



**Tribunal of Inquiry
Into Certain Planning Matters and Payments**

Appointed by Instrument of The Minister for the Environment
and Local Government dated the 4th day of November 1997
as amended by Instrument dated the 15th day of July 1998

**Decision re submissions made by Colm Allen S.C., Counsel
for Bailey/Bovale and Joseph Finnegan S.C., Counsel for
Raphael P. Burke**

OF

**THE SOLE MEMBER
Mr. JUSTICE FEARGUS M. FLOOD**

Wednesday, 7th July 1999

This is my ruling in response to an address made by Mr. Colm Allen, leading Counsel for Messrs. Bailey/Bovale Ltd. Immediately prior to the calling in evidence of Mr Raphael Burke, Mr Allen addressed a number his of concerns with regard to the Tribunal proceeding to hear this evidence. He contended firstly that the Tribunal has refused to identify the allegations against his clients. This statement is based on correspondence which has passed between Mr Allen's Solicitor's and Tribunal in April of this year. However the facts are that the Affidavit of James Gogarty sworn on 12th October 1998 was circulated to Mr Allen's clients on 20th October 1998 and such allegations as Mr Gogarty makes against Mr Allen's clients are contained within that affidavit. It is also the case that Mr Gogarty has given oral testimony before this Tribunal for 37 days commencing on 12th day of January 1999 and terminating on the 22nd day of April 1999. In these circumstances it is difficult to conceive how it can be submitted by Mr Allen that his clients are not or may not be in a position to properly or adequately cross-examine this witness. The statement of the intended testimony of Mr Burke before this Tribunal has been circulated to Mr Allen's client and to all other affected parties on the 11th day of January 1999. The account of events contained within that statement is essentially in conformity with the

account of events which Mr Allen put to James Gogarty in his cross-examination of him from the 22nd day of March to 26th March 1999 inclusive. There would not appear to be any conflict between the evidence of Mr Burke and what I understand to be the intended evidence of Mr Bailey on this issue. As with any other party affected in the event that any witness attempts to offer evidence before the Tribunal which is adverse to any other party, and which has not been circulated in advance I shall ensure that such evidence is not profered until it has been first circulated. I have received no indication to suggest that the evidence intended to be adduced from Mr. Burke is in any way different from the statement which has been already furnished to Mr Allen.

I note that on 11th January 1999, Mr Allen's client furnished a written statement to the Tribunal in which he took issue with the contents of the affidavit of James Gogarty and set out his account of the meeting which took place at the home of Raphael Burke. I fail to understand how it is now being contended eight months after delivery of this statement that Mr Allen is hampered or left in doubt as to the nature of the allegations levelled against his client by Mr James Gogarty which stem from their admitted contacts with this witness.

In these circumstances, I must conclude that Mr Allen is in a position to address such issues which may arise in the testimony of this witness which involve his clients.

The second issue raised by Mr Allen was to inquire again as to whether any allegation was being made that any of the lands referred to in the Terms of Reference were corruptly or improperly rezoned by any party to these proceedings. This is not a matter which is currently being dealt with during this module of evidence. As long ago as the 12th of October, 1998, I publicly stated my intention to take the evidence of James Gogarty out of the normal sequence. All parties were invited to make submissions to me with regard to proposed sittings to hear the evidence of James Gogarty on 16th November 1998 and on 10th November 1998, I delivered my ruling on the issue clearly stating that the evidence of James Gogarty and related evidence only would be heard. The Tribunal will proceed to deal with all of the matters set forth in its Terms of Reference at the conclusion of the evidence relating to James Gogarty at which time the precise details of the planning history of the lands in question will be dealt with. I have already ruled that the subsequent planning history of these lands is not material to the present module of

evidence. Once the present module has been completed, the Tribunal will then move to deal in public with all other aspects of the inquiry once the preliminary investigative stages have been completed. The present sequence of evidence is limited to dealing with the evidence of James Gogarty and related evidence only.

Mr Allen has criticised the Tribunal for an alleged failure on my part to provide an interim report to the Oireachtas as to whether or not sufficient evidence existed in relation to any of the Terms of Reference to warrant proceeding to a full public inquiry. This statement is factually incorrect as I did, in fact furnish an interim report to the Clerk of Dáil Éireann on 26th February 1998.

Mr Allen complained yesterday that matters other than those alleged by Mr Gogarty are being investigated in this module, and by way of example alleged that whereas Mr Gogarty made no complaint of Mr Michael Bailey's conduct in relation to the purchase of the Forrest Road Land yet Mr Bailey has found that an Order for Discovery and Production in connection with these lands has been made against him. The factual position is that Mr Gogarty alleged in his affidavit that he had been introduced to Mr

George Redmond by Mr Michael Bailey and that Mr Redmond had drafted a letter on behalf of Grafton Construction Company Limited which had the effect of ensuring that financial contributions to Dublin County Council would remain at a level fixed in 1983 notwithstanding that development of the lands would not take place until 1989 at minimum. Mr. Redmond is alleged to have devised this strategy so as to avoid payment by the ultimate developer of financial contributions based at 1989 levels so that there would be a substantial financial saving to the company by adopting this procedure. Mr Michael Bailey and/or companies associated with him were instrumental in the purchase of these lands from Grafton Construction Co. Limited and it is in these circumstances that Discovery and Production of the documents in connection with these lands is clearly necessary.

Accordingly, I conclude that there is no basis in fact for the contentions advanced by Mr. Allen. I see no valid reason why he should not be in a position to deal with any of the issues arising from the evidence of Mr. Burke which touch upon his clients' interest.

Before passing from Mr. Allen's address to me I wish to record that the manner and tone of Mr. Allen's address to the Tribunal yesterday was offensive and inappropriate. He used his right of audience before this Tribunal to level insults against Counsel for the Tribunal and upon being rebuked by me for doing so used the opportunity offered to him to apologise to prefer further insults. This behaviour is not acceptable to me and an apology ultimately offered does little to repair the damage caused by such utterances. This is not the first occasion upon which I have been obliged to take issue with Mr. Allen over his conduct before the Tribunal. Should similar instances occur in the future I will have to consider whether or not this behaviour amounts to a calculated attempt to interfere with the important work being carried out by this Tribunal. In the event that I am driven to that conclusion, I will not hesitate to take all necessary steps to preserve the integrity and efficiency of this Tribunal including, if necessary, the withdrawal of any individual counsel's right of audience before the Tribunal.

I shall now deal with the submissions of Mr. Joseph Finnegan S.C., Counsel on behalf of Mr. Raphael Burke.

Mr. Finnegan has expressed concern about the nature and scope of the examination of Mr. Burke. His concern arises from his consideration of the documents which have been furnished to him by the Tribunal. These documents are, in the main, Mr. Burke's own financial records and those of his banks during a limited period in 1989. Mr. Finnegan urged upon me that evidence adduced on these documents goes very far outside matters which are the concern of the Tribunal at this stage. The matters which are under investigation at this stage are the allegations which have been made by Mr. James Gogarty. Insofar as they touch upon Mr. Finnegan's interest, they concern the allegations of Mr. Gogarty to the effect that his client, Mr. Raphael Burke, received a substantial sum of money from Mr. Gogarty on behalf of JMSE and from Mr. Bailey on behalf of Bovale Developments Ltd. with the intention that he would procure planning permission in respect of certain specified lands, details of which were furnished to him. It follows from the nature of these allegations, that Mr. Burke's financial affairs for a period prior to and subsequent to the transaction in question must be examined at this stage of the inquiry.

Evidence regarding his financial affairs commencing at the date of the calling of the General Election on the 25th May 1989 will be adduced as will evidence of his financial transactions in the weeks following the General Election itself.

Should any of the information contained within the documents which have been circulated to all parties concerned, touch upon matters which are the subject of separate investigation I shall endeavour to ensure that only such evidence that is material to a consideration of the allegations made by Mr. Gogarty is publicly heard. I am satisfied that the evidence of Mr. Burke can be limited to dealing with the Gogarty issues without any infringement of any of Mr. Burke's legal entitlements before this Tribunal.

Accordingly, I will now proceed to hear the evidence of Mr. Burke.