

Interim Report

Tribunal of Inquiry into Certain Planning Matters

Appointed by instrument of the Minister for the
Environment and Local Government dated the
4th November, 1997

Sole Member

The Hon. Mr. Justice Feargus M. Flood

officer of the Planning and Land Section of the Department of the Environment and Local Government made an administrative team under the management of Mr. John Kiernan available to the Tribunal. The work load of the Tribunal was such that the Tribunal required the assistance of a second experienced solicitor. Due to staff shortages the Chief State Solicitor was not in a position to provide a further experienced Solicitor. Consequently it was necessary for the Tribunal to find an experienced Solicitor, willing to work on a contract basis from the private sector.

2. The Tribunal was assigned premises at the Clock Tower Building, Dublin Castle. The Tribunal has been greatly assisted in the establishment of its offices by the General Manager of Dublin Castle, Mr. David L. Byers.
3. The Tribunal commenced its work on the 11th day of December 1997, the terms of appointment of the Tribunal legal team having been agreed on the 9th day of December 1997.

**TRIBUNAL OF INQUIRY INTO CERTAIN PLANNING
MATTERS
INTERIM REPORT**

INTRODUCTION

1. The Minister for the Environment and Local Government appointed Mr. Justice Flood, a Judge of the High Court, by instrument dated the 4th November, 1997 as the sole member of the Tribunal. The Tribunal then took steps to engage a legal team with the appropriate specialist expertise for the work of this Tribunal. The Chief State Solicitor, Mr. Michael A. Buckley, made a member of his staff available to act as a Solicitor to the Tribunal. The Chief Registrar of the High Court, Mr. John Delahunty, made an experienced member of his staff available to act as Registrar to the tribunal. Ms. Mary Moylan, principal

NOTICES

4. The Tribunal published its Terms of Reference together with notice of a public sitting in 69 newspapers. The Terms of Reference together with the notices appeared once in each newspaper over a period from the 15th of December 1997 to the 21st of December 1997. The same format of notice was used in each newspaper. A copy of the Terms of Reference together with the notice published by the Tribunal is set out at Appendix 1 of this Interim Report.

5. The Tribunal invited members of the public to provide, in confidence, to the Tribunal any information in their possession which they considered relevant to the Terms of Reference of the Tribunal. The public request for information was contained in the notices published in the local and national newspapers.

The Tribunal at its public sittings repeated this request for information. A considerable volume of such information has been received. The Tribunal is at present

considering the information furnished with a view to deciding whether the matters identified are within the Terms of Reference to the Tribunal.

SITTINGS

6. The Tribunal has sat in public on two occasions. The first sitting took place on the 14th January, 1998. The second sitting took place on the 2nd February, 1998. The first sitting was a publicly advertised sitting to hear applications from interested persons for legal representation. The second sitting was to publicly announce the decisions of the Tribunal in respect of various applications for representation.

At the first public sitting on the 14th of January, 1998, certain guidelines were issued for the benefit of parties interested in the work of the Tribunal. These are set out in Appendix 2.

REPRESENTATION

7. Representation has been granted to 22 parties. There is common representation for associated or related companies and the number of "interests" represented, taking common representation into account, is 9. A number of applications for representation have been refused.

It is anticipated that other parties may apply for representation either before or at the commencement of the public hearings.

8. All parties who have been given representation have been given limited representation. No party has been given full representation.

PUBLIC HEARINGS

9. In accordance with paragraph B (i) of the Terms of Reference, the Tribunal has been carrying out preliminary investigations in private for the purpose of determining whether sufficient evidence exists in relation to the matters referred to in the Terms of Reference. These

investigations are continuing. However, it is already clear, from these preliminary investigations in respect of a number of matters, that there is sufficient evidence to warrant proceeding to a full public inquiry and, consequently, the Tribunal will so proceed.

10. Having regard to the Terms of Reference, the necessity for the Tribunal to assemble information which may lead to evidence and having regard to the confidential nature of the information it is receiving and to the fact that portion of that information may transpire not to be relevant to the inquiry, the Tribunal formed the opinion that it is in the public interest, expedient that the investigating and evidence gathering stage of the inquiry be conducted in private.

11. The Tribunal will therefore, for the time being, continue its work (including the preliminary investigations referred to above) in private until the Tribunal is ready to proceed to a public hearing.

12. The Tribunal indicated at its public sitting on the 14th day of January 1998 the manner in which it would treat the confidential nature of any commercial or personal information that came into the possession of the Tribunal. These are contained in the guidelines in Appendix 2.

WORK OF THE TRIBUNAL

13. Due to the confidential nature of the material in its possession, the fact that inquiries are not yet complete and the requirements of natural justice, it is not possible for the Tribunal, at this stage, to disclose specific details of the matters being inquired into and the Tribunal begs the indulgence of the members of the Oireachtas in this regard.

14. The Tribunal has made substantial progress in relation to the matters referred to at paragraphs A.1, A.2 and A.3 of the Terms of Reference. In addition, the matters referred to at paragraph A.4 and a number of matters of which the Tribunal has become aware, as envisaged by

paragraph A.5 are under active investigation. The Tribunal intends to conduct as thorough an investigation as possible before holding public hearings.

15. The Tribunal confirms that it is proceeding to inquire into the matter referred to in clause B (ii) of the Terms of Reference in the manner therein directed.

DOCUMENTS

16. As directed by clause B (iii) of the Terms of Reference, the Tribunal has sought discovery of all relevant documents, files and papers in the possession, power or procurement of Mr. Michael Bailey, Mr. James Gogarty and Donnelly Neary and Donnelly, Solicitors. The relevant files and documents have been received by the Tribunal from Mr. James Gogarty and Donnelly, Neary and Donnelly, Solicitors. The discovery and documentation from Mr. Michael Bailey is awaited by the Tribunal.

The Tribunal has also sought discovery and production of documents from a substantial number of other parties

who are believed to be in possession of relevant documentation.

17. The legal validity of the orders made by the Tribunal against two of the interests represented before the Tribunal have been challenged in correspondence. The Tribunal is satisfied that there is no valid basis for such a challenge and is insisting on compliance with its orders.

DURATION

18. The likely duration of the proceedings of the Tribunal is not capable of being estimated at this time. The workload of the Tribunal is substantial in terms of the volume of documentation to be read, the extent of inquiries to be made and the number of persons to be interviewed. A considerable amount of this work requires to be carried out outside normal business hours. The Tribunal will report further to Dáil Éireann as soon as the likely duration of the proceedings of the Tribunal is capable of being estimated. It is hoped that the Tribunal

will be in a position to report in this regard by the end of April.

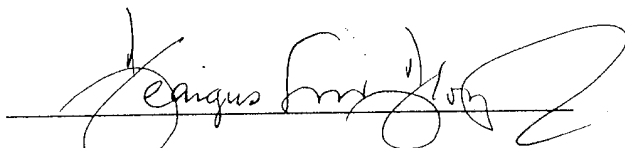
TERMS OF REFERENCE

19. A number of matters which are said to have occurred prior to the 20th June, 1985, have come to the attention of the Tribunal, and the Tribunal has been advised that evidence in relation to such matters is admissible if and in so far as it is relevant to matters which occurred subsequent to the 20th June, 1985. However the fact that such a date is specified in paragraph A(5) of the Terms of Reference may give rise to a legal challenge which would inevitably delay the proceedings of the Tribunal in relation to such matters. Consequently, notwithstanding the said advice and to avoid any such legal challenge the Tribunal respectfully requests the Oireachtas to amend the Terms of Reference by the deletion of the following words :-

“.....committed on or after the 20th June 1985....”

If the Oireachtas agrees to this amendment, the amended paragraph A (5) of the Terms of Reference would read as follows:-

In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvement of existing legislation governing corruption in the light of its inquiries.



The Honourable Mr. Justice Feargus M. Flood

Sole Member of the Tribunal

Dated 26th February 1998

3. Whether the lands referred to in the letter dated 8th June, 1989 were the subject of the following: -
- (a) Re-zoning resolutions;
 - (b) Resolutions for material contravention of the relevant Development Plans;
 - (c) Applications for special tax designations status pursuant to the Finance Acts;
 - (d) Applications for planning permission;
 - (e) Changes made or requested to be made with regard to the servicing of the lands for development;
 - (f) Applications for the granting of building by-law approval in respect of buildings constructed on the lands;
 - (g) Applications for fire safety certificates;

on or after the 20th day of June 1985.

And

- (i) to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;
- (ii) to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above;
- (iii) to ascertain the identity of all public officials who considered, made recommendations or decisions on any such matters and

to report on such considerations, recommendations and/or decisions;

- (iv) to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority;

4. (a) The identity of all recipients of payments made to political parties or members of either House of the Oireachtas, past or present, or members or officials of a Dublin local authority or other public official by Mr. Gogarty or Mr. Bailey or a connected person or company within the meaning of the Ethics in Public Office Act, 1995, from 20th June 1985 to date, and the circumstances, considerations and motives relative to any such payment;

- (b) whether any of the persons referred to at sub-paragraphs 3(ii) and 3(iii) above were influenced directly or indirectly by the offer or receipt of any such payments or benefits;

5. In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process committed on or after the 20th June 1985 which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvement of existing legislation governing corruption in the light of its inquiries.

6. And that the Tribunal be requested to make recommendations in relation to such amendments to Planning, Local Government, Ethics in Public Office and any other relevant legislation as the Tribunal considers appropriate having regard to its findings.

"payment" includes money and any benefit in kind and the payment to any person includes a payment to a connected person within the meaning of the Ethics in Public Office Act, 1995.

- B. And that the Tribunal be requested to conduct its enquiries in the following manner, to the extent that it may do so consistent with the provisions of the Tribunals of Inquiry (Evidence) Acts, 1921 and 1979: -

- (i) To carry out such preliminary investigations in private as it thinks fit using all the powers conferred on it under the Acts, in order to determine whether sufficient evidence exists in relation to any of the matters referred to above to warrant proceeding to a full public inquiry in relation to such matters,
- (ii) To enquire fully into all matters referred to above in relation to which such evidence may be found to exist, dealing in the first instance with the acknowledged monetary donation debated in Dáil Eireann on the 10th September 1997 Dáil Debates Columns 616-638 and to report to the Clerk of the Dáil thereupon,
- (iii) To seek discovery of all relevant documents, files and papers in the possession, power or procurement of said Mr. Michael Bailey, Mr. James Gogarty and Donnelly, Neary, and Donnelly Solicitors,
- (iv) In relation to any matters where the Tribunal finds that there is insufficient evidence to warrant proceeding to a fully public inquiry, to report that fact to the Clerk of the Dáil and to report in such a manner as the Tribunal thinks appropriate on the steps taken by the Tribunal to determine what evidence, if any, existed and the Clerk of the Dáil shall thereupon communicate the Tribunal's report in full to the Dáil,
- (v) To report on an interim basis not later than one month from the date of establishment of the Tribunal or the tenth day of any oral hearing, whichever shall first occur, to the Clerk of the Dáil on the following matters:
 - the numbers of parties then represented before the Tribunal;
 - the progress which has been made in the hearing and the work of the Tribunal;
 - the likely duration (so far as that may be capable of being estimated at that time) of the Tribunal proceedings;
 - any other matters which the Tribunal believes should be drawn to the attention of the Clerk of the Dáil at that stage (including any matter relating to the terms of reference);

C. And that the person or persons selected to conduct the Inquiry should be informed that it is the desire of the House that -

- (a) the Inquiry be completed in as economical a manner as possible and

at the earliest date consistent with a fair examination of the matters referred to it, and, in respect to the matters referred to in paragraphs 1 to 4 above, if possible, not later than the 31st December 1997, and

- (b) all costs incurred by reason of the failure of individuals to co-operate fully and expeditiously with the Inquiry should, so far as is consistent with the interests of justice, be borne by those individuals.

D. And that the Clerk of the Dáil shall on receipt of any Report from the Tribunal arrange to have it laid before both Houses of the Oireachtas immediately on its receipt.

Text of Schedule to Resolution passed by Dáil Éireann at its meeting on 7th October, 1997.

SCHEDULE

Kilinamonan House,
The Ward,
Co. Dublin.

8th June 1989

Dear Mr. Gogarty,

PROPOSALS FOR DISCUSSION

Re: Your lands at Finglas, Ballymun, Donabate, Balgriffin and Portmarnock, Co. Dublin.

I refer to our many discussions regarding your following six parcels of land: -

- | | |
|--------|--|
| Lot 1: | 100 acres (approx) at North Road, Finglas, including "Barrett's Land". |
| Lot 2: | 12 acres (approx) at Jamestown Road, Finglas. |
| Lot 3: | 100 acres (approx) at Poppintree, Ballymun. |
| Lot 4: | 255 acres (approx) at Donabate (Turvey House and Beaverton House). |
| Lot 5: | 250 acres (approx) at Balgriffin. |
| Lot 6: | 9 acres (approx) at Portmarnock. |

I submit the following proposals for your consideration: -

PROPOSAL No. 1 - Purchase Proposal

<u>Lots 1,2 and 3</u>	Purchase Price £4,000 per acre 10% deposit payable on the signing of the contract Completion 1 year from date of contract.
<u>Lot 4</u>	Purchase Price IR£1 Million Deposit 10% on contract Completion 2 years from date of contract.
<u>Lot 5</u>	Purchase Price IR £750,000 Deposit 10% on contract Completion 3 years from date of contract.
<u>Lot 6</u>	Option to be granted for nominal consideration (£100.00) for a period of 2 years at a purchase price of £30,000.00 per acre.

PROPOSAL No. 2 - Participation Proposal

As an alternative to the outright purchase proposal above I am prepared to deal with Lots 1 - 5 (inclusive) above on the basis that I would be given a 50% share in the ownership of the said lands in exchange for procuring Planning Permission and Building Bye Law Approval. The time span which I would require to be allowed to obtain the Permissions and Approval and my anticipated financial expenditure (apart from my time input) in respect of the different lots would be as follows: -

Lots 1,2 and 3

A period of 2 years within which to procure a buildable Planning Permission and Building Bye Laws Approval for mixed development including housing, industrial and commercial.

My financial expenditure up to a figure of £150,000.00 (to include Architect's fees, Consulting Engineer's fees, Planning and Bye Law charges etc.).

Lots 4 and 5

Time requirement - 3 years.

Financial
Expenditure - up to £150,000.00

In considering the above proposals the following points of information should be borne in mind by all parties:-

1. From the point of view of obtaining Planning Permission the entire lands (Lots 1 to 6 inclusive) have the following shortcoming:-

NO zoning for development purposes

NO services.

NO proposal in current draft development plans (City and County) for the zoning of the lands or any part thereof for development purposes.

2. We face a very severe uphill battle to arrange for the availability of services and for the ultimate procurement of Planning Permission.
3. The steps to be taken on the way to procuring a buildable Planning Permission and Building Bye Laws Approval are notoriously difficult, time consuming and expensive. Material Contravention Orders must be obtained and this involves their procurement of a majority vote at 2 full Council Meetings at which 78 Council Members must be present and it also involves satisfactory compliance with extensive requirements and pre-conditions of the Planning Authority and the inevitable dealing with protracted Appeals to An Bord Pleanála.
4. It is essential that the Planning Application should be brought in the name of an active housebuilding company which enjoys good standing and good working relationship with the Planners and the Council Members and in this regard I confirm that in the event of our reaching agreement regarding the within proposals that all Planning Applications would be made by one of my Companies which meets the said requirements.
5. In the case of all of the lands the applications will be highly sensitive and controversial and we can realistically expect strenuous opposition from private, political and planning sectors. One of my active companies will have to take the limelight in such applications and withstand the objections and protests which will inevitably confront it. Apart from the anticipated financial expenditure as outlined above it should be borne in mind that I will personally have to give extensively of my time and efforts over the entire period of the applications including the necessary preliminary negotiations in regard to services and zoning. It must be borne in mind that I will have to abandon other projects which would be open to myself and my companies in order to give proper attention to this project. If I am successful in changing your lands from their present status of agricultural lands with very limited potential even for agricultural use into highly valuable building lands I would have to be rewarded with a minimum 50% stake in the ownership of the lands. Our advisors would have to work out the details as to how this can be effected in the most tax-efficient manner.

I look forward to hearing from you in relation to the above proposals. In the case of the first proposal which relates to the outright purchase of the lands (excluding Lot 6) I would not be averse to a proposal which would involve the vendors retaining a participation stake of up to 20% in the purchasing company if you felt that an ongoing interest in the future development of the lands would be more acceptable to the present owners.

Yours sincerely,

MICHAEL BAILEY.

Mr. Jim Gogarty,
Clontarf,
Dublin 3.

AND WHEREAS a resolution in even terms was, on the 8th day of October, 1997, passed by Seanad Eireann.

TAKE NOTICE that the Tribunal will sit at 9am on Wednesday 14th of January 1998 in the Clock Tower Building, Ship Street Gate, Dublin Castle, Dublin 2 to hear any applications from any person seeking authorisation to be represented before the Tribunal pursuant to Section 2(b) of the Tribunal of Inquiry (Evidence) Act 1921

AND TAKE NOTICE that any person wishing to be so represented should appear before the Tribunal on the aforesaid date and at aforesaid time.

**Peter Kavanagh
Registrar to the Tribunal
The Clock Tower Building
Ship Street Gate
Dublin Castle
Dublin 2**

Telephone : 01 4785633

INFORMATION: Any person having information which may be relevant to the Terms of Reference of the Tribunal should forward same in writing, in confidence, to the Registrar to the Tribunal.

APPENDIX 1

APPENDIX 2

OPENING ADDRESS OF THE SOLE MEMBER OF THE TRIBUNAL
OF INQUIRY INTO CERTAIN PLANNING MATTERS – DELIVERED
ON THE 14TH JANUARY, 1998.

1. I draw the attention of parties interested in the business of the Tribunal to the fact that the nature of the Tribunal is primarily an inquisitorial rather than an adversarial one. Consequently the evidence before the Tribunal will be led by Counsel on behalf of the Tribunal.
2. Any person whose interests are, in the opinion of the Tribunal, likely to be affected will be allowed such representation as is necessary to protect those interests and such parties will be allowed to cross examine relevant witnesses.
3. All proceedings before the Tribunal will be conducted in a manner so as to ensure compliance with the requirements of natural justice

4. In the first instance it is necessary for the Tribunal to carry out a considerable amount of investigative work. The Tribunal has been engaged in this work since shortly before Christmas. In the course of this work a large volume of material falls to be considered. The Tribunal has already received material from a number of sources and will be in contact with persons and companies who may have relevant documentation and information.
5. The members of the Tribunal legal team will be available to provide assistance to any party seeking to make statements or to forward documents to the Tribunal
6. The Tribunal earnestly hopes that all persons who have an interest in the business of the inquiry will co-operate fully in the provision of information and documentation to enable the inquiry to be brought to an expeditious and successful conclusion.
7. I fully appreciate concerns which persons wishing to assist the Tribunal may have in relation to the issues of

personal and commercial confidentiality. In order to protect these legitimate concerns I propose to adopt the following protocol in regard to documents:-

- (i) All original documents will be returned to their owners after the Tribunal has concluded its work.
- (ii) All copies of documents with confidential, commercially sensitive or personal information will be destroyed after the conclusion of the inquiry.
- (iii) All documents will be stored in a secure location.
- (iv) Confidential information not relevant to the inquiry will not be disclosed to any outside party. The only parties who will have access to such documents will be the Chairman and the legal team to the Tribunal.
- (v) Documents, which contain both confidential, personal or commercially sensitive information not relevant to the inquiry, and other information, which is relevant, will have the irrelevant information blanked out.

(vi) Counsel for the Tribunal will be willing at all times to discuss any concerns any person may have concerning confidential, personal or commercially sensitive information.

8. With regard to the question of public hearings it should be noted that under its terms of reference the Tribunal is obliged in the first instance to carry out such preliminary investigations in private as are necessary to determine whether sufficient evidence exists in relation to any of the terms of reference to warrant proceeding to a full public enquiry. These preliminary investigations are already in hand and I hope to be in a position to make this determination before my interim report to the Dail in February. The fact that representation may be granted to any person or company should not be taken as implying that the Tribunal has made any finding that there is sufficient evidence to warrant proceeding to a full public inquiry.

9. Any person who may be in a position to assist this preliminary investigation in private should come

forward at the earliest opportunity. The telephone and FAX numbers of the Tribunal, which are posted on a noticeboard in the lobby, are Telephone 4785633 and FAX 4785584.

10. It is not possible until the preliminary private investigation is completed to make an informed assessment as to when the public hearings, if any, will commence, if I conclude that such hearings are warranted. I can say however that if it is decided to have public hearings I intend to follow the excellent example of the Finlay and McCracken Tribunals which demonstrated that time spent on investigation can pay considerable dividends in terms of keeping the amount of expensive hearing days to a minimum consistent with the Tribunal fully discharging its terms of reference.

11. On the question of representation it should be noted that any decisions taken as a result of applications made to-day are not in any sense final. Any party who may not be given representation at this time may renew their

application later if it subsequently becomes apparent that such representation is warranted.

12. For the purpose of any particular application for representation I may require a party to make submissions in writing as to the basis upon which the application for representation is made and reserve my decision on the application until the submissions have been considered.
13. Parties who are granted representation should note that the granting of representation is not a guarantee that such party will be awarded costs at the conclusion of the inquiry.
14. Without fettering my discretion in any way, I would indicate that, in general, where any person or body, whether represented before the Tribunal or not has realistically and reasonably incurred any legal expense in fully and promptly assisting the Tribunal in its work, I would be favourably disposed to providing for indemnity in respect of such expense.

Tribunal of Inquiry (Evidence) Acts 1921 and 1979

WHEREAS a resolution in the following terms was passed by Dáil Éireann on the 7th day of October, 1997.

"That Dáil Éireann resolves

- A. That it is expedient that a Tribunal be established under the Tribunals of Inquiry (Evidence) Act, 1921, as adapted by or under subsequent enactments and the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, to inquire urgently into and report to the Clerk of the Dáil and make such findings and recommendations as it see fit, in relation to the following definite matters of urgent public importance:
1. The identification of the lands stated to be 726 acres in extent, referred to in the letter dated 8th June, 1989 from Mr. Michael Bailey to Mr. James Gogarty (reproduced in the schedule herewith) and the establishment of the beneficial ownership of the lands at that date and changes in the beneficial ownership of the lands since the 8th June, 1989 prior to their development;
 2. The planning history of the lands including: -
 - (a) their planning status in the Development Plan of the Dublin local authorities current at the 8th June, 1989;
 - (b) the position with regard to the servicing of the lands for development as at the 8th June, 1989;
 - (c) changes made or proposed to be made to the 8th June, 1989 planning status of the lands by way of:-
 - (i) proposals put forward by Dublin local authority officials pursuant to the review of Development Plans or otherwise;
 - (ii) motions by elected members of the Dublin local authorities proposing re-zoning;
 - (iii) applications for planning permission (including any involving a material contravention of the Development Plan);