

09:54:46 1

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,

2

29TH NOVEMBER 2006, AT 10.30 A.M.:

3

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10:38:58 5

CHAIRMAN: Good morning, Mr. O'Neill.

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

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The first witness to be called today is Sinead Collins.

10:39:07 10

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Ms. Collins, could you come forward to the witness box, please.

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10:39:12 15

MS COLLINS, HAVING BEEN SWORN, WAS QUESTIONED

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BY MS MURPHY AS FOLLOWS:

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19

MS MURPHY: Good morning, Ms. Collins, My name is Adele Murphy.

10:39:43 20

21

I'm just going to briefly take you through the statement that you furnished to

22

the Tribunal in October of this year concerning the Baldoyle lands.

23

24

If I could have pages 667, please.

10:39:54 25

26

Okay Ms. Collins. I propose to start at paragraph two, as you previously have

27

given evidence in respect of paragraph one.

28

29

The 1983 Development Plan was adopted on the 31st of March 1983. The lands the

10:40:12 30

subject matter of the present inquiry by the Tribunal comprising approximately

10:40:16 1 of 167 hectares at Portmarnock, Stepolin and Maynetown hereinafter referred to
2 as the Baldoyle lands were zoned as follows in the 1983 plan. B and G green
3 belt proposals to preserve a green belt between developments areas. G, to
4 protect and improve high amenity areas. E, to provide for industrial and
10:40:36 5 related uses. And A, which was to protect and/or are improve residential
6 amenity.

7
8 The 1983 Development Plan zonings of the Baldoyle lands are outlined on map 7
9 of the '83 Development Plan attached at appendix two which can be found in the
10:40:51 10 brief at page 681.

11
12 Also attached to your statement at appendix three, at pages 682 to 685 is part
13 of the 1983 Development Plan and statement regarding those zonings.

14
10:41:03 15 I propose now to skip to paragraph four as again you've previously given
16 evidence in relation to paragraph three.

17
18 At a special meeting of Dublin County Council on the 8th of June 1990 the draft
19 written statement for the scheduled town of Malahide maps No. 7 and 8 and
10:41:19 20 report Deputy Chief Engineer of Sanitary Services concerning drainage in the
21 Malahide area were considered. It was agreed however that the proposed changes
22 in Portmarnock, Map 8 would be the subject of further discussion at a future
23 meeting of the Council dealing with the Development Plan review. The agenda
24 and minutes of that meeting are attached at appendix six of your statement
10:41:38 25 which can be found at brief page Nos 693 to 696.

26
27 At a special meeting of Dublin County Council on the 22nd of June consideration
28 of map eight relating to Portmarnock resumed. Following discussions which
29 Councillors Malone, Wright, Dunne, Maher, Ryan and Riney contributed. The
10:41:56 30 Manager replied to queries raised by the members. Thereafter map No. 8 was

10:42:00 1 noted. That is the councillors had discussed the matters and generally agreed
2 and accepted the contents of the document and maps and passed on to other
3 matters without a vote.

4

10:42:08 5 Those are attached at appendix 7 of your statement which can be found in the
6 brief at pagings 697 to 699.

7

8 On map 8 of the Draft Development Plan 1990 the Baldoyle lands were again zoned
9 objective B and G to preserve a green belt area between development areas G to
10:42:26 10 protect improve high amenity areas and E, to provide for industrial and related
11 uses and that can be found at appendix 8, which is at brief page 700.

12

13 In January 1991 the members were circularised and afforded the opportunity to
14 submit motions for insertion and a wrap up agenda for consideration by the
10:42:43 15 council before putting a Draft Plan on display. By letter dated 18th of
16 January 1991 a copy of which is attached to your statement at appendix nine the
17 members of the council were advised by the principal officer that the motions
18 had to be submitted not later than Friday 8th of February' 91. This deadline
19 was Later extended to the 15th of February 1991 and motions received after that
20 date were not included on the agenda.

21

22 Approximately 160 motions were received and were placed in the agenda in area
23 order commencing in Balbriggan in the north of the county, moving south through
24 Skerries, Donabate, Swords, Malahide, Sutton, Howth, north suburbs,
10:43:20 25 Blanchardstown, Lucan/Clondalkin and then in southeasterly direction to the
26 Wicklow border. No motions were submit in the relation to the Baldoyle lands
27 at this stage.

28

29 A new Council was elected at the end of June 1991. The 1991 Draft Development
10:43:35 30 Plan was on public display for the statutory three months period from the 2nd

10:43:38 1 of December 1991 to the 3rd of December 1991. The Baldoyle lands from zoned as
2 follows on map 8 of the 1991 Draft Development Plan, a copy of which is
3 attached at appendix ten of your statement which can be found at page 702 of
4 the brief.

10:43:55 5
6 Again, it was B and G, to preserve a green belt between development areas. G,
7 to protect and improve high amenity areas and E, to provide for industrial and
8 related uses. The one distinction between these maps is that the zoning A,
9 which had been on the 1983 Development Plan was no longer on the statutory
10:44:15 10 Development Plan. Is that correct, Ms. Collins?

11 A. Yes.

12 Q. 1 Okay. The draft written statement, an extract of which is attached herewith at
13 appendix level, that is at pages 703 to 706, outlined the Council's policy in
14 relation to the preservation of green belts. During the period of public
10:44:32 15 display from the 2nd of December to 1991, 23,866 objections and representations
16 were received and 487 requests were facilitated. 14 objections and
17 representations were received in relation to the Baldoyle proposals.

18
19 During the public display of the 1991 draft development plan representation No.
10:44:52 20 000558 was submitted on behalf of Pennine Holdings Limited seeking the rezoning
21 of approximately 160 acres of the green belt between Baldoyle and Portmarnock
22 for various uses including business park, residential, golf course and golf
23 village. This was one of a number of representations relating to the green
24 belt in agricultural lands in the Portmarnock and Baldoyle area.

10:45:15 25
26 A copy of that representation can be found at appendix 12 of your statement
27 which is page 707 to 739 in the brief.

28
29 Copies of all objections and representations were circulated to the members for
10:45:26 30 their consideration and a series of a special meetings which commenced in 1992.

10:45:30 1 The council considered representations on an area basis commencing from the
2 southern most part of the county to the north working from map No. 28 to map
3 No. 1.

4
10:45:38 5 The Baldoyle area was dealt with under item 14 of the agenda. A copy portion
6 of this agenda entitled 'considerations of draft Dublin County Development Plan
7 '91' map No. 8 Baldoyle and objections and representations relating there to
8 and report on the objections and representations already circulated is attached
9 herewith at appendix 13, which is in the brief at pages 740 to 743.

10:46:01 10
11 The first time the lands at Baldoyle came up for consideration at a special
12 meeting of the County Council was on the 20th of April 1993.

13
14 Three motions relating to the lands, the subject of representation 000558 were
10:46:15 15 submitted for inclusion on the agenda at the special meeting of the council
16 dealing with representations received during the public display.

17
18 These were as follows motion 14.51 signed by Councillor Healy which is attached
19 at appendix 14 and can be found at the brief page numbers 744 to 747. His

10:46:34 20 motion was that Dublin County Council hereby resolves that all of the lands
21 zoned B and G in the Draft Plan between Baldoyle and Portmarnock retain this
22 zoning. Motion 14.5 G1 was signed by Councillor Creaven, MJ Cosgrave,
23 Gilbride and Gallagher, which is attached at appendix 15 of your statement and
24 can be found at brief page Nos 748 to 750 and it is that Dublin County Council

10:46:59 25 hereby resolves that the lands at Portmarnock, Maynetown and Stepolin as
26 outlined in red in the attached map which has been signed for identification
27 purposes by the proposers of the motion be zoned for the following objectives.

28 B and G (a public pay as you play golf course in order to protect and enhance
29 the open nature of the land between urban areas. A1 to provide for new low
10:47:21 30 density residential communities in accordance with the action area plans). C,

10:47:26 1 to protect and provide for improved district centre facilities and E, to
2 provide for industrial related uses.

3
4 Motion 14 5(g)(ii) signed by Councillors Creaven and MJ Cosgrave, which can be
10:47:38 5 found at appendix 16, brief page Nos 751 to 757 provided that Dublin County
6 Council hereby resolves that the lands at Portmarnock, Maynetown and Stepolin
7 is outlined in red on the attached map which has been signed for identification
8 purposes by the proposers be zoned for the following objectives.

9
10:47:56 10 B and G (public pay as you play golf course, public park, recreation pitches
11 and pitch and putt course in order to protect and enhance the open nature of
12 the land between Portmarnock and Baldoyle). A, to provide for new high
13 quality housing C, to provide, protect and provide for district centre
14 facilities and G, to retain G zoning to protect the high amenity of the lands
10:48:20 15 as shown.

16
17 Consideration of map 8 which covered the Baldoyle, South Portmarnock area
18 commenced at the meeting held on the 20th of April 1993 when the Manager's
19 Report which had been circulated was considered. See appendix 17 at brief page
10:48:32 20 numbers 758 to 766. The Manager's Report and the representations received in
21 respect of the agricultural and green belt lands in the Portmarnock/Baldoyle
22 states interalia. The lands of the representations form part of the
23 agricultural green belt countryside between the designated development areas of
24 Swords, Baldoyle, Portmarnock and Malahide.

10:48:57 25
26 Council's policy in relation to development in rural areas and green belt areas
27 is set out in paragraphs 2.36 2.810 and 3.236 of the draft written statement.
28 It is also council policy that drainage facilities will not be provided for
29 lands designated as green belt. In addition to the lands at the
10:49:09 30 representations are effected by 35 NNI contour as shown 1 A. In this regard

10:49:14 1 it is council policy to restrict development in the area encompassed by the
2 line. Developments as proposed in the representations would encroach on the
3 agricultural and green belt areas and would be contrary to the development
4 policies of the Council and the adopted settlement strategy. Motion 1451 which
10:49:32 5 was proposed by Councillor Healy and was seconded by Councillor Gordon, see
6 appends 14 above and brief page numbers 744 to 747. An amendment seeking to
7 add the words and that a study is done by the Fingal County Council as to
8 whether development would be desirable and to what extent was proposed by
9 Councillor Maher and seconded by Councillor Boland.

10:49:54 10
11 Councillor Creaven then withdrew motion 14.5 G1 which can be found at appendix
12 15 above and proposed motion 14.5 G2 which was seconded by Councillor Creaven.
13 The following amendment signed by councillors Creaven, MJ Cosgrave and Gilbride
14 was then proposed by Councillor MJ Cosgrave and seconded by Councillor Creaven.
10:50:15 15 See appendix 16 above.

16
17 And that is that the motion be amended by deleting all words after Stepolin and
18 substituting the following words as outlined in red on the attached map which
19 has been signed for identification purposes by the proposers and dated 20th of
10:50:31 20 April 1993 be zoned as follows. B and G for public pay as you play golf
21 course, public park, linear coastal park, recreation pitches and pitch and
22 putt course in order to protect and enhance the open nature of the lands
23 between Portmarnock and Baldoyle. A, to provide for not more than 450 new
24 houses on approximately 75 acres at Baldoyle with access from the coast road.

10:50:52 25
26 To provide for not more than 450 new houses on approximately 75 acres at
27 Portmarnock. C, to provide for district centre facilities and G, to retain G
28 zoning to protect the high amenity lands as shown. Following discussion the
29 meeting was adjourned for a short interval to enable the amendment be examined.
10:51:10 30 When the meeting resumed the Manager advised that as the effect of the

10:51:14 1 amendment would be to reduce the area proposed for development then in
2 accordance with previous practice the amendment could be accepted. It was then
3 proposed by Tipping and seconded by Councillor O'Connell that the further
4 consideration of item 14.5 relating to green belt and agricultural lands
10:51:29 5 between Baldoyle and Portmarnock would be adjourned to the next special meeting
6 to be held on the 27th of April. It was proposed by Councillor Malone and
7 seconded by Councillor Dillon Byrne that further consideration be deferred
8 until the members received a copy of the amendment proposed by Councillor
9 Cosgrave and the map referred to therein. Both of those motions were defeated
10:51:46 10 by 26 votes for 35 votes against and one abstention. And you can see there the
11 councillors voting is recorded which I don't propose to read.

12
13 Then continuing on.

14
10:52:00 15 The proposals contained in the amendment were then explained by the Dublin
16 planning officer and following further discussion disorder in the chamber the
17 meeting was adjourned.

18
19 At the next special meeting on the 27th of April which can be found at appendix
10:52:14 20 18, brief page 767 to 773 consideration of the Manager's Report and motions
21 1451 and proposed amendment there to motion 14.5(g)(ii) and its proposed
22 amendment resumed. Councillors MJ Cosgrave and Creaven indicated that they
23 wished to postpone discussion. Councillor Healy stated that he did not wish to
24 have his motion deferred. The Manager advised the meeting that the tradition
10:52:37 25 of the council was if Councillor moved a motion it should not be deferred if he
26 dissented and that in the event of the motion to defer being passed Councillor
27 Healy's motion would remain to be considered. It was proposed by Councillor
28 Cosgrave, seconded by Councillor Creaven that motion 14.5(g)(ii) and amendment
29 be deferred for further consideration to a date not later than the 15th of May
10:52:59 30 1993. This motion was passed by the 37 votes for and 33 votes against. And

10:53:05 1 again, the councillors voting is recorded there and I don't propose to go
2 through that.

3
4 Councillor Maher then withdrew the amendment she had initially proposed to
10:53:15 5 motion 1451 on the 20th of April 1993. Councillor O'Halloran proposed and
6 Councillor L Cosgrave seconded a motion seeking to have decisions relating to
7 the Baldoyle Portmarnock area deferred until a site meeting was held in that
8 year to allow all councillors view the lands proposed for rezoning. The
9 Chairman ruled this motion out of order.

10:53:35 10
11 Mr. John Henry, senior engineer, outlined the various roads serving the area
12 and advised that they would be not capable of handling further traffic which
13 would be generated by the proposed development. He estimated that it could
14 cost in the region of 6.5 million to upgrade the road infrastructure.

10:53:50 15 Following further discussion motion 1451, proposed by Councillor Healy and
16 seconded by Councillor Gordon, was put and was carried by 43 votes in favour,
17 three votes against and 23 abstentions as set out there.

18
19 And again, I don't propose to go through those.

10:54:07 20
21 The Manager then advised that as a result of passing of this motion, that
22 motion 14 5(g)(ii) and the proposed amendment fell.

23
24 At the outset of the meeting held on the 4th of May 1993, which can be found at
10:54:19 25 appendix 19, brief pages 774 to 799 the Chairman read a letter she had received
26 from Councillor O'Halloran together with a motion signed by councillors
27 O'Halloran and Gilbride. In his letter Councillor O'Halloran said that he
28 believed that the refusal to put his motion deferring decisions on the Baldoyle
29 Portmarnock area until a site meeting was held was a serious breach of the
10:54:38 30 council's standing orders and as such called into question the validity of a

10:54:42 1 meeting and the decisions taken and he requested that the accompanying motion
2 be put to the meeting.

3
4 The following motion was then proposed by Councillor O'Halloran and seconded by
10:54:52 5 Councillor Gilbride that Dublin County Council hereby resolves that a site
6 meeting be held on the lands between Baldoyle and Portmarnock subject of
7 motions numbers 51 and 5(g)(ii) as amended on the Draft Development Plan review
8 agenda. Prior to any decision regarding future uses of these lands and that a
9 full report be made to the appropriate Development Plan meeting.

10:55:12 10
11 Following discussion it was agreed to defer further consideration to the
12 meeting scheduled for the 16th of May. At the outset of the meeting on the
13 16th of May 1993 letters -- the minutes of which can be found at appendix 20,
14 pages 800 to 807 of the brief.

10:55:28 15
16 Letters from the principal officer in relation to the points raised were read.
17 Following discussion O'Halloran proposed and Councillor Gilbride seconded that
18 the motion be amended by the addition of the words the site visit to take place
19 on Tuesday the 18th of May 1993. It was proposed by Councillor Malone,
10:55:44 20 seconded by Councillor Ryan that all procedural matters and disputes in
21 relation to representation 000558, map 8, be dealt with when legal advice is
22 available to the Council and after the present review motions etc. of the whole
23 county is completed.

24
10:56:01 25 Following discussion the manager advised that both motions were out of order.
26 After an adjournment due to disorder in the chamber the Chairman said that
27 because there was a doubt as to the correctness of our decision when ruling the
28 motion proposed by Councillor O'Halloran and L Cosgrave out of order on the
29 27th of April she was ruling those motions now before the Council in order but
10:56:22 30 that all decisions taken in relation to those matters would be referred to the

10:56:25 1 law agent for advice. She directed that the vote be taken.

2

3

The amendment proposed by councillors O'Halloran and Gilbride to add the words

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'the site visit to take place on the 18th of May' was put and passed by 33

10:56:37 5

votes in favour, four against and one abstention.

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And again, you can see the how the councillors voted are set out there.

8

9

The motion as amended was then put and passed by 33 votes in favour, four

10:56:49 10

against and one abstention. And again, the Councillor votes are set out there.

11

12

Councillor S Ryan then withdrew the motion which had been proposed by

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Councillor Malone and which she had seconded as the Manager had advised that it

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was out of order.

10:57:04 15

16

The site visit took place on the 18th of May.

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No further action was taken in relation it to these lands and the land was

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zoned in 1993 Development Plan as in 1919 Draft Plan. That is B and G. To

10:57:15 20

preserve a green belt between development areas G, to protect and improve high

21

amenity areas and E, to provide for industrial related uses. This was

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confirmed at the meeting of the councillors on the 29th of September 1993,

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which is at appendix 21 of your statement and brief page numbers 808 to 845.

24

10:57:36 25

The Dublin County Development Plan 1993 was adopted County Council at a special

26

meeting 1993. And a copy of the minutes of that meeting are attached at

27

appendix 22 of your statement. Pages 846 to 863 and a copy of map 8 of the

28

Dublin County Development Plan 1993 is attached at appendix 23 of your

29

statement, pages 864 to 865.

10:58:00 30

10:58:00 1 And you can see that you signed that on the 13th of October, is that your
2 evidence, Ms. Collins?

3 A. It is, yes.

4 Q. 2 Thank you.

10:58:07 5

6 CHAIRMAN: Thank you very much, Ms. Collins

7 A. Thank you.

8

9 CHAIRMAN: Thank you, Ms. Murphy.

10:58:12 10

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13 **THE WITNESS THEN WITHDREW**

14

10:58:14 15

16 MR. O'NEILL: The next witness will be John Gore Grimes.

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18 Mr. Gore Grimes, could you come to the witness box, please.

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10:58:21 20

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MR. GORE GRIMES HAVING BEEN SWORN,

WAS QUESTIONED BY MR. O'NEILL AS FOLLOWS:

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10:58:45 5

CHAIRMAN: Good morning, Mr. Gore Grimes

6

A. Good morning, Chairman.

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MR. O'NEILL: Good morning Mr. Gore Grimes. My name is Desmond O'Neill and

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I'll be asking you questions on behalf of the Tribunal.

10:58:58 10

11

I'm not sure if you've been here before. And I will just familiarise with you,

12

if I can, with the system that operates here.

13

14

There is a screen in front of you on which documents will be shown. The same

10:59:10 15

documents appear on the large screen, which is opposite here.

16

17

If you need to have it in any way magnified or increased, please indicate that

18

that is so.

19

10:59:19 20

The documents that you will be shown will include documents generated by you in

21

the course of your work as a solicitor and also reference will be made to other

22

documents coming from other sources

23

A. Thank you.

24

Q. 3 You are a solicitor, Mr. Gore Grimes, in a firm called Gore and Grimes

10:59:38 25

solicitors, isn't that right?

26

A. Yes.

27

Q. 4 And you are a senior partner in that firm, is that right?

28

A. Yes.

29

Q. 5 And you have been the solicitor to Mr. John Byrne for many years, isn't that

10:59:49 30

right?

- 10:59:49 1 A. For many years.
- 2 Q. 6 And I think Mr. Byrne has been in effect the controller of a number of
- 3 corporate entities through which he has held property, isn't that so?
- 4 A. Yes.
- 11:00:00 5 Q. 7 And you have been the solicitor also for those corporate entities, isn't that
- 6 correct?
- 7 A. I have but my discipline would be conveyancing and planning and environmental
- 8 law rather than corporate law or that sort of thing, commercial law.
- 9 Q. 8 Yes. I think it would be fair to say, as with many persons involved in land
- 11:00:20 10 ownership and development, it is often done through corporate structures,
- 11 albeit that the intermediary might be the beneficial owner of it?
- 12 A. Oh, yes.
- 13 Q. 9 And there is no issue here as to the beneficial ownership of these companies
- 14 for the purpose of the Tribunal, they are assuming these are companies that
- 11:00:38 15 were controlled and owned by Mr. Byrne, isn't that so?
- 16 A. Effectively, yes.
- 17 Q. 10 And Mr. Byrne I think you know to be a very successful and long lived property
- 18 developer who has developed mainly in Dublin city and the area controlled by
- 19 Dublin Corporation, isn't that so?
- 11:00:57 20 A. Mainly. But of course he would have started in London and came here.
- 21 Q. 11 Yes. In relation to his Irish activities. They have, other than in Kerry, his
- 22 development opportunities have been mainly in the Dublin Corporation area,
- 23 isn't that so?
- 24 A. Dublin Corporation and -- yes.
- 11:01:15 25 Q. 12 Yes. And I think a very significant exception to that of course is the
- 26 Baldoyle land?
- 27 A. Yes.
- 28 Q. 13 Which until 1995, 1985 I should say, was astride the boundary as between Dublin
- 29 County and Dublin Corporation's administrative areas, isn't that so?
- 11:01:33 30 A. So yes, and it's now Fingal.

- 11:01:35 1 Q. 14 Yes. After 1993 it became within the Fingal area. But for the purpose of our
2 review of the 1993 and 1983 Development Plan, we are concerned with Dublin
3 County Council and Dublin Corporation, isn't that so?
- 4 A. That's correct.
- 11:01:54 5 Q. 15 Now, we know that this area in Baldoyle was astride the boundary. But is it
6 the case that Mr. Byrne also had an involvement with land in the county in his
7 capacity as a trustee. And I'm not saying that this is something that you were
8 dealing with on his behalf. I'm talking in particular in relation to the
9 Airlie Stud where Mr. Byrne was a trustee of the estate of the late captain
11:02:26 10 Rogers?
- 11 A. I actually know nothing about that but I'm sure you're right.
- 12 Q. 16 Yes?
- 13 A. I don't know.
- 14 Q. 17 Very good. In any event, if we're dealing with the Baldoyle lands here,
11:02:37 15 perhaps we might look at the boundaries of this land at map 2957 on the screen,
16 please.
17
18 The map which is before you, Mr. Gore Grimes. If we take north to be the top
19 of the map and south to be the bottom of the map. The heavy black line here
11:02:59 20 indicates the lands at Baldoyle between Baldoyle and Portmarnock, which were
21 those owned by Mr. Byrne. And if we start on the Western side. The boundary
22 runs along the railway line between Dublin and Belfast, isn't that right
- 23 A. That's right.
- 24 Q. 18 And if we move then to the eastern side. The boundary is that of the coast
11:03:23 25 road between the estuary or inlet at Baldoyle, isn't that so?
- 26 A. That's right.
- 27 Q. 19 And on the northern part, I don't think there's any particular definable object
28 that marks that boundary, there's a railway station I think at Portmarnock in
29 the top left hand corner there, is that right?
- 11:03:43 30 A. From the railway station across to the roundabout, which goes to Portmarnock,

11:03:46 1 the north boundary.

2 Q. 20 And if we look then to the south, there is an indent there on the south and

3 within that there is a housing development, isn't that?

4 A. So yes.

11:03:57 5 Q. 21 That may have been a portion of the original take of Mr. Byrne, was it?

6 A. That's Admiral's Park, I think that.

7 Q. 22 I'm not sure that it entirely is?

8 A. Not entirely perhaps. Oh, no I see it's not. It's an older part of Baldoyle

9 and the bit to the right where the sort of more modern layout is would be

11:04:18 10 Admiral's Park, I think.

11 Q. 23 The bit on the left might have been developed possibly by the Gallagher group,

12 would that be -- a long time ago?

13 A. I should know but I don't know.

14 Q. 24 Not to worry. If we move then towards the coast and the straight heavy black

11:04:33 15 line there. I think that's Willie Nolan Road immediately south of that, is

16 that right?

17 A. Yes, that's it.

18 Q. 25 If you just look to the large screen, Mr. Gore Grimes. I have a little red

19 marker here. I'm not sure if it will show. Following along here, I think

11:04:51 20 this is the Willie Nolan Road and then it becomes Grange Road as it moves up in

21 that direction?

22 A. Yeah.

23 Q. 26 That effectively is the southern boundary of the lands?

24 A. Yes.

11:05:03 25 Q. 27 In total and without being accurate to the acre as such. There was about 511

26 acres in total of the take here, isn't that right?

27 A. That's right. There are a few little exceptions within the boundaries as you

28 can see.

29 Q. 28 Yes. They are patched there and I think they were in the ownership of others.

11:05:23 30 Originally most of this land had formed part of the Baldoyle Race Course or a

- 11:05:27 1 significant part of?
- 2 A. It all of the south end would have been Baldoyle Race Course.
- 3 Q. 29 Yes?
- 4 A. And the north end I think was probably Howth estate, was it.
- 11:05:36 5 Q. 30 Right. The acquisition of these lands by Mr. Byrne took place in the 1960s and
6 1970s, isn't that right?
- 7 A. That's right.
- 8 Q. 31 And at a time after he had assembled this large portion of grounds, he explored
9 the possibility of having the lands brought into development status by rezoning
11:05:59 10 and seeking planning permission, isn't that right?
- 11 A. That's right.
- 12 Q. 32 And his attempts which were relatively numerous took place over a period of
13 years, the last of them I think culminating with a refusal by An Bord Pleanala
14 in December of 1994. Sorry '84, to his plan to develop those lands, isn't
11:06:22 15 that right?
- 16 A. Yeah, I think they were two planning appeals and several other applications.
- 17 Q. 33 It effectively, I think, was the last of them?
- 18 A. That's right.
- 19 Q. 34 In 1984?
- 11:06:32 20 A. Yes.
- 21 Q. 35 And I think it's correct to say that Mr. Byrne disposed of all of his interest
22 in these lands, probably between 1995 and 1999.
- 23 A. I think closer to '99 I think.
- 24 Q. 36 Yes?
- 11:06:47 25 A. Would that be the date of conveyance? I think around '99.
- 26 Q. 37 Yes. The lands, as I say H, initially comprised about 400, about 511 acres.
27 And in relation to what was to become the Pennine Holdings option, that related
28 to some 400 acres approximately, isn't that right?
- 29 A. Yes.
- 11:07:12 30 Q. 38 And it was one of the options that applied in relation to these lands. Another

- 11:07:17 1 one was an option over approximately 100 acres. And that was in the name of a
2 firm called Bauval, BA U VA L, isn't that right?
- 3 A. Bovale and Sabre Developments I think are the two. That's right, that was an
4 earlier sale, earlier than.
- 11:07:37 5 Q. 39 Bauval and I announce it specifically as Bauval because we have had another
6 company here called Bovale and there is no connection between those two.
7 Bauval, BA U V A L was an Isle of Man registered company, isn't that right?
- 8 A. Well I don't really know much about it.
- 9 Q. 40 In either event, is it correct to say that in relation to all of Mr. Byrne's
11:08:02 10 lands here at Baldoyle, after he had ceased to bring his own applications for
11 rezoning, the applications were bought by persons who were option holders or
12 the nominees of option holders?
- 13 A. Yes.
- 14 Q. 41 Yes. And in the main, there were two options. The 400 acre option, which was
11:08:24 15 the Pennine Holdings option and the 100 acres option which was the Bauval
16 option, isn't that so?
- 17 A. Yeah, I just -- I think was Mr. Byrne not left with a bit of land on his own
18 outside the option, perhaps I'm wrong about, that I thought he was.
- 19 Q. 42 Within the Pennine option agreement it covered some 400 acres of which the
11:08:45 20 option holder was entitled to acquire 250?
- 21 A. Yes.
- 22 Q. 43 Mr. Byrne was to rake in 150?
- 23 A. Correct.
- 24 Q. 44 But the option holder had the obligation of bringing the rezoning application
11:08:57 25 in respect of the entire?
- 26 A. That's right.
- 27 Q. 45 Yes. Now, as regards both of those options. Do you know whether or not it is
28 the case that Mr. Liam Lawlor was the person who was the intermediary between
29 the persons seeking to acquire those options and Mr. Byrne in both instances?
- 11:09:18 30 A. I don't think I can help you there because I really came in after the option

11:09:23 1 had been done. What I did in relation to the option was to provide the
2 schedules, which would be the conveyancing part.

3 Q. 46 Yes?

4 A. And I didn't do the option myself, it was done by my brother.

11:09:36 5 Q. 47 Yes?

6 A. And he drafted that option and it went through various stages and all I did to
7 that was provide the schedules, which weren't contentious, but obviously there
8 were terms to be agreed and disagreed, and that went through that process,
9 which I was not part of.

11:09:52 10 Q. 48 Very good. Well I'll now turn to dealing with some of the documentation that
11 the Tribunal has and you might be able to assist the Tribunal in relation to
12 that documentation and its position or its importance in the inquiry that is
13 being conducted by the Tribunal.
14

11:10:08 15 The first document I'd ask you to look at is at page 902 on screen.
16

17 And it is an agreement which was dated the 27th of January of 1986. And it was
18 made between Endcamp Limited, which we know to be one of the companies of
19 Mr. Byrne and also with a company called Edington Limited

11:10:29 20 A. Yes.

21 Q. 49 You see that. And that is an agreement by way of a license under which the
22 company Edington was entitled to build upon a certain portion of the Baldoyle
23 lands and there would be a site fine of some 5,000 pounds per house for each
24 house that was built on those lands. Do you remember at all that relationship
11:10:56 25 being entered into?

26 A. Vaguely. I wouldn't have done that agreement either. But I would know about
27 the agreement, yes.

28 Q. 50 Right?

29 A. And I'd know why it was done.

11:11:05 30 Q. 51 Right. Why in particular was it done in this way? As we know, to this point,

11:11:12 1 Mr. Byrne's company, Endcamp, had brought its own planning applications, they
2 had been unsuccessful. The last of them had been in December of 1984. And
3 were now a little over a year later in January of 1986 there is this structure
4 Edington dealing with Mr. Byrne?

11:11:35 5 A. Well, he had bought the lands, as you said, between 1960 and 1970. And had
6 assumed that as Dublin was expanding that that would fall into a development
7 area.

8 Q. 52 Uh-huh?

9 A. As you outlined, he went to a lot of trouble to make planning applications and
11:12:00 10 used good advice, good planners, good lawyers, the late Eamonn Walsh, and I
11 think -- I can't remember the second barrister, but he made these applications,
12 was turned down, appealed, tried to re jig the applications. That was a
13 process that went on for a very long time. And I think eventually he came to
14 the conclusion and I working with him, would have I think held the same
11:12:34 15 opinion. That he was not going to get planning permission from the local
16 authority and that he was not going to get it from An Bord Pleanala.

17
18 Now, I just want to set that in the context of what I'm going to say next. And
19 that is that planning, and that is my discipline and I've published a book on
11:12:59 20 planning law and it's something that I know about, I hope, something about
21 anyway. I mean, it is of course a discipline which is left to planners to a
22 large extent. But there is a very large political input into the planning
23 system. And that was particularly so until the passing of the Act of 2000 in
24 March 2002. And it has been diminishing. And correctly diminishing, in that
11:13:30 25 decisions have been taken from the Minister and have been placed correctly with
26 An Bord Pleanala.

27
28 But it's not to say that it's still not a political process. And I'm not
29 criticising this. I'm merely stating it as a fact. Because, of course, I think
11:13:49 30 correctly the local authority councillors have an input and plans are drawn and

11:13:52 1 presented to them for their approval and there's a process which was a lot more
2 torturous before the new Act. It has been greatly, in a sense simplified but
3 also, you're much clearer where you are under the new Act, which was not the
4 case necessarily under the 1963 Act and the amendments which followed.

11:14:16 5
6 So it was a political process. And the conclusion that we came to sometime
7 around 1991 or maybe 1990, I wouldn't be exactly sure. But around that time
8 was that we were not going to get planning permission because, now, this is a
9 conclusion. It's not necessarily a fact. We were not going to get planning
11:14:37 10 permission because of an untruth. I mean an untruth. Which had been
11 perpetuated, started by someone and perpetuated by the media. That the late
12 Mr. Haughey had an interest in these lands.

13
14 And no matter what we did to show that that was not the case and I am
11:14:59 15 absolutely satisfied that it was not the case and never was the case. It was
16 not accepted. People simply got it into their minds and that untruth could not
17 be shifted.

18
19 And in the course of negotiations with various people who would be involved in
11:15:21 20 politics, be they councillors or perhaps TDs, we would have learnt and as I
21 say, as something that we came to believe in and we can't prove it, that that
22 was the reason why no permission was granted to Mr. Byrne and he came to the
23 conclusion based on what people told him that he would have no opportunity ever
24 of getting planning permission on that land.

11:15:49 25
26 And it was for that reason that he decided to move sideways and to set up
27 Edington, in the first place. And eventually when that didn't work, as you
28 know, to enter into an option. And to shed all responsibility for applying for
29 planning permission and to have nothing to do with the planning permission, if
11:16:16 30 that was possible, to allow somebody else to do it and to disassociate himself

11:16:20 1 with that land insofar as possible. And his aim was, as you know from the
2 option, to take a sum of 30,000 pounds per acre. And that was a figure agreed
3 I think in 1990, perhaps 1991. And although it seems quite ludicrous now, that
4 was a nice sum at the time

11:16:41 5 Q. 53 Yes. But in relation to Edington then, as of 1986 in January when it is
6 formed?
7 A. Yeah.

8 Q. 54 It really was what you called a sideways move to distance Mr. John Byrne
9 personally from the application so that those who were going to deal with this
11:16:57 10 matter in the future would not associate him with the project but others, isn't
11 that as you understood the position to be?
12 A. Well his, as far as he was concerned, his name was a definite negative in terms
13 of applications and that was it.

14 Q. 55 We'll see a little later Mr. Gore Grimes, that in fact letters are written in
11:17:16 15 which he identifies himself with Edington, isn't that so?
16 A. He did, that cover didn't work.

17 Q. 56 Which would blow the cover?
18 A. Indeed.

19 Q. 57 Perhaps just to finish with this document. It, on its face, appeared to be a
11:17:32 20 document between two stand alone arms length entities, one of them Endcamp and
21 the other one Edington where they are entering into a commercial arrangement?
22 A. Yes.

23 Q. 58 But in fact it's one and the same person insofar as you're concerned, isn't
24 that so, or is that so?
11:17:49 25 A. I didn't do that agreement. And I actually haven't looked at it since it's
26 come on the screen for I'm sure ten or twelve years.

27 Q. 59 Yes?
28 A. So I don't want to make a definite conclusion there. I would think
29 effectively, yes it did fall back to Mr. Byrne.

11:18:04 30 Q. 60 I merely draw your attention to it because it would illustrate a capacity of

11:18:09 1 Mr. Byrne to operate in this fashion when it suited him to do so. I'm not
2 saying that there is anything sinister in it. But that he could enter into an
3 arrangement where he is in fact both the giver and the taker in the
4 arrangement, isn't that?

11:18:23 5 A. As could anybody.

6 Q. 61 I'm not making any other comment. To say that that is what the result of this
7 document is, isn't that right?

8 A. Yeah.

9 Q. 62 But just to look formally then at the signatures to this document.

11:18:38 10
11 You'll see at page 904, it's signed on behalf of Endcamp. At 904 on the bottom
12 of the page there you recognise your brother's signature, Anthony Gore Grimes,
13 isn't that right

14 A. Yes.

11:18:56 15 Q. 63 And he was signing for Endcamp. On the next page, 905, we see Mr. Jack
16 Stakelom was signing on behalf of Edington, is that correct?

17 A. Yes. Is Mr. Jack Stakelom at that time an accountant with Eddie Boland?

18 Q. 64 Yes, I believe so. If we turn to the next page, 906, we see the area of land
19 that was involved. And it is the bottom right hand corner of the map that we
20 looked at a little earlier, isn't that right?

11:19:22 20
21 A. Yes.

22 Q. 65 And the Willie Nolan Road is running at the very bottom there?

23 A. Uh-huh.

24 Q. 66 It's at the junction with Grange Road?

11:19:32 25 A. Grange Road.

26 Q. 67 Is towards the left of the map, isn't that right?

27 A. Yes.

28 Q. 68 And that was an area of approximately eleven or perhaps twelve acres which at
29 that time was zoned land but did not have planning permission, isn't that
30 right?

11:19:47 30

11:19:48 1 A. It was zoned, I know that.

2 Q. 69 Yes?

3 A. It didn't have planning permission, that's correct.

4 Q. 70 It didn't have planning permission?

11:19:54 5 A. Yeah.

6 Q. 71 Now, were you aware at that time, that is in January of 1986, that Mr. Byrne

7 had apparently reached some form of arrangement with Mr. Jim Kennedy for the

8 development of these lands?

9 A. What was that date again?

11:20:10 10 Q. 72 January 1986.

11 A. I can't remember the date but I know that there was an arrangement entered into

12 between Mr. Kennedy and Mr. Byrne.

13 Q. 73 Yes there may have been perhaps more than one arrangement and we'll be moving

14 to an arrangement which was made following a meeting which took place in July

11:20:32 15 of 1986, some six seven months after this. Where the 100 acre option was

16 discussed and agreed in principle. But their relationship, I suggest, started

17 with this eleven or twelve acre holding. Are you aware of that?

18 A. I'm -- I just don't quite follow you. You're saying that there was an option

19 oh, yes for the 100 acre.

11:20:57 20 Q. 74 Yes?

21 A. Yes.

22 Q. 75 This agreement that we saw on screen?

23 A. Which was to be in several tranches. Is that the one we're talking about, 16

24 acres or 20 acres.

11:21:07 25 Q. 76 Well it could be exercised in ten-acre tranches?

26 A. Yes.

27 Q. 77 But the relationship, could I suggest, started in relation to the eleven acres

28 that we see on the screen here?

29 A. I can't remember I'm afraid. I'm not sure, I don't know.

11:21:22 30 Q. 78 I think Mr. Byrne acknowledges in his statement to the Tribunal that he was in

11:21:26 1 error in his initial belief that his involvement with Mr. Kennedy had started,
2 excuse me, in July of 1986 when the Tribunal was able to produce documents to
3 him?
4 A. Yes.

11:21:40 5 Q. 79 And show this Edington involvement in 1985?
6 A. Well, I read Mr. Byrne's statement.
7 Q. 80 Yes?
8 A. I think what's there is correct.
9 Q. 81 Yes. We'll see that on page 920. A firm of solicitors Binchy & Partners, is
11:22:04 10 writing to Mr. Byrne in connection with the lands at the Baldoyle Race Course
11 in August 1986.
12 A. I see that letter, yes.
13 Q. 82 'Dear Mr. Byrne, further to a meeting with our clients, which took place at
14 Fenit House, Kerry, on the 21st inst. We wish to confirm on behalf of our
11:22:24 15 clients that they are agreeable to entering into an option agreement with the
16 owners of the lands which we understand involves 80 acres'. That was to
17 increase to 100. The option should be for a further of period of four years a
18 price per acre 20,000 pounds per acre, the payment for the option should be 50
19 pounds. Our client should be entitled to draw down portions of land as
11:22:43 20 required on them giving a reasonable notice to your clients.
21
22 That was the first letter in a series of correspondence which culminated in the
23 option agreement being entered into over the 100 acres of land, which are the
24 southern most part on the site, isn't that correct
11:23:01 25 A. Yes. I haven't seen that letter, I don't think, before.
26 Q. 83 If you'd like to read?
27 A. It I've read it now, thank you.
28 Q. 84 Familiarise yourself with it?
29 A. Yeah that letter was written on the 26th of August 1986.
11:23:16 30 Q. 85 Mr. Byrne tells us that the meeting which is referred to here is a meeting

- 11:23:23 1 which was attended by Mr. Liam Lawlor and Mr. Jim Kennedy and that it had been
2 organised by Mr. Liam Lawlor, who effected the introduction of Mr. Kennedy to
3 him at this meeting.
- 4 A. I'm sure that's correct.
- 11:23:37 5 Q. 86 Yes. Mr. Lawlor I think was to form or to play a similar role when it came to
6 the 400 acres. He was also the introducer in that instance also, isn't that
7 so?
- 8 A. Well, again, I'm sure it is, yes. But I don't know personally.
- 9 Q. 87 We'll see that on the 28th of August what is discussed here is that the
11:24:05 10 solicitor who was acting on behalf of the party which intends to take the
11 option over what is the 80 acres here, is writing in terms that there had in
12 effect been a concluded agreement. I think that is common enough perhaps where
13 a purchaser's solicitor is writing. It doesn't necessarily mean?
- 14 A. Exactly.
- 11:24:28 15 Q. 88 That there was an agreement concluded. But it is an indication of the fact
16 that in principle there may well have been an agreement between the parties.
17 Though of course being a contract for the sale of land, it would require to be
18 in writing to be legally enforced, isn't that correct?
- 19 A. Yes, and a deposit paid, yes.
- 11:24:47 20 Q. 89 Just looking at it, it seems that what was envisaged here was that the option
21 holder company would effectively control some 80 acres of lands for a period of
22 four years from the date upon which the option was entered into, isn't that
23 right?
- 24 A. So it says here, yes.
- 11:25:03 25 Q. 90 And the consideration for that was minimal, in the sense that 50 pounds was
26 going to be paid for that right, isn't that the so?
- 27 A. Yes.
- 28 Q. 91 And would you agree that that is an indication that certainly those who were
29 taking the option, firstly, well perhaps not them. The person who was granting
11:25:19 30 the option must have had a reasonable belief that the option holder could carry

11:25:24 1 out the tasks that the option holder had to do in relation to these lands,
2 isn't that so?
3 A. Yes. And they did.
4 Q. 92 You generally don't tie up your lands for 50 pounds to somebody?
11:25:38 5 A. No, well, as I say, he was to get 20 thousand an acre, isn't that right?
6 Q. 93 Yes.
7 A. And if the option was exercised.
8 Q. 94 Exactly?
9 A. Yeah.
11:25:48 10 Q. 95 So, whereas Mr. Byrne himself wasn't successful and couldn't get planning, it
11 was his belief, obviously, at this time that those to whom he was giving the
12 option could do so, isn't that right?
13 A. Well I say he hoped they could, yes.
14 Q. 96 Yes. Did you know of any particular suggestion or plan or project that had
11:26:14 15 been advanced to Mr. Byrne by the option holders which caused him to agree to
16 allowing them to effectively control his land and the planning application
17 which was going to be made in respect of it?
18 A. No, I can't help you there. Because, again, I would not really have had
19 anything to do with that option agreement apart from providing the schedules of
11:26:36 20 title.
21 Q. 97 Yes?
22 A. But I wouldn't have gone into the nuts and bolts of that at all myself. So, I
23 mean, I didn't -- I wasn't in Fenit, I met Mr. Lawlor but I don't think at that
24 time, I met him later.
11:26:50 25 Q. 98 Right. If we move to document 950. This is a document which I think is an
26 internal document of your firm. Possibly to you, is it?
27 A. It is, yeah. Yes, from my brother to me A C to J, yeah.
28 Q. 99 This is on the 18th of November 1986?
29 A. Right.
11:27:15 30 Q. 100 And it indicates that John Byrne wants an option contract sent out covering 100

11:27:21 1 acres of land at Baldoyle on which he is prepared to give an option of 20,000
2 pounds an acre or a total of 2 million pounds to a Mr. James Kennedy acted for
3 by Binchy & Partners. The letter from them is attached.

4
11:27:34 5 And I think that probably is the letter that we saw a little earlier, albeit
6 that it is some months earlier, the 28th of August. The option for a nominal
7 50 pounds consideration is to be exercised on or before the 25th of January
8 1990. Also attached is a memorandum of some similar type of agreements which
9 Liam McGonigal prepared in relation to other lands which might be helpful to
10 you in preparing the option agreement.

11
12 If I could just stop just at that point.

13
14 You may be aware of the fact that the lands in respect of which Mr. Byrne was
15 trustee were also lands which were covered by an option which was granted to a
16 company involved with Mr. Kennedy.

17
18 Does that jog your memory at all as to the reference here to the accompanying
19 document to this memorandum?

11:28:28 20 A. Is that the Rogers land?

21 Q. 101 Yes.

22 A. No, I knew there was some association but I didn't deal with anything myself.
23 I think maybe Mr. McGonagle did, I don't know. I don't know a lot about that
24 I'm afraid.

11:28:42 25 Q. 102 AI appreciate that your firm didn't deal with it?

26 A. It yeah.

27 Q. 103 As regards the other lands. Firstly, can I suggest to you that Mr. McGonagle
28 and Mr. Byrne were both trustees of the Rogers Estate together with
29 Mr. Crowley, the other trustees?

11:29:09 30 A. I see.

- 11:29:09 1 Q. 104 And their lands were also the subject of an option which was negotiated in 1986
2 with a company called Financial Indemnity Company Limited which was an option
3 over the lands in respect of which Mr. Byrne was trustee. Now, could I suggest
4 to you that in considering a draft or a similar type of agreement which was
11:29:19 5 referred to in this memorandum, it may well have been that similar draft in
6 relation to the Rogers lands which you were considering?
7 A. I haven't got a copy of that option agreement. I don't remember doing it.
8 But, I mean, I see that I'm asking to asked to do it here. I have to say that
9 I would have thrown up my hands in horror because I wouldn't know how to do it,
11:29:43 10 even today. Options and that sort of thing are something I just don't deal in.
11 I am just a pure conveyancer and a planner. Maybe I copied it from the
12 McGonagle thing, I can't remember. If you have a copy I'll look at it now.
13 Q. 105 We don't unfortunately. If we had we'd produce the original for you?
14 A. Yeah.
11:30:00 15 Q. 106 I was enquiring a little earlier, Mr. Gore Grimes, about what the possible
16 reasoning for entering such an agreement was. I think you will see in the body
17 of this attendance that your brother, Mr. Anthony Gore Grimes, sets out the
18 reasoning here for this arrangement. Towards the end of the attendance he says
19 to you apparently the reasoning behind this particular area is that Mr. Kennedy
11:30:22 20 believes that he will be able to connect into the existing Howth sewage system
21 and it wouldn't be necessary to engage in any massive new sewage development.
22
23 So the parties apparently were of the belief that Mr. Kennedy had the capacity
24 to access the sewage
11:30:41 25 A. Now that's very familiar. I can remember that all right, yes.
26 Q. 107 Although, I think you probably remember that until such time as Mr. Kennedy
27 took this option, he was not the owner of any of the lands which would be
28 accessing the Howth sewage system, isn't that right?
29 A. I'm sure it is, yes.
11:30:59 30 Q. 108 Yes. So that what Mr. Kennedy was bringing to this arrangement was that he was

11:31:05 1 indicating, whether it be correct or incorrect, to Mr. Byrne, that he could get
2 access to the sewage system?

3 A. I can remember that.

4 Q. 109 Yes?

11:31:13 5 A. And he did get access.

6 Q. 110 Yes. Now, the option agreement which was to be drafted here is one which took
7 approximately two years to come to fruition. We'll see that it was signed in
8 November of 1988, some two years after this attendance here, isn't that right?

9 A. I haven't got that agreement.

11:31:36 10 Q. 111 Not to worry. You don't remember any particular reason for there being what
11 would seem to be a considerable delay in a four year option if it didn't get
12 signed for two years after the date upon which it was agreed?

13 A. I do. I remember there were protracted negotiations.

14 Q. 112 Yes?

11:31:55 15 A. Long silences sometimes on my part and sometimes on, I don't know, I think it
16 was maybe Brian Gartland or maybe John Caldwell, one or other.

17 Q. 113 Yes?

18 A. And it did proceed very slowly. And, I mean, I kept on being reminded to move
19 it along.

11:32:14 20 Q. 114 Yes?

21 A. And it fell between us I think.

22 Q. 115 And throughout all of that, is it correct to say that Mr. Liam Lawlor was
23 involved?

24 A. I'm not saying that he wasn't. But I really -- I don't think I met him until
11:32:29 25 somewhere later. But I could be wrong about that. I can't remember when I
26 met him.

27 Q. 116 Yes?

28 A. But I know that certainly, I know from later when we came to negotiate the 100
29 acres and when we came later to try and extract ourselves from various
11:32:44 30 commitments that had been given to Mr. Kennedy. That Mr. Liam Lawlor was

- 11:32:49 1 advising Mr. Kennedy, at least they were frequently together and I would have
2 met the two of them.
- 3 Q. 117 Yes. Could I suggest to you that in fact from the very beginning of this
4 transaction, from 1986 onwards, Mr. Lawlor was continuously involved. We've
11:33:01 5 seen to date now this is November 1986, the fact that the meeting which gave
6 rise to this option agreement was one which was organised by Mr. Lawlor in
7 Fenit?
- 8 A. Well I could be incorrect in this but I really can't remember Mr. Lawlor's
9 involvement on that. At that stage.
- 11:33:20 10 Q. 118 Yes?
- 11 A. Yeah. I mean, I could be wrong there.
- 12 Q. 119 The initial Edington building license agreement, which was the first document
13 we saw this morning, appears to have been superseded by this option type
14 arrangement, isn't that so?
- 11:33:39 15 A. I would think so, yes.
- 16 Q. 120 Yes. And we'll see that apparently Mr. Byrne himself was involved in
17 endeavouring to achieve the development potential of the lands, particularly
18 the Admiral Park Lands, they are the ones which were the subject of the twelve
19 acre Edington arrangement?
- 11:34:08 20 A. They seemed to be, I think, a general consensus, you know, that if any part was
21 to be developed that the Baldoyle end was the one to go for. Because Baldoyle
22 was getting crowded, there was demand for housing even then and that seemed to
23 be the right one.
- 24 Q. 121 Yes. And it had the benefit of being zoned for residential?
- 11:34:24 25 A. That's the point too.
- 26 Q. 122 Whereas the rest was B and G?
- 27 A. B and G.
- 28 Q. 123 Yes. And we'll see that Mr. Byrne was endeavouring to get the sewage access
29 for those lands through the Council themselves, do you remember that?
- 11:34:48 30 A. I don't, I have to say, sorry.

- 11:34:50 1 Q. 124 We'll see that there is another attendance at page 954. Again, it's J G B K at
2 the end of it, which is at page 955. I'm not sure if this is your attendance
3 now rather than your brother's?
- 4 A. Oh, J G B K is me. What's at the top, JB, did I see something at the top of,
11:35:12 5 that oh, is it the last attendance that you have on screen? Oh, no that's your
6 reference. Okay. Yes. That's me .
- 7 Q. 125 So if we look at this we'll see that it's dealing with Endcamp and John James
8 Kennedy and with the option agreement on the lands. So we're not dealing with
9 the original Edington plan we're now dealing with the option, isn't that right?
11:35:34 10 It had moved on to there being an option?
- 11 A. In December '86.
- 12 Q. 126 Yes?
- 13 A. Yes.
- 14 Q. 127 Now, although this agreement was not to be formally reached by the parties
11:35:44 15 until November 1988. They appear to have been progressing matters in the
16 absence of a formal written agreement, is that fair?
- 17 A. It would appear so from this, yes.
- 18 Q. 128 Yes. Now, this is your attendance, is that right?
- 19 A. It is.
- 11:36:02 20 Q. 129 And it says attending consultation with John Byrne when he said he was awaiting
21 information concerning possibly -- possible goods for Endcamp. I suggest that
22 was possible good news for Endcamp?
- 23 A. Oh, yes sorry it probably is.
- 24 Q. 130 He said that Kevin O'Donnell wanted to insert a lake somewhere around the river
11:36:21 25 and the Moyne Road to cater for drainage. But that once this was done there
26 was a possibility of some sort of permission being forthcoming. He was having
27 a meeting with some people during this week and would be in a better position
28 to know what the situation was after those meetings. In the meantime, he
29 wanted me to stall a little bit.
- 11:36:41 30

11:36:41 1 Does this suggest that independent of Mr. Kennedy's efforts to have the access
2 to the sewage, Mr. Byrne himself was also trying to get access?
3 A. Well, I mean, Mr. Kennedy would have been concentrating on his 100 acres this
4 would seem to me to indicate that Mr. Byrne was looking at the entire take.
11:37:02 5 You are talking about the lake. That was an attenuation flood plain lake to
6 try and alleviate the flooding that was taking place in Baldoyle.
7 Q. 131 Yes?
8 A. But I would think that Mr. Byrne hadn't lost sight of, you know, what remained
9 and that was the major part of the site.
11:37:19 10 Q. 132 Well everything remained at this point Mr. Gore Grimes?
11 A. That's right.
12 Q. 133 Because there hadn't been any formal written agreement between the parties?
13 A. Except that one was already zoned and the other wasn't. And I say that the
14 good news was the hope that the remainder would get some or part of it would
11:37:31 15 get some sort of rezoning.
16 Q. 134 Certainly while that is one possible explanation. Another one is that when you
17 are being asked to stall. It was to stall the completion of a legally binding
18 agreement, isn't that right? I mean that was -- you were being asked to stall?
19 A. Probably asked to wait and see what Mr. O'Donnell's news was.
11:37:54 20 Q. 135 Right. Now, as regards the value of the property at this point in time.
21 Obviously the common intention of the parties was that the option would only be
22 exercised if planning permission was granted, isn't that so? That was the
23 reality of their relationship. If there was no planning permission there was
24 no way Mr. Kennedy was going to spend 20,000 an acre, isn't that right?
11:38:21 25 A. Correct.
26 Q. 136 So everything was contingent upon there being planning permission. And we see
27 towards the end of this letter that there is an illustration of the difference
28 in value between the lands with permission and without permission.
29
11:38:36 30 At the very end you'll see on the last line there "they said that they got

11:38:40 1 permission -- sorry. They said that at the time they got permission the value
2 per acre would be risen from 20,000 to 60,000. And that represents a four
3 million pound profit"

4 A. I am sure that's correct.

11:39:03 5 Q. 137 Could I suggest to you that they were the realistic figures that were
6 applicable at the time?

7 A. I believe so.

8 Q. 138 Yes. And so that would indicate that Mr. Byrne was apparently happy to take
9 approximately one-third of the value of his land and to leave two-thirds of the
11:39:13 10 value of the land to the option holders, isn't that correct?

11 A. I haven't calculated but I'm sure you're right, yes.

12 Q. 139 20 of 60, it is two thirds?

13 A. But of course the option holder was the man who was getting the permission.

14 Q. 140 He is. But he is not the owner of the land. And his expense to date, as far
11:39:31 15 as we see, is 50 pounds for the benefit of the option?

16 A. Well.

17 Q. 141 And then whatever it costs him to get the zoning or planning?

18 A. A lot I would suggest.

19 Q. 142 Yes.

11:39:42 20 A. Yeah.

21 Q. 143 Mr. Byrne of course, at this time was himself a very successful developer and
22 he knew all about the costs of planning and various other matters, isn't that
23 right?

24 A. Yes, he hadn't really gone into the housing development.

11:40:02 25 Q. 144 Yes?

26 A. He was more of an officer developer and they are two different terms in terms
27 of planning expenses.

28 Q. 145 Sure. Could you see any reason objectively as to why he should allow somebody
29 else to take the lion's share of the profit here of four million and he will
11:40:18 30 only get two million, despite the fact that he is the owner of the land?

11:40:22 1 A. Well, he still believed that if he made any application for planning permission
2 that he wasn't going to get it. So he was trying to make some bit of money out
3 of the lands and reinvest it in somewhere which is more productive. I know
4 that he was partly sick of Baldoyle at that time and for several years later.

11:40:41 5 Q. 146 Yes. We will see that matters didn't progress terribly far for the next year.
6 Because if we look to document at page 1009.
7
8 This is December 1987. A year later. And again, it's an attendance of your's
9 A. Yeah. Could I just say. I mean, the price in '86 was 20,000 an acre.

11:41:10 10 Q. 147 Yes?
11 A. And that was on the zoned land.
12 Q. 148 Yes?
13 A. And yet it went up to 30,000 in 1991 or thereabouts.
14 Q. 149 Yes?

11:41:20 15 A. And that was on unzoned land.
16 Q. 150 Yes?
17 A. So, you know, it's not altogether an unfair comparison. That was a time of
18 huge increase, if you recall.
19 Q. 151 Yes. I appreciate that the market price can vary depending on what the
11:41:36 20 economic circumstances are at the time?
21 A. Yeah.
22 Q. 152 But the time we're looking at here is in 1986 and we're looking particularly at
23 the relationship between the landowner and the option holder. And just looking
24 at where the profit was going to go on the deal and I was really asking you for
11:41:58 25 your views as to why it was that the lion's share of the profit of this deal in
26 1986 had it gone through at that time, would have found itself in the pocket of
27 the option holder rather than the landowner?
28 A. Because he was happy to sell the acreage and let the other man go ahead.
29 Q. 153 Yeah. Mr. Byrne has continued for the next 20 years to be a developer of
11:42:23 30 property, isn't that right? He's still in the property business?

- 11:42:27 1 A. Question.
- 2 Q. 154 Yes. And I take it?
- 3 A. He was cured of housing development after that.
- 4 Q. 155 Yes. In a year later, as I say, we are now in 1987. The option has not been
- 11:42:45 5 signed. It's still believed that Mr. Kennedy will be the person who will get a
- 6 100 acre option over the lands. And he is still dealing with Mr. Kennedy?
- 7 A. He had a few reservations I see.
- 8 Q. 156 He had reservations. But in the meantime Mr. Kennedy had been advancing his
- 9 plans to develop this land albeit that he didn't have any legal title or
- 11:43:10 10 enforceable contract at that point, isn't that so?
- 11 A. Yes, yes.
- 12 Q. 157 Now, what you record here as having taken place at a meeting attended by
- 13 Mr. Kennedy and Mr. Caldwell and yourself and Mr. Byrne, was that Mr. Kennedy
- 14 then explained the work that he had done in getting the permission, this
- 11:43:35 15 permission. And said that he and he alone had done it. Now, that everybody
- 16 else had failed. He discovered that there was a possibility of getting another
- 17 1100 houses into the Howth pipe and he got permission for 230 houses and he
- 18 would certainly get another 100 houses".
- 19
- 11:43:52 20 Have you a recollection of Mr. Kennedy explaining how it was that he could get
- 21 this permission where nobody else could have got it? Remember the detail of
- 22 what he was saying
- 23 A. I wouldn't recall the detail. But Mr. Kennedy was very successful at getting
- 24 permissions which certainly we couldn't get.
- 11:44:17 25 Q. 158 Yes. Now, were you aware that in the meantime, that is between December 1986,
- 26 which was your last attendance and this attendance in December '87. That there
- 27 were attempts being made by Mr. Liam Lawlor to advance the project with the
- 28 County Council?
- 29 A. I don't remember that. I mean, I'm not in any sense denying it but I've no
- 11:44:49 30 recollection of it.

- 11:44:51 1 Q. 159 Yes?
- 2 A. I met Mr. Kennedy and Mr. Byrne at that stage and actually I'm surprised to see
3 that that meeting only took fifteen minutes. My goodness, we said a lot. I
4 mean, we could have met. If you got an attendance there that shows me I did
11:45:08 5 meet Mr. Lawlor. I accept it. I don't remember it.
- 6 Q. 160 I'm not suggesting that you necessarily met him. I'm asking you whether or not
7 you were aware of the fact that while Mr. Kennedy here says that he was the
8 person who got the permission, were you aware of the efforts that were being
9 made by Mr. Liam Lawlor during this period?
- 11:45:26 10 A. Well I can't be absolutely certain about this. But I think that I thought
11 Kennedy was Kennedy and until much later when he came in with Lawlor and then I
12 saw that Lawlor was advising Kennedy. But I don't remember any talk about
13 Lawlor at the stage of this connection with to the Howth pipe. I know exactly
14 where it went. We went out to inspect it with Mr. Kennedy and Mr. Byrne and
11:45:51 15 there was no sign of Mr. Lawlor at that stage.
- 16 Q. 161 I'd like to look at a document at 946, please.
17
18 Which is a document dated October 1986.
19
- 11:46:02 20 Now, this document is one which is on the letter head of, if we could see the
21 letter head
- 22 A. Yes.
- 23 Q. 162 That is Mr. Byrne's personal correspondence, isn't that right?
- 24 A. Yes.
- 11:46:20 25 Q. 163 Sorry. It's...
- 26 A. From his home.
- 27 Q. 164 From his personal home address and it is supposedly signed by Mr. John Byrne,
28 at the very end. It's not Mr. Byrne's signature. I think you'll be able to
29 see that. It's PP'd by an indecipherable signature, isn't that right?
- 11:46:42 30 A. Yes.

11:46:43 1 Q. 165 Now, this letter is one in which if it came from Mr. Byrne says that following
2 a recent meeting with his representative, Mr. Bill Riordan, he, Mr. Byrne, can
3 confirm his agreement to Dublin County Council entering onto the Baldoyle lands
4 to effect remedial works on the race course stream. He understands from
11:47:08 5 Mr. Riordan who is accompanied by Mr. David Galbraith, the consultant engineer,
6 that the sanitary services Department will give a detailed technical response
7 to the report prepared and submitted. This report will deal with the disposal
8 of surface water and foul drainage from the zoned lands and the surface
9 capacity if certain upgrading takes place.

11:47:31 10
11 Now, there will be evidence later today Mr. Gore Grimes, from Mr. Liam Lawlor's
12 former secretary, Ms. Joan Clarke, that this document was one dictated by
13 Mr. Liam Lawlor and typed by her. And Mr. Byrne, as you know, has indicated
14 that he has no knowledge of this document

11:47:54 15 A. It certainly doesn't sound like anything Mr. Byrne would write, I'd say that.

16 Q. 166 Do you know why it was that Mr. Liam Lawlor was writing letters on
17 correspondence which appears to be on the letter heading of Mr. John Byrne in
18 relation to these lands in 1986?

19 A. I'm afraid I have no idea.

11:48:18 20 Q. 167 Yes?

21 A. I don't know.

22 Q. 168 Yes. This is part of a series of correspondence around that time, all of which
23 Ms. Clarke will say was written by her, typed by her, although it appears to
24 come from a whole series of different persons.

11:48:35 25
26 Now Mr. Byrne has told us that he never met the gentleman Mr. Bill Riordan, who
27 is referred to in the top of that letter as being his representative. Nor does
28 he say that he ever knew Mr. David Galbraith, who is mis-spelled here as
29 Mr. David Galbraithy, an engineer.

11:48:55 30 A. Yes.

- 11:48:56 1 Q. 169 If that is correct it would appear that Mr. Lawlor was, through Mr. Galbraith,
2 the engineer, and through Mr. Riordan, conducting the attempts to have the
3 sewage to these lands granted by Dublin Corporation, County Council I should
4 say, isn't that so?
- 11:49:16 5 A. I've never heard of Mr. Bill Riordan until I read these papers just the other
6 day. Until I read yesterday's transcript or some time like that. But that
7 would seem to be the implication. You know, I agree with you.
- 8 Q. 170 If we look to the letter now. 9767, which was on the 20th of May 1987. We'll
9 see that this is a letter from Mr. Lawlor himself on his constituency office
11:49:46 10 headed paper.
11
12 You will see the typeface is exactly the same as the earlier letter. But as
13 you'll see at the very bottom of that. A copy of this letter was being sent to
14 Mr. John Byrne. You see that?
- 11:50:01 15 A. Yes.
- 16 Q. 171 And in this it seems Mr. Lawlor is acknowledging that to Mr. Henigan, who
17 happens to be a senior engineer in the Council. "I would like to thank you for
18 the courtesy extended when I recently visited your office. I noted your
19 comments regarding the progress being made on the various engineering aspects
11:50:21 20 of the surface and foul drainage network of the Baldoyle area. I've
21 recommended to the Applicant, that's unidentified Applicant here, your proposal
22 to carry out a detailed analysis of the foul drainage system should allow for a
23 deferral of a decision on the present appeal. Pending the outcome of your
24 engineering personnel's completion of the appropriate assessment. I also
11:50:46 25 acknowledge the progress your department has made on the design of a suitable
26 water system which obviously has to go through an assessment and final
27 approval stage in the Department Of The Environment.
28
29 Your guidance and assistance is appreciated".
11:51:00 30

- 11:51:00 1 Now, it seems, therefore, that Mr. Lawlor was writing both officially to deal
2 with the question of drainage being provided to these lands but also he was
3 engaged through writing letters on Mr. Byrne's headed notepaper regarding the
4 same issue, isn't that right?
- 11:51:19 5 A. Well, I really can't comment very much on these letters. I mean,.
- 6 Q. 172 Well your client Mr. Byrne, I think in giving his instructions or in making his
7 statements to the Tribunal, has been dealing through your offices who have
8 approved all of his statements with him, isn't that right?
- 9 A. Yes.
- 11:51:37 10 Q. 173 You're aware that Mr. Byrne says that he knew nothing of this Mr. Riordan,
11 nothing of Mr. Galbraith and he knows nothing of the correspondence that we've
12 just seen on screen. Although it appears to have been written in his name and
13 we'll hear today from Ms. Clarke that it was typed by her?
- 14 A. That's what I'm saying to you, yes.
- 11:51:58 15 Q. 174 Yes?
- 16 A. I don't know who John McDaid or Tom Mayor are.
- 17 Q. 175 They are employees, Council officials, engineers in the Council?
- 18 A. Oh, I see, yes.
- 19 Q. 176 If we look now to document at 980.
- 11:52:14 20
- 21 And this is on the 13th of July of 1987. Again, this appears to be a letter
22 from Mr. Byrne from...
- 23 A. Edington.
- 24 Q. 177 Well, I should say if we look to the top of it we'll see that it's from
11:52:33 25 Simmonscourt Lodge?
- 26 A. Yes.
- 27 Q. 178 It's being written to An Bord Pleanala in this instance?
- 28 A. Yes.
- 29 Q. 179 And it's signed by Edington. But it's supposedly is emanating from
11:52:45 30 Simmonscourt Lodge, Mr. Byrne's residence, isn't that correct?

- 11:52:48 1 A. That's correct.
- 2 Q. 180 And again this is a letter which Ms. Clarke will say was a letter typed by her
- 3 in the offices of Mr. Liam Lawlor. And therefore it would appear to follow not
- 4 Mr. Byrne's letter?
- 11:53:04 5 A. Yes.
- 6 Q. 181 Isn't that so?
- 7 A. It seems so.
- 8 Q. 182 So in addition to dealing with the Council in relation to Mr. Byrne's lands,
- 9 Mr. Lawlor seemingly is dealing with An Bord Pleanala also on the letter
- 11:53:18 10 heading of Mr Byrne, isn't that so?
- 11 A. Yes, it looks like that.
- 12 Q. 183 And again, we'll see at page 981 he's writing to Dublin County Council on the
- 13 31st of July. Again, from Mr. Byrne's address at Simmonscourt Lodge dealing
- 14 with both the surface water and foul drainage of the Baldoyle lands.
- 11:53:50 15 A. Yes, I don't know who signed that.
- 16 Q. 184 I think it's a rather poor squiggle for Edington?
- 17 A. Oh, right yep.
- 18 Q. 185 So no identifiable individual but it's supposedly emanating from Mr. Byrne's
- 19 address, isn't that right?
- 11:54:06 20 A. It is, yeah, the notepaper has that address at the top, yes.
- 21 Q. 186 For completeness, I'd like to see now the document at page 1,000, which is a
- 22 letter of the 6th of November 1987. It's one of three letters which were
- 23 supposedly written by Mr. Galbraith, who is the engineer, who is referred in
- 24 the earlier correspondence.
- 11:54:35 25
- 26 But, again, in each of these letters and they go to the Council and to An Bord
- 27 Pleanala. These were also typed by Mr. Lawlor's secretary and sent out
- 28 supposedly in the name of Mr. Galbraith.
- 29
- 11:55:02 30 Now, all of that correspondence, Mr. Gore Grimes, is taking place between the

11:55:02 1 two dates that I've mentioned of your attendance, one was the 1986 December
2 meeting. And the last one we looked at, at page 1009 was the December 1987
3 meeting.

4

11:55:14 5 And in your attendance in December 1987 you were recording the fact that
6 Mr. Kennedy had explained all the work that he had done in relation to getting
7 access to the Howth system, isn't that right

8 A. Yes.

9 Q. 187 At any time in the course of that were you made aware of the fact that part of
11:55:35 10 that effort of Mr. Byrne and Mr. Kennedy's involved Mr. Lawlor doing what we
11 see he did here, namely, making direct approaches to the Sanitary Services
12 Department himself, attending at their offices, writing in the name of
13 Mr. Byrne and Mr. Galbraith, and apparently arranging meetings with Mr. Riordan
14 and Mr. Galbraith with Council officials. Did you know of any of that or did
11:56:03 15 Mr. Kennedy indicate any of that to you at the time?

16 A. I can't say definitely that he did or he didn't. But I have no recollection at
17 all in those years, '86 '87 of having any knowledge that Mr. Lawlor was working
18 for or with, I don't know which, Mr. Kennedy, who I -- my recollection is that
19 I believed that Mr. Kennedy was the man. He was doing everything. And
11:56:30 20 certainly when he spoke to us at meetings it was I did this, I did that, I got
21 this, I got that. And so I mean I would say fairly certainly that I did not
22 know that Lawlor was in the background writing these letters. I certainly
23 didn't know about these letters until today.

24 Q. 188 Right. We'll see on the next attendance at page 1012. Again, an attendance of
11:56:57 25 yours. You are meeting with Mr. John Byrne or certainly recording what
26 happened with Mr. Byrne on that date.

27

28 Mr. Byrne is a little suspicious of Kennedy and I've written a letter dated
29 21st of December to Binchy & Partners setting out the amendments we require.

11:57:15 30

- 11:57:15 1 This illustrates, I think, that the parties still had not committed themselves
2 to any legally binding agreement at the time. And Mr. Byrne would be happier
3 to get out of the matter if he could, presumably, at that point, isn't that
4 right?
- 11:57:30 5 A. That's true.
- 6 Q. 189 But Mr. Kennedy was making the point that there was already a contract in being
7 because he had done all of the planning work, isn't that right?
- 8 A. I think perhaps the price was probably slipping up too.
- 9 Q. 190 Sorry?
- 11:57:42 10 A. The price might have been going up a bit too.
- 11 Q. 191 I'm not sure that the price ever changed from?
- 12 A. It might be another reason whilst he might like to negotiate.
- 13 Q. 192 Whilst he might like to do so in fact he ended up being committed in 1988 to
14 the terms of the agreement which had been reached by way of heads of agreement
11:58:01 15 in 1986, isn't that so? We'll see that a little later?
- 16 A. Right.
- 17 Q. 193 The price doesn't vary from 1986?
- 18 A. No, I think that's correct.
- 19 Q. 194 Whatever about Mr. Kennedy getting more, Mr. Byrne wasn't going to get any
11:58:14 20 more.
- 21
- 22 CHAIRMAN: Sorry, Mr. O'Neill. It's nearly or it's just gone five to twelve.
23 Perhaps we might take a ten minute break.
24
- 11:58:23 25 MR. O'NEILL: Yes.
26
27
- 28 **THE TRIBUNAL THEN ADJOURNED FOR A**
29 **SHORT BREAK AND RESUMED AS FOLLOWS:**
11:58:47 30

11:58:47 1

2

MR. O'NEILL: I think we can see from the attendance on screen, Mr. Gore

3

Grimes, that there was a dispute arising certainly as to the exact contractual

4

relationship which existed between Mr. Byrne and Mr. Kennedy as of that time,

12:13:49 5

isn't that right

6

A. Yes.

7

Q. 195 And I think your memo reflects the fact that Mr. Byrne was essentially becoming

8

suspicious and unhappy about dealings with Mr. Kennedy, isn't that right?

9

A. Correct, yes.

12:14:02 10

Q. 196 Had you any particular reason or do you know why Mr. Kennedy (sic) had that

11

difficulty with Mr. Kennedy, was there anything that Mr. Kennedy had done in

12

relation to these lands which caused Mr. Byrne to be unhappy about the

13

situation or what was his concern?

14

A. I wouldn't remember any particular concern but maybe it was more to do with

12:14:22 15

what he hadn't done. We were getting, it was going on. And I think there is

16

an attendance which you had up on screen earlier which said that Mr. Byrne was

17

feeling uneasy about Mr. Kennedy and you know because of rumours he'd heard or

18

things he'd heard from other people.

19

Q. 197 Yes.

12:14:43 20

A. But I can't say exactly why.

21

Q. 198 You'll see that in or around this time at the end of 1987 and beginning of 1988

22

Mr. Liam Lawlor comes in effectively I think to resolve the disputes or issues

23

that might have arisen as between Mr. Byrne and Mr. Kennedy. And the next

24

attendance is one at page 1013.

12:15:08 25

26

It's dated the 5th of January of 1988. It's your attendance. And it's

27

referring back to the 23rd of December of 1987, which was the date upon which

28

the last attendance was prepared. And in this attendance you record the fact

29

that we had an attendance with Liam Lawlor TD and John Byrne, which lasted from

12:15:32 30

2:30 until four o'clock on the 23rd of December

- 12:15:37 1 A. Yes.
- 2 Q. 199 So as between this attendance and the earlier attendance, can you say whether
- 3 or not it was the case that Mr. Kennedy and Mr. Lawlor were both together at
- 4 the time of the meeting on the 23rd or was it only yourself, Mr. Lawlor and
- 12:15:59 5 Mr. Byrne who were in attendance in December?
- 6 A. Well I think I would have recorded Mr. Lawlor's attendance if he'd been there.
- 7 And I didn't. So I'd have to assume that he wasn't there.
- 8 Q. 200 It seems then that there were two attendances you took in relation to what took
- 9 place on the 23rd. In one of them reference is made to Mr. Lawlor being
- 12:16:21 10 present. In the other you are discussing the concerns in relation to
- 11 Mr. Byrne?
- 12 A. Which are these, 23rd?
- 13 Q. 201 Sorry. If we look to page 1012 firstly. This is, this was prepared on the
- 14 23rd of December, at the very bottom you'll see that date, okay? That is the
- 12:16:42 15 attendance in which you record the fact that Kennedy is trying to make the
- 16 point that there is already a contract in being because he has done all the
- 17 work?
- 18 A. Per performance.
- 19 Q. 202 Exactly, now the next attendance, albeit the 5th of January is referring to
- 12:16:56 20 what took place on the 23rd, which is the same day as this attendance. You
- 21 understand.
- 22 A. On the 23rd of December?
- 23 Q. 203 Yeah?
- 24 A. And the date of the last one was also the 23rd is it.
- 12:17:08 25 Q. 204 It in fact is the next one. If we now look to 1013. This although prepared on
- 26 the 5th is dealing with matters which took place on the 23rd.
- 27 A. Probably rushing out to the office party.
- 28 Q. 205 Probably. After four o'clock because you've been with Mr. Lawlor and Mr. Byrne
- 29 until four o'clock that afternoon. Right. Now, this attendance is dealing
- 12:17:37 30 with the position as to whether or not there was a contract in existence or

- 12:17:41 1 otherwise. And obviously Mr. Lawlor had some input in trying to resolve that
2 issue, isn't that right?
- 3 A. Yes, yes.
- 4 Q. 206 And we'll see the next document I'd ask you to look at now is at page 1014.
12:17:57 5 And this apparently is a recording of the terms of an agreement which were
6 reached at Simmonscourt, which is Mr. Byrne's house, on Wednesday 3rd of
7 February 1988. And it's headed agreement between Jim Kennedy and John and it
8 is, I suggest, yet another document typed by Mr. Lawlor's secretary, we'll have
9 to get confirmation of that from Ms. Clarke this afternoon?
- 12:18:30 10 A. Yes.
- 11 Q. 207 But I believe it to be. And it is recording in effect the agreement between
12 Mr. Byrne's side, Mr. Kennedy's side, to put it?
- 13 A. And it refers to a signed map.
- 14 Q. 208 Yes. And the signed map we'll see on the next page.
12:18:46 15
16 But just looking at this document here, if this is prepared by Mr. Lawlor, it's
17 putting Mr. Lawlor in the position where he was attending a meeting at
18 Simmonscourt with a view to resolving issues arising out of the agreement,
19 isn't that so? The 100 acre option agreement
- 12:19:04 20 A. Yeah, well I mean I wasn't there, I would assume so but ...
- 21 Q. 209 Right. This document has come from Mr. Byrne's discovery. So presumably it
22 was with yourselves. Our reference to it is G and G, that's Gore and Grimes,
23 John Byrne. So I assume that this is in your files and has come to the
24 Tribunal from that source. I can confirm that for you. But I think you may
12:19:35 25 take it that this is the document which was in the Gore and Grimes file?
- 26 A. Yeah, well I haven't seen that document. I don't think.
- 27 Q. 210 Certainly it's not a document prepared within the firm. It's a document which
28 I suggest was prepared by Mr. Lawlor and sent to you to record the agreement
29 which your client has made with Mr. Lawlor on the 3rd of February?
- 12:19:57 30 A. And where does it say that is it was sent to us?

12:20:01 1 Q. 211 There is' nothing to say it was sent to you?
2 A. Oh, it came from us.
3 Q. 212 It came from you to us. It came to you in some form, how I'm not sure?
4 A. Uh-huh.
12:20:15 5 Q. 213 But it's not accredited to anybody on the face of it. But it says "please note
6 John Byrne's handwritten comment on the enclosed drawing agreeing in principle
7 to the boundary for the 100 acre holding. It was also agreed that a detailed
8 land survey would be undertaken on John Byrne's return to peg out access on the
9 ground and the 100 acre holding to ensure that it is compatible with the red
12:20:36 10 line. This action should not hold up conclusion of the documentation between
11 solicitors Gore and Grimes and Binchy & Partners?"
12 A. Was this agreement just an agreement about the layout of the roads and about
13 the rough boundaries subject to checking.
14 Q. 214 I think it's the reason for it as far as I can ascertain, is that there was to
12:20:57 15 be an access on to the site from the coast road and Mr. Byrne did not want to
16 compromise his own access to the remaining 400 acres by drawing a boundary line
17 on the 100 acres which would limit his subsequent use of the land.
18 A. Yeah.
19 Q. 215 I think that was the logic of it?
12:21:15 20 A. Yeah.
21 Q. 216 But it would appear from the note that the reference is made to the solicitors
22 Gore and Grimes and Binchy & Partners. And that suggests that it wasn't either
23 of those firms that prepared this note. And it is recording an agreement
24 reached at Simmonscourt. And I am suggesting to you that if this is
12:21:36 25 Mr. Lawlor's document and typed by Mr. Lawlor, an agreement was reached between
26 Mr. Lawlor and Mr. Byrne in relation to the option lands in 1988. Obviously,
27 this agreement was implemented, which we'll see by the fact that the maps
28 ultimately conformed with this agreement. So it came to your firm with the
29 view, I suggest, to it forming part of the agreement which ultimately was going
12:22:08 30 to be drawn up between the parties and showing the boundaries which is part and

12:22:13 1 parcel of the contractual arrangement.

2

3

A similar letter, albeit not identical in its terms, was recorded on the 5th of

4

February. I see at page 1016. I'm not sure how this document came into

12:22:46 5

existence. But it's headed attention Mr. John Caldwell, who was the solicitor

6

acting for the option holder. There is a little note in manuscript on the

7

corner saying to AGG, which suggests that it was to go to your brother. It's

8

dated 5th of February. 100 acres site on attached plan of the land subject

9

main distributor, entry and exit. The main distributor road is to be laid

12:23:10 10

close to the red line running from east to west off the main Baldoyle

11

Portmarnock road. The road entry and exit to the lands with the red line to be

12

agreed with DCC Roads Design Department. The red line referred to is on the

13

northern boundary of the land and access will be provided from the main

14

distributor road, the lands north of the red line etc.

12:23:30 15

16

So is this possibly a direction of yours?

17

A. I honestly -- when I got your letter I thought I was to deal with those

18

questions A to thing, I'm kind of a little bit taken by surprise. I have no

19

idea where that came from. I don't recall there being much difficulty about

12:23:50 20

the access. The access was eventually from the Willie Nolan Road, as you

21

probably know.

22

Q. 217 The access I think to the eleven access was from the Willie Nolan Road?

23

A. Yes.

24

Q. 218 This is the access sorry if you look to map 1015 that?

12:24:06 25

A. Is from the Grange Road entrance was it?

26

Q. 219 From the coast road as far as I can see. We're talking about reserving ...

27

A. I didn't think it did happen.

28

Q. 220 If we turn the map around, please, so that the manuscript is legible at the

29

bottom. Now, and perhaps magnify it. Do you see this is Mr. Byrne's writing.

12:24:32 30

Do you see it says 'important road near red line'?

12:24:36 1 A. I can't see that.

2 Q. 221 I don't think that I can decipher the rest of it?

3 A. There it needs to come down a bit. Oh, yeah important road red line. What

4 does it say exactly?

12:24:49 5 Q. 222 Access to the rest of the site, I think. Something to the rest of the site.

6 A. Is there an access into the site from there? I don't think so.

7 Q. 223 No, there wasn't an access. But the red line was place in that position.

8 A. Yes.

9 Q. 224 So as to allow for the possibility of there being an access to the site within

12:25:07 10 the lands that were going to be retained by Mr. Byrne?

11 A. That didn't happen because he didn't exercise the option at that end.

12 Q. 225 Exactly, yes?

13 A. There were two entrances, as far as I recall, one from the Grange Road across

14 a sort of a bridge and the other from the Willie Nolan Road.

12:25:27 15 Q. 226 So, what was in dispute here was do you see the line that's running, that marks

16 the 100 acre division between the lands that Mr. Byrne was going to retain,

17 which is about 400 acres that?

18 A. Would be straight line, the northbound re.

19 Q. 227 Yes. Perhaps if we can turn it so that Mr. Galbraith's note is at the bottom

12:25:43 20 of the page?

21 A. Yes.

22 Q. 228 Fine, we see now. And if you move forward to the line that is the most

23 northerly line?

24 A. Yes.

12:25:50 25 Q. 229 That's a wholly artificial line. There's no boundary?

26 A. That's right, it's a straight line across the field.

27 Q. 230 And the issue here was to determine where that line would be, being compatible

28 with the 100 acres being contained within the option and that the same time

29 allowing Mr. Byrne an opportunity of getting into the site off the coast road

12:26:11 30 to what he had retained. Do you see that? That's what it appears to say?

- 12:26:16 1 A. Right, its important that access to the rest of the site can be gained at the
2 point where the arrow is. In any event, its relevance from the point of view
3 to the Tribunal is that Mr. Lawlor appears to have been the person who
4 negotiated that agreement, indicating an involvement of his which commenced as
12:26:37 5 we saw in 1986 with the introduction and is continuing through to 1998 here.
6
7 You mentioned that Mr. Byrne had some disquiet about Mr. Kennedy and his
8 involvement.
9
- 12:26:52 10 And we'll see at page 1017. There is an extract from the Phoenix magazine,
11 which you had on your files
12 A. That reliable source.
- 13 Q. 231 Yes. Well, sufficiently reliable for you to include in your file as being
14 something that Mr. Byrne should be made aware of if he wasn't already aware of
12:27:13 15 it, isn't that right?
16 A. I can't read it so I can't remember actually.
- 17 Q. 232 It sets out a litany of complaints in relation to the behaviour of Mr. Kennedy
18 and his various business enterprises. And have you any recollection as to why
19 it was that you felt that it should be included on your file at this time?
12:27:33 20 A. Well, I knew Mr. Byrne had certain anxieties about Mr. Kennedy and I don't know
21 how I got that because I have actually never in my life bought a copy of that
22 magazine. But somebody must have given it to me and I put it in the file.
- 23 Q. 233 Now, that's the 12th of February 1988. As we know, the actual legal agreement
24 between the parties wasn't signed until the 1st of November 1988. So it
12:28:00 25 appears that despite whatever reservations Mr. Kennedy (sic) had, he still went
26 on to enter into a contractual arrangement with Mr. Kennedy?
27 A. Reservation Mr. Byrne had.
- 28 Q. 234 I beg your pardon, yes?
29 A. Yes.
- 12:28:14 30 Q. 235 And we'll see that in the meantime the attempts to have the lands at Admiral

- 12:28:25 1 Park were progressing through the Council, had gone from there to An Bord
2 Pleanala, and An Bord Pleanala on the 29th of July 1988 gave approval for the
3 development of the Edington Park Lands?
- 4 A. Yes.
- 12:28:42 5 Q. 236 We'll see that at page 1027.
6
7 So whatever about Mr. Byrne's reservations about Mr. Kennedy. Mr. Kennedy
8 delivered in relation to this planning, isn't that so?
- 9 A. He certainly did, yes.
- 12:29:01 10 Q. 237 And the planning was granted on the 29th of July 1988. And the Bauval option
11 was signed on the 4th of November of 1988. We'll see the option agreement at
12 page 1036. I beg your pardon. 1034. If we just come back to the page.
13
14 I'm not sure is that legible to you there, Mr. Gore Grimes? You see in the
12:29:44 15 manuscript that the date is entered there at the top. 4th of November 1988 is
16 in manuscript also. It may be that it was an option, the terms of which had
17 been reduced to writing at some earlier stage but you simply had not entered
18 the dates until November of 1988.
- 19 A. It doesn't look like it was generated in the our office. However, I'm not
12:30:09 20 certain about that.
- 21 Q. 238 I see.
- 22 A. Certainly the date is not, the writing there is not familiar. Are there
23 witnesses to the signatures perhaps?
- 24 Q. 239 There are. If we look to page 1047. It's signed by your brother as a
12:30:36 25 director. And witnessed by Mr. Caldwell perhaps. And then it's signed by
26 Bauval, which is the Isle of Man company, by Mr. Moore and by Jennifer Mary
27 Shade, who was a director?
- 28 A. Yes.
- 29 Q. 240 Of that company, Bauval.
- 12:31:03 30 A. Yes.

- 12:31:03 1 Q. 241 Now, in this agreement you'll see that --
- 2 A. I would think that just sorry. I would think that that document was generated
- 3 by John Caldwell.
- 4 Q. 242 Right. But irrespective of whoever?
- 12:31:11 5 A. Yes.
- 6 Q. 243 Generated it, it wasn't signed until November 1988?
- 7 A. Yeah, it seems to be about the description of the land, is that right.
- 8 Q. 244 I'm sorry?
- 9 A. Does it leave out the description of the land at the top paragraphs there?
- 12:31:24 10 It's incomplete there for some reason.
- 11 Q. 245 Yes. The description of the lands appears at page 1045. As being the area
- 12 surrounded by a red line on the map next hereto, the exact acreage to be
- 13 established by the respective architects of the owner...
- 14 A. Oh, yeah.
- 12:31:42 15 Q. 246 Really I think it was just do ensure that there was a legally enforceable
- 16 agreement. Because to this point in time, there had been no signed agreement
- 17 by the parties or their agents, isn't that right?
- 18 A. That's right, yes.
- 19 Q. 247 As and from this point the parties were legally committed to each other on the
- 12:32:02 20 terms, isn't that right?
- 21 A. Yes.
- 22 Q. 248 Yes. And, now, you'll see at page 1034 that one of the matters that was
- 23 intended was that the grantee, that is Bauval Limited, proposes to implement
- 24 the planning sequence proposal annexed hereto but the parties hereby agree that
- 12:32:23 25 the proposal merely represents an outline of the intent and doesn't constitute
- 26 any contractual obligation on behalf of the grantee whether on foot of the
- 27 agreement or otherwise.
- 28
- 29 So that it really was a declaration of intent embodied within the agreement as
- 12:32:38 30 to what was to happen on the planning side, isn't that right?

12:32:41 1 A. Yes.

2 Q. 249 And if we can see that document. At page 1048, and if we could turn it really

3 to ...?

4 A. Yes.

12:32:57 5 Q. 250 The formatting of this document is different from the rest of the agreement

6 itself. And it's typed on a different font. And it is consistent with the

7 presentation of documents which the Tribunal has considered to date as having

8 been prepared by Mr. Liam Lawlor.

9

12:33:15 10 Do you know whether or not this is Mr. Liam Lawlor's document?

11 A. I don't know, I can't help you there, I don't know.

12 Q. 251 Now, the option which was here was an option in relation to 100 acres of land.

13 It was exercisable by the option holder upon the option holder or its nominee

14 giving notice of the intention to exercise the option and paying 10 percent of

12:33:46 15 the amount, isn't that so?

16 A. Yes.

17 Q. 252 So that the minimum amount that would follow every option exercised was 20,000

18 pounds?

19 A. That's right.

12:33:57 20 Q. 253 Isn't that right? And we'll see that the option was exercised on three

21 occasions. Firstly, it was exercised in relation to that portion of ground in

22 respect of which the Edington planning application had been successful to build

23 the Admiral Park development, isn't that right?

24 A. Yes. Yes, on the Willie Nolan Road, I think.

12:34:21 25 Q. 254 That's on the Willie Nolan Road.

26

27 And we'll see at page 1076 that on the 6th of December 1989

28 A. Oh, yes.

29 Q. 255 You were given notice of the option. It refers to Bauval having its registered

12:34:40 30 office at 12 Mount Havalock, Douglas, Isle of Man on the one part and Endcamp

12:34:46 1 having its registered office at your former offices in Cavendish Row. Bauval
2 hereby notifies Gore and Grimes solicitors, solicitors for Endcamp, that Bauval
3 hereby nominates or designates Sabre Developments Limited having its registered
4 office at 13 Lower Baggot Street Dublin to exercise the option granted by the
12:35:07 5 option agreement in respect of the lands in the schedule and then it details
6 those lands as being 11.96 acres or thereabouts more particularly designated on
7 the map.
8
9 Now, that 11.96 is the Admiral's Park site, isn't that right
12:35:28 10 A. I think so, yes.
11 Q. 256 Yes. You can look at page 1078, which shows the map?
12 A. The map will tell me, yeah.
13 Q. 257 If we just turn that, please.
14 A. It's 3-- no, where is that at all?
12:35:54 15 Q. 258 We're looking to the left now. On the left I think is the coast road, is that
16 right? And the road running from east?
17 A. On the right is the coast road, on my right.
18 Q. 259 Yes, I beg your pardon. On the right. The gravel pit area there is what was
19 to be?
12:36:15 20 A. Isn't that where Admiral's Park is?
21 Q. 260 Yes.
22 A. Yeah.
23 Q. 261 And that I suggest is the 11.96 acres?
24 A. Yes, I can see the line. It's a thin line but I remember it now, yeah.
12:36:39 25 Q. 262 So that exercise of that option was the first exercise of the 100 acre option.
26 It had been done in respect of 11.96 acres, isn't that right?
27 A. Yeah.
28 Q. 263 Now, when we look at page 1087 we'll see a copy of the contract which was
29 entered into by the parties. I think you had recommended to Mr. Byrne that the
12:37:01 30 Incorporated Law Society standard conditions of contracts should be used when

- 12:37:06 1 the exercise of the option was taken, isn't that right?
- 2 A. Yes.
- 3 Q. 264 And on the first page here we see the relevant particulars. Firstly, it's the
- 4 8th of December of 1989. The vendor is Endcamp, that's Mr. Byrne's company.
- 12:37:23 5 And the purchaser is Sabre Developments Limited, which is the company which the
- 6 option holder, Bauval, nominated to exercise the option, isn't that right?
- 7 A. Yes.
- 8 Q. 265 In effect, it's either standing in the shoes of Bauval or is its nominee?
- 9 A. Yeah.
- 12:37:41 10 Q. 266 In any event, they were to be the purchasers and they were purchasing for
- 11 239,200 pounds, which really was a multiplier of the site area by 20,000 an
- 12 acre, isn't that right?
- 13 A. Yes.
- 14 Q. 267 And if we look now to page 1099. And we'll see a rather poor copy I'm afraid,
- 12:38:16 15 of another contract for sale. It's dated the same date as the sale from
- 16 Endcamp to Sabre. But it is the onward sale of the lands by Sabre to Finbarr
- 17 Cahill and solicitor in trust, do you see that?
- 18 A. I do, yes.
- 19 Q. 268 Right. Now, whereas the sale price from Mr. Byrne to Sabre, and it was
- 12:38:43 20 239,000. We'll see that Sabre was selling on for 622,917 pounds?
- 21 A. Yes.
- 22 Q. 269 And the difference between those two sums being 383,711 pounds. And the sale
- 23 is taking place or certainly the contract is entered into on the same date?
- 24 A. Well, is one a price that was fixed by the option agreement?
- 12:39:16 25 Q. 270 One was fixed by the option agreement. The other was obviously?
- 26 A. Prior to planning and the other was after the option agreement with planning,
- 27 is that right?
- 28 Q. 271 No. They were different parties involved?
- 29 A. Oh, right.
- 12:39:26 30 Q. 272 The party who was taking the option here, who was exercising the option rather

- 12:39:31 1 and purchasing the land was Sabre?
- 2 A. Yes.
- 3 Q. 273 It was going to pay Mr. Byrne 239,000 for his interest?
- 4 A. As fixed by the option agreement.
- 12:39:40 5 Q. 274 Yes?
- 6 A. Yeah.
- 7 Q. 275 But immediately having exercised the option it sold on what it was going to buy
- 8 for 622,000?
- 9 A. Yes.
- 12:39:49 10 Q. 276 So that the actual person who was going to build on these lands was paying
- 11 622,000 for ownership of the lands. And as regards the division of that sum,
- 12 something in the region of two-thirds of it was going to go to the option
- 13 holder, presumably, one of Mr. Kennedy's nominee companies?
- 14 A. Yes.
- 12:40:12 15 Q. 277 And one-third was going to go?
- 16 A. To Sabre Developments probably.
- 17 Q. 278 Well Sabre was going to get 622,000?
- 18 A. Yes.
- 19 Q. 279 It was going to pay your client 240?
- 12:40:24 20 A. Left of the profit.
- 21 Q. 280 It was going to end up 383,000?
- 22 A. Yeah.
- 23 Q. 281 Although, at that point in time, of course, it hadn't paid Mr. Byrne for the
- 24 land?
- 12:40:34 25 A. Apart from the 50 pounds.
- 26 Q. 282 No. Its 50 pounds represented its expenditure. And whatever it had paid by
- 27 way of professional fees to Mr. Galbraith or whatever engineer was involved and
- 28 whoever put in the planning application, isn't that so?
- 29 A. Yes.
- 12:40:58 30 Q. 283 Did you have any discussion or have you any recollection of Mr. Byrne being

- 12:41:02 1 aware of the likely profit or onward benefit that the option holders were
2 getting out of this arrangement?
- 3 A. I can't honestly remember if I did. I mean, the difference is, of course, that
4 one piece of land was without planning permission and the second is with
12:41:22 5 planning permission.
- 6 Q. 284 Yes. That accounts for the difference in their value.
- 7 A. In their value, yes.
- 8 Q. 285 And it quantifies the benefit of the planning permission in cash terms?
- 9 A. Absolutely.
- 12:41:31 10 Q. 286 Insofar as it was worth somebody's while to get planning permission for these
11 lands because by doing so they ended up with 389,000 pounds for an expenditure
12 of a fraction of that, isn't that right?
- 13 A. Yes. I expect that if that was a subsale, I can't remember. Then we would
14 have known about it. But if it wasn't we mightn't have.
- 12:41:55 15 Q. 287 Yes. Irrespective of whether it was a subsale or not. I think if we look back
16 to the very origin of this, it was at all times acknowledged that 60,000 was
17 probably the value of the lands in 1986. And with planning and 20,000 was the
18 option fee. There seems to have been an understanding that or an acceptance?
- 19 A. Yeah.
- 12:42:23 20 Q. 288 That at the end of the day if somebody got planning they were going to have an
21 asset worth 60,000 an acre and it wasn't going to be Mr. Byrne?
- 22 A. That's correct.
- 23 Q. 289 By 1990 you'll see at page 1137. There was apparently an application being
24 brought by Edington Limited for planning permission in respect of industrial
12:43:19 25 development at Grange Road, Baldoyle. You see that? That's the reference
26 heading to the letter which comes from Gore and Grimes.
- 27 A. Yes.
- 28 Q. 290 And obviously, it seems there was an application being made to Dublin County
29 Council in relation to lands for planning permission for Edington Limited,
12:43:44 30 isn't that right?

- 12:43:45 1 A. Subject to the Hasebury contract.
- 2 Q. 291 Yes. But Hasebury didn't have a contract with Edington, isn't that right? It
- 3 had a contract with Mr, with Sabre Developments?
- 4 A. I'm not sure.
- 12:44:03 5 Q. 292 Well, we looked at a contract a little earlier on the 8th of December 1989?
- 6 A. Yeah.
- 7 Q. 293 Where the exercise of the option was notified. A contract was entered into
- 8 between Endcamp, which was selling its interest to Sabre, it received
- 9 approximately 20,000?
- 12:44:21 10 A. Oh, yes.
- 11 Q. 294 24,000 as a deposit. And the contractual purchaser was Sabre?
- 12 A. Okay.
- 13 Q. 295 And it in turn went on to sell to Finbarr Cahill in trust for Hasebury?
- 14 A. Yeah, right.
- 12:44:37 15 Q. 296 And they were then moving get planning permission. They were altering the
- 16 planning permission which had been granted by An Bord Pleanala?
- 17 A. Uh-huh.
- 18 Q. 297 By a different house type and what have you. And the planning authority wanted
- 19 to know what the relationship was between Hasebury or Edington and the land
- 12:44:56 20 ownership. And this letter from your firm says "that we confirm that the
- 21 current application made by its subsidiary Edington has been made with the
- 22 approval of Endcamp limited" you see that?
- 23 A. I do.
- 24 Q. 298 That's what it says. But in fact the planning application was not being made
- 12:45:12 25 by anybody connected with either Edington or Endcamp. It was being made by
- 26 Hasebury, who were going to be the ultimate purchasers from Sabre, isn't that
- 27 right?
- 28 A. I didn't generate this letter but, I can't disagree with what you're saying,
- 29 yeah.
- 12:45:32 30 Q. 299 Now, to date we've been talking about the 100 acre option?

- 12:45:38 1 A. Sorry, there was a connection was there. We confirm that Hasebury limited has
2 a contract to acquire the Hatch Lands.
- 3 Q. 300 It does but not from either Edington or Endcamp?
- 4 A. Well indirectly. All you've got to show is an interest in land to make a ...
- 12:45:55 5 Q. 301 I'm not saying that there wasn't an interest in land?
- 6 A. Sorry.
- 7 Q. 302 I'm drawing your attention to the fact that this statement appears to suggest
8 that the current application is being made by its subsidiary Edington and with
9 the approval Endcamp. I'm not suggesting that Endcamp wasn't agreeable to
10 somebody making a planning application in relation to it. I am just saying
11 that in describing the application as being one brought by Edington that is not
12 factually correct. It was one being brought by Hasebury and its promoters.
13 Not by Edington which apparently was a John Byrne company.
- 14 A. Well, have you got the copy of the application? It seems to indicate here that
15 the application was made by Edington.
- 16 Q. 303 It was being made in the name of Edington. What I'm putting to you, Mr. Gore
17 Grimes isn't that Mr. Byrne had nothing to do with this planning application
18 even though it was being made in the name of Edington. He was not the person
19 behind this planning application?
- 12:46:56 20 A. I'm afraid I can't say anything with certainty about that because I don't know.
- 21 Q. 304 And we'll see that in 1991, on page 1344.
22
23 Two further exercises of the 100 acre option are triggered on the 24th of
24 January of 1991. You see that?
- 12:47:23 25 A. Yeah.
- 26 Q. 305 It's a letter from Binchys, who are the solicitors for Bauval and they enclose
27 designation notices from Bauval Limited and option notices from Sabre
28 Developments Limited together with cheques of 20,480 and 27,480 -- sorry 480
29 respectively. Now, we know that there was 100 acres involved in the original
12:47:53 30 option.

12:47:53 1

2 It was exercised in relation to the Admiral's Park site and is now being
3 exercised in relation to two further sites. And the total acreage that was
4 subject to the exercise of the option was 36 acres, isn't that right?

12:48:17 5

A. I'm sure, yeah.

6 Q. 306 It lapsed in respect of the balance of 64?

7 A. It did, yes.

8 Q. 307 And there was litigation for quite some time in relation to what we see here as
9 these two exercises of the option. And that extended for some years after this
10 date, isn't that right?

12:48:27 10

11 A. It did.

12 Q. 308 But as of January 1991, from the point of view of ownership and control of the
13 lands in Baldoyle of Mr. Byrne, he still owned the entire 511 acres, isn't that
14 so -- well with the exception of the 11 that had been sold off?

12:48:52 15

A. Yeah.

16 Q. 309 He had 500 acres. He had no restriction on what he might do with the 400 acres
17 that were not within the option?

18 A. Yeah.

19 Q. 310 And the option was now being exercised in relation to a further 24 acres or
20 thereabouts, isn't that right?

12:49:09 20

21 A. Yes.

22 Q. 311 Now, it's at this stage in January 1991 that negotiations start in relation to
23 the remaining 400 acres which are to be the subject of the Pennine Holdings
24 option?

12:49:27 25

A. Yes.

26 Q. 312 Isn't that so?

27 A. Yeah, this is now coming to the letter, yeah.

28 Q. 313 Yes.

29 A. Okay.

12:49:34 30

Q. 314 But in a sense there is a certain continuation of the relationship which has

- 12:49:41 1 existed from 1986 in relation to this property. Because Mr. Lawlor who
2 introduced the original option holders is now going to be involved in relation
3 to the introduction of the new option holder for the balance, isn't that so?
- 4 A. Well, I don't think there's much of a relationship because we were in doing
12:50:05 5 battle with Kennedy at the time over some right-of-way and grant of an
6 easement, a pipe and that sort of thing. And certainly we weren't on very good
7 terms with Mr. Kennedy. And therefore, in relation to, that I expect not on
8 very good terms with Mr. Lawlor. But Mr. Lawlor appears to have had several
9 different clients. Pennine seemed to have been one or another.
- 12:50:33 10 Q. 315 Yes.
- 11 A. But I don't think there was a continuation or anything like that.
- 12 Q. 316 Well I'm suggesting to you that the same individuals were concerned?
- 13 A. Well Kennedy wasn't concerned.
- 14 Q. 317 Mr. Kennedy wasn't concerned in relation to the acquisition of the Pennine
12:50:50 15 Holdings option?
- 16 A. Yeah.
- 17 Q. 318 But Mr. Lawlor who had been involved was to be involved with the 400 acres?
- 18 A. Well I mean, I always thought that Mr. Lawlor was Mr. Kennedy's advisor. I, to
19 this day, wouldn't know if he was involved financially in that deal or actually
12:51:09 20 I didn't think he was.
- 21 Q. 319 Yes?
- 22 A. But.
- 23 Q. 320 Well?
- 24 A. I'm sure he was paid for his services but I didn't know if he was involved.
- 12:51:18 25 Q. 321 You may or may not know that Mr. Lawlor, when alive, gave evidence to the
26 Tribunal here in relation to his holding or his interest in part of the lands
27 which were the subject of the options that we're talking of here. That is the
28 Bauval options?
- 29 A. Uh-huh.
- 12:51:35 30 Q. 322 And in respect of one option exercise only he received 335,000 pounds as his

- 12:51:43 1 share of the option, the sale on of the option lands?
- 2 A. Well, I mean, I wouldn't have been a party to that, you know. If I knew it I'd
- 3 forgotten it, you know.
- 4 Q. 323 Sure. Could I suggest to that you in whatever capacity was involved,
- 12:51:58 5 Mr. Lawlor was actually present and involved with these lands from 1986 until
- 6 1991. For example, he attended that meeting which apparently led to the
- 7 agreement as to the boundary line in February?
- 8 A. Yes.
- 9 Q. 324 He had attended with you earlier?
- 12:52:22 10 A. Oh, yes.
- 11 Q. 325 In relation to others?
- 12 A. On the Kennedy front, yes.
- 13 Q. 326 Well, he was there. Whether he be on the Kennedy front or anybody else's
- 14 front. He was certainly there in a capacity which was not that of being an
- 12:52:33 15 elected public representative carrying out any public duty, isn't that right?
- 16 A. Which I can't comment on, that I mean.
- 17 Q. 327 Even if one looks at it and you see any circumstance in which a TD should be
- 18 attending at a meeting to decide a boundary line between two landowners in any
- 19 public capacity, isn't it entirely private?
- 12:52:53 20 A. Well, I mean apart from his job as a TD he was also, you know, involved in
- 21 various land deals and advising. I mean, that's all I know about. I don't
- 22 know very much about Mr. Lawlor's affairs, you know.
- 23 Q. 328 Yes. Well one of the issues that the Tribunal is enquiring into?
- 24 A. Yeah.
- 12:53:11 25 Q. 329 Is precisely what Mr. Lawlor was doing here and who was paying him?
- 26 A. I'm outside of that, you know.
- 27 Q. 330 Yes. You acknowledge I think or you know from your client, Mr. Byrne, and
- 28 indeed probably from your brother, Mr. Anthony Gore Grimes, that there was a
- 29 meeting in Davy Stockbrokers probably in January of 1991 attended by Mr. Liam
- 12:53:37 30 Lawlor, Mr. David Shubotham Mr. Brendan Hickey, Mr. John Byrne and himself at

- 12:53:42 1 which the question of there being an option over the Pennine lands was the
2 subject of their discussion, isn't that so?
- 3 A. Yes.
- 4 Q. 331 Yes. And it was effectively the genesis of your next involvement, which was in
12:53:55 5 relation to the 400 acre option leaving aside for a moment the 100 acre option
6 which was the Bauval option, isn't that right?
- 7 A. Except that I can't help you in relation to your question A in the letter
8 because I wasn't there. I didn't know anything about that.
- 9 Q. 332 Yes. You learnt?
- 12:54:10 10 A. I never met Mr. Shubotham, I don't think that I ever met Mr. Hickey, I spoke to
11 him on the phone. I know I did speak to him on the phone. Of course, I knew
12 Mr. Lawlor. And I came to meet Mr. Dunlop.
- 13 Q. 333 Yes. But, I mean, obviously from your inquiries of your own office you could
14 establish that there was in fact a meeting at that time?
- 12:54:33 15 A. Yes.
- 16 Q. 334 And it was attended by those persons. But not by you, by your brother isn't
17 that right?
- 18 A. Yes, but my inquiries are about two days old.
- 19 Q. 335 The brief was sent a long time ago, Mr. Gore Grimes, and there has been a
12:54:48 20 considerable correspondence over time in relation to it?
- 21 A. Yes.
- 22 Q. 336 Can we perhaps just look at the exercise of these options briefly. That is the
23 options to which notification was given in January 1991. The letter whilst it
24 says that the options were being exercised on behalf of Sabre Developments
12:55:11 25 Limited, in other words, that they were the nominees, there were in fact two
26 entities involved. One Cara Sports Limited and the other Sabre Developments,
27 isn't that so?
- 28 A. Yes.
- 29 Q. 337 If we just look to page 1345. You will see that both deposit cheques emanated
12:55:30 30 from the same bank account, that is Sabre Developments Limited?

- 12:55:34 1 A. Yes.
- 2 Q. 338 If we look then to page 1346 we see that the option notice in respect of the
- 3 13.75 acres is given by the designate Cara Sports Limited, not Sabre. So there
- 4 must have been a relationship between Sabre and Cara or indeed they may well
- 12:55:56 5 have been the same entities. The money is paid by Sabre. The option is
- 6 exercised by Cara?
- 7 A. Well, I mean you sometimes get deposits from people who are not, you don't
- 8 inquire, that's their affair.
- 9 Q. 339 As long as the cheque was honoured?
- 12:56:13 10 A. Exactly.
- 11 Q. 340 We will see at 1348. The map shows the lands the subject of that exercise of
- 12 the option?
- 13 A. Yes, I remember that, yeah.
- 14 Q. 341 And that shows on the right-hand side the coast road, what's referred to as the
- 12:56:29 15 stand being the old stand of the race course, isn't that right?
- 16 A. Yeah.
- 17 Q. 342 And the?
- 18 A. Then demolished.
- 19 Q. 343 Since demolished, yeah?
- 12:56:39 20 A. Even they.
- 21 Q. 344 Yes. And obviously, the boundary to the north there had to be compatible with?
- 22 A. Going all the way across.
- 23 Q. 345 Yes, the land going all the way across. Now, that was one portion of land.
- 24 Option exercised by Cara 13.74 acres.
- 12:57:02 25 A. Yeah.
- 26 Q. 346 That was to give rise to some litigation over the next number of years, isn't
- 27 that right?
- 28 A. Yes.
- 29 Q. 347 And the other exercise of the option by Cara, sorry, by Sabre. We'll see at
- 12:57:16 30 page 134 -- sorry 1354. And if we can turn that map, please, so that the left,

- 12:57:27 1 the right-hand side is the bottom of the page. The great northern is on top.
2 Just turn it again, please. Once again. Now, the great northern railway line
3 there, the Belfast Dublin line, isn't that right?
- 4 A. Yes.
- 12:57:41 5 Q. 348 And this option now is at the other end of the southern part of the site. It's
6 the industrially zoned lands near Tallaght there, isn't that right?
- 7 A. Grange Road, yes.
- 8 Q. 349 Grange Road. So what in effect Mr. Kennedy's companies were doing were taking
9 the corner sites of the development in respect of which there was some zonings
10 status?
- 11 A. Yeah.
- 12 Q. 350 In respect of those, isn't that right. Balance then was going to be the
13 subject of the option for the 400 acres, isn't that right? Now, you learned of
14 this I think because heads of agreement had been entered into apparently at a
15 meeting that you didn't attend, isn't that right?
- 12:58:33 15 A. Yes.
- 16 Q. 351 But you did receive a copy of the heads of agreement by the 11th of February of
17 1991. You'll see this at page 2820. It's -- 2820. It's an attendance within
18 your office from your brother to yourself. "I enclose copies of the Heads of
19 Agreement which I have prepared for Baldoyle which has a map attached to it. I
20 have now to submit details of title over that entire area to Eugene F Collins
21 and would be glad if you would please set out the special conditions of title
22 and copy documents have been furnished as I want to include these in the option
23 agreement?"
- 12:58:55 24 A. Yes.
- 25 Q. 352 We can gather from that, that the parties had agreed that at least there would
26 be an option agreement, the solicitors who were going to be acting for the
27 option holders presumably, were Eugene F Collins & Co. Your role was to get
28 the title?
- 12:59:12 29 A. Yes, the title.
- 12:59:27 30

12:59:28 1 Q. 353 In order, isn't that right?

2 A. Yes, yes.

3 Q. 354 But unfortunately, this is a document which is not available to us?

4 A. Yes.

12:59:34 5 Q. 355 That means the Heads of Agreement. Have you any recollection of what matters
6 were encompassed in the Heads of Agreement other than there being an option to
7 purchase?

8 A. I'm afraid I can't remember it at all, sorry.

9

13:00:05 10 MR. O'NEILL: I think we might stop.

11

12 CHAIRMAN: It's one o'clock. All right. We'll sit again at two o'clock.

13

14

13:00:30 15

16

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

17

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

18

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13:00:37 1

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CHAIRMAN: Good afternoon.

4

14:07:40 5

MR. O'NEILL: Mr. Gore Grimes, I think that before lunch we'd establish by the month of January 1991 your workload had increased somewhat in that you were no longer dealing solely with the 100 acre first option, but you also had to deal with a new option which was coming in to place in relation to the remaining 400 acres, isn't that so

6

7

8

14:08:01 10

A. Yes.

11

Q. 356

And we have established, I think, that the exercise of the options in relation to the 100 acres was limited to 36 acres and that option period expired then in January, isn't that right?

12

13

14

A. That's right.

14:08:14 15

Q. 357

Those two options had been effectively the last exercise that was possible on those options, isn't that right?

16

17

A. Yes.

18

Q. 358

And the new options then, the new option, I should say, was to be taken by this company, Pennine Holdings Limited, in respect of 400 acres. And again, it was a five year option, isn't that right?

19

14:08:30 20

21

A. That's right.

22

Q. 359

If we could just finish off perhaps in relation to the Cara/Sabre option exercises. Because, as you indicated earlier, they were to lead to the institutional proceedings and they were unresolved matters over the next couple of years, isn't that right?

23

24

14:08:48 25

26

A. Yes, they were.

27

Q. 360

So running in tandem with the possibly more active and more involved activities on the Pennine Holdings, there was still the remnants of the Bauval, Cara Sports and Sabre options to be dealt with, isn't that right?

28

29

14:09:07 30

A. Yes, it wasn't very demanding.

14:09:10 1 Q. 361 No?
2 A. Because the proceedings started and stopped effectively. But they were never
3 conceded in any sense.
4 Q. 362 Yes. However, obviously the parties and in particular Mr. Byrne from your
14:09:23 5 point of view was anxious to bring this matter to finality. His land was being
6 tied up, this is the 24 acres, was being tied up. He had or perhaps you had a
7 deposit of 10 percent of that amount. But he was out-of-pocket a considerable
8 amount, half a million pounds really, in relation to the transaction until it
9 was completed, isn't that right?
14:09:45 10 A. That's right.
11 Q. 363 Now, in the course of that between 1991 and 1993, which is when our interest at
12 this point terminates in these lands. Mr. Lawlor was to have a recorded
13 involvement with you in relation to the Cara option over that period. And I
14 just want to touch on a few references that are present in your files and
14:10:08 15 others?
16 A. Yes.
17 Q. 364 Relating to that to see if you can assist us as to why he's still at this
18 ongoing role in relation to Cara and to Sabre. And if we look to page 1652.
19
14:10:30 20 You'll see is that this is a rather lengthy letter written, I think, by you to
21 counsel seeking advises in relation to conveyancing matters which are arising
22 out of the Cara Sports issue, isn't that right?
23 A. Yes.
24 Q. 365 And the relevant part of this from the point of view of the Tribunal appears at
14:10:54 25 page 1655.
26
27 At the very top of that page you are explaining to counsel the background in
28 relation to the Cara lands. And on the previous page I'll just read that
29 briefly "I should perhaps explain the background" and then it goes on to the
14:11:21 30 page on screen "the man behind Bauval and we believe Ross Ford Homes, Sabre

14:11:21 1 Developments and Cara Sports is a man called Mr. Kennedy who is notorious and
 2 who has appeared many times in the Phoenix. There were many suggestions made
 3 about this man and we knew that we would have difficulties in dealing with him.
 4 He is represented by Liam Lawlor. And Liam Lawlor is very closely involved in
 14:11:40 5 this whole deal. The intention of Cara Sports was to try and engineer, we
 6 believe, a deal with Phil Monahan of Monarch Properties to obtain planning
 7 permission for and develop a large shopping centre on the site. They felt that
 8 this was badly needed to serve the Baldoyle, Howth, Sutton and Portmarnock area
 9 because they felt that Sutton was over priced and over crowded. Parking was
 14:12:03 10 restricted. As far as we know nothing has ever been formally proposed in
 11 relation to this suggestion. We're not aware that any application for planning
 12 permission has been made. We do however understand that Kennedy and Liam
 13 Lawlor have been making inquiries and doing their homework. That they are not
 14 in a position to apply just at the moment. We also believe that Phil Monahan
 14:12:23 15 had expressed an interest no more than that in the whole idea. My instructions
 16 were that Cara Sports were simply holding up the whole transaction by any means
 17 conceivable to give themselves time to arrange their commercial deal and to
 18 obtain planning permission and by-law approval. As you will see the sale ought
 19 to have closed two months ago from the 24th of January 1991".

14:12:44 20

21 That was a letter you were writing in January of 1992, a year later?

22 A. Yes.

23 Q. 366 The area of land that was here, we saw it on screen, it's the corner on the
 24 coast road. And behind the Willie Nolan road, isn't that right?

14:12:59 25

A. Yes.

26 Q. 367 It's the area where there was some dispute as to where the red line was going
 27 to be, so as to allow the maximum development take place from the point of view
 28 of the developer. But at the same time, allow Mr. Byrne his access to the
 29 remaining lands, isn't that right?

14:13:15 30

A. Yes.

- 14:13:16* 1 Q. 368 And in this letter here you are expressing what your belief was in January
2 1992. Amongst other things, as to the relationship of Mr. Lawlor in this,
3 isn't that right?
- 4 A. Yes, I see that.
- 14:13:28* 5 Q. 369 And you seem to have moved to a position in 1992 perhaps I'm incorrect in this,
6 but the letter suggests that at this point you'd realised that Mr. Lawlor and
7 Mr. Kennedy both were involved and it wasn't simply a matter of Mr. Lawlor
8 advising Mr. Kennedy, is that so?
- 9 A. I actually don't remember coming to that conclusion. I mean, I may be wrong
14:13:50 10 about this. But I actually still thought that Lawlor was representing Kennedy.
11 And in that sense was closely involved in the whole deal. But I just can't
12 honestly remember. If I think of it now.
- 13 Q. 370 Yes?
- 14 A. I just can't say that I ever thought that Lawlor was a shareholder in the
14:14:14 15 Kennedy operation. But, I mean, I know I'm wrong about that.
- 16 Q. 371 Yes?
- 17 A. But I don't remember thinking that at the time .
- 18 Q. 372 But certainly as of the time of this letter, it doesn't bring to recall the
19 fact that you had reached that conclusion at this time and you're uncertain as
14:14:28 20 to whether you ever did. I think we'll see from later communications that
21 perhaps?
- 22 A. I did.
- 23 Q. 373 You did.
- 24 A. All right.
- 14:14:36* 25 Q. 374 I'm not clear on that myself. It may be that that was the case?
- 26 A. Yeah.
- 27 Q. 375 But certainly, Mr. Lawlor's involvement here was part of a much bigger project.
28 He apparently was involved with Mr. Phil Monahan and they were endeavouring to
29 put together an arrangement for commercial development of this particular part
14:14:57 30 of the land, isn't that so? That's as you understood it?

- 14:15:05 1 A. Again,.
- 2 Q. 376 They were thinking of developing a large shopping centre, for example, on the?
- 3 A. I thought that was Phil Monahan, yes.
- 4 Q. 377 Yes. But Mr. Monahan obviously had no contractual relationship with Mr. Byrne,
- 14:15:17 5 who was the owner?
- 6 A. That's true.
- 7 Q. 378 The only way Mr. Monahan could become involved in a large project of building a
- 8 shopping centre here was through Mr. Kennedy and Mr. Lawlor, isn't that so?
- 9 A. Well, I expect if Mr. Lawlor, Mr. Kennedy I should say, had exercised the
- 14:15:34 10 option he could have sold on, I mean, I don't know.
- 11 Q. 379 Yes.
- 12 A. Yeah.
- 13 Q. 380 Presumably, that is what happened with the first exercise of the option?
- 14 A. Yes.
- 14:15:53 15 Q. 381 He wasn't intending to develop himself?
- 16 A. Himself.
- 17 Q. 382 He was merely using his capacity to obtain planning permission and zoning?
- 18 A. Yes.
- 19 Q. 383 So as to allow for a profit to be made in an onward sale?
- 14:15:53 20 A. Yes.
- 21 Q. 384 That seemed to be the history of the lands, isn't that right?
- 22 A. That's right.
- 23 Q. 385 I was merely drawing your attention to the fact that you seemed to be linking
- 24 both Mr. Lawlor and Mr. Kennedy in this as opposed to Mr. Kennedy solely as had
- 14:16:05 25 been the position previously. I mean?
- 26 A. Just, around about this time I met Mr. Kennedy in a restaurant one evening and
- 27 we just got to talk, I mean, you know, just no more than a social chat. But I
- 28 some how came to the conclusion around about that time, which is around about
- 29 this time. Now, I'm not exactly sure but I think so.
- 14:16:29 30 Q. 386 Uh-huh?

- 14:16:29 1 A. That Mr. Kennedy was very much a lone man who liked to do things his way.
- 2 Q. 387 Uh-huh?
- 3 A. And that's probably why I felt that, you know, Lawlor was not financially
- 4 involved with him. The impression that Kennedy gave was I. That he was the
- 14:16:48 5 man. He was in charge, you know, and he had Lawlor there to help him with the
- 6 planning. That's the impression I got.
- 7 Q. 388 Yes?
- 8 A. But, I mean, I understand that I'm wrong from what I've read.
- 9 Q. 389 Uh-huh?
- 14:17:00 10 A. But at the time I would have thought that Lawlor was sort of his planning man
- 11 and his man who would approach for rezoning councillors and people like that.
- 12 Q. 390 Yes. Certainly at a minimum, Mr. Lawlor is in the middle somewhere?
- 13 A. Yes.
- 14 Q. 391 Between the parties?
- 14:17:19 15 A. Yes,.
- 16 Q. 392 And we'll see at page 1682 now about four months after your letter to counsel
- 17 there on the 5th of March 1992. You have an attendance here on Mr. John Byrne.
- 18 You explained what was happening. Now, there had been an inordinate delay to
- 19 this point in time. We're probably a year after the date upon which the option
- 14:17:53 20 sale should have concluded and it hasn't done so. And you note there what
- 21 Mr. Byrne was to do after your discussion?
- 22 A. Yeah.
- 23 Q. 393 He was to go to see Mr. Lawlor to arrange the following. That they closed the
- 24 Talavera lands. Now, that is not the lands we've just been talking about,
- 14:18:11 25 which are the district centre lands. But they are the industrial lands up at
- 26 the railway track?
- 27 A. Yeah.
- 28 Q. 394 They were to do that within two months. They were to pay the full balance of
- 29 the deposit. That they were to close the Baldoyle Shopping Centre lands.
- 14:18:24 30 We're now talking about the Cara Sports corner, isn't that right?

14:18:29 1 A. Yes.

2 Q. 395 They were to do that?

3 A. Yes.

4 Q. 396 And there was an allowance here that if they didn't the price would increase to

14:18:35 5 40,000 an acre?

6 A. Uh-huh.

7 Q. 397 The option agreement had been for 20. This was allowing them more time but

8 doubling the price, isn't that right?

9 A. That's right.

14:18:43 10 Q. 398 And they deal with Sabre on the 10 acre housing estate in respect of which they

11 had got the sewage connections. I think this is the one which Hasebury had

12 taken, is that right?

13 A. Yes.

14 Q. 399 Yes?

14:18:57 15 A. I think is, yes.

16 Q. 400 So in any event, all of these were matters which it was felt, certainly from

17 this attendance, that Mr. Lawlor had a role in bringing these three matters to

18 a conclusion, isn't that right?

19 A. Yes.

14:19:10 20 Q. 401 Yes. In doing so, was he do be the representative of Mr. Byrne or Mr. Kennedy?

21 A. Mr. Kennedy. Sorry, would you just repeat that, sorry?

22 Q. 402 I was asking whether or not Mr. Lawlor, who was to perform the three functions

23 here of arranging the following, closing of these three matters?

24 A. Yes.

14:19:38 25 Q. 403 Which were outstanding?

26 A. Yes.

27 Q. 404 I was wondering whether Mr. Lawlor was going to be doing this as the agent to

28 Mr. Byrne or of Mr. Kennedy?

29 A. Well I certainly would have no information at all that Mr. Lawlor was

14:19:51 30 Mr. Byrne's agent.

- 14:19:53 1 Q. 405 Yes?
- 2 A. I think he was Mr. Kennedy's.
- 3 Q. 406 Right. Now, you had the belief that this or whoever was in touch with you, had
- 4 led you to believe that the purpose of the delay was to improve the position of
- 14:20:09 5 the option holder as regards getting planning permission for this land, isn't
- 6 that right?
- 7 A. Yeah, I think we came to that conclusion ourselves really.
- 8 Q. 407 I mean, there were a number of legal impediments put in the way, including
- 9 title and?
- 14:20:22 10 A. Stamp duty requirements.
- 11 Q. 408 And stamp duties issues?
- 12 A. Yeah.
- 13 Q. 409 But you saw those as delaying tactics to allow the option holder to improve
- 14 their position from the planning side, isn't that right?
- 14:20:32 15 A. To get the added value before they closed.
- 16 Q. 410 Yes. Which would involve them getting the lands rezoned, that were the subject
- 17 of the option, isn't that right?
- 18 A. Yes.
- 19 Q. 411 And I think you are aware that immediately after this attendance here on the
- 14:20:51 20 5th of March, High Court proceedings were launched by Cara Sports Limited
- 21 against Endcamp in effect seeking specific performance for an injunction
- 22 restraining the Endcamp from selling to anybody else?
- 23 A. That's correct.
- 24 Q. 412 Now, those proceedings we'll see at page 1683 on screen Statement of Claim
- 14:21:08 25 delivered on the 5th of March 1992. The same day as your attendance. It may
- 26 be that they weren't served for some period thereafter. But the proceedings
- 27 were in being as of that time, isn't that right?
- 28 A. Yes.
- 29 Q. 413 And I think again this is a matter upon which Mr. Lawlor ultimately was brought
- 14:21:27 30 in or certainly was contacted in relation to, because we see the following

14:21:32 1 month in April 1992, at page 1698.

2

3 You had a further attendance with John Byrne. And he says that he was

4 attending to speak to John Byrne when he said that Liam Lawlor had been in

14:21:47 5 touch with him but really he had made his case perfectly clear. I think that's

6 Mr. Byrne's case perfectly clear. He was anxious to know what was happening

7 about the stamp duty. And I said Anthony was now dealing with this" etc.

8

9 So, again, Mr. Byrne and Mr. Lawlor seemed to have been in communication on

14:22:06 10 this issue, the unresolved issue of the completion of the option lands

11 A. Yes.

12 Q. 414 In 1992, isn't that right?

13 A. I think Mr. Byrne would have made those points, as were referred to in the

14 earlier attendance. And he hadn't got any satisfactory response to that.

14:22:21 15 Q. 415 Yes. That position of Mr. Byrne's didn't improve. And by January 1993 you

16 again had a further attendance on him, which is at page 1813. You're

17 attending to speak to John Byrne going through the map. He queried the option

18 notice. I again took out the option notice. Went through them with him?

19 A. I think I've got wrong page there.

14:22:51 20 Q. 416 I beg your pardon. 1813. 1813.

21 A. Yes thank you.

22 Q. 417 Again, this is an attendance of yours in the beginning of 1993. The Talavera

23 issue is the Sabre industrial lands and that is being dealt with here. You

24 were trying to or Mr. Byrne was trying to complete matters. You weren't

14:23:19 25 getting anywhere. And again, the attendance records that he was going to speak

26 to Mr. Liam Lawlor about this, isn't that right? At the very last line there?

27 A. Yes, yes.

28 Q. 418 To speak to Liam Lawlor. This is at a time when there is litigation in being.

29 The parties have their respective solicitors to represent their interests. You

14:23:41 30 are representing the interests to Mr. Byrne and presumably Binchys representing

14:23:46 1 the interests of Mr. Kennedy. Yet Mr. Byrne feels that he can speak to
2 Mr. Lawlor?

3 A. Or was it Finbarr Cahill who was representing.

4 Q. 419 I'm sorry, you're right.

14:23:54 5 A. Yes, yes.

6 Q. 420 He was representing Cara?

7 A. Cara.

8 Q. 421 But I think your view was that Cara was just yet another off shoot of
9 Mr. Kennedy's?

14:24:04 10 A. Oh, yes I think so.

11 Q. 422 Most of which were being dealt with by the Binchy Enterprise?

12 A. Yes, we would have dealt with Binchys on the closing matter.

13 Q. 423 Yes. I think in fact there was a position between Mr. Cahill, representing a
14 party who was to have a relationship with Binchys' client when they ultimately
15 dealt with these lands. And therefore, there were separate representations for
16 that purpose I think?

17 A. Yeah.

18 Q. 424 But in any event Mr. Lawlor, I think, again was seen to be the person who was
19 contacted in relation to this by Mr. Byrne, notwithstanding that he had the
20 benefit of legal advice. It was yours and there was an avenue open to
21 exchange?

22 A. To allow prejudice discussion and when we could close.

23 Q. 425 Of course?

24 A. Or if we could close and how.

14:24:51 25 Q. 426 Now, about two months after this we'll see at page 1894, another attendance of
26 yours. Where you are setting out your attempts to resolve the matter of John
27 Caldwell, who was acting for the option holders' interest. "He was not taking
28 my calls. And said that he was at a meeting, which I did not accept. I then
29 rang John Byrne and he said that John Caldwell would be in touch with me. But
14:25:25 30 that he was awaiting instructions from Liam Lawlor and they were to call in to

14:25:29 1 see me".

2

3

And you then deal with the position of Mr. Byrne and his financiers.

4

14:25:35 5 But does that indicate to you certainly that at that point in time, the role of
6 Mr. Lawlor in all of this was beyond merely being a person who was a conduit of
7 information but that instructions were going to be given by Mr. Lawlor to
8 Mr. Caldwell as to how to proceed

9 A. Again, I'm not sure but I just can't get over the fact that it's still in my

14:26:01 10 mind that Lawlor, although he was fronting, because I think at that stage

11 Mr. Kennedy was not in Ireland a lot. Now, I think that's the case. And

12 certainly he wasn't available for meetings and never presented himself.

13 Q. 427 Uh-huh?

14 A. And Mr. Lawlor was doing Mr. Kennedy's work for him, either because he was

14:26:24 15 abroad or because he didn't want to meet us or discuss the matter. So.

16 Q. 428 Uh-huh?

17 A. My feeling was that he was still the agent. I mean, I really didn't know that
18 he was a shareholder. Perhaps it was naive. Does anything turn on that? It's
19 just my view. But I didn't really think that he was.

14:26:44 20 Q. 429 Yes?

21 A. Part of the Kennedy set up.

22 Q. 430 Well certainly?

23 A. I'm wrong, I know.

24 Q. 431 Some of the information which is provided to the Tribunal by Mr. Lawlor would
14:26:53 25 not have made any reference to his involvement here at all?

26 A. Yeah.

27 Q. 432 It would have indicated that he had no involvement. I'm taking you through
28 this documentation because it appears to establish on its face that he was so
29 involved. The capacity of which he was of course is a matter of ultimate
14:27:10 30 determination. But he was there and he was acting?

14:27:13 1 A. He was the front man.

2 Q. 433 The manner in which it appears here. In this attendance it certainly appears

3 that the solicitor who was dealing with the matter was awaiting instructions

4 from Mr. Lawlor?

14:27:23 5 A. Yeah.

6 Q. 434 Albeit they might have been coming from Mr. Lawlor on behalf of Mr. Kennedy.

7 But they were apparently coming from Mr. Lawlor, isn't that so? That's what

8 your attendance suggests anyway?

9 A. I still would have thought that Kennedy was pulling the strings.

14:27:40 10 Q. 435 I'm not saying that that isn't so?

11 A. Yeah.

12 Q. 436 What you record here is that you rang John Byrne?

13 A. Yes.

14 Q. 437 He said that he, that John Caldwell would be in touch with you?

14:27:52 15 A. Yes.

16 Q. 438 But that he was awaiting instructions and Caldwell was awaiting instructions?

17 A. Yeah.

18 Q. 439 From Liam Lawlor?

19 A. Yes.

14:28:00 20 Q. 440 So, Caldwell as the solicitor was going to get his instructions from Lawlor.

21 That's what this --

22 A. Verbally, yes.

23 Q. 441 Now, the next document I'd ask you to look at is on page 1899. Now, this

24 document is a telephone record which is maintained in Mr. Frank Dunlop's office

14:28:33 25 by his secretary and it records telephone calls which came in and which were

26 either unanswered or he was unavailable to take them.

27

28 And one of them contains a reference to matters involving you. It's at 11:50.

29 Ann, who is a secretary in Liam Lawlor's office is sending over a finished

14:28:50 30 document for John Gore Grimes this afternoon. Now, you, of course, weren't to

14:28:55 1 know of this particular telephone attendance. But this is some four days after
2 the attendance you had taken on Mr. Byrne where Mr. Byrne had said that he was
3 awaiting information to come from Mr. Caldwell. And Mr. Caldwell was to get
4 his instructions from Mr. Lawlor. And have you any recollection of documents
14:29:15 5 coming to you in and around the 22nd of March 1993 in relation to the
6 resolution of these issues? I have to say I haven't found one but I'm
7 wondering
8 A. I'm afraid that I've got some documents that you have. March '93.
9 Q. 442 In April we'll see that there are?
14:29:39 10 A. Yes.
11 Q. 443 Yes, these documents?
12 A. Yes, I'm afraid I can't assist you, I don't know.
13 Q. 444 In any event, this document would appear to suggest that whatever documentation
14 that was going to come to you in relation to the option lands here might
14:29:56 15 possibly have emanated from the hand of Mr. Liam Lawlor as being provided from
16 his secretary to Mr. Dunlop and onward?
17 A. It seems so.
18 Q. 445 Yes. On the 5th of April 1993. We'll see a letter from you to Mr. Byrne, it's
19 at page 1929. Again, it's on the subject matter of the Sabre options and of
14:30:24 20 course it's running at a time contemporaneously with the Pennine option. But
21 we're dealing exclusively with Sabre at the moment. And here you are enclosing
22 for him a draft contract. "I should be obliged if you'd approve same and
23 perhaps we should meet to discuss it. I've been unable to add a map to it. I'm
24 sure exactly where the boundary is and I should be most grateful if you would
14:30:49 25 please carefully let me have a map. This is a case where we would require, two
26 subdivisions are required etc.
27
28 The following matter should be noted. The closing date is six months after
29 that cert ratification. And again I have provided that ratification must be
14:31:06 30 not later than the 1st of January 1994. This is as per Liam Lawlor's own

14:31:13 1 programme. We reserve the right to rescind the contract if they exceed that
 2 date. It cannot go on forever. Perhaps that date is not absolutely agreed but
 3 we should fix a reasonable date. Interest rate 20 percent. Closing date eight
 4 months after ratification. Can you please let me have the exact acreage and
 14:31:33 5 the purchase price is 30,000 pounds per acre. I look forward to hearing from
 6 you. If you have any other special conditions please let me know".

7
 8 Now, obviously, this is a contract which has more favourable terms than those
 9 which Mr. Byrne had had to this point. There is an increase in the price for a
 14:31:48 10 start

11 A. That's right.

12 Q. 446 By 50 percent to 30,000 pounds per acre. It would appear that this may well be
 13 a document which was discussed by Mr. Lawlor and Mr. Byrne. Have you any
 14 recollection of Mr. Byrne telling you that as part of the perhaps resolution of
 14:32:08 15 the High Court proceedings, he and Mr. Lawlor had agreed a new contract
 16 carrying these terms?

17 A. I don't have any recollection but the circumstances seem to fit in what you're
 18 suggesting.

19 Q. 447 Yes. Well obviously you wouldn't have written this letter unless?

14:32:26 20 A. Exactly.

21 Q. 448 Somebody had indicated to you that there was a new contract agreed?

22 A. Yeah.

23 Q. 449 And you believed that Mr. Kennedy was out of the country. He wasn't given?

24 A. He wasn't available wherever he was, yeah.

14:32:39 25 Q. 450 Yes. There is reference here to the closing date being six months after
 26 ratification. That would suggest perhaps some other event was to take place
 27 before this contract would come in to play.

28 A. Yes.

29 Q. 451 Would that have been a zoning, a planning, some alteration in the status of the
 14:33:05 30 lands which would trigger the period?

- 14:33:12 1 A. Uh-huh.
- 2 Q. 452 In other words, whose ratification would be required. Obviously it wasn't
- 3 either of the contracting parties?
- 4 A. Is there map to show where this land was? Is this the land with the exit on to
- 14:33:23 5 Grange Road?
- 6 Q. 453 Well it's described as the Sabre lands. Sabre development lands?
- 7 A. Yeah.
- 8 Q. 454 And we distinguished a little earlier between the Cara and the Sabre lands?
- 9 A. It's at the back of Talavera.
- 14:33:36 10 Q. 455 Yes?
- 11 A. Which seemed to indicate that it's the one that you got to over the ditch.
- 12 Q. 456 Well it's beside the railway tracks, isn't that right?
- 13 A. Exactly. But there was a deep ditch there which needed to be bridged.
- 14 Q. 457 Yes?
- 14:33:48 15 A. And we were waiting to get, somebody was waiting to get that matter solved as
- 16 to the type of bridge or whatever. I remember going to -- I'm not certain at
- 17 that stage. It could have been sewage connection. But there was something
- 18 that was missing there.
- 19 Q. 458 In any event, this was an attempt to resolve the existing legal dispute by the
- 14:34:13 20 substitution of another contract agreeable to the parties?
- 21 A. Yes.
- 22 Q. 459 And as far as you know, Mr. Lawlor may well have been involved in this, in the
- 23 sense that there was a programme set out for completion and you recorded here
- 24 as being Liam Lawlor's own programme, is that right?
- 14:34:31 25 A. Yes, yeah.
- 26 Q. 460 So his involvement extended to that?
- 27 A. Yes.
- 28 Q. 461 Whether it was for his own interests or Mr. Kennedy's interests, isn't that
- 29 right?
- 14:34:39 30 A. That's right.

- 14:34:40 1 Q. 462 And again, fortunately from Mr. Byrne's point of view, that's not a matter
2 which was ultimately resolved in his favour. It didn't come to fruition, isn't
3 that right?
- 4 A. That's right.
- 14:34:54 5 Q. 463 And by June. We'll see at page 2344. By June of 1993 you had been trying to
6 bring the matter to finality with contact with Mr. Caldwell. You were getting
7 nowhere. And you record in a letter to Mr. Byrne that John, "that Liam Lawlor
8 was in the office the other day. I asked him what was happening. He had no
9 explanation as to why Kennedy was not proceeding with the Development Plans for
14:35:20 10 the housing. I'm afraid that I do not understand this either. I'll keep
11 pressing but nothing happened as a result of that". Isn't that right
- 12 A. Yes.
- 13 Q. 464 So just to finalise in relation to Mr. Lawlor's involvement in the lands, the
14 subject of the 100 acre option. It is something which as we've seen extended
14:35:41 15 from 1986 all the way to 1993, isn't that right?
- 16 A. Yes.
- 17 Q. 465 In various guises. You accept at this point in time the evidence that
18 Mr. Lawlor gave that he was a financial beneficiary of these option lands to
19 the extent of 335,000?
- 14:36:10 20 A. I read that, yes.
- 21 Q. 466 That didn't happen until 1997?
- 22 A. '97.
- 23 Q. 467 Until the interest was sold?
- 24 A. Uh-huh.
- 14:36:10 25 Q. 468 But by that point in time Mr. Byrne didn't have an interest in the land?
- 26 A. That's correct, yes. He didn't.
- 27 Q. 469 Now, while all of this is going on, of course, there is the other issue of the
28 Pennine Holdings option lands, with which I think your involvement had started
29 in and around the 5th of February -- sorry. I should say your recorded
14:36:27 30 involvement started in and around the 5th of February 1991. As we saw at page

- 14:36:33 1 2820. Which was the attendance from Anthony Gore Grimes enclosing the copy of
2 the Heads of Agreement?
- 3 A. Yes.
- 4 Q. 470 Which the parties had in mind. And your function in this really was to
14:36:46 5 assemble the conveyancing documents sufficient to allow for the option
6 agreement to be completed. And we know that the option itself wasn't actually
7 signed until November of that year. And I think in part that may have been
8 because you were away for the month of September or a significant part?
- 9 A. Bit longer I'm afraid, yeah, I was.
- 14:37:12 10 Q. 471 But there didn't seem to be any pressing urgency on the part of the contracting
11 parties to formalise that agreement at the time, isn't that right?
- 12 A. Yes, it was exchange on the 4th of November, I think, isn't that right?
- 13 Q. 472 Yes. I think that your significant involvement I suppose didn't really arise
14 until a compulsory purchase order was served towards the end of 1992. And that
14:37:46 15 would have effected the respective rights of the parties because the Council
16 was seeking to obtain part of the lands which were the subject of the option,
17 isn't that right?
- 18 A. Yes. They wanted a small sort of field for a travellers settlement camp on the
19 Mayne Road,, you know, just there.
- 14:38:10 20 Q. 473 And you'll see that on the 6th of January 1993, at page 1802. You wrote to
21 Mr. Byrne advising him that there had been a compulsory purchase order issued.
22 That had been served I think in your offices because you were the registered
23 offices of?
- 24 A. Yes.
- 14:38:28 25 Q. 474 The company?
- 26 A. And it needed immediate action, yes.
- 27 Q. 475 Exactly?
- 28 A. Yes.
- 29 Q. 476 Now, this caused you to have involvement, not only with Mr. Byrne but also with
14:38:39 30 the option holders, isn't that right?

- 14:38:42 1 A. Yes. There were, I expect, two interests there.
- 2 Q. 477 Yes?
- 3 A. One, the option holder. Who is working towards getting a rezoning. And
- 4 Mr. Byrne's interest which would have arisen from A, the fact that he was
- 14:38:59 5 retaining 150 or thereabouts acres.
- 6 Q. 478 Yes?
- 7 A. Which he hoped to develop as a golf course and leisure centre at some stage.
- 8 Q. 479 Yes?
- 9 A. But the rezoning of that 150 was lumped in with the Pennine 200 acres as you
- 14:39:15 10 know.
- 11 Q. 480 Yes?
- 12 A. And so that they were dealing with the rezoning issues. But when this CPO came
- 13 up Mr. Byrne was thinking well I've got some land which will be joining this.
- 14 I am in a situation that perhaps this option will not be exercised. It might
- 14:39:30 15 all come back to me so we must do our best to oppose it.
- 16 Q. 481 Yes?
- 17 A. Which he did. And we instructed George Birmingham, as you have seen, and then
- 18 Pennine instructed Fenton Simmons.
- 19 Q. 482 Yes?
- 14:39:48 20 A. And two letters addressed to the Minister were sent in, one by me and one by
- 21 Fenton Simmons.
- 22 Q. 483 Yes. Now, Fenton Simmons, who are the planning and development consultants,
- 23 were planning and development consultants engaged by Pennine Holdings as far as
- 24 you were aware, isn't that right?
- 14:40:10 25 A. Yes.
- 26 Q. 484 And we'll see at page 1829. A letter of the 28th of January 1993. Addressed
- 27 to Mr. Brendan Hickey of Davy Hickey Properties. 27 Dawson Street. The
- 28 reference being Endcamp, you see that?
- 29 A. Yes.
- 14:40:32 30 Q. 485 Further to your letter of the 22nd of January 1993, with attached letter from

14:40:38 1 Gore Grimes. I wish to advise as follows. And they set out what would be the
2 basis of their objection. But the letter in fact records the fact that your
3 letter had gone or a letter of yours had found itself with Mr. Brendan Hickey.
4 And it had formed the basis of the requests for advises from Fenton Simmons,
14:41:03 5 isn't that right?

6 A. Yes.

7 Q. 486 Now, in in this instance, do you think that your letter had been a letter to
8 Davy Hickey Properties or was it a letter to Pennine Holdings Limited? In
9 other words, did you believe that the people you were dealing with on this were
14:41:20 10 Davy Hickey?

11 A. I did.

12 Q. 487 Yes?

13 A. And I think my client -- we both agreed that we were dealing with Davy Hickey
14 at that stage.

14:41:39 15 Q. 488 Yes. Had you personally any knowledge at that time of what the role of
16 Mr. Frank Dunlop was in all of this?

17 A. We were very pleased to be dealing with Davy Hickey because they were large
18 people and they were very experienced in the property game and they knew what
19 they were doing. And so, you know, that gave us confidence for going ahead.
14:41:54 20 But we would have considered that Mr. Dunlop was there as a PR man or
21 negotiator or that sort of thing.

22 Q. 489 Yes?

23 A. That sort of thing. But then we realised that he was, I mean, later, I can't
24 remember exactly when. We realised that he was also financially involved and I
14:42:12 25 think there's an attendance on this file that says at some stage he took over
26 completely.

27 Q. 490 Yes. Now, one of the issues that is before the Tribunal is the fact that
28 Mr. Hickey would say that Pennine Holdings in fact had nothing at all to do
29 with him. And that it was Mr. Dunlop's company and that the interest of Davy
14:42:35 30 Hickey Properties was one which might come in to play only after they had

14:42:39 1 carried out various feasibility studies to see whether or not they should
2 involve themselves but they in fact never did so. It was against that
3 background really that I want to go through the next series of correspondence
4 with you?

14:42:53 5 A. Yes.

6 Q. 491 And?

7 A. I couldn't say really.

8 Q. 492 Yes?

9 A. About that internal arrangement. But our feeling, Mr. Byrne and myself
14:43:01 10 certainly.

11 Q. 493 Yes?

12 A. Was that we were dealing with Davy Hickey.

13 Q. 494 Yes. If we look to the document now at page 1833. Which is a letter dated the
14 29th of January 1993. It's from Davy Hickey Properties. It's addressed to
14:43:18 15 Mr. John Byrne, Simmonscourt Lodge, Simmonscourt Avenue, Ballsbridge. Dated
16 29th of January. Endcamp Limited. "Dear John, with regard to the halting
17 site. Please find an attached a letter which I have received from Fenton
18 Simmons. I would propose that Fenton Simmons elaborate on the grounds of their
19 objections and give these grounds to Gore Grimes to submit on your behalf.

14:43:42 20 Perhaps you might confirm that you are in agreement with this course of action
21 or indeed have you done anything yourself on this matter. Brendan Hickey,
22 Managing Director".

23 A. Yes. That would have confirmed our view.

24 Q. 495 Yes?

14:43:56 25 A. That we were dealing with Davy Hickey.

26 Q. 496 He yes. Now, this letter is written almost two years after the date upon which
27 apparently the Heads of Agreement had been reached in January 1991, isn't that
28 so? Well your file would indicate?

29 A. Thereabouts.

14:44:16 30 Q. 497 The 5th of February you received?

14:44:19 1 A. Yeah.

2 Q. 498 So we're now January '93. Two years later?

3 A. Yeah.

4 Q. 499 You haven't really done anything in the interim save the completion of the

14:44:28 5 formal agreement, which was signed in November of 1991?

6 A. Yeah.

7 Q. 500 Isn't that so?

8 A. Uh-huh.

9 Q. 501 And really you know that the option was one, I take it, which was only of

14:44:44 10 practical effect and only likely to be exercised ever in the event that there

11 was a rezoning, isn't that so?

12 A. Yes.

13 Q. 502 There's no question of Pennine being committed in any way by a substantial cash

14 deposit or anything of that nature which would have been lost if they didn't

14:45:01 15 complete the agreement, isn't that right?

16 A. And this goes back to something I've said before. Just to put it in the

17 context of the Pennine deal.

18 Q. 503 Yes?

19 A. That Mr. Byrne still believed, at that time and so did I, that he simply would

14:45:17 20 not get permission on these lands. And therefore, he was prepared to sell the

21 acreage and allow somebody else to get the permission. And if they could get

22 permission for what was left for something else he'd be pleased but that was

23 it.

24 Q. 504 Yes. It also begs the question as to why he should believe that somebody else

14:45:34 25 could get permission when he couldn't, isn't that right?

26 A. Well, I think I've said why.

27 Q. 505 Yes?

28 A. And, you know, I don't have to repeat it. It's recorded here.

29 Q. 506 Yes?

14:45:42 30 A. But, I mean, that is a very serious belief.

- 14:45:45 1 Q. 507 Yes?
- 2 A. And that's what we absolutely felt throughout this whole dealing.
- 3 Q. 508 Well there is both a positive and negative aspect on that. Firstly, from the
- 4 point of view Mr. Byrne, he felt that any public association of himself with
- 14:46:00 5 the project would lead to it being unsuccessful, is that right?
- 6 A. Yes.
- 7 Q. 509 But also, did he also have the belief that the engagement of persons such as
- 8 Mr. Lawlor, who had been of assistance from 1986 to that date, could assist in
- 9 securing a rezoning in the future?
- 14:46:24 10 A. Well, I can't speak for Mr. Byrne. But, I mean, I would think that I would
- 11 have felt that there was some hope.
- 12 Q. 510 Yes?
- 13 A. But that hope did work in that permission was obtained for some development,
- 14 for Mr. Kennedy's development. The Pennine thing did not proceed in the end.
- 14:46:43 15 The date ran out. And it didn't go ahead. But then the property was sold and
- 16 we know what's happened since. So that in a way it rather confirms what I've
- 17 said earlier.
- 18 Q. 511 Uh-huh. Well, were you aware, for example, that the team who were coming on
- 19 board to advance this rezoning application were a team who had successfully
- 14:47:08 20 achieved the rezoning of a large area of the west Dublin development called
- 21 City West?
- 22 A. I think I was, yes.
- 23 Q. 512 And they had a proven track record, in other words, they weren't people who
- 24 were coming in to this?
- 14:47:24 25 A. Oh, I knew about Citywest, yes.
- 26 Q. 513 And Mr. Dunlop was involved in that as he was in this, as were Davy Hickey
- 27 Properties?
- 28 A. Exactly.
- 29 Q. 514 So when dealing with the CPO in any event, it is an indicator at this point in
- 14:47:39 30 time that Mr. Hickey was personally involved as late as 1993 in relation to the

14:47:44 1 project. And that he was advising as to how Mr. Byrne should deal with the CPO
2 through the planning consultants who were engaged already, that is Fenton
3 Simmons, isn't that so?

4 A. Yes. He was. And that letter came on Davy Hickey Properties notepaper. And
14:48:04 5 that really sort of confirmed what we believed. I think you see that I didn't
6 altogether agree with Fenton Simmons ...

7 Q. 515 Yes?

8 A. Approach. And I felt that Mr. Byrne should be separately advised.

9 Q. 516 Yes. We see that in your attendance at 1843 on the 5th of February 1993. You
14:48:25 10 spoke to one of the principals of the planning firm intending to speak to Mr
11 Fenton "when he was sending out a letter and he would send it across to me for
12 approval. I then received the letter by fax and immediately phoned his office
13 to say that his client was not Melvin Securities but Davy Hickey and he should
14 be very careful not to write on behalf of our clients and most of the grounds
14:48:48 15 of objection were not ground which we would use or indeed would want to use. "

16 A. That's right.

17 Q. 517 So there was a difference of opinion?

18 A. There was.

19 Q. 518 In relation to that.

14:48:57 20

21 You engaged counsel to deal with the CPO, which of course is a public process,
22 once the objections had been lodged with the Minister. There was going to be a
23 hearing

24 A. Oral hearing, yes.

14:49:09 25 Q. 519 Isn't that right?

26 A. Yeah.

27 Q. 520 And you instructed counsel in relation to that. On the 17th of February we'll
28 see at page 1860. You sent Mr. Hickey a copy of the letter of objection which
29 you were sending, isn't that right?

14:49:29 30 A. That's right.

- 14:49:30 1 Q. 521 Effectively that was the same really I think as the Fenton Simmons one, was it?
- 2 A. Hmm.
- 3 Q. 522 You didn't engage any third firm or second firm, I should say, of planning
- 4 consultants to prepare a report other than?
- 14:49:50 5 A. I think the letter I sent to Mr. Hickey there surely was the letter that I had
- 6 written, which really was based on our barrister's advice.
- 7 Q. 523 Yes?
- 8 A. It wasn't the Fenton letter obviously. Because I think Fenton Simmons then
- 9 wrote to the Minister of the Environment saying that they acted for Pennine
- 14:50:08 10 Holdings and not for Melvin securities.
- 11 Q. 524 Yes. The CPO had started in January 1993. To that point in time as far as you
- 12 were aware Mr. Byrne had not engaged in any attempt to have these lands rezoned
- 13 himself, isn't that right?
- 14 A. He passed that over to Pennine.
- 14:50:49 15 Q. 525 Exactly. And we know that the 1983 Draft Development Plan revision started in
- 16 1987. And there were a number of opportunities in the course of that process
- 17 where parties who wished to make representation to have their lands rezoned
- 18 could do so, isn't that right?
- 19 A. That's right.
- 14:51:09 20 Q. 526 And we know equally that Mr. Byrne himself didn't make any application in that
- 21 period. And the applications which were made through Pennine Holdings were not
- 22 made at any stage prior to December of 1991 after the public display or in the
- 23 public display period?
- 24 A. Yes.
- 14:51:30 25 Q. 527 Isn't that right?
- 26 A. Yeah.
- 27 Q. 528 I think it follows from that, that I'm not saying that the only person who
- 28 could make representations is the landowner. But there were equally no
- 29 representations made by local councillors to vary what had been planned by the
- 14:51:47 30 planning officials themselves in their draft, isn't that so?

- 14:51:50 1 A. Not at that time .
- 2 Q. 529 No. We note from the minutes of the meetings that at the first time upon which
- 3 the Baldoyle lands were considered in June of 1990, the councillors noted the
- 4 intention to retain this as green belt, isn't that right?
- 14:52:11 5 A. Yes.
- 6 Q. 530 So that the process of revision of what was intended by the planning officials
- 7 was one which commenced really after the lodgement of the submission by Pennine
- 8 Holdings at the public display period in December 1991. But that didn't come
- 9 for discussion until 1993, isn't that so?
- 14:52:35 10 A. That's correct, yeah.
- 11 Q. 531 And I think that was nothing to do with the delay on the part of Pennine
- 12 Holdings or anybody. It was because of the fact that the Council was moving on
- 13 an area by area basis?
- 14 A. That's right.
- 14:52:46 15 Q. 532 And it wasn't until April of 1993 that the councillors came to consider for the
- 16 first time?
- 17 A. Baldoyle.
- 18 Q. 533 The submissions which were made in relation to Baldoyle?
- 19 A. Yes.
- 14:52:56 20 Q. 534 And I think that happened to be at the time that the CPO issue was also being
- 21 dealt with, isn't that right?
- 22 A. It was, yeah, it coincided, yeah.
- 23 Q. 535 And in the course then of your dealings with both counsel and your own client
- 24 Mr. Byrne, and the option holders representatives. These were matters which
- 14:53:16 25 were all in effect current at the time , isn't that right?
- 26 A. Yes.
- 27 Q. 536 And to some extent, I'm not saying that they merged, but your attendances
- 28 referred to certain aspects of this, isn't that so?
- 29 A. Yes.
- 14:53:29 30 Q. 537 And if we turn firstly to the attendance at page 1926. It's on the 1st of

14:53:35 1

April 1993.

2

3

I should say that to put this in context. The first submissions or motions

4

that were lodged with the Council were signed on the 12th of March 1993. And

14:53:50 5

they were to come for hearing before the Council on the 20th of April 1993.

6

7

This was a consultation that you had with counsel concerning Endcamp. You

8

explained what was happening in relation to rezoning. You were obviously

9

familiar to some extent with what was going on.

14:54:11 10

11

He was aware of this but he said two things which were. One, that the alliance

12

between Cosgrave and Liam Creaven was very much resented in Fine Gael and we

13

might not get co-operation from Fine Gael councillors.

14

14:54:23 15

That's Michael J Cosgrave rather than Liam Cosgrave

16

A. That's right.

17

Q. 538 They were the two local councillors involved in this area, isn't that right?

18

A. Liam Creaven, Fianna Fail and Michael Cosgrave, Fine Gael.

19

Q. 539 And you went on to say that he knows Frank Dunlop well. He is meeting Nora

14:54:39 20

Owen at lunchtime on Saturday and be prepared to intervene with her if this was

21

required. He is anxious that we should employ Senior Counsel if we were making

22

the main running.

23

24

This is in relation to the CPO, isn't that right?

14:54:52 25

A. That's right.

26

Q. 540 But as regards the other matters. They were more the political side of things

27

rather than anything else, isn't that right?

28

A. Yes.

29

Q. 541 Your card was being marked. That from the rezoning perspective, if one was

14:55:04 30

looking for Fine Gael's support there was this issue in Fine Gael as to the

- 14:55:10 1 relationship between those two particular councillors?
- 2 A. That was the reality.
- 3 Q. 542 One was Fianna Fail and the other was Fine Gael, isn't that right?
- 4 A. Yes, yes. I expect the one thing that was at that time. That we did have a
- 14:55:23 5 public meeting. I wasn't there but some of the Pennine people were there.
- 6 Q. 543 Yes?
- 7 A. About the CPO in Baldoyle. And of course, there's a very large group of
- 8 residents opposing this.
- 9 Q. 544 Yes?
- 14:55:38 10 A. At that time. I mean, you know, it's all worked out fine. But, I mean, at
- 11 that time they were opposing it. And Mr. Cosgrave and Mr. Creaven were very
- 12 much together on that because, I mean, naturally they could see that that was
- 13 the thing to support and they were sporting the residents interests and our
- 14 interests at the same time because they seemed to coincide.
- 14:56:03 15 Q. 545 Well a certain section apparently of the population didn't feel?
- 16 A. That's correct.
- 17 Q. 546 And they might have been the more vocal section?
- 18 A. Yes, but not the largest numbers.
- 19 Q. 547 No. We'll see that this involvement of yours and I take it that insofar as you
- 14:56:20 20 were involved in the rezoning side of things, it was, of course, for your
- 21 client Mr. John Byrne, isn't that right?
- 22 A. Oh, yes absolutely.
- 23 Q. 548 We'll see on the 6th of February. Almost a week later, an attendance at 1937.
- 24 Attending a meeting in the Gresham Hotel with Mr Liam Creaven and Mr MJ
- 14:56:37 25 Cosgrave and Frank Dunlop to discuss this case.
- 26 A. Yeah.
- 27 Q. 549 Insofar as there is a case, that was the CPO, was it?
- 28 A. It was. It was to do I think with the public meeting.
- 29 Q. 550 Yes. But it, this attendance also extends to deal with the rezoning?
- 14:56:57 30 A. Yes.

- 14:56:57 1 Q. 551 In a larger perspective, isn't that right?
- 2 A. Yes.
- 3 Q. 552 It says that a meeting was to be held in Baldoyle this evening at which all of
- 4 the residents would be making their objections?
- 14:57:02 5 A. Yes.
- 6 Q. 553 A new plan was now produced showing agreed belt. I think that should be a
- 7 green belt?
- 8 A. Yes.
- 9 Q. 554 For 300 yards down along the coastal side. There is approximately 70 to 80
- 14:57:15 10 acres of housing in Baldoyle and the same in Portmarnock. In between both was
- 11 a golf course and public park. We would have to resist the itinerant
- 12 settlement proposal Moyne road but this would be difficult to do as we would
- 13 have to be very careful about what we said. Frank Dunlop was of the opinion
- 14 that the decision would really be made by the Minister in attendance for one
- 14:57:35 15 hour.
- 16
- 17 The ministerial decision exclusively is one on the CPO and nothing do with the
- 18 zoning, isn't that right?
- 19 A. That's correct.
- 14:57:44 20 Q. 555 When you're addressing the zoning here. I think at this point you're aware of
- 21 the proposal which was to limit the residential housing to two separate areas
- 22 which you estimate between 70 and 80 acres. One at the Portmarnock end and one
- 23 at the Baldoyle end, isn't that right?
- 24 A. Yes.
- 14:58:00 25 Q. 556 And this in effect is the content of a motion which was to be heard before the
- 26 Council some two weeks after this meeting. But which had been drafted and
- 27 lodged in advance of that meeting on the 12th of March, isn't that right?
- 28 A. That's right.
- 29 Q. 557 So Mr. Dunlop was in attendance at this meeting. And presumably, did he have a
- 14:58:27 30 copy of this motion with him or how did he explain to you that this was the

- 14:58:32 1 content of the proposal in relation to rezoning that was being advanced at that
2 time?
- 3 A. I can't remember if he had any documents. But he certainly explained it
4 verbally.
- 14:58:42 5 Q. 558 Right. And he did so in the presence of Mr. Cosgrave and Mr. Creaven, both of
6 whom were signatories to this particular motion, isn't that right?
- 7 A. That's right, they were.
- 8 Q. 559 And there was effectively agreement between all four of you. You certainly
9 weren't objecting to this particular proposal?
- 14:58:59 10 A. Oh, no.
- 11 Q. 560 It was one which would have allowed for the proposed development by Mr. Byrne
12 of his 150 acres of golf course and hotel. Leaving residential at the two
13 ends. And his development in the middle, isn't that right?
- 14 A. That's right.
- 14:59:15 15 Q. 561 Yes.
- 16 A. There was a big concern at the time not to allow Baldoyle and Portmarnock run
17 into one big urban sprawl and they wanted a lung between.
- 18 Q. 562 Yes. And the CPO hearing took place on the 15th of April. We'll see that at
19 page 1957.
- 14:59:37 20
21 This is a diary entry of Mr. Dunlop's. If you look to Thursday April 15th you
22 will see at 11:00, Baldoyle CPO hearing
- 23 A. Yes, in the Dublin County Council offices.
- 24 Q. 563 Yes?
- 14:59:52 25 A. Chamber.
- 26 Q. 564 Yes?
- 27 A. The Council Chamber.
- 28 Q. 565 You were in attendance obviously on behalf of your client?
- 29 A. Yeah.
- 14:59:58 30 Q. 566 And Mr. Dunlop was also there, was he, can you recollect?

- 15:00:02 1 A. I'd say he was but I can't be absolutely certain.
- 2 Q. 567 Was there separate representation on behalf of the Pennine Holdings or Davy
3 Hickey Properties also. In other words, this is obviously representations are
4 made to the inspector who was there?
- 15:00:20 5 A. I think Mr. Fenton was there.
- 6 Q. 568 Right?
- 7 A. That's my memory. And I was there with my barrister representing Mr. Byrne.
- 8 Q. 569 Right. And did you effectively adopt Mr. Fenton's?
- 9 A. No, no.
- 15:00:35 10 Q. 570 No?
- 11 A. We didn't.
- 12 Q. 571 Submissions were made separately, is that right?
- 13 A. Absolutely.
- 14 Q. 572 Now --
- 15:00:46 15 A. I would think that. Sorry. I would think that at that hearing Mr. Birmingham
16 spoke for quite a while and also cross-examined witnesses and did quite a lot
17 of work in fact.
- 18 Q. 573 Uh-huh?
- 19 A. Mr. Fenton was there and he was observing and when he, when it was his turn to
15:01:06 20 speak he simply presented his letter. I think that was it.
- 21 Q. 574 Obviously having had the meeting both with Mr. Dunlop on the 6th of April and
22 having met effectively the Fenton Simmons people and your own counsel on the
23 15th, you were mindful of the fact that the motion would be heard on the 27th,
24 isn't that right?
- 15:01:31 25 A. Yes.
- 26 Q. 575 Because it really -- it was the result of that that would determine whether or
27 not the option was going to be exercised and everything else, isn't that so?
- 28 A. More or less. There was still time afterwards but, yes, it was the new plan.
- 29 Q. 576 Yes. There had been I think an initial motion hearing on the 20th but that was
15:01:54 30 effectively adjourned until the 27th for a substantive discussion?

- 15:01:56 1 A. That's right.
- 2 Q. 577 And on that date apparently there were a number of issues arose which resulted
- 3 in a motion being passed which was contrary to the interests of Mr. Byrne and
- 4 also of the Pennine Holdings persons?
- 15:02:16 5 A. Yes.
- 6 Q. 578 And those behind it, isn't that right?
- 7 A. That's right.
- 8 Q. 579 And I take it that that is something that you became aware of probably on that
- 9 day because we see that there's a telephone call between yourself and Mr.
- 15:02:29 10 Dunlop's office asking him to ring you at home that evening?
- 11 A. That's right.
- 12 Q. 580 Can you remember how you learnt of how the motion had gone against the
- 13 interests of Mr. Byrne or not?
- 14 A. I'm not sure but I know that Mr. Creaven and Cosgrave would have been around
- 15:02:56 15 quite a lot at that time .
- 16 Q. 581 Yes?
- 17 A. And I knew Mr. Creaven personally. And, you know, his children and my
- 18 children sort of grew up together. And I knew him. And I would see him on a
- 19 fairly regular basis.
- 15:03:09 20 Q. 582 Yes?
- 21 A. I would imagine that I learnt from one of them probably.
- 22 Q. 583 Yes. Well certainly the matter was relatively contentious and newsworthy and
- 23 it found itself featured in the following day's newspapers in any event.
- 24
- 15:03:24 25 A synopsis I think we can see from the Irish Times article the following day.
- 26 It's at page 2620, I just want to refer to its headline "Dunlop plan unravels
- 27 as Council keeps green belt".
- 28
- 29 Without having to go too deeply into the article itself. It identified in
- 15:03:46 30 effect the consequence which resulted from the passing of a motion brought by

- 15:03:53 1 Councillor Healy, isn't that right
- 2 A. Yes.
- 3 Q. 584 It expressed it in the following terms "the best laid plans of a former
- 4 Government press secretary Mr. Frank Dunlop to have large tracts of open lands
- 15:04:04 5 between Baldoyle and Portmarnock rezoned for development came seriously unstuck
- 6 yesterday when Dublin County Council voted overwhelmingly to preserve the
- 7 entire green belt for the area by 43 votes to three with 23 abstentions. The
- 8 Council adopted a motion tabled by Mr. David Healy of the green parties to
- 9 uphold the current zoning of some 438 acres of land thereby protecting it from
- 15:04:33 10 the highly speculative scheme being canvassed by Mr. Dunlop's company, Pennine
- 11 Holdings Limited".
- 12
- 13 And obviously, if that was to be accepted as the final position, Mr. Byrne's
- 14 prospects of dealing with the lands for another number of years were going to
- 15:04:54 15 be seriously hampered. Because there is a review every five years or so though
- 16 they never really managed to keep it within the five year period.
- 17 A. Not in those years they didn't.
- 18 Q. 585 Not in those years. And opportunity of getting rezoning or development
- 19 potential for the land would be seriously compromised if this was to be the
- 15:05:13 20 final result, isn't that right?
- 21 A. Yes, unless the elected members decided to.
- 22 Q. 586 Yes?
- 23 A. Press ahead with the motion.
- 24 Q. 587 Yes. If indeed they were entitled to do?
- 15:05:24 25 A. Indeed.
- 26 Q. 588 I think that became a serious issue, isn't that right?
- 27 A. Indeed.
- 28 Q. 589 The consequences of the passing of Mr. Healy's motion again became a matter of
- 29 public record in a newspaper article which was an article of the 3rd of May
- 15:05:48 30 1993 from the independent. We see that at 2176.

15:05:54 1

2

The headline reads "legal doubts on ruling not to rezone land". It says "legal

3

doubts have been cast over Dublin County Council's decision not to rezone 400

4

acres of green belt between Baldoyle and Portmarnock which if confirmed may

15:06:11 5

reactivate plans to develop the area. A Councillor claims his rights under the

6

local authorities Standing Orders were breached at last weeks meeting which

7

voted by a massive majority to retain the green belt. Pennine Holdings

8

consortium of business people headed by former Government press secretary Frank

9

Dunlop had proposed building 900 houses and 25,000 square meter shopping centre

15:06:36 10

and golfing facilities on the property. Councillor John O'Halloran had

11

proposed that a decision on the lands be deferred until after councillors had

12

visited the site. They were ruled out of order because Green Party Councillor

13

David Healy insisted his motion to keep the green belt be taken".

14

15:06:57 15

So apparently matters weren't going to be allowed to rest, isn't that right?

16

A. Well, I mean, I think when that happened Mr. Byrne was suddenly, you know, if
you like, unwillingly thrown back into the field because.

17

18

Q. 590 Yes?

19

A. I mean, he could see that there was a very good chance that the option now
would not be exercised.

15:07:20 20

21

Q. 591 Yes?

22

A. But that wasn't confirmed for quite a while. Nevertheless, he was anxious to
find out what his position was.

23

24

Q. 592 Yes?

15:07:23 25

A. So I was instructed to investigate and take copies of the minutes of the

26

Council proceedings. And to examine those and to prepare a case for counsel

27

and to take an opinion as to whether the proceedings could be challenged by

28

judicial review.

29

Q. 593 Yes?

15:07:40 30

A. And in summary, if I could say that the advice was lukewarm rather than hot.

- 15:07:47 1 Q. 594 Yes?
- 2 A. And therefore, it left quite a few ifs and but's and it was considered and we
3 took Senior Counsel advice and that really closed down that avenue we thought
4 it would be imprudent to challenge that.
- 15:08:03 5 Q. 595 Uh-huh. This publication that we see on screen here was published on the 3rd
6 of May. On the eve of a meeting which was to take place on the 4th of May of
7 the Council?
- 8 A. Uh-huh.
- 9 Q. 596 Obviously somebody had leaked this information in advance of that meeting?
- 15:08:21 10 A. Yes.
- 11 Q. 597 And the record would show that at the meeting on the 4th the matter was
12 adjourned until a meeting of the 6th. And it was to be dealt with at a meeting
13 of the Council on the 6th of May?
- 14 A. Yes.
- 15:08:35 15 Q. 598 In advance of that, it appears that Mr. Dunlop obtained the advises of
16 Mr. Birmingham, counsel, in relation to the decision taken by the meeting of
17 Dublin County Council on the 27th of April. And we see at page 2198?
- 18 A. Yes.
- 19 Q. 599 A copy of a letter sent to you by Mr. Birmingham beneath it there was in
15:09:04 20 manuscript it was to go to Frank Dunlop only with a compliments slip. And
21 beneath that again Mr. John Byrne and an English fax number and apparently the
22 opinion was faxed to?
- 23 A. Both.
- 24 Q. 600 To both. So at this point in time it appears that the interests of both were
15:09:22 25 being served by the advises being given by Mr. Birmingham, isn't that right?
- 26 A. Yes, the date of that letter was?
- 27 Q. 601 It's the 6th of May?
- 28 A. The 6th.
- 29 Q. 602 The morning of the meeting of the Council?
- 15:09:35 30 A. It was just at this time that developments were taking place which we had wind

15:09:40 1 off but had not quite been firmed up. That the Pennine ownership was about to
2 change as far as we understood.

3 Q. 603 Yes?

4 A. Up to that time we believed that Davy Hickey Properties were effectively
15:09:57 5 Pennine. We realised that Mr. Dunlop had a shareholding in it. But we
6 understood that they controlled it.

7 Q. 604 Yes?

8 A. And by the 11th of May we knew most definitely, because we were told by Mr.
9 Dunlop, that Davy Hickey were out of it and that he was the sole owner of
15:10:16 10 Pennine Holdings. Which, I may say, was disappointing news for us. Not
11 casting any slight on Mr. Dunlop. But Mr. Dunlop wouldn't have had the same
12 resources or indeed development skills as Davy Hickey.

13 Q. 605 Right. And were you given any explanation at that time either by Mr. Hickey,
14 with whom you had had some contact over the past three months in relation to
15:10:39 15 the CPO aspect. Or from Mr. Dunlop as to why it was that they were no longer
16 involved in this issue?

17 A. I had very little contact with Mr. Hickey. I mean, I wrote to him. He wrote
18 to me. And we may have had two or three, I can't remember, but some number of
19 telephone calls to say who would do what and you know he was employing Fenton
15:11:05 20 Simmons and I was employing George Birmingham and that sort of thing. No, this
21 was just a statement that was made by Mr. Dunlop who said here's a fact now, I
22 am Pennine Holdings and the others have gone.

23 Q. 606 Yes. Mr. Lawlor in writing to the Tribunal in relation to the involvement of
24 Davy Hickey in the property, indicated that Davy's pulled out of the matter
15:11:30 25 after the Irish Sugar Company flotation matter had come to light?

26 A. I saw that, yeah.

27 Q. 607 Now, obviously, I can't say whether that's true or otherwise. Can you
28 recollect whether or not that was the case, the matter was in the press at the
29 same time or in and around the same time. But was it ever indicated to you
15:11:51 30 that this was the reason why they were not prepared to go forward with this?

- 15:11:54 1 A. I certainly read about it in the press. And I think I am associating the two
2 things. I'm not quite sure who I got the information from. I would in my mind
3 associate the two things in some way, yes.
- 4 Q. 608 Yes?
- 15:12:14 5 A. I'm sure that the fact that the rezoning issue was a dead duck had something to
6 do with it as well.
- 7 Q. 609 Yes. Well the extent to which it's a dead duck is I suppose somewhat unclear
8 at this point in time. Because there had been the initial decision of the
9 Council taken on the 27th?
- 15:12:24 10 A. Yes.
- 11 Q. 610 This was a matter then upon which the opinion of counsel is sought and it's
12 given on the 6th of May?
- 13 A. That's right.
- 14 Q. 611 And the opinion that is given is a favourable opinion from the point of view of
15 Mr. Byrne and Pennine?
- 15:12:33 16 A. Uh-huh.
- 17 Q. 612 Insofar as counsel expressed the view that the decision which was taken should
18 not or could not have had the effect which is being argued for, namely, that
19 one couldn't reopen the issue, isn't that right?
- 15:12:51 20 A. Well, yeah, that was the opinion. I will say that when we looked at that more
21 closely.
- 22 Q. 613 Yes?
- 23 A. It became slightly sort of lukewarm.
- 24 Q. 614 Yes?
- 15:12:59 25 A. It wasn't that definite in the end.
- 26 Q. 615 No. And obviously, if the plans of Mr. Byrne and Pennine were to be advanced,
27 the decision of the 27th would have to be set aside in some way, be it by
28 judicial review or be it by a decision taken by the Council in its Standing
29 Orders that they should allow for it to happen, isn't that right?
- 15:13:24 30 A. Yes.

- 15:13:24 1 Q. 616 And you say that the judicial review route was seen to be one which was likely
2 to be baron and was not pursued?
- 3 A. That's right.
- 4 Q. 617 But then the other route was pursued, isn't that right?
- 15:13:35 5 A. It was but ...
- 6 Q. 618 Yeah. The advises, as I say, of Mr. Birmingham were favourable or they allowed
7 for a favourable interpretation to be taken from the point of view of
8 Mr. Byrne. We'll see the opinion runs from page 2202, which sets out really
9 the history of events. And we probably could move to the summary?
- 15:14:11 10 A. Yes.
- 11 Q. 619 It's at page 2204. In this it is stated "in summary it is my view that the
12 decision taken on Councillor Michael Cosgrave's motion by necessary implication
13 involved a deferral of Councillor Healy's motion and that Councillor Healy's
14 motion should not have been taken. It is also my view that Councillor
15 O'Halloran is entitled to his motion for deferral considered. Finally, I am of
16 the view that Councillor Cosgrave and Creaven are entitled to have a specific
17 decision on their proposal to their rezonings. Nothing further occurs to me".
18
19 Just to try and put that in some context. Councillor Cosgrave's motion, the
15:14:59 20 first one referred here, was a motion to defer consideration of his -- to
21 substantive motion on to a date not later than the 15th of May. And what is
22 being argued for here is that since that motion was passed, it followed that a
23 motion taken by Councillor Healy to decide to keep the area a green belt should
24 of itself have fallen back as well
- 15:15:28 25 A. It was contradictory, yes.
- 26 Q. 620 To consider one, having agreed to defer one, with you couldn't then go on to
27 consider the other?
- 28 A. Yeah.
- 29 Q. 621 That was the kernel of this view expressed here, although, as we see, it was
15:15:40 30 not one accepted by others?

- 15:15:41 1 A. That's right.
- 2 Q. 622 But in the light of, that obviously, it was going to be necessary to see
3 whether or not that view would be accepted by the Council rather than counsel?
- 4 A. Yeah.
- 15:15:58 5 Q. 623 And the councillors meeting was the same day, the 6th. And we'll see that that
6 seemed to have been a rather hectic event. It's described in the newspapers?
- 7 A. Yeah.
- 8 Q. 624 On the day following as being one where there was uproar in the Council
9 Chamber. We see that at page 2621. The Irish Times of Friday the 7th of May.
10 Says there was uproar in the Council Chamber over the vote on the Baldoyle
11 motion.
12
- 13 A. 34 votes to four.
- 14 Q. 625 34 votes to four of those who had remained?
- 15:16:39 15 A. Yeah.
- 16 Q. 626 Voted in favour of the motion. But apparently?
- 17 A. 22.
- 18 Q. 627 There was a walk out and various other matters?
- 19 A. Yeah.
- 15:16:47 20 Q. 628 Those who stayed were those in favour. Those who left were those in opposition
21 who were claiming that the vote was one which was illegal because it breached
22 Standing Orders?
- 23 A. Yeah.
- 24 Q. 629 I think ultimately the opinion which was sought by the law agent confirmed the
15:17:01 25 fact that for better or for worse, the decision which had been taken on the
26 27th to defer the matter to not before the 15th of May, was one taken in the
27 knowledge that there was a following motion of Councillor Healy's which was
28 going to be determined. And that that motion once determined could not be
29 revisited for a period of six months thereafter, isn't that so?
- 15:17:30 30 A. That's right.

- 15:17:30 1 Q. 630 The effect of that being that the period which was available to make
2 submissions in relation to the Draft Development Plan would have been acceded,
3 isn't that right?
- 4 A. Yeah.
- 15:17:38 5 Q. 631 Now, the uproar that's referred here is because the Chairman decided that a
6 vote would be taken as to whether or not there should be a site visit conducted
7 in the Baldoyle lands of Mr. Byrne by councillors before a final decision was
8 taken, isn't that right?
- 9 A. Yes.
- 15:18:02 10 Q. 632 And the Chairman ruled that because there was some doubt in her mind as to
11 whether the decision taken on the 27th was in fact a valid decision, that this
12 motion would be allowed subject to the caveat that the opinion of the law agent
13 would be sought?
- 14 A. That's right.
- 15:18:20 15 Q. 633 And it would determine what happened?
- 16 A. Uh-huh.
- 17 Q. 634 Since. So two days after this meeting you convened or you attended a meeting
18 with Mr. Frank Dunlop and also Mr. Liam Lawlor to discuss the proceedings of
19 the Council, isn't that right?
- 15:18:40 20 A. That's right.
- 21 Q. 635 We see that at page 2210. Which is an attendance of yours on the subject of
22 Endcamp and Dublin County Council. It's dated the 8th of May but I suggest it
23 may have been typed on that date rather than dictated on that date. Because
24 it's talking about the proceedings of yesterday?
- 15:19:03 25 A. Yes.
- 26 Q. 636 And the meeting of yesterday was that of the 6th not of the 7th. So it's
27 likely that this is a recording what took place on the 7th not the 8th? Is
28 that right?
- 29 A. I think so, yes.
- 15:19:16 30 Q. 637 Attending a meeting from 9:30 to 10 with Frank Dunlop and Liam Lawlor to

15:19:21 1 discuss the proceedings of yesterday based on counsel's opinion. Councillor
2 O'Halloran was now introducing a motion to say that Mr. Healy's motion was
3 completely without foundation. Letters are to be drafted over the weekend and
4 Mr. Lawlor and Mr. Dunlop are to come in to see me on Monday and I am to check
15:19:42 5 the legal implication of these letters. Discussing site and agreeing that we
6 need aerial photographs and to contact Tom Lawlor to get these for the 18th. I
7 mentioned that the cost would be 1500 pounds plus VAT and Frank Dunlop accepted
8 this"
9

15:19:59 10 The last part of that is to deal with aerial photographs I think which were
11 going to be taken of the site and used as an aid to advance the argument that
12 the rezoning should take place, isn't that right?

13 A. Yes, that's right.

14 Q. 638 If we revert back to what the initial matter covered was firstly, you noted
15:20:20 15 that Councillor O'Halloran was now introducing a motion to say that Mr. Healy's
16 motion was completely without foundation. That was a stage which was taking
17 place after the meeting of the Council on the 6th, isn't that right?

18 A. Yes.

19 Q. 639 And apparently, Mr. Dunlop and Mr. Lawlor had been advised or had been made
15:20:44 20 aware of the intentions of Councillor John O'Halloran, isn't that so?

21 A. Yes.

22 Q. 640 Mr. Dunlop tells us in his most recent statement to the Tribunal that after the
23 meeting and indeed on the margins of the meeting of the 6th that he had
24 discussions with Councillor O'Halloran with regard to what was to be done. And
15:21:05 25 presumably, this strategy of bringing a motion was something that they had
26 discussed. That presumably is something that you understood from what was said
27 at this meeting of which you've taken a relatively short note?

28 A. Yes, at that time Mr. Dunlop's and Mr. Byrne's interests absolutely coincided
29 and that's why we were working together in a very short time to see what we
15:21:29 30 could do.

- 15:21:30 1 Q. 641 Yes. And the strategy for dealing with this was a combined strategy as and
2 from this day forward, isn't that right?
- 3 A. That's right.
- 4 Q. 642 And obviously Mr. Byrne himself wasn't going to be personally involved in it.
15:21:41 5 But you were going to represent his interests as best you could and to liaise
6 liaise with the Pennine interests?
- 7 A. Well, I would imagine that I would have been in touch with Mr. Byrne and he
8 would have instructed me to do what he did.
- 9 Q. 643 Oh, absolutely. Yes. I just say that because Mr. Byrne in his statement to
15:22:02 10 the Tribunal indicated that as far as he was concerned he'd had no involvement
11 whatsoever in advancing the aspirations of Pennine once the option had been
12 signed. I just quote to you what he said?
- 13 A. Yes, I've read that. Yes, if you want to quote it by all means yes.
- 14 Q. 644 Said "I had no involvement whatsoever in the efforts by Pennine Holdings
15:22:38 15 Limited to achieve their aims, but I am aware that they ran into difficulties
16 with the local authority as the local authority wanted to acquire the
17 substantial part of the option lands for the purpose of erecting a sewage
18 treatment plant, sludge treatment plant and creating a flood plain?"
- 19 A. Now, I can see what he's saying there. And Mr. Byrne wanted to take a back
15:22:56 20 seat there on the whole rezoning issue.
- 21 Q. 645 Yes?
- 22 A. And he did so in the earlier stages. But, you know, when we're talking about
23 that flood plain and everything else. That was to do with the flooding in
24 Baldoyle. And they did see it in a different way in the end. Anyway, they
15:23:16 25 were looking for something like 80 acres to put in a sludge plant, sewage
26 treatment plant and a continuation water ponds.
- 27 Q. 646 I think all of this follows upon the meetings?
- 28 A. Yes.
- 29 Q. 647 The meetings in April, it doesn't precede?
15:23:32 30 A. He didn't get involved in that. And he wasn't involved in the general

- 15:23:35 1 principle of rezoning which he left to Pennine and their people. But when this
2 issue of the Healy motion came, I mean, he could see very clearly that look,
3 this is quite likely to land back in his lap and he must try and do his best
4 now because otherwise he'll be shut out for a very long time .
- 15:23:57 5 Q. 648 Absolutely?
- 6 A. He may have perhaps just overlooked that. And he certainly would have been
7 involved in at that time around the main dates that we're talking about now.
- 8 Q. 649 We'll see that from your attendances and hopefully you'll be able to elaborate
9 somewhat on it for us?
- 15:24:15 10 A. Yes.
- 11 Q. 650 What is clear is that the crucial point as regards the rezoning in the 1993
12 plan was what was to happen to the 27th of April motion if it went the way that
13 Councillor Healy and his supporters claimed it should?
- 14 A. Uh-huh.
- 15:24:32 15 Q. 651 That was the end of the matter for Mr. Byrne and for Pennine?
- 16 A. Yeah, and it did.
- 17 Q. 652 And equally. And it did?
- 18 A. Yeah.
- 19 Q. 653 Equally, for so long as there was hope that that could be of up-scuttled in
15:24:45 20 some way, you'd pursue every reasonable avenue of trying to achieve that?
- 21 A. That's why we were looking at judicial review and every possibility.
- 22 Q. 654 That's why, I take it, you were having the interests with Mr. Dunlop?
- 23 A. As you say, the interests coincided absolutely at that time .
- 24 Q. 655 Now it seems clear from the fact that Mr. Lawlor was in attendance at this
15:25:05 25 meeting. That Mr. Lawlor was in support of the idea that the decision of the
26 27th should be up turned, isn't that so?
- 27 A. Well it was very obvious that he'd have to be.
- 28 Q. 656 Yes?
- 29 A. Because otherwise he was in trouble. Not in trouble but I mean the option
15:25:24 30 agreement wasn't going to work for him.

- 15:25:25 1 Q. 657 Sure. But he would be in trouble or those with him would be in trouble only if
2 he had an interest in this project. He is a local representative, a TD, as far
3 as we know. What possible interest had Mr. Lawlor that you can identify?
4 A. Oh, Mr. Lawlor. Sorry, I thought you were talking about Mr. Dunlop.
- 15:25:46 5 Q. 658 Mr. Dunlop's role is obviously -- well it's obvious. Firstly, it was published
6 and all of the newspaper articles refer to him as being the person who was in
7 front of this organisation. But Mr. Lawlor's involvement here at this meeting.
8 How do you explain the presence of Mr. Lawlor at a meeting which is
9 strategising a policy for altering the decision of the Council?
- 15:26:10 10 A. Well, I have to say again that I assumed that Mr. Lawlor was the advisor to
11 Pennine. And I knew that because I met them together very often that he would
12 have had a very close relationship with Mr. Dunlop at that time .
13 Q. 659 Yes?
14 A. You know, I mine, they were working together on this project.
- 15:26:27 15 Q. 660 And?
16 A. But I -- again, I must say that I did not think that Mr. Lawlor was a Pennine
17 shareholder. Perhaps I'm wrong again.
- 18 Q. 661 I mean, do you distinguish in any way between the role that he might be
19 identified with in the 100 acre option as opposed to this 400 acre option. Was
15:26:49 20 there any difference as far as you were concerned?
21 A. No.
22 Q. 662 In the way in which he presented himself to you?
23 A. No, not that I recall.
24 Q. 663 So it was an unidentified, unspecified role. But it was one which was pretty
15:27:02 25 much an omnibus role insofar as he was there on the contract.
26 A. He was hands on.
27 Q. 664 He was there on the contract, he was there on the planning?
28 A. Yes.
29 Q. 665 And to a significant extent?
15:27:14 30 A. Absolutely, I have to say that.

- 15:27:17 1 Q. 666 Now, at this meeting you learnt, firstly, that there is a plan or a strategy.
2 It's page 2210 on screen. It's your attendance of the 8th of May. Although I
3 think we identify it as more accurately recording what was taking place on the
4 7th.
- 15:27:39 5
6 The first aspect was that there was now going to be a motion brought obviously
7 before the next Council meeting. And letters were to be drafted over the
8 weekend and Mr. Lawlor and Mr. Dunlop were to come in to see me on Monday and I
9 am to check the legal implications of those letters. The first aspect of that
10 was that either jointly or individually Mr. Lawlor and Mr Dunlop were to go off
11 and draft letters, isn't that right
- 12 A. Yes.
- 13 Q. 667 Those letters then when drafted by them were to be brought back to you the
14 following Monday, which was the 10th. And you were to look at those letters,
15 see if they met with your approval and what the legal implications of them
16 were, isn't that so?
- 17 A. So and I think with counsel's approval as well, as far as I recall.
- 18 Q. 668 Certainly we'll see that you consulted with counsel on them. But as regards
19 your note at this point in time?
- 15:28:38 20 A. That's right.
- 21 Q. 669 The respective roles of the parties was that they were to do the drafting
22 either jointly or individually. You were to look at it. And you were to see
23 what the legal implications were of it and matters would proceed from there,
24 isn't that right?
- 15:28:50 25 A. Yes.
- 26 Q. 670 We'll see that on the following month, at page 2212. Mr. Lawlor's -- sorry.
27 Mr. Dunlop's telephone records record that you phoned his offices at 9:35 that
28 morning urgently leaving your number, probably is that a mobile or otherwise?
- 29 A. Office number there, yeah.
- 15:29:16 30 Q. 671 In any event, and you'll see later on in the course of the day there's a

15:29:20 1 reference to Liam, that's Liam Lawlor, will be here at 4:30 reschedule Gore
2 Grimes for 8:30 tomorrow morning.
3
4 Have you any recollection as to why it was that you were ringing at 9:30 that
15:29:34 5 morning? There had been I think a scheduled meeting to take place with Mr.
6 Dunlop and Mr. Lawlor that morning, isn't that right?
7 A. That's right. That's why I was ringing to know what time .
8 Q. 672 Oh, it was to check time, was it?
9 A. Yeah.
15:29:48 10 Q. 673 And for some reason that meeting didn't happen?
11 A. Yeah, perhaps the letters hadn't been prepared. I don't know. But for some
12 reason it didn't happen.
13 Q. 674 Yes. Yep. But the letters did in fact come to you at some stage before nine
14 o'clock the following morning?
15:30:05 15 A. If the record shows that, yes. I mean, I can't actually remember but they did
16 come to me, yes.
17 Q. 675 Okay. Well we'll see?
18 A. They might have come the evening before, I don't know.
19 Q. 676 Yes. You certainly were in possession of them in the early morning of the
15:30:18 20 11th?
21 A. Yes, yeah.
22 Q. 677 And I suggest that it may well be that you received them the previous
23 afternoon?
24 A. Yeah, well, we certainly had them when I met Mr. Birmingham.
15:30:31 25 Q. 678 We'll see at page 2218. Which is an attendance on Tuesday the 11th of May.
26 Attending consultation with George Birmingham when he approved the letters to
27 be written by Michael J Cosgrave to the Chairperson and by the Chairperson back
28 to him and also the request for information to be submitted regarding the
29 deferral of the motion. In attendance for 20 minutes at the Bar Library and
15:30:58 30 then attending meeting with Liam Lawlor and Frank Dunlop. These letters were

- 15:31:01 1 approved and we added the matter dealing with the CPO for the itinerant site.
2 We also telephoned John Byrne. Spoke to him. Frank Dunlop is to remove
3 Brendan Hickey and David Shubotham from the Pennine board. There is to be
4 absolutely no conversation to the press. They are to form an association with
15:31:17 5 the Baldoyle Residents Association who support the plan. Apparently the three
6 ladies and their sons who burst into the Council chambers were all friends of
7 Joe Maher. Ms. Stepolin in attendance from 8:30 to 9:30."
8
9 That would appear to suggest that on going to counsel you had possession of the
15:31:40 10 letters involved, isn't that right
11 A. Yes we were in a position to discuss those with him.
12 Q. 679 You then met with Mr. Lawlor and Mr. Dunlop who were the drafters of those
13 letters, isn't that right.
14 A. Yes.
15:31:55 15 Q. 680 Now, what we know from the attendance here is that the letters were letters to
16 be written by Michael Joseph Cosgrave to the Chairperson and by the chairperson
17 back to him. And also a request for information to be submitted regarding the
18 deferral of the motion. Do you have a recollection of what those letters were?
19 A. Other than what I've put down there, I can't recall.
15:32:28 20 Q. 681 Right. Well, without knowing the content of the letters and we do have letters
21 that I won't ask to you look at. If you want to see them now it might be
22 easier?
23 A. Yes, please.
24 Q. 682 Fine. If we look to page 2853 we see a letter here which is a draft. It's not
15:32:46 25 on anybody's headed paper. We'll see on the following page 2854 that there is
26 space at the bottom of it for both Michael Joe Cosgrave and for Liam Creaven to
27 sign it. Do you see that?
28 A. Yes.
29 Q. 683 And if we go back now to page 2853. This is a letter which if written by
15:33:12 30 Councillor Cosgrave would address the question of the decisions taken on the

- 15:33:17 1 27th of April on their motions, isn't that right?
- 2 A. That's right.
- 3 Q. 684 And they are in effect asking the Chairperson, who is Councillor Ridge, certain
- 4 questions. Can you confirm that our interpretation of the standing order is
- 15:33:33 5 correct?"
- 6 A. Uh-huh.
- 7 Q. 685 That interpretation being an interpretation which is extrapolated, I think from
- 8 Mr. Birmingham's opinion?
- 9 A. Exactly.
- 15:33:43 10 Q. 686 "Specifically could you confirm to us that Councillor Healy's motion should
- 11 have been taken prior to our deferral motion. B, that has standing orders been
- 12 adhered to in Councillor Healy's motion put to the members before ours the
- 13 resultant vote would have had the following effect". Sets out what the
- 14 following effect is.
- 15:34:02 15
- 16 This letter, could I suggest to you, Mr. Gore Grimes, appears to be one which
- 17 would conform with the type of letter which was intended to be drafted over the
- 18 weekend.
- 19 A. Yes.
- 15:34:12 20 Q. 687 Isn't that so?
- 21 A. Oh, I'd agree.
- 22 Q. 688 And if so, it would be a letter drafted by Mr. Dunlop and/or Mr. Lawlor. But
- 23 intended to be one which appears on its face to be coming from two councillors,
- 24 isn't that right?
- 15:34:28 25 A. Yeah, with their agreement, I assume .
- 26 Q. 689 Irrespective of whether it does or it doesn't have their agreement. It's a
- 27 letter drafted by Mr. Lawlor and by Mr. Dunlop, either in combination or
- 28 certainly agreed between both of them?
- 29 A. Well I would think that Mr. Creaven and Mr. Cosgrave would have felt the same
- 15:34:49 30 way, in other words, that they'd ...

- 15:34:51 1 Q. 690 Yes?
- 2 A. They felt that the motion, the Healy motion, should have been taken before
- 3 their motion if.
- 4 Q. 691 I'm sure that the sentiments and the views expressed within the letter are
- 15:35:01 5 shared by all those who wished to ensure that?
- 6 A. That's right.
- 7 Q. 692 That the motion of the 27th was not allowed to be conclusive?
- 8 A. Yeah.
- 9 Q. 693 But as regards the manner in which it was prepared?
- 15:35:12 10 A. Yes.
- 11 Q. 694 This appears to indicate, if this -- well firstly. Can you confirm having read
- 12 the letter now that it probably is the draft that you looked at on the Tuesday,
- 13 approved by counsel and discussed?
- 14 A. I would think it is.
- 15:35:27 15 Q. 695 With the parties?
- 16 A. As you say they are large chunks of George Birmingham's opinion there.
- 17 Q. 696 Yes. Just for completeness, that letter appears to have been then transposed
- 18 on to Council headed paper. We'll see at page 2301. Sorry, I beg your pardon.
- 19 That's not the correct reference. Just if you wouldn't mind bearing with me
- 15:36:25 20 for a moment, Mr. Gore Grimes, while we find the headed copy of this. it's
- 21 2227.
- 22 A. Yes.
- 23 Q. 697 It's word for word as per the draft that you had approved. It now finds itself
- 24 on a document headed with the Council logo and it would appear that that letter
- 15:36:49 25 was sent to the Chairman or Chairperson, Councillor Ridge, as it's recorded in
- 26 a later letter of Mr. Cosgrave as having been sent.
- 27
- 28 Now, can you indicate --
- 29 A. Is that signed, can we see the bottom?
- 15:37:06 30 Q. 698 No, this isn't the signed copy?

- 15:37:08 1 A. No.
- 2 Q. 699 This again is a copy which is on the letter heading of the Council?
- 3 A. Yeah.
- 4 Q. 700 Its unsigned. And in its unsigned format with that letter heading is found in
- 15:37:20 5 Mr. Dunlop's discovered documents.
- 6 A. Oh, yes so that could be a copy.
- 7 Q. 701 Exactly. The original is not available?
- 8 A. Yeah.
- 9 Q. 702 To the Tribunal because the Council's file on this issue is not available. But
- 15:37:34 10 we can reconstruct its content. And the fact that that letter was sent from
- 11 the letter I referred to earlier, that's 2301. Which is again a letter from
- 12 Mr. Creaven and Mr. Cosgrave saying "we wrote to you on the 12th of May last
- 13 copy attached". And?
- 14 A. Yes.
- 15:37:58 15 Q. 703 And that documentation is the earlier one?
- 16 A. Yes.
- 17 Q. 704 So in this scenario that is being described here in your attendance of the 11th
- 18 of May of 1993. It appear that is you had a meeting earlier, four days
- 19 earlier, with Mr. Dunlop and Mr. Lawlor. At that meeting it was agreed that
- 15:38:20 20 letters would be drafted by those parties which would address the issue caused
- 21 by the problem of the decision of the 27th of April, isn't that right?
- 22 A. That's right.
- 23 Q. 705 You left it to them to draft the letters. They drafted them. They gave them
- 24 to you. They're in the form that we see in this document. You looked at them.
- 15:38:45 25 You had them approved by counsel. You discussed them with your client. As far
- 26 as you know, these letters were then to be sent by the councillors to the
- 27 Chairman, isn't that right?
- 28 A. Yes.
- 29 Q. 706 You don't know what role, if any, it was that Mr. Cosgrave or Mr. Creaven
- 15:39:03 30 played in this. In other words, whether they signed these letters and sent

15:39:07 1 them on or the extent to which they had been part of the drafting team which
2 prepared them, isn't that right?

3 A. Well, I mean, I'd had meetings with Mr. Cosgrave, Mr. Creaven about this
4 matter.

15:39:22 5 Q. 707 Yes?

6 A. And I mean they were expressing the same sentiments as are in this letter. I
7 would assume that Mr. Dunlop or Mr. Lawlor took it to Mr. Cosgrave and
8 Mr. Creaven and had it signed and approved I assume. And that they sent the
9 signed letters as it would seem to indicate in this letter, unless this is a
15:39:41 10 some sort of a false letter. But, I mean, it says we wrote to you on the 12th
11 of May last.

12 Q. 708 Absolutely?

13 A. So I think that they certainly knew that this letter was going out.

14 Q. 709 No question of it.

15:39:54 15 A. They did, yeah. Okay. So they knew it, yeah.

16 Q. 710 But what they were signing were the views and the strategy which was drafted by
17 Mr. Lawlor and/or Mr. Dunlop and not their own strategy?

18 A. Well it was their own strategy but not their own words. That's what I would
19 think, I mean.

15:40:14 20 Q. 711 Firstly, you're in agreement with me they're not their own words. Secondly,
21 what is expressed within their own letter is really the essence of the opinion
22 of Mr. Birmingham's?

23 A. Yeah.

24 Q. 712 Which wasn't sent to either Mr. Creaven or Mr. Cosgrave?

15:40:30 25 A. No, the letter was.

26 Q. 713 The letter was with the conclusions?

27 A. Yeah.

28 Q. 714 They signed the document which had been extrapolated from the opinion of
29 counsel, considered by Mr. Dunlop and Mr. Lawlor and presented to them and
15:40:43 30 signed by them?

- 15:40:45 1 A. Well that extrapolation is the relevant part dealing with the error that they
2 believed was made by the Council, by the Chairman.
- 3 Q. 715 I appreciate that it is what counsel identified as the issue. What I'm
4 indicating to you, Mr. Gore Grimes, is that there's nothing to indicate that
15:41:03 5 that opinion was ever considered by either of the two councillors who lent
6 their name to this document, isn't that right?
- 7 A. But I don't know whether or not the opinion was. I certainly didn't give it to
8 them.
- 9 Q. 716 All right?
- 15:41:14 10 A. But it's not to say that we didn't discuss the whole approach to this.
- 11 Q. 717 Right?
- 12 A. And I mean, they were as anxious as we were to try and have this matter looked
13 into and to say that the Healy motion was wrong and that it shouldn't have been
14 allowed.
- 15:41:34 15 Q. 718 Is there any reason why you would not have gone to either Councillor Cosgrave
16 or Councillor Creaven and raised with them the issue of your unhappiness with
17 the decision, asked them what their views are and if they had views to express
18 those views to the Council. In what circumstances can you see that it should
19 be the developer and the proposer of this project who should be drafting the
15:42:02 20 letters with the assistance of Mr. Lawlor which in turn should find themselves
21 going from the councillors to the Council Chairman?
- 22 A. Well I don't see anything bizarre about that at all. Because, I mean, as far
23 as I'm aware Mr. Cosgrave and Mr. Creaven were looking for help in doing these
24 letters.
- 15:42:24 25 Q. 719 Yes?
- 26 A. And, I mean, they saw what was written and they signed it approving it. That's
27 what my understanding is. I can't say because I wasn't there. but, I mean,
28 that's my understanding.
- 29 Q. 720 And do you find anything bizarre about the fact that not only was the letter to
15:42:39 30 the Chairman drafted by Mr. Lawlor and Mr. Dunlop. But they also drafted the

- 15:42:44 1 response to their own letter?
- 2 A. Yes.
- 3 Q. 721 Yes?
- 4 A. That's bizarre.
- 15:42:49 5 Q. 722 Uh-huh?
- 6 A. Yes.
- 7 Q. 723 And this appears to be a set piece, Mr. Gore Grimes, where there will appear on
- 8 the Council file letters written in effect by Mr. Lawlor and Mr. Dunlop but in
- 9 the adopted or signed by the two councillors?
- 15:43:09 10 A. But it wasn't done without the, you know, express permission of the people who
- 11 signed the letters.
- 12 Q. 724 Absolutely. And can you see any reason why public officials, elected
- 13 representatives, should be signing letters drafted by others to represent the
- 14 interests of the developers and the promoters in anticipation that they will
- 15:43:31 15 receive a particular response from the Chairman on the same issue?
- 16 A. Well, my letter to the Minister, for example, was drafted by George Birmingham
- 17 and I don't see anything bizarre in that. I don't see anything strange in it.
- 18 There are sometimes when people draft letters for other people, that's what
- 19 solicitors do.
- 15:43:50 20 Q. 725 Of course it is?
- 21 A. I don't see anything, you know, I mean, it would be different if they had never
- 22 been shown to the people who sent them. That would be a different matter,
- 23 that's not my understanding.
- 24 Q. 726 Sorry, I missed the last bit?
- 15:44:03 25 A. It would be very different if those letters hadn't been shown to the people who
- 26 were supposed to have signed them. In fact they were shown and signed, as far
- 27 as I understand.
- 28 Q. 727 Both councillors were prepared to sign the documentation put before them by Mr.
- 29 Dunlop in this instance without having been the originators of those letters or
- 15:44:27 30 necessarily sharing those views?

- 15:44:30 1 A. Well, now, I don't see how you can say necessarily not sharing those views. I
2 think necessarily they did share those views because they wouldn't have signed
3 it if they didn't. And it's consistent with all of the stuff that we discussed
4 before and after. I mean, their whole aim was to try and have that land
15:44:49 5 rezoned and it's an aim in which they failed.
- 6 Q. 728 Yes. The response that was intended to be drafted was intended to be one of
7 the issues which I think you found perhaps extraordinary. That any person
8 should be drafting a letter to another?
- 9 A. Drafting a reply.
- 15:45:12 10 Q. 729 And then drafting the reply?
- 11 A. Yeah.
- 12 Q. 730 But this obviously was something which had been, firstly, considered by you on
13 the 7th.
- 14 A. That's right.
- 15:45:21 15 Q. 731 You'd a time obviously to reflect on it over the weekend. On the Monday then
16 you got the two letters. You had before you one asking for something and the
17 other intending to give it, isn't that effectively it?
- 18 A. Uh-huh.
- 19 Q. 732 What did you understand the purpose of that documentation to be? I mean, I can
15:45:41 20 see how one would draft a letter writing to somebody looking for something to
21 be done. You would then perhaps await the response and draft a reply to that
22 or take issue with the response. But why write the letter at all if you have
23 both the request and the answer?
- 24 A. Well, I mean, the request and the answer presupposed that the Chairperson read
15:46:03 25 the request and the answer and signed the answer.
- 26 Q. 733 Yes. But then is there any point in writing at all if you know exactly what
27 the parties have agreed to? I mean, why is it necessary?
- 28 A. Only if it expresses her view.
- 29 Q. 734 But expressing her view back to the councillors who already supposedly know
15:46:23 30 that view?

- 15:46:23 1 A. Yeah, well, of course. I mean, it's to formalise it and to document what the
2 two views are.
- 3 Q. 735 Well is the real issue that there would be a document trail which appears to
4 show an inquiry and then appears to show a considered response to that inquiry
15:46:40 5 coming sometime later?
- 6 A. I just don't agree with you on the word "appears to show". If they signed it
7 the accept it.
- 8 Q. 736 I know that they accept it. The reason why they accept it is a matter which
9 obviously the Tribunal is going to inquire into?
- 15:46:56 10 A. Oh, fine, yeah.
- 11 Q. 737 I mean, here you have --
- 12 A. I mean, as far as I'm concerned you don't sign something unless that's what you
13 want to go out.
14
- 15:47:03 15 CHAIRMAN: But, Mr. Gore Grimes, doesn't it suggest -- doesn't it suggest that
16 the Chairperson was prepared to agree something before she was even being
17 asked, in the sense that she was being presented with
- 18 A. That could be the case, that's what I say.
19
- 15:47:22 20 CHAIRMAN: But at the time these letters were drafted, the request and the
21 response to the request were known by the people drafting
- 22 A. Yeah.
23
- 24 CHAIRMAN: Isn't that -- doesn't that seem to be fairly clear?
- 15:47:38 25 A. Well, they were known by everybody, I mean, really, surely. I mean, they were
26 writing about something that had happened.
27
- 28 CHAIRMAN: No, but this was in effect a request going in from the two
29 councillors
- 15:47:54 30 A. Yes.

15:47:55 1

2 CHAIRMAN: For something to be considered by the Chairperson

3 A. Yes.

4

15:48:12 5 CHAIRMAN: But at the time the request is being drafted the response

6 A. Yeah.

7

8 CHAIRMAN: Is known

9 A. I can see what you mean. I must admit --

15:48:12 10

11 CHAIRMAN: Given that the Chairperson was in a quasi judicial role at the time

12 A. Yes. Well a Chairperson is entitled to his or her point of view. I'm only

13 accepting that go --

14

15:48:25 15 CHAIRMAN: But it's been presented to her. Her point of view, it would

16 appear, is being presented to her as a fait accompli

17 A. But she didn't have to sign it if she didn't want to. Isn't that so.

18

19 CHAIRMAN: Well that would suggest that this was just going to her as a

15:48:40 20 suggestion. But it would appear at first appearance it would seem that the

21 request and the response to the request were known

22 A. Uh-huh.

23

24 CHAIRMAN: In advance by the drafters of the letter or of the letters

15:48:56 25 A. Yeah.

26

27 CHAIRMAN: In other words, they knew they were going through a procedure

28 A. Well had they discussed the matter with the Chairperson. I don't know the

29 answer to that I mean, I don't know. Sorry.

15:49:06 30

15:49:06 1

CHAIRMAN: We have to rise early today unfortunately.

2

3

So, Mr. Gore Grimes, will have to come back tomorrow at half past ten if that's

4

all right. But hopefully he won't be too long.

15:49:19 5

6

MR. O'NEILL: No, I suspect that we will be less than half an hour.

7

8

CHAIRMAN: All right.

9

A.

Thank you.

15:49:23 10

11

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY.

12

THURSDAY, 30TH NOVEMBER 2006, AT 10.30 A.M.

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