
12:42:33 20 Q. 1 And in relation to the Pennine Holdings Limited inquiry which is being
21 conducted at present, I believe that your firm provided legal and professional
22 services in relation to Pennine Holdings in the years 1991 to 1993, is that so?
23 A. Yes. I mean, I can't, because I've, all of the files are gone, I'm not sure.
24 I know that certainly 1991 and I think we did a bit more in 1993.
12:42:59 25 Q. 2 Yes. And I think that the range of services that you provided were advisory
26 work in relation to a partnership and possibly a shareholder's agreement
27 between parties. The setting up of a company and its incorporation. And
28 subsequently, the drawing up of a document of undertaking between Pennine
29 Holdings and a residents association in Baldoyle. Are you familiar with those
12:43:33 30 matters?

- 12:43:33 1 A. I think that sounds right. I don't remember anything about a shareholders
2 agreement.
- 3 Q. 3 Well we'll go through the correspondence and we'll see exactly what the
4 references to that were.
- 12:43:44 5
6 In any event, you may be aware or perhaps possibly are not aware, depending on
7 the extent to which you read the brief of documents, which are somewhat
8 voluminous, that in early 1991 a meeting took place between a number of
9 individuals. Mr. Brendan Hickey, Mr. David Shubotham, Mr. Frank Dunlop,
10 Mr. Liam Lawlor and Mr. John Byrne. Of the gentlemen I've just mentioned
11 there, were any of those parties clients of your firm prior to January of 1991
- 12 A. No, except in an earlier capacity I'd worked with Brendan Hickey.
- 13 Q. 4 Yes?
- 14 A. When he was in the Rohan Group.
- 12:44:09 15 Q. 5 Mr. Hickey was somebody known to you professionally in his capacity as an
16 employee of a firm which was a client of yours, is that so?
- 17 A. Yes.
- 18 Q. 6 Prior to this incident?
- 19 A. Yes, at one stage, yes.
- 12:44:49 20 Q. 7 Fine. In relation to the other individuals, you'd no professional dealings
21 with them in the capacity of being their solicitor?
- 22 A. No.
- 23 Q. 8 Right. And in 1991 can you recollect who it was came to you initially seeking
24 to engage your firm to act in the matter?
- 12:45:13 25 A. When I was asked that question originally I said either Brendan Hickey or David
26 Shubotham. I think probably it was David Shubotham that came first, but I'm
27 not sure.
- 28 Q. 9 And what relationship, if any, had you had with Mr. David Shubotham?
- 29 A. Just friendship.
- 12:45:28 30 Q. 10 He was a friend, a personal friend of yours?

12:45:31 1 A. Well I always find that phrase hard to understand.

2 Q. 11 Fair enough. In any event, it wasn't something that had stemmed from a
3 professional relationship before then?

4 A. No.

12:45:42 5 Q. 12 No. And in 1991 then what did you understand the wish of Mr. Shubotham to be
6 in relation to what services you were going to provide?

7 A. Well, as mentioned, all our files, or virtually all of our files are gone, and
8 it's very hard to remember back fifteen years. But what I remember was the
9 instructions came from both David Shubotham and Brendan Hickey. And they
10 involved, I had thought actually the formation of a company but when I saw some
11 of the documentation now, I think the it was the provision of a shelf company,
12 which we already had. And then there was a draft, a partnership agreement and
13 subsequently an option agreement.

14 Q. 13 Right. Okay. Well, if we look to the broader picture. Did you identify this
15 with a potential development of some 400 acres of land in Baldoyle?

12:46:40 16 A. Oh, yes.

17 Q. 14 Right. And that I take it would be a significant and important piece of work
18 for your firm to get, isn't that right?

19 A. Oh, yes.

12:46:58 20 Q. 15 Did you understand that Mr. Shubotham and those associated with him had
21 intended if they were successful in getting an option, to develop or acquire
22 those lands in the event of their obtaining zoning or planning permission?

23 A. I don't know the answer to that really.

24 Q. 16 Uh-huh.

12:47:24 25 A. Certainly there was -- it's hard again at this distance to know. I mean, what
26 I do remember is the company was getting the option and we effectively held the
27 company to the order of David Shubotham, Brendan Hickey. There was a
28 partnership agreement which sometime in the future some people might be
29 partners of. But I'm not sure how much I knew at the beginning really, is the
12:47:54 30 short answer.

- 12:47:55 1 Q. 17 All right. Well it may help you I think possibly to see some of the
2 contemporaneous documentation generated at that time.
- 3 A. Right.
- 4 Q. 18 If we look at screen, please, to page 1362. You'll see a Companies
12:48:09 5 Registration Office document. Which is dated the 5th of February. The date is
6 on the very end there, you'll see Mr. Collins. And it's signed by the
7 solicitor in your firm, Nora Malone. And it is an application effectively to
8 effect the registration in the Companies Office of an entity which is Pennine
9 Holdings Limited, isn't that correct?
- 12:48:34 10 A. Yeah, correct.
- 11 Q. 19 So the document which gave rise to the formation of this company?
- 12 A. Yes, but just to ...
- 13 Q. 20 Yes?
- 14 A. To tie it into your earlier question.
- 12:48:44 15 Q. 21 Yes?
- 16 A. Because of the dates and because of the dates I've now seen. I believe this
17 was just one of the many companies we formed, had on the shelf waiting for
18 clients to take.
- 19 Q. 22 Is that because the objects clause was amended at a subsequent date to recite
12:48:58 20 the narrative ...
- 21 A. Also the date of it. My understanding from the documentation and to be honest,
22 I didn't read through all of the lever arch folders that I was sent. My
23 understanding is that things in relation to activity didn't get going until
24 quite a few months later. And that's why I suspect it was a shelf company.
12:49:15 25 But I can't be sure.
- 26 Q. 23 No. Well, some of the following dates might be of assistance to you in
27 ascertaining just what the relationship was as of this date, the 5th of
28 February.
- 29 A. Right.
- 12:49:31 30 Q. 24 Firstly, the option which was granted was an option which was to expire on the

12:49:37 1 25th of January of 1996?

2 A. Right.

3 Q. 25 Often these options are for a five year term. The commencement date of it

4 being therefore likely to have been the 25th of January of 1991.

12:49:59 5 A. I wouldn't necessarily agree with you. I've seen options over many lengths of

6 time. I really have no idea whether you're right or wrong.

7 Q. 26 The headings of agreement which were entered into by the parties were capable

8 of being recorded by Gore and Grimes solicitors in early February?

9 A. I'm not sure I ever saw those.

12:50:30 10 Q. 27 No, but the fact that they could recite the fact that the parties had reached

11 agreement?

12 A. I see.

13 Q. 28 Would be reflected by a statement to the effect that there were heads of

14 agreement between the parties?

12:50:34 15 A. I see.

16 Q. 29 And that was written in February. You're not aware of that?

17 A. No.

18 Q. 30 Equally, the amount of money which represented the consideration for the

19 acquisition of the option was the sum of 5,000 pounds recorded as having been

12:50:49 20 paid on the 28th of January?

21 A. I see.

22 Q. 31 Of 1991. All of those dates would be consistent with there being a company

23 formed to order after that event and that took place in early February, isn't

24 that so?

12:51:05 25 A. Well, yes, except I don't know when I was brought in to it.

26 Q. 32 Yes?

27 A. So, I mean.

28 Q. 33 Have you any reason to believe that this company set up on the -- or intended

29 to be set up from the 5th of February onwards was not a company that was being

12:51:21 30 formed specifically for the parties who were your clients rather than being

- 12:51:26 1 taken off the shelf?
- 2 A. No, no, I have no reason not to believe, you know.
- 3 Q. 34 All right. And when the parties came to you, that's Mr. Shubotham in the first
- 4 instance, I take it that for amongst, for many reasons, perhaps one of them,
- 12:51:49 5 being the fact that you were friends, that he came to you rather than to
- 6 somebody who was in the firm at a lower level?
- 7 A. I'm sure that's the case. Again, I don't have attendances to prove it but I'm
- 8 sure that's the case.
- 9 Q. 35 All right. Insofar as there was an initial instruction given, it would have
- 12:52:08 10 been to you?
- 11 A. Yes, I would have assumed so.
- 12 Q. 36 And you have absolutely no recollection at this point in time of what was
- 13 originally intended, is that so?
- 14 A. I'm not quite sure how to answer that question because ...
- 12:52:26 15 Q. 37 Well, what can you remember about it then is possibly the best?
- 16 A. As I say, all I do remember, I do remember the formation of a company. Whether
- 17 the formation or the transfer of a company, I'm not sure which. I do remember
- 18 drafting a partnership agreement. And I do remember being involved in the
- 19 option agreement as well.
- 12:52:45 20 Q. 38 Right?
- 21 A. But as to what was said at what stage, I would be -- I can't tell you at this
- 22 stage fifteen years later.
- 23 Q. 39 All right. If we look to the page 2820 on screen. You'll see that this is the
- 24 attendance of Mr. John Gore Grimes. He is writing to his?
- 12:53:01 25 A. Okay.
- 26 Q. 40 Brother and partner, Anthony Gore Grimes, on the 11th of February enclosing
- 27 copy of the Heads of Agreement which he prepared for Baldoyle?
- 28 A. Okay.
- 29 Q. 41 He is to submit title to Eugene F Collins. Glad if you would please set out
- 12:53:16 30 the special conditions I want to include it in the option agreement. Would

12:53:20 1 suggest that there was a considerable measure of agreement and the detail was
2 probably something to be worked out by the respective solicitors, so as to give
3 effect to the clients wishes. But the clients had in fact made their agreement
4 by that date?

12:53:34 5 A. I think that's fair comment, yeah.

6 Q. 42 And you, presumably, would have had a similar heads of agreement document at
7 some point in time reflecting what your client understood he was getting into
8 and what you were to draft up for him or approve for him, is that right?

9 A. Well, I just have no recollection of a heads of agreement.

12:53:54 10 Q. 43 Uh-huh.

11 A. So, you know, it wouldn't be necessary sometimes. It depends, you know,
12 clients sometimes know what they've agreed and they give instructions without
13 reference to a document or correspondence they've seen. I could well have seen
14 it but I don't remember it.

12:54:11 15 Q. 44 Uh-huh. Given that the matter here was firstly involving a large tract of
16 land, considerable amount of money would be involved, I take it, if the plan
17 was brought to fruition. It is something upon which you as a solicitor would
18 recall -- would record in detail what your client understood the agreement to
19 be, isn't that right?

12:54:32 20 A. I would expect to. I'm sure I would have had it in the original attendance.

21 Q. 45 And you probably, I suggest, would have done that in and around the same time
22 as the solicitor with whom you were going to be dealing was recording the same
23 detail?

24 A. I don't know.

12:54:47 25 Q. 46 Right. Well have you any reason to believe that in February of 1991 you were
26 not in full receipt of instruction from your client with regard to the option
27 agreement?

28 A. I really don't know.

29 Q. 47 I see. It is not of assistance to know that the solicitor you were going to
12:55:13 30 deal with on these matters was in possession of that documentation?

- 12:55:18 1 A. Not really. I mean, on the ground what happens, as you know, is clients of
2 different sides do things on different timetables. What you're saying is
3 really quite feasible, what I'm saying is I really don't know whether it
4 happened or not.
- 12:55:33 5 Q. 48 You may be aware that the company Pennine Holdings Limited was incorporated on
6 the 15th of April, that is about two months after the initiation of the process
7 which was started by your colleague, Ms. Malone, isn't that right? That's the
8 normal process through the Companies Office?
- 9 A. Sorry, the process started in April.
- 12:55:57 10 Q. 49 Yeah, no, no, it started in February as we saw from the earlier document?
- 11 A. Yes.
- 12 Q. 50 Where she indicated that she had completed all of the necessary documentation.
13 The company is then incorporated in April?
- 14 A. I see, okay.
- 12:56:10 15 Q. 51 And your first recorded communication that is available to the Tribunal is a
16 document which was generated in August of 1991, on the 22nd of August, we see
17 that at page 1488.
18
19 This document might be familiar to you, Mr. Collins. You are the signatory of
12:56:34 20 it.
- 21 A. Right.
- 22 Q. 52 Is that right?
- 23 A. I did read this when I got the papers. Okay.
- 24 Q. 53 The first matter I draw your attention to is the fact that you are writing to
12:56:46 25 Mr. Brendan Hickey?
- 26 A. Right.
- 27 Q. 54 Presumably, that is because you believed that Mr. Hickey is your client?
- 28 A. Well, in the people instructing me, as I say, were David Shubotham and Brendan
29 Hickey. I would suspect if I wrote to Brendan I had been told by the two of
12:57:01 30 them to direct the correspondence to Brendan.

- 12:57:04 1 Q. 55 Right. Well I take it that you only take instructions from your client rather
2 than anybody else, so that this is a client of yours or is there any doubt in
3 your mind about that?
- 4 A. No, no, I was acting on their instructions.
- 12:57:16 5 Q. 56 Right?
- 6 A. Absolutely.
- 7 Q. 57 You've indicated that Mr. Shubotham you believed was probably the first person
8 to come to you. Did he come to you with Mr. Hickey?
- 9 A. I can't remember that.
- 12:57:25 10 Q. 58 At some point you obviously --
- 11 A. And certainly, I have, you know, insofar as you dredge back through your
12 memories. I have a memory of meetings with David Shubotham and Brendan Hickey.
13 Whether that was a first meeting or a later meeting, I don't know.
- 14 Q. 59 Right. You knew one of them socially. You knew the other as having been an
15 employee of a company, which was a client of yours?
- 12:57:44 16 A. Well, I mean, he was very much leading the particular transaction I worked in
17 so I got to know him well, yeah.
- 18 Q. 60 Yes. So you never met both of them in the same capacity until the Pennine
19 Holdings involvement, is that correct?
- 12:57:59 20 A. I don't believe so.
- 21 Q. 61 Well, do you distinguish between either or both of them in their being your
22 client?
- 23 A. No.
- 24 Q. 62 No. So you've two individuals coming to you, they both, as far as you're
12:58:15 25 concerned, at this point, have the same interest, whatever it may be, is that
26 right?
- 27 A. That's what I would have believed, certainly.
- 28 Q. 63 And you're writing to one of them at Davy Hickey Properties Limited?
- 29 A. Uh-huh.
- 12:58:28 30 Q. 64 And did you understand that they had a joint interest or that they had a

- 12:58:32 1 similar interest in that entry?
- 2 A. I wouldn't have known the details of it but I certainly would have known they
3 were both involved.
- 4 Q. 65 Right. And as I say, both of them, as far as you are concerned, could give you
12:58:46 5 instructions on the issue that you were to act on, is that right?
- 6 A. Uh-huh.
- 7 Q. 66 Yes. And we see here the reference to Davy Hickey Properties Limited. You may
8 know that that is a company which is capable of, in its objects of developing
9 lands and doing various matters of that nature, isn't that right?
- 12:59:06 10 A. Oh, yes. I mean, I think I would have -- as far as I can remember. Again,
11 it's different with the dates. But City West would have been a matter of
12 public knowledge at that time. And I knew that Brendan Hickey was actually
13 working from 27 Dawson Street. So that's obviously why I wrote the letter to
14 him there.
- 12:59:23 15 Q. 67 Yes. So the corporate entity there, in Davy Hickey Properties Limited, as far
16 as you were concerned, was a company which could in fact carry on this
17 development if the parties chose to use it. There's no legal impediment that
18 you could see in that company carrying out this development as opposed to
19 Pennine Holdings?
- 12:59:43 20 A. Well, I wouldn't have known it. I wouldn't have known anything.
- 21 Q. 68 All right. But the parties in any event wanted a new company brought into
22 existence. They didn't want to use Davy Hickey Properties as the company to
23 conduct this option agreement, is that right?
- 24 A. Well that's assuming that my instructions from Brendan Hickey and David
13:00:06 25 Shubotham were on behalf of Davy Hickey Properties.
- 26 Q. 69 Yes?
- 27 A. I didn't consider Davy Hickey Properties my client. I considered Brendan
28 Hickey and David Shubotham my clients.
- 29 Q. 70 And why are you not writing to Mr. Hickey then at his home address or care of
13:00:23 30 Davy Hickey Properties?

13:00:24 1 A. Well, because, just normal practice. I mean, people would write me a lot of
2 letters at Eugene F Collins, it doesn't imply that they're my clients.

3 Q. 71 But when you're writing to somebody else, surely, this would come in to the
4 general desk in Davy Hickey Properties Limited. I mean, for all you know this
13:00:43 5 might be a transaction which Mr. Hickey was conducting out of Davy Hickey
6 Properties Limited for his own benefit with Mr. Shubotham?

7 A. I mean, to be honest, I think you're making a bit of a meal of it because just
8 the normal thing is a client says to you - you say 'well, where will I write to
9 you at?' and they say write to me at 'Davy Hickey Properties'. That's the end
13:01:04 10 of it. It's not a big deal.

11 Q. 72 You didn't copy this correspondence to David Shubotham?

12 A. I don't know.

13 Q. 73 If you did, is it not your normal practice that you've have a cc on the bottom
14 of it saying cc David Shubotham?

13:01:18 15 A. It would be normal, yes.

16 Q. 74 Well then --

17 A. But I haven't got the bottom of it here.

18 Q. 75 Well, you were sent the documentation?

19 A. Yes.

13:01:25 20 Q. 76 Which is very limited, as regards available documentation from you.

21 A. Sure.

22 Q. 77 You will see at page 1490?

23 A. Yeah.

24 Q. 78 The reference to there being enclosures but no cc, isn't that right?

13:01:38 25 A. No, no, I'm sure you're right.

26

27 CHAIRMAN: All right. Mr. O'Neill, it's just gone one o'clock.

28

29 MR. O'NEILL: I see.

13:01:44 30

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13:02:03 5
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CHAIRMAN: So we'll rise until two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

13:02:08 1

2

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 P.M.:

3

4

14:04:48 5

6

MR. O'NEILL: Mr. Collins, please. Page 1488 on screen, please.

7

A. Thank you.

8

Q. 79 Mr. Collins, before the break, we were looking at document 1488, which is a

9

letter that you say that you wrote to Mr. Brendan Hickey on the 22nd of August

14:05:13 10

1991, isn't that so?

11

A. Yeah.

12

Q. 80 And in your initial paragraph you say you refer to the above company which is

13

presently under the control of two solicitors in this office. The directors

14

and secretary are acting as such on your instructions and the shares are being

14:05:28 15

held in trust for you and your nominee? Isn't that right?

16

A. Correct.

17

Q. 81 So it appears to recognise the existence of two entities, one Mr. Hickey

18

himself and the second his nominee.

19

A. Yeah, I think that's fair. I suppose looking at the wording again so many

14:05:49 20

years later. I mean, I was aware that he wasn't, I wasn't holding, that he

21

wasn't the sole owner.

22

Q. 82 Yes?

23

A. I didn't know who was the owner. And so I suppose that was my way of saying

24

look, it's your instructions but it's for yourself and your nominees.

14:06:05 25

Q. 83 Yes. And I think it indicates also that the company was in existence at this

26

time, the 22nd of August, 1991, being held as a company in trust for Mr. Hickey

27

and his nominee?

28

A. Yes.

29

Q. 84 In other words, it wasn't at that point a shelf company, it had been taken off

14:06:24 30

the shelf, if I could describe it as that?

- 14:06:27 1 A. Oh, yeah absolutely.
- 2 Q. 85 And it was in the interim period of having come off the shelf and it was
3 awaiting being put into the control of the actual beneficial owners, isn't that
4 right?
- 14:06:37 5 A. Yes, but, I mean, I would just say one thing. I'm not sure whether it was a
6 shelf company or whether it was incorporated for the purpose. But whichever it
7 was, we were from before this holding it as directed by Brendan Hickey, that's
8 really it.
- 9 Q. 86 Yes. Just to get that right. Because there is an issue here, I'm afraid
14:06:57 10 Mr. Collins, as between Mr. Hickey and other witnesses as to what exactly his
11 role was in relation to this company. So therefore we have to examine it in
12 some detail, you'll appreciate that?
- 13 A. Sure. And sorry, I should perhaps add that when I say for him, I considered
14 him and Mr. Shubotham as the one instructor.
- 14:07:18 15 Q. 87 Yes. If we start firstly with the company. We know that the company in April
16 is incorporated, isn't that right? And we know that by August you are writing
17 to Mr. Hickey saying we have the company, two of our solicitors are directors
18 of it, we're holding it in trust for you, isn't that right?
- 19 A. Correct.
- 14:07:35 20 Q. 88 Now, if it had started life as a shelf company it would have had to have a
21 change to get to the status of being held in trust for Mr. Hickey. But, in
22 other words, if it had been formed to his order, it was always a company being
23 held in trust for him, you appreciate the distinction?
- 24 A. Yes, except there would be no actual unlikely to be any legal document.
- 14:07:57 25 Q. 89 No, no, it was just?
- 26 A. It would just be a question at some point in time we say you want a shelf
27 company, it's yours and we're holding it in trust for you now. That's the way
28 it works.
- 29 Q. 90 Whenever that time was it was certainly before this letter?
- 14:08:10 30 A. Oh yes.

- 14:08:10 1 Q. 91 Because this letter indicates that the company was in existence but in a
2 nominee ...
- 3 A. Sure.
- 4 Q. 92 Capacity as regards your company?
- 14:08:17 5 A. Uh-huh.
- 6 Q. 93 And it appears to suggest that he, Mr. Hickey, and his nominee, would be the
7 persons who would be considered the beneficial owners of that company at this
8 point in time in August, isn't that right?
- 9 A. Yeah, I think the intention of that was he and whoever he would nominate and
10 whoever he would nominate rather than his nominee being a specific personal
11 thing. That's the way I would read it, my own letter.
- 12 Q. 94 It goes on to say "I am enclosing a first draft of the minutes of the first
13 meeting with the directors of the company at which meeting the control of the
14 company can be transferred to yourself and your nominee". And I think that
14:08:55 15 confirms your understanding at the time that it was going to be Mr. Hickey and
16 his nominees who would come in to play as the directors and/or shareholders of
17 this company as opposed to the staff of your firm, isn't that right?
- 18 A. Oh, yeah. I mean, it was -- as I say, we were awaiting instructions.
- 19 Q. 95 Yes?
- 14:09:16 20 A. From himself and David Shubotham as to who the beneficial owners would be.
- 21 Q. 96 And when we look to paragraph five, which is the last paragraph on that page.
22 You'll see that you say "I note that yourself and David Shubotham are both
23 willing to act as Directors of the company. In that regard I am enclosing
24 herewith Form B10 which must be signed and completed", can you make that out at
14:09:38 25 the end there?
- 26 A. Yes, I can, yes.
- 27 Q. 97 Does that assist you in your recollection as to what your understanding was as
28 of the 22nd of August as to who the directors were going to be at that point in
29 time?
- 14:09:52 30 A. Well certainly it seems to be clear who the directors were.

- 14:09:56 1 Q. 98 Yes?
- 2 A. It doesn't make clear who the beneficial owners were, which was a totally
- 3 different issue.
- 4 Q. 99 Yes. The question then of ownership is a matter which we'll see at page 1490.
- 14:10:11 5 It is the last page of this letter. And you will see the penultimate paragraph
- 6 there "I have had a brief discussion with you and David Shubotham about
- 7 shareholders agreement. I feel this should now be dealt with in the reasonably
- 8 near future?"
- 9 A. I had completely forgotten that.
- 14:10:31 10 Q. 100 In the first instance, when one is forming a company like this and where there
- 11 is a shareholding. The shareholders are effectively the beneficial owners of
- 12 the company, isn't that right?
- 13 A. Well, not -- I mean, for convenience and speed.
- 14 Q. 101 Yes?
- 14:10:46 15 A. A corporate law firm would form the company.
- 16 Q. 102 Yes?
- 17 A. But from the moment, we might have two nominees who would be solicitors often
- 18 or clerks or whatever. But from the moment that the company is formed we're
- 19 effectively holding it on the instructions of our client.
- 14:11:04 20 Q. 103 Yes?
- 21 A. And that's, as I say there, maybe the convenience of having directors within
- 22 the company, convenience of having shareholders within the company for speed.
- 23 But at no stage would we have a beneficial interest.
- 24 Q. 104 No. But what was intended in this letter was to alter the position from what
- 14:11:20 25 was the status quo as of that date, which was two solicitors were directors,
- 26 they also were the shareholders of the company?
- 27 A. Yes.
- 28 Q. 105 You were writing this letter to give effect to a change of both the direction
- 29 of the company and its shareholding to Mr. Hickey and his nominee, isn't that
- 14:11:39 30 right? That's what this letter was for?

- 14:11:41 1 A. Yes, yes, I mean ...
- 2 Q. 106 And the effect of that would be that the new shareholders would be the owners
3 of the company, isn't that right?
- 4 A. Unless they in turn held in trust.
- 14:11:54 5 Q. 107 Right. Well I want to establish, firstly, what was intended. We'll see from
6 page 1489 that it records the fact at paragraph 11 there. "Only two shares of
7 one pound each have been issued. Please indicate whether you would like us to
8 allocate to a lot more shares. In order to effect the allotment we'd need to
9 know the following". So as of this date there were two shares in the company?
- 14:12:18 10 A. Uh-huh.
- 11 Q. 108 You understood that there were two individuals concerned, Mr. Shubotham and
12 Mr. Hickey, isn't that right?
- 13 A. I'm not quite sure if that's -- what I understood was that I was acting for
14 them on their instructions.
- 14:12:31 15 Q. 109 Yes?
- 16 A. The way you say concerned almost means to imply that they were the two
17 shareholders, which I have no views object.
- 18 Q. 110 Right. Did you know who the shareholders were at that time?
- 19 A. No, not as far as I can recollect. I'm not sure -- I mean, I would read that
14:12:47 20 in the way that I remember it. And that is that basically 11 was saying who
21 are we allotting these shares to. Who are going to be the shareholders and
22 give me all of those details in relation to all of the people.
- 23 Q. 111 All right --
- 24 A. And including the amount of shares to be taken by the person. That clearly
14:13:04 25 shows that I hadn't a clue.
- 26 Q. 112 Sure. You were awaiting instructions. You'd received some information. And
27 that information was such to allow you to believe that there should be a
28 shareholders agreement?
- 29 A. Well so it appears now that I've read it, yeah.
- 14:13:18 30 Q. 113 Yes. And in what circumstances would you require a shareholders agreement over

- 14:13:23 1 and above an allocation of shares to individuals?
- 2 A. Well, when there are a number of individuals it's always advisable really to
- 3 work out their rights.
- 4 Q. 114 Yes?
- 14:13:33 5 A. If you're acting for somebody who owns, say, 80 percent of a company and there
- 6 is another 20 percent shareholder you strongly advise against a shareholders
- 7 agreement because your 80 percent client has control of the company anyway. If
- 8 you are acting for the 20 percent guy you're always looking to protect his
- 9 rights further and then there are all the middle points.
- 14:13:55 10 Q. 115 Yes. In this instances you felt that the circumstances were such that a
- 11 shareholders agreement was advisable?
- 12 A. So it appears, yeah.
- 13 Q. 116 And would that -- and also it's a matter that you'd discussed with both of
- 14 them, both Mr. Shubotham and Mr. Hickey, apparently, if we go back to page
- 14:14:12 15 1490. "I've had brief discussions with both you and David Shubotham about a
- 16 shareholders agreement. I feel this should now be dealt with in the reasonably
- 17 near future".
- 18 A. Okay.
- 19 Q. 117 Is it safe to assume from that that you understood at the time that both
- 14:14:28 20 Mr. Shubotham and Mr. Hickey were going to be shareholders whether as through
- 21 nominees or otherwise in this venture?
- 22 A. I would read that in a slightly different way. I'd read it and it's only
- 23 speculation, that at this stage it had been indicated to me that there were
- 24 going to be a number of shareholders.
- 14:14:48 25 Q. 118 All right?
- 26 A. And on that basis that there should be a shareholders agreement. That's the
- 27 way that I'd read it normally, you know, but I mean, I really don't know
- 28 because it is so long ago.
- 29 Q. 119 Uh-huh.
- 14:14:59 30 A. But certainly normally when I discover that there are going to be six, seven or

- 14:15:04 1 eight shareholders. It's advisable to work-out their rights between them.
- 2 Q. 120 Right. But in this instance, you can't say whether you were aware of there
- 3 being more than the two named persons here or not. There may well have been?
- 4 A. As I say, I would read that as that they had indicated to me that there were
- 14:15:21 5 going to be a number.
- 6 Q. 121 Yes?
- 7 A. That's the way that I would read my own letter now, at this remove.
- 8 Q. 122 Right. Certainly as regards the direction of the company. Your view was that
- 9 that was going to be directed through both Mr. Shubotham and Mr. Hickey, isn't
- 14:15:39 10 that so?
- 11 A. Oh, the instructions still very much come. Sorry, am I near enough to this for
- 12 you.
- 13 Q. 123 No, you're fine.
- 14 A. No, the instructions very much continued to be as far as I was aware at that
- 14:15:51 15 stage to the two of them.
- 16 Q. 124 At this stage though they weren't the directors of the company yet and there
- 17 wouldn't be a change of directors until a meeting which was to take place on
- 18 the 2nd of September. As far as you were concerned, you were receiving your
- 19 instructions from Mr. Hickey and Mr. Shubotham and you anticipated that as and
- 14:16:15 20 from the first company meeting, which was to pass the resolutions set forth in
- 21 your letter here. That Mr. Hickey and Mr. Shubotham would be the directors of
- 22 the company, isn't that so?
- 23 A. The directors, yes and that they'd tell me who the shareholders would be.
- 24 Q. 125 Exactly. And as far as you're concerned there is no confusion and certainly
- 14:16:31 25 there doesn't appear to be any confusion about that on the face of the document
- 26 itself, isn't that right?
- 27 A. On the face of my letter, yes.
- 28 Q. 126 Do you have any recollection of Mr. Hickey getting back to you and telling you
- 29 that you got the matter entirely wrong and that he wasn't in fact ever going to
- 14:16:46 30 be a director of this company. That it was Mr. Dunlop's company not his?

14:16:52 1 A. I have no recollection of that. I did see it in some of the bits that I read.
2 And this is where the memory gets confused with what other people have said.

3 Q. 127 Yes?

4 A. But the only thing I really remember is that at some stage we were told no,
14:17:07 5 everything is to be transferred to Frank Dunlop. And I really have no idea
6 what stage that was.

7 Q. 128 Yes. Well, we'll see in the correspondence a little further that certainly
8 there was a further letter from your office on the 26th of August 1991. It's
9 at page 1491. Your colleague Mary Barrett wrote the letter. And we'll see
14:17:32 10 again that it's a letter delivered by hand on that date to Brendan Hickey in
11 Davy Hickey Properties. And it refers to your earlier letter that we have had
12 on screen. And it is enclosing the engrossments and the option agreement. And
13 the company seal. "Would you please arrange to have all three engrossments of
14 the option agreement sealed by the company in accordance with its articles
14:17:55 15 etc." and the third paragraph it says "before execution I should be obliged if
16 you would contact Anthony to ensure that all of the secretarial requirements
17 are in order?"

18 A. Uh-huh.

19 Q. 129 Again, I think this confirms as far as Eugene F Collins were concerned, Brendan
14:18:15 20 Hickey was the client, isn't that right, Brendan Hickey and/or David Shubotham?

21 A. Um. I'm not trying to be difficulty. I'm still having a slight problem with
22 the -- I got instructions from them.

23 Q. 130 Yes?

24 A. And I would at all times certainly, yes, so, yes.

14:18:35 25 Q. 131 Yes?

26 A. Sorry.

27 Q. 132 This is a second letter written to Mr. Hickey at the time. And again it would
28 appear on its face to be addressed to him, to the client, awaiting his
29 instructions. In relation to these matters. Specifically drawing his
14:18:51 30 attention to your earlier letter and saying if there is anything in the

14:18:56 1 secretarial side of it that requires clarification now is the time to do it
2 before the agreement is signed, isn't that right?

3 A. Yeah.

4 Q. 133 It afforded an opportunity for Mr. Hickey, if he wished, to correct any error
14:19:09 5 that there might have been on the part of Eugene F Collins as to his exact
6 status, isn't that right?

7 A. Well, I mean, I would read it simply that we were still -- we wanted to know
8 who were the shareholders and who would be the directors.

9 Q. 134 Yes?

14:19:25 10 A. And that we wanted to get that in place before the option is signed. I suspect
11 that is the reason. But certainly I don't know how that fits in.

12 Q. 135 Yes. I was asking you whether or not it afforded Mr. Hickey the opportunity of
13 correcting any errors because Mr. Hickey in dealing with the matter with the
14 Tribunal states -- I would ask you to look now to page 455.

14:19:56 15
16 In the middle paragraph there he refers to the letters that I have just had on
17 screen a little earlier. And he says that "on receipt of this
18 correspondence --

19 A. Sorry, could you increase the size.

14:20:10 20 Q. 136 Yes?

21 A. Thank you.

22 Q. 137 Centre paragraph?

23 A. Yeah, sure. Thanks.

24 Q. 138 Can you read it now?

14:20:15 25 A. Yeah, fine.

26 Q. 139 "On receipt of this correspondence I contacted Mr. Dunlop and told him there
27 appears to be some confusion with the solicitors about the company formation.
28 I told him that as this was his company since it was going -- I told him this
29 was his company since it was going to be the entity with which the option
14:20:33 30 agreement would be signed, he needed to instruct Eugene F Collins solicitors

14:20:38 1 accordingly".
2
3 Now, was there any confusion in your mind, Mr. Collins, as to the position and
4 were you ever contacted by Mr. Hickey to say you've got it wrong, your client
14:20:50 5 is Mr. Dunlop not me?
6 A. I really don't recall.
7 Q. 140 If you had done, I take it is something that you would have recorded somewhere
8 and you would have acted on the basis of that instruction, isn't that right?
9 A. Well, I mean, again in, practice what would have happened is I would have got
14:21:12 10 the instructions, put in these names where I'd ask for all of the details of
11 the shareholders they would have said Frank Dunlop etc. etc. That's the normal
12 way of doing it. So there mightn't necessarily be. I'd just get those
13 instructions and comply with them.
14 Q. 141 Yes. But if you were being, firstly, if it was the case that you'd made a
14:21:32 15 mistake as to who your client was. It's something that you'd remember even
16 now. Because you'd been dealing with these people for some time, you'd written
17 advises, you'd offered views as to shareholders agreements. You'd formed a
18 company on their behalf. And now you are being told that if this is true that
19 Mr. Hickey is not in fact the person involved and that it is Mr. Dunlop who
14:21:57 20 should have been writing to you, isn't that right?
21 A. Well I don't think -- were they suggesting that I should have been writing to
22 Mr. Dunlop?
23 Q. 142 No. They are suggesting that you are wrong. That there was confusion on the
24 part of the solicitors as to who the client was. That the client was Mr.
14:22:11 25 Dunlop and not Mr. Hickey. Isn't that what effectively he is saying. I'll
26 read it again --
27 A. No, no that seems to be the case.
28 Q. 143 Now, what I want to establish with you, Mr. Collins. Is whether you have a
29 recollection of being informed at the time by Mr. Hickey that you had got it
14:22:28 30 wrong, that the client in fact is Mr. Dunlop and not himself and Mr. Shubotham?

- 14:22:33 1 A. Well, I've no recollection of it again after fifteen years. I suppose you seem
2 to be laying an emphasis on it which I wouldn't quite go along with. These
3 secretarial matters in the company to be honest are boring. And you just await
4 instructions as to who to put in as shareholders and everything else. So that
14:22:54 5 if following that earlier letter of request I had then been told okay it's now
6 Frank Dunlop and things, well then we would have done that. If we were told it
7 was ten other people I would have done that. I don't think anybody would rush
8 to tell me I'm wrong. I think they'd just give me the instructions I was
9 looking for in the earlier letter. That's the way I see it.
- 14:23:14 10 Q. 144 I appreciate that there are nominee arrangements which can be made down the
11 line. But the question as to who the client is, is always something that will
12 be paramount in the mind of the solicitor?
- 13 A. Yes.
- 14 Q. 145 Because when he is dealing with the client and the client's affairs, you could
14:23:30 15 be breaching all sorts of confidentiality if you had the wrong client, isn't
16 that right?
- 17 A. Absolutely.
- 18 Q. 146 And what is being said to you here is that you got it wrong, that Mr. Dunlop is
19 the client, not Mr. Hickey. Now, is that correct or incorrect?
- 14:23:44 20 A. Well, I think it's incorrect that I've got it wrong. But for all I know, and I
21 don't know, you know, people sometimes act on other people's behalfs and give
22 instructions with their authority. So that they may have considered Frank
23 Dunlop, the client from the beginning. I have no idea. But I was getting
24 instructions through Brendan Hickey and David Shubotham.
- 14:24:09 25 Q. 147 And you considered them to be your client?
- 26 A. Uh-huh.
- 27 Q. 148 And that position continued after Mr. Dunlop became a director of the company,
28 isn't that so? You still considered Mr. Hickey to be your client even after
29 the change of directors from your company to Mr. Dunlop and Mr. O'Byrne, who
14:24:32 30 were the new directors?

- 14:24:35 1 A. I can't, you see, because I really have no idea of the timings of these things
2 I can't answer that question.
- 3 Q. 149 Well I'll assist you then?
- 4 A. Thank you.
- 14:24:45 5 Q. 150 We'll see at page 1502. There's a special resolution of the company?
- 6 A. Uh-huh.
- 7 Q. 151 And this was a resolution on the 2nd of September of 1991. It alters its
8 objects clause so as to allow for the option to be signed?
- 9 A. Yes.
- 14:25:09 10 Q. 152 And if we go back one page to 1501. We'll see that it refers to an
11 extraordinary general meeting of the company held on the 2nd of September. And
12 now if we turn to page 1505. These are the minutes of the first meeting of
13 directors. And present are the two members of your firm, Leonora Malone and
14 Simon McCormack and Mr. Frank Dunlop and Ciaran O'Byrne, I beg your pardon.
14:25:44 15 And you'll see at the very bottom of the page. It is noted that Leonora Malone
16 and Simon McCormack had consented to act as first directors of the company and
17 were deemed to have been so appointed in accordance with the Companies Act and
18 if we turn then to the next page, 1506 you'll see that there was a resolution
19 of the company where it was resolved that Frank J Dunlop and Ciaran O'Byrne are
14:26:08 20 hereby appointed to be the directors of the company.
- 21 A. Yes.
- 22 Q. 153 And the shareholding is at page 1508. Transfer of shares. The shares were
23 transferred you'll see at paragraph ten at the top of the page.
- 24 A. Yes.
- 14:26:33 25 Q. 154 Loan share to Mr. Dunlop, Mr. McCormack's to Ciaran O'Byrne?
- 26 A. Yes.
- 27 Q. 155 So there were two shares in the company originally. They were now in the
28 possession of these two persons. There had been two directors. Those two
29 directors are now the two persons, isn't that correct?
- 14:26:49 30 A. That's correct.

- 14:26:51 1 Q. 156 There is no mention of either Mr. Shubotham or Mr. Hickey as being either
2 directors or shareholders of the company?
3 A. Correct.
- 14:27:02 4 Q. 157 Isn't that right? That is the formal position vis-a-vis the records of the
5 company in the Companies Office, isn't that right? Now, unless there then is
6 some other deed of trust or shareholders agreement or nominee arrangement, at
7 this point, Mr. Hickey no longer has an interest in this company, isn't that
8 right?
9 A. That's correct, yes.
- 14:27:20 10 Q. 158 And in those circumstances, he is not a person with whom, from whom you either
11 accept instructions or communicate with in relation to the affairs of the
12 company?
13 A. Unless Frank Dunlop, the owners told me to.
- 14 Q. 159 Yes, unless he did?
- 14:27:37 15 A. Yeah.
- 16 Q. 160 But not the other way around? You wouldn't be acting on Mr. Hickey's
17 instructions?
18 A. No, but if Frank Dunlop said, continued to act and take his instructions for
19 example then of course I'd be perfectly in order to do so.
- 14:27:53 20 Q. 161 Yes, indeed.
21
22 We see at page 2617 that a month after this meeting your company is writing to
23 Mr. Dunlop. "I confirm that the relevant minutes, resolutions, associated
24 documentation has been finalised and the above company has now been transferred
14:28:14 25 to the control of yourself and Mr. O'Byrne".
26
27 As requested by Brendan Hickey I'm enclosing the following documentation".
28
29 And this is all the formal documentation of the company, isn't that correct?
14:28:26 30 A. Correct.

- 14:28:26 1 Q. 162 Being transferred on Mr. Hickey's instructions. He is neither a director or a
2 shareholder, isn't that right?
- 3 A. Uh-huh.
- 4 Q. 163 Wouldn't that convey to you that there must be a further agreement or
14:28:36 5 arrangement under which the direction and shareholding of the company Pennine
6 is being conducted by Mr. Dunlop and Mr. O'Byrne under the instruction of
7 Mr. Hickey?
- 8 A. I think that's -- sorry, say it again, please.
- 9 Q. 164 I'm suggesting to you, we've dealt with a nominee situation which existed in
14:28:59 10 relation to this company before its meeting on the 2nd of September. On that
11 occasion two members of your firm were both shareholders and the directors.
12 There is communication to Mr. Hickey before the first meeting of the company at
13 which you propose that they will be the directors, that is Mr. Hickey and
14 Mr. Shubotham, and that you will arrange a shareholders agreement in relation
14:29:24 15 to the shares. When it comes to the first meeting the two persons who you
16 believed might be the directors, that is Mr. Hickey and Mr. Shubotham, don't
17 become the directors but Mr. Dunlop and Mr. O'Byrne do become the directors,
18 isn't that right?
- 19 A. Uh-huh.
- 14:29:41 20 Q. 165 And they also become the owners of the two registered shares in the company,
21 isn't that right? And there's no mention whatsoever of Mr. Hickey and
22 Mr. Shubotham. I'm asking you whether in those circumstances as a matter of
23 probability since Mr. Hickey is continuing to give instructions in relation to
24 the company, that he has a relationship with Mr. Dunlop and Mr. O'Byrne in
14:30:07 25 which they are nominees of his in the operation of the company?
- 26 A. Well, I think -- I don't know how you could come to that presumption I have to
27 say.
- 28 Q. 166 I see.
- 29 A. If I could just go back. I formed this company as it turns out now, as I say,
14:30:24 30 I thought it was a shelf company. Formed it, it would seem, for Brendan Hickey

14:30:28 1 and David Shubotham. I would be looking to them for our costs. I looked for
2 them for information as to who the shareholders would be. They must have given
3 it to me between the dates you've just mentioned. I then would have done all
4 the things that they requested me to do, arranged the transfers to Frank Dunlop
14:30:47 5 and then I'd naturally arranged all of this and then naturally gone back and
6 said shall I send everything to him now. That would be perfectly normal.
7 Similarly I'd be looking to them for the costs, I don't know. I don't know if
8 it did happen.

9 Q. 167 Are you of the belief that at this point in time, whatever interest Mr. Hickey
14:31:05 10 and Mr. Shubotham had in the venture, they were transferring in total to Mr.
11 Dunlop and Mr. O'Byrne?

12 A. I really don't know at this remove.

13 Q. 168 Do you think that Mr. Dunlop and Mr. O'Byrne were going to be involved in the
14 project?

14:31:24 15 A. You're asking me questions I can't answer really. I'd like to but I can't.

16 Q. 169 Uh-huh. If we look to 1993, Mr. Collins, at page 2125. Here is another letter
17 from your firm to Mr. Dunlop. And the background to this letter is that Mr.
18 O'Byrne has indicated that he is resigning as a director because of matters
19 which we needn't concern ourselves with. But it involves the appointment of a
14:31:58 20 new director to substitute for him. And it involves the transfer of his
21 shareholding. Right?

22 A. Right.

23 Q. 170 Now, and we'll see, obviously whoever it was in your firm received instructions
24 on these issues as we see in the second paragraph in order to record this
14:32:16 25 resignation and to deal with some other related matters, I have prepared
26 minutes of a meeting which yourself and Ciaran must hold to record and approve
27 certain matters. And there then are the minutes which set out in the
28 penultimate paragraph there is "Ciaran is also a shareholder. I have provided
29 that his share be transferred although I have not identified the transferee.
14:32:40 30 Perhaps you might deal with this".

- 14:32:42 1
- 2 Suggesting that Mr. O'Byrne's role here was not that he had a beneficial
- 3 ownership but that he was there in a nominee capacity. That upon his
- 4 resignation as director he would also be resigning effectively or transferring
- 14:32:57 5 his shareholding in the company, isn't that so?
- 6 A. Yeah, well, I mean, put it in the context. Frank Dunlop is a very strong
- 7 personality and a very dominant personality. I don't have any recollection of
- 8 having met Mr. O'Byrne. Therefore, at this stage, obviously I would do as
- 9 requested by Frank Dunlop. And obviously, for somebody to sign a share
- 14:33:17 10 transfer they have to agree to do so. That that was up to that guy.
- 11 Q. 171 So are you agreeing with me then that as a matter of probability Mr. O'Byrne's
- 12 role here was as a nominee, both in his director capacity and as shareholder?
- 13 A. It's certainly possible. But I'm not very keen on the matter of probability
- 14 when I really don't know.
- 14:33:36 15 Q. 172 All right. Well you knew at the time, obviously?
- 16 A. 13 years ago.
- 17 Q. 173 This letter concludes at page 2127. And again, in the penultimate paragraph
- 18 there. "You will notice that I am also sending a copy of this letter with its
- 19 enclosure to Brendan Hickey" do you see that?
- 14:34:01 20 A. Yes.
- 21 Q. 174 We are now two years after the date upon which Mr. Dunlop and Mr. O'Byrne
- 22 became directors of the company. And presumably, ran the company from then on.
- 23 Do you know of any reason why Mr. Hickey would be receiving documentation in
- 24 relation to the transfer of shares and the new director if he was not a person
- 14:34:25 25 who had a, who had an interest, if I put it that way, in the affairs of Pennine
- 26 Holdings Limited?
- 27 A. Well, I would suspect that I sent that to Brendan Hickey because Frank Dunlop
- 28 asked me to. I suspect that but I don't know. But that would certainly be the
- 29 most likely explanation for it.
- 14:34:46 30 Q. 175 And that is presumably because he, Mr. Hickey, would still be a person with an

- 14:34:52 1 interest in the affairs of the company. It wouldn't have been sent to him for
2 nothing, isn't that right?
- 3 A. I don't know. You're making the presumption. It sounds reasonable.
- 4 Q. 176 You don't have a recollection of the shareholders agreement that was intended
14:35:19 5 to be entered into by the parties. But you believe that somebody was going to
6 enter into a shareholders agreement which would control the shareholding of
7 Pennine Holdings Limited, is that right?
- 8 A. Yeah, I mean, as I say, I was -- I had no recollection whatsoever of a
9 shareholders agreement. And as I also said, what I would recommend in a case
14:35:44 10 where I understand that there are going to be a few shareholders, a number of
11 shareholders.
- 12 Q. 177 Well you now find that the advices that you'd given on the 22nd of August
13 apparently aren't taken up insofar as nobody comes back to you to draw a
14 shareholders agreement.
- 14:36:05 15 A. As far as I can remember. But, as I say, I literally don't know because the
16 files are all gone.
- 17 Q. 178 Right. But you do know that Mr. Hickey came back to you in relation to another
18 agreement called partnership agreement, isn't that right?
- 19 A. I would have thought that was at a much earlier stage but I'm not sure.
- 14:36:22 20 Q. 179 Well, the period we're talking about now is September of 1991. We have --
21 A. We're going back, to yeah, okay.
- 22 Q. 180 This was only to indicate that as of 1993 Mr. Hickey was still interested, if I
23 can put it at its most neutral, in the affairs of the company?
- 24 A. Yes.
- 14:36:43 25 Q. 181 I say that because he received all of the documentation in relation to the
26 change of director and the shareholding. Whether it was as a result of his
27 having an interest in the company or as a result of an instruction given to you
28 by Mr. Dunlop which you cannot recall?
- 29 A. Yeah. I just don't know the time when I did that option agreement.
- 14:37:08 30 Q. 182 Yes?

- 14:37:08 1 A. I would have thought it was earlier than that but I may be wrong.
- 2 Q. 183 Well, I'll just give you a very brief chronology of the events?
- 3 A. Okay.
- 4 Q. 184 Insofar as we see them at present. The consideration for the option agreement
- 14:37:23 5 was paid on the 28th of January of 1991.
- 6
- 7 Pennine Holdings Limited documentation was completed by your office on the 5th
- 8 of February 1991 and submitted to the Companies Office.
- 9
- 14:37:40 10 In April 1991 the company was incorporated as a company in Ireland.
- 11
- 12 Between then and August 1991 you indicated to Mr. Hickey that you were holding
- 13 the company in trust for him and the shareholdings were being held as nominees
- 14 for him.
- 14:38:03 15
- 16 On the 22nd of August you wrote indicating that you understood that the
- 17 directors were to be Mr. Hickey and Mr. Shubotham. And you required
- 18 instructions as to the shareholding and you advised that a shareholders
- 19 agreement should be entered into in addition to the matters which had taken
- 14:38:23 20 place
- 21 A. Yes.
- 22 Q. 185 That brings you to a date on the 22nd of August of 1991.
- 23
- 24 Now, after that date on the 2nd of September the company has its first meeting.
- 14:38:37 25 It appoints not Mr. Hickey, Mr. Shubotham, but Mr. Dunlop and Mr. O'Byrne as
- 26 the directors. No shareholders agreement apparently is drawn up in respect of
- 27 their shareholding. And the matter then moves to a partnership agreement being
- 28 discussed and advised on by you, isn't that right?
- 29 A. What date was that?
- 14:39:03 30 Q. 186 You bill for it from a date on the 17th of December 1991 and that runs

14:39:10 1 continuously until the 29th of March of 1993?

2 A. Yeah, I would have put the discussions about the -- and the redraft, the draft

3 and the redraft of the partnership agreement earlier that year. But, again, I

4 could be completely wrong. I would have put it sort of in July and August.

14:39:34 5 But I really don't know.

6 Q. 187 Okay. Well your bill might help.

7

8 If we look to page 1793.

9 A. Sure.

14:39:41 10 Q. 188 And this is a fee note?

11 A. Okay. Well then I'm obviously wrong.

12 Q. 189 It's, firstly, directed to Davy Hickey. If we see at the top there. It's

13 dated the 25th of November of 1992. It's almost eleven months after the work

14 commenced.

14:40:15 15 A. Right.

16 Q. 190 And it's in regard to a partnership agreement.

17

18 It reads "to professional fees to cover all work done in relation to the

19 partnership agreement between the 17th of December 1991 and the 24th of

14:40:29 20 November 1992"

21 A. Right.

22 Q. 191 So that probably is the period?

23 A. No, no, well I'm definitely wrong in my recollection then.

24 Q. 192 So instead of a shareholders agreement coming into place. Certainly we know

14:40:41 25 that a partnership agreement was discussed, isn't that right?

26 A. Yes.

27 Q. 193 And to put this partnership in context?

28 A. Except, sorry ...

29 Q. 194 Yes?

14:40:51 30 A. I just -- you know, it's not impossible that some work was done on this

- 14:40:57 1 partnership agreement before these dates and this is a continuation bill, I
2 just don't know, that's the only point I make.
- 3 Q. 195 There is another continuation bill which starts on the 25th of November 1992
4 and runs from then to the 28th of March 1993?
- 14:41:12 5 A. Right.
- 6 Q. 196 '93. So I suspect your practice was to charge for work between those dates
7 rather than to have a composite figure including dates before that?
- 8 A. Yeah.
- 9 Q. 197 What was being considered here was a partnership agreement?
- 14:41:32 10 A. Uh-huh.
- 11 Q. 198 And your work involved the consideration of a similar partnership agreement.
12 Can we take it from that, that Mr. Hickey came to you with an agreement and
13 said look, this is an arrangement that I have. Would it be suitable for this
14 particular venture or does it require tweaking or amendment to reflect the
15 particular circumstances of my relationship here?
- 16 A. I think that's a reasonable assumption.
- 17 Q. 199 And this was discussed. You looked at it and obviously felt it did require
18 amendment. It was redrafted. Then there was further discussion and then it
19 required yet further redrafting, isn't that right?
- 14:42:22 20 A. Yes.
- 21 Q. 200 And this work was charged out at 1,875 pounds at the time. Is that ten hours
22 work or more or less?
- 23 A. Oh, I don't know what my rates were in 1992.
- 24 Q. 201 Uh-huh.
- 14:42:41 25 A. Sorry.
- 26 Q. 202 But certainly it involved an amount of time and effort on your part, focussing
27 upon the particular issues that were involved here, the drafting, redrafting of
28 the partnership agreement, isn't that right?
- 29 A. Yes.
- 14:43:01 30 Q. 203 Now, did you understand that Mr. Hickey and Mr. Shubotham already had a

14:43:05 1 business relationship which regulated their relationship?

2 A. Between David Shubotham and Brendan Hickey.

3 Q. 204 Yeah?

4 A. I wasn't aware. Not to my knowledge. Again, I've no ...

14:43:17 5 Q. 205 Well they came to you in relation to a joint venture?

6 A. Well, sorry, I knew they were in Davy Hickey together, yes, of course. And I

7 think they were in City West together as far as I know, yes.

8 Q. 206 And do you remember who the intended partners in this partnership agreement

9 were, was it to be Mr. Hickey, Mr. Shubotham, Mr. Dunlop, Mr. Lawlor,

14:43:40 10 Mr. Byrne, any of the other parties whom we can see involved in the Pennine

11 rezoning?

12 A. I have, as I sent was when I got originally a request from the Tribunal. I

13 have no recollection of any person in that agreement. I believe it was all

14 totally in blank. And I don't believe I was ever informed who the partners

14:44:06 15 were going to be.

16 Q. 207 Yes?

17 A. That's the best of my recollection.

18 Q. 208 Were you advising Mr. Hickey or Mr. Shubotham in this aspect of it? I know

19 that so far you've indicated that their interests were synonomous in relation

14:44:26 20 to the initial instruction which related to the forming of Pennine, we're now

21 talking about the partnership agreement. Was there any change in the

22 situation?

23 A. I don't recall ever having a change in that area, no, it was irrelevant.

24 Q. 209 So you weren't advising one as against the other?

14:44:46 25 A. No, certainly not.

26 Q. 210 So the partnership was to be with third parties, who are not your clients isn't

27 that correct?

28 A. That's my recollection. As I say, it was all blank. But also, sorry, I think

29 I wasn't even aware if David Shubotham and Brendan Hickey were going to be

14:45:04 30 partners either. It was the parties, as far as I can recall, were simply not

- 14:45:09 1 mentioned.
- 2 Q. 211 But the person who you were advising was?
- 3 A. Who I was taking instructions from was Brendan Hickey and David Shubotham, yep.
- 4 Q. 212 You can't think of any reason, I take it, at this point in time, why they would
- 14:45:28 5 be asking you to advise parties other than themselves. Put another way. If
- 6 somebody wanted particular advice for their own interest, you wouldn't expect
- 7 them to have to come through Mr. Hickey and Mr. Shubotham to get that advice
- 8 from you. They'd go to their own solicitor, isn't that right?
- 9 A. No, it would work a slightly different way. When there are multiple people
- 14:45:52 10 involved somebody has to draft agreement on behalf of one or in this case two
- 11 people. What would then happen in the ordinary course, which I don't believe
- 12 happened here, but I don't know. Is that that be sent out to the other parties
- 13 who would be said please feel free to ask, get independent advice from your own
- 14 solicitor, that's the normal way it would happen.
- 14:46:13 15 Q. 213 In this instance it wasn't forming a normal pattern because you weren't asked
- 16 to send this draft to anybody else for their views and you were not asked to
- 17 consider their amended version of it. You were advising solely your client
- 18 who came to you with a draft already prepared and you amended it?
- 19 A. Well, no, I would again look at it in a slightly different way. I was to draft
- 14:46:36 20 the partnership agreement. I was given the assistance of a template which was
- 21 already in existence.
- 22 Q. 214 All right?
- 23 A. And again, and I don't know what happened in this case. The normal thing would
- 24 be either you would be then instructed to send it out to other parties in due
- 14:47:00 25 course or you'd give it to your clients and they send it to other parties in
- 26 due course. And in each case the others would be expected to say are you happy
- 27 with this or do you want to take independent advice. I don't recall what
- 28 happened after I did the redraft of this.
- 29 Q. 215 Well, what is clear from it is that the draft that you were given was something
- 14:47:10 30 that you would not advise your client to sign in the form in which it was in

- 14:47:14 1 the first instance because you suggested its amendment, isn't that right?
- 2 A. Oh, well I mean there are very few documents that you can't improve on.
- 3 Q. 216 Sure. And having amended it, it then came back to you again and required
- 4 further amendment and discussion?
- 14:47:32 5 A. So it seems, yes.
- 6 Q. 217 And you then amended it a second occasion and gave it, presumably, to
- 7 Mr. Hickey and that brought matters up-to-date to the 25th of November 1992,
- 8 isn't that right?
- 9 A. So.
- 14:47:54 10 Q. 218 So you'd been advising on this matter for almost a year?
- 11 A. Yeah, I mean, I -- again, I'm surprised at that but it looks like you're right.
- 12 Q. 219 And you have no recollection as to who the parties were or how many parties
- 13 were involved or what issues required the amendments on two occasions that you
- 14 were involved with?
- 14:48:15 15 A. No. I mean, just in that again dredging back in the mind. I don't believe
- 16 there were major issues. And certainly insofar as the parties involved. As I
- 17 said to you before, I believe that the document was in blank at all times and I
- 18 wasn't informed who were going to be the parties at that stage.
- 19 Q. 220 I presume that we can take it that it was in relation to the Pennine option?
- 14:48:42 20 A. I would presume so too, yes.
- 21 Q. 221 And it's addressed to Davy Hickey, as we see?
- 22 A. Yes. It's actually addressed. I beg your pardon. I just notice as you put it
- 23 up in front of me there. My client is stated to be Davy Hickey. It's also
- 24 addressed to J and E Hickey, so I don't know.
- 14:49:08 25 Q. 222 I think we see also that you sent a reminder for a payment of that invoice on
- 26 the 3rd of February 1993. At page 1837.
- 27 A. That would be our accounts Department, yes.
- 28 Q. 223 Right. Now ...
- 29 A. And again, some how it seems to have been addressed to J&E Davy..
- 14:49:39 30 Q. 224 Yes?

- 14:49:40 1 A. Which probably was not right.
- 2 Q. 225 Presumably following on from the information on the original invoice your
3 accounts Department would have sent the bill to them as a reminder?
- 4 A. Uh-huh.
- 14:49:50 5 Q. 226 You'll see this is a document which has come from the recipient and not from
6 your records?
- 7 A. Right.
- 8 Q. 227 There is a date at the top of it, the 8th of February. Which is when it was
9 received apparently by Davy Hickey?
- 14:50:02 10 A. Okay.
- 11 Q. 228 And do you remember being contacted after that date because if we look to page
12 1792. It appears that a further invoice was issued on the 26th of March 1993.
- 13 A. Sorry, 179?
- 14 Q. 229 Sorry, 1792. At the very bottom of the page you will see the date the 26th of
15 March 1993?
- 14:50:32 16 A. I see. I'm just trying to work-out how that meshes in with the date up the
17 top.
- 18 Q. 230 The date on the top, the 25th of the 11th '92 was the original invoice date.
19 But the original invoice was billed to Davy Hickey?
- 14:50:50 20 A. Oh, right well then obviously I would have been told to address it to Pennine
21 Holdings.
- 22 Q. 231 Yes?
- 23 A. Uh-huh.
- 24 Q. 232 Now, I take it that that was because the recipient of the invoice said to you
14:51:03 25 that it should be billed to Pennine Holdings and not to Davy Hickey Properties?
- 26 A. That would be the most likely. I mean whether it was from the recipient or
27 whether it was, say, from Frank Dunlop ringing and saying that should be
28 addressed to Pennine Holdings, I don't know. But ...
- 29 Q. 233 Yes?
- 14:51:24 30 A. And I would suspect then that that must have replaced the earlier bill then,

14:51:29 1 isn't that right.

2 Q. 234 Exactly?

3 A. Yeah.

4 Q. 235 Contains exactly the same information. But the changes that have been effected

14:51:34 5 to it are that Pennine Holdings is shown as the entity which is to be billed

6 for the service?

7 A. Okay. Right.

8 Q. 236 We're still talking here about the partnership agreement that involved

9 Mr. Hickey?

14:51:53 10 A. Right.

11 Q. 237 At least and whoever else it was who was involved with him. And this is to be

12 billed to Pennine Holdings Limited?

13 A. Right.

14 Q. 238 Which is the company of which Mr. Frank Dunlop and Mr. O'Byrne are the

14:52:07 15 directors, as of this time?

16 A. Okay.

17 Q. 239 Yes?

18 A. Yes, yes.

19 Q. 240 Does that make it, in your view, likely that Mr. Dunlop and Mr. Hickey had a

14:52:20 20 joint interest in the partnership advises which you were given, giving rather,

21 given that Pennine Holdings Limited was being billed for this service?

22 A. Yeah, I mean, I suppose when you've got a bill outstanding your main aim is to

23 get it paid. And if you're told to address it to somebody else you do, it, you

24 know.

14:52:43 25 Q. 241 Yes?

26 A. Provided that they, you know, that it's all of the parties are agreed, you

27 know.

28 Q. 242 Yes. Can you remember being given any explanation as to why it was that it

29 should be done in this particular?

14:52:55 30 A. I can't, no.

- 14:52:58 1 Q. 243 It seems that the partnership advises were an ongoing matter. Because when we
2 look to page 2314 we see another invoice which is issued on the 14th of June of
3 1993. It's for professional fees to cover all work in relation to the
4 partnership agreement and all ancillary matters between the 25th of November
14:53:29 5 1992 and the 31st of March 1993. Including considering a memo of some time
6 before, discussing same with Brendan Hickey, redrafting the document and
7 advising generally in relation to it. And you charge a professional fee for
8 825 pounds.
- 9 A. A memo, was that the one with the local people living in the area?
- 14:53:55 10 Q. 244 No. No. This is in relation to partnership agreement. The residents
11 association matter was another matter, it didn't occur between November 1992
12 and the 31st of March 1993.
- 13 A. I see.
- 14 Q. 245 It occurred in May of 1993?
- 14:54:20 15 A. I see.
- 16 Q. 246 So this is a continuation in effect. It starts on, you might remember that the
17 last bill stopped on the 24th of November 1992?
- 18 A. Sure.
- 19 Q. 247 This starts on the 25th, the following day. It's in relation to the
14:54:36 20 partnership agreement. And it's continuing advises in relation to that matter.
21 And particularly discussing the same with Brendan Hickey?
- 22 A. Discussing some memo. I really -- that has me puzzled.
- 23 Q. 248 Well?
- 24 A. I don't know what.
- 14:54:53 25 Q. 249 Well discussing a memo of some time before. Now, that is a memo which was
26 prepared before November of 1992. And it might well be what you'd cover in
27 your last bill which was considering draft of similar partnership agreement.
28 Discussing same with you. And redrafting the agreement. Subsequently
29 discussing same and providing a further draft together with commentary.
14:55:23 30 Commentary presumably was written commentary?

- 14:55:27 1 A. Yeah, usually if I'm referring to a memo it would be a memo from somebody else.
2 And that just completely puzzles me, I have to say.
- 3 Q. 250 Yes. But it certainly would appear to indicate on its face that the
4 partnership arrangement between the parties involved in Pennine Holdings was a
14:55:44 5 matter which had extended from the 17th of December 1991 to the 29th of March
6 1993, a period of well over a year and almost a year and a half. Do you know
7 what it was that was either so contentious or requiring of advice throughout
8 that period?
- 9 A. Well, I really don't know. I mean it wasn't anything very big from the amount
14:56:15 10 of the fee. That's one sure thing.
- 11 Q. 251 Yes?
- 12 A. As I say, the memo a bit puzzles me completely. And the other ancillary
13 matters, I really don't know what that was. Unless it was some company
14 secretarial stuff or something like that.
- 14:56:36 15 Q. 252 As far as you're concerned, in relation to Pennine Holdings agreement and
16 Mr. Hickey and Mr. Shubotham. Did their involvement in this matter extend from
17 the time of the first setting up of the company in early 1991 until the date
18 upon which you gave these advises in June of 1993?
- 19 A. I'm sorry, could you ask the question again.
- 14:57:07 20 Q. 253 Did the involvement of Mr. Hickey and Mr. Shubotham in the affairs of Pennine
21 Holdings continue from a time commencing in early 1991 and continuing until the
22 date of this invoice on the 14th of June of 1993?
- 23 A. Well, because I had a reference there to Brendan Hickey, it certainly, I must
24 have been in touch with him at that time, yes.
- 14:57:34 25 Q. 254 But in touch with him in connection with a bill for services provided between
26 those dates, that is certainly the last invoice was up to the 31st of March?
- 27 A. Uh-huh.
- 28 Q. 255 Isn't that right?
- 29 A. Yes, no, no, no.
- 14:57:49 30 Q. 256 It certainly suggests a continuous connection or relationship, I am not saying

- 14:58:07 1 that you were giving him advice all of the time obviously the size of the bill
2 wouldn't merit that. But he was your client on this issue between those dates,
3 isn't that so?
- 4 A. I don't think you can assume that Mr. O'Neill.
- 14:58:10 5 Q. 257 I see. Why would you be billing him if he wasn't your client?
- 6 A. Well I wasn't billing him. I was billing Pennine Holdings.
- 7 Q. 258 Right. And who was paying for it? You'd see at the very bottom of that
8 invoice it says Davy Hickey Properties Limited?
- 9 A. Yes.
- 14:58:27 10 Q. 259 Davy Hickey Properties, 27 Dawson Street, Dublin 2?
- 11 A. Right.
- 12 Q. 260 Were the two not synonymous in your mind at that stage?
- 13 A. Pennine Holdings and Davy Hickey?
- 14 Q. 261 Yes?
- 14:58:38 15 A. No, because we transferred the shares in Pennine to Frank Dunlop and his
16 associate.
- 17 Q. 262 Yes?
- 18 A. But, I mean, it's quite clear. And as I say, memory is the problem. That
19 there was an involvement still with Brendan Hickey up until certainly the 31st
14:58:54 20 of March 1993.
- 21 Q. 263 Yes. Well that's what I was asking you really. Isn't this bill perfectly
22 consistent with Mr. Dunlop and Mr. O'Byrne in Pennine being nominees, perhaps
23 for themselves and others, but certainly nominees for Mr. Hickey and
24 Mr. Shubotham and companies connected with them in relation to Pennine
14:59:16 25 Holdings?
- 26 A. Well, I think that certainly could be one explanation. I would have thought
27 that there could be others. I'm not really into speculation.
- 28 Q. 264 But to bill somebody other than the actual client for services provided is an
29 unusual step for a solicitor to take unless he has received a specific
14:59:34 30 instruction in that regard, isn't that so?

- 14:59:37 1 A. So sorry, we billed Pennine Holdings.
- 2 Q. 265 You billed Pennine Holdings. You get paid by Davy Hickey?
- 3 A. Is that the cheque?
- 4 Q. 266 Yes.
- 14:59:48 5 A. I see. Right.
- 6 Q. 267 You have no recollection of why that should be so Mr. Collins, isn't that
- 7 right?
- 8 A. No, I mean, my real problem is if I had the files I could give the answer to
- 9 all of these questions but they were long since destroyed.
- 15:00:06 10 Q. 268 But the prompts that are available to you in the documentation in the
- 11 possession of others would show the chronology of events for you. Your own
- 12 descriptions of what you did are contained within the bills which you sent to
- 13 others. Do these not cause you to have some recollection of who and what you
- 14 were dealing with in this period, from 1991 to '93?
- 15:00:31 15 A. Yeah, I mean, I would have thought very little happened during those, during
- 16 the sort of later part of the years. My own recollection would have been, and
- 17 it obviously is faulty, that there would have been quite a lot of work at the
- 18 beginning. And probably finished at the end of 1991. I mean, I'm quite
- 19 surprised to see this reference to later work other than I did remember some
- 15:00:54 20 secretarial changes for Pennine Holdings which we dealt with on Frank Dunlop's
- 21 behalf. I'm actually very surprised at this chronology.
- 22 Q. 269 Well if it does assist you, Mr. Collins, I can tell you that this bill here
- 23 ends the period on the 31st of March 1993. The first motion which was brought
- 24 before Dublin County Council by Pennine Holdings to rezone these lands from
- 15:01:21 25 green belt to development was signed on the 12th of March of 1993. That's the
- 26 first motion. It then comes before the Council on the 20th of April, a little
- 27 after this, and before you send the bill on the 14th of June?
- 28 A. Right.
- 29 Q. 270 And on the 6th of May there is a motion before the Council which is
- 15:01:50 30 endeavouring to reopen the issue of the rezoning of those lands following upon

15:01:58 1 a motion which was passed on the 27th of April, which on its face appeared to
2 rule out any possibility of Pennine Holdings being rezoned?

3 A. Okay.

4 Q. 271 And in the first week of May, Davy Hickey's involvement in -- sorry, Davy
15:02:23 5 Stockbrokers involvement in the Greencore issue became a matter of public
6 debate about the retention by Davy's of 19 million pounds worth of shares in
7 Greencore. And shortly thereafter the documentation available to the Tribunal
8 will say that Mr. Dunlop conveyed to Mr. Gore Grimes, who was acting for
9 Mr. Byrne, that Davy's were no longer involved and that he was now Pennine
15:02:58 10 Holdings?

11 A. Right.

12 Q. 272 All of that occurred in this month, in June?

13 A. Okay.

14 Q. 273 So that is putting it in context?

15:03:06 15 A. All right.

16 Q. 274 As to what was happening. I am suggesting to you that this, these final
17 payments were being made by Davy Hickey at this time in June because they were
18 no longer going to be involved in the Pennine Holdings operation whereas they
19 had been to that point and they had paid all your bills to that point. You're
15:03:30 20 not aware of that?

21 A. I'm not. I'm just saying I note what you say, yeah.

22 Q. 275 Thanks, Mr. Collins.

23 A. Thank you very much.

24 Q. 276 Would you answer any questions.

15:03:48 25

26 JUDGE FAHERTY: Just one question, Mr. Collins

27 A. Sure.

28

29 JUDGE FAHERTY: Thank you. Could I have page 2125, just something I just
15:03:57 30 wanted to clarify. Yes. That was opened already, Mr. Collins

15:04:09 1 A. Yes.
2
3 JUDGE FAHERTY: That's a letter I think to Mr. Dunlop at a time when Mr.
4 O'Byrne, I think, is resigning his Directorship

15:04:18 5 A. Yes.
6
7 JUDGE FAHERTY: And I think transferring his shares. And I just want to ask
8 you just one thing. It's nothing much may turn on it. I just want to ask you
9 about the language used. The penultimate paragraph there says "as Ciaran is
10 also shareholder I have provided that a share be transferred although I have
11 not identified the transferee. Perhaps you might deal with this"

12 A. Sure.
13
14 JUDGE FAHERTY: And obviously it's some 13 years since this letter is written
15 and I appreciate that. What do you say you meant by that? In fairness to
16 yourself, I'm not sure if this letter is written by you. It's certainly
17 written by your office?

18 A. I don't think it was written by me.
19

15:05:01 20 JUDGE FAHERTY: But somebody in your office I think?
21 A. I don't really mind that.
22

23 JUDGE FAHERTY: Yes?
24 A. Insofar as that company, when we were asked to transfer the shares in that
15:05:09 25 company, we were asked to transfer them to Frank Dunlop and Mr. O'Byrne. Now,
26 Frank Dunlop was the only person that we knew and Frank Dunlop was quite a
27 strong personality. So therefore you assumed that you are transferring to
28 Frank and whatever he organises. And so basically we were saying to Frank we
29 presume that you want the shares transferred as well and if so you know find
15:05:32 30 out who they are being transferred to, that share. Is that a help or have I

15:05:37 1 missed your point?

2

3 JUDGE FAHERTY: No, I was just wondering was that suggesting that the writer
4 of this letter knew the identity of the transferee but just didn't put it in

15:05:47 5 the letter or that they didn't know the identity of the transferee. I'm just
6 wondering about the language used?

7 A. I would assume didn't know the identity. The whole idea is that they are
8 ceasing to be a director. I think, did it say because they'd left the company
9 or something like that. But I don't know. But -- and in those circumstance
10 where is somebody is holding one share you would often assume that they are
11 going to relinquish that share as well unless they are total beneficial owners.

12

13 JUDGE FAHERTY: Okay, thank you.

14

15:06:18 15 CHAIRMAN: Thank you very much Mr. Collins

16 A. Thank you.

17

18 CHAIRMAN: Half ten tomorrow.

19

15:06:24 20

21 **THE WITNESS THEN WITHDREW.**

22

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15:06:44 25 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**

26 **WEDNESDAY, 29TH NOVEMBER 2006, AT 10.30 A.M.**

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