

THE HEARING RESUMED ON THE 9TH OF NOVEMBER, 1999, AS
FOLLOWS::

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CHAIRMAN: Good morning everyone.

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REGISTRAR: Examination of Mr. George Redmond by Mr.
Anthony Harris, solicitor.

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MR. HANRATTY: Mr. Redmond please.

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GEORGE REDMOND HAVING BEEN ALREADY SWORN RETURNS TO THE
WITNESS-BOX AND IS EXAMINED BY MR. HARRIS AS FOLLOWS:

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CHAIRMAN: When you are ready, Mr. Harris.

1 Q. MR. HARRIS: Yes, Mr. Chairman.

Now Mr. Redmond, I think you have already told the Tribunal
that your recollection is that you met Mr. Gogarty in 1987
and not 1984?

A. Yes.

2 Q. And I think you have said that Mr. O'Shea brought him in, I
think he is the next witness; isn't that right?

A. That was my recollection.

3 Q. Okay. Now just very briefly, Mr. Gogarty has given
evidence in relation to the Finglas Industrial Estate case,
I don't intend to dwell on this; from your conversations
with Mr. Gogarty, are you aware whether he was familiar
with that case

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MR. CALLANAN: I don't think Mr. Gogarty did refer to -
there was an issue about it. In fact what I put to the
witness was that Mr. Gogarty hadn't had an involvement in
the Finglas Industrial Estate case, that it was sometime in

the past and therefore there was no reason why it would have been discussed between Mr. Redmond and Mr. Gogarty. Just to correct what was put in relation to that, Mr. Chairman.

A. It was definitely discussed. We discussed it all right, probably more on my initiative than Mr. Gogarty's, and he certainly wasn't as aware of the legal implications of the case, I had far more knowledge than he had. He was aware that it was their land and that it had permission, but for one reason or another the Supreme Court decided that it wasn't valid, but beyond that; his knowledge wouldn't have gone beyond that, but I was, I did, he brought me in some papers in relation to it. That much - I have already said that in evidence.

4 Q. Okay. I just want to deal, briefly, with Turvey House. I think your evidence has been that you had no hand, act or part whatever in the demolition of Turvey House. I think you give an example to the Tribunal as to the kind of advice that you might have given to somebody if a Demolition Order or Dangerous Buildings Order was served upon them; isn't that right?

A. Well, I had no knowledge of what was happening in relation to the dangerous buildings proceedings with respect to Turvey House. It came to my notice following the demolition and when it was the subject of a lot of public disquiet because it was a preserved building. Insofar as my comment, that the best advice I could give to anyone in relation to a preserved house was to be enforced into preserving it and take it from there - but certainly I couldn't see it as being in his interest to demolish it without offering some objection on the grounds of preservation.

5 Q. And I think that the lands --

A. But incidentally, Chairman, that never arose. That was just an aside I wrote when I was making my statement, but it didn't arise because I, I never had discussions with anybody about it, about Turvey House.

6 Q. And Mr. Redmond, I think you do acknowledge that you did have a meeting with Mr. Gogarty in 1988 in relation to the Forest Road lands; isn't that right?

A. Yes. There seems to be evidence that I met him early in 1988, having regard to the evidence given with respect to the architect fees for a consultation in January. Mr. - I can't remember his name.

7 Q. I think that is Mr. Manahan?

A. Yes. So, I didn't recall that nor can I recall it, but I have no doubt if that is documented it probably took place, that would have been one meeting. Then at that stage my recollection is there was, Mr. Gogarty had made no decision as to selling the lands, he probably, he wanted to be up-to-date as to how they stood, but when I saw him later in the year, in the spring, it would have been more urgent from his point of view in that a decision, or at least consideration was being given to the sale of the lands.

8 Q. Mr. Redmond, I think Mr. Gogarty has described two meetings in your office, one of which, the second of which was attended by, I think, Mr. Bailey and Mr. Murphy Jnr..

A. No, excuse me, no. He - by Mr. Murphy Jnr. and himself, not Mr. Bailey.

9 Q. I apologise. And I think he puts that meeting at the end of May or the beginning of June in his affidavit, but I think he is probably incorrect about that, because the letter to the Council is dated the 10th of May; isn't that right?

A. Yes.

10 Q. And there seems to be some dispute between yourself and Mr.

Gogarty as to exactly what was the purpose of the meeting, whether it was an extension, whether you were discussing an extension of the existing planning permission or not; isn't that right?

A. The meeting, the meeting would have taken place, I think myself, sometime in the spring, probably April, one of those dates in the diaries, a spring meeting anyway.

Mr. Gogarty was not familiar with planning law and certainly he wasn't au fait with the difference between letting it run out and looking for a new permission, and extending - the business about extension wasn't that widely known. I think it would have been known to people who were building, actively building, but in the case of Mr. Gogarty who had lands and weren't building, they were just, you know --

11 Q. In any case, I think Mr. Gogarty now disagrees with you as to what exactly was the purpose of the discussion. I just want to put this to you to give you an opportunity to comment on it. I think Mr. Gogarty says that the purpose of the meeting was that you were going to arrange a mechanism to peg the planning fees and also, and/or to maintain the services for a new planning application; and I think what you, what your version is, is that in fact what you were talking about is an extension of the existing planning permission?

A. I think I have already given evidence on a number of occasions about having read the history of the file and the original recommendation from the Council Roads Department, that in no circumstances should permission be given, that

there was always the likelihood in the event of a new application starting, de nova, that somewhere along the line a decision would be made on the basis of traffic hazard, that the permission should not be granted. That was the first thing, I think.

And apart altogether from that, one can never say in an appeal situation what is going to happen. And in fact my prophesy was borne out in that, in the final decision on which, on the basis of which the houses were built, a condition was put in on the appeal with relation to the financial contributions which changed the entire position.

12 Q. Okay.

A. But sorry, excuse me, I will continue. But insofar as advising him, there were a lot of advantages in looking for an extension. The first one being of course that he saved planning fees, he saved the need for an advertisement and the possibility of third party objections, and on top of all of that of course he got a permission without any change in conditions, everything was exactly as before.

13 Q. And that would include the financial contributions?

A. It included everything as before, including - of course there were two conditions before he could qualify, or even qualify for seeking such an extension.

14 Q. Substantial works --

A. Excuse me; now if you let me please continue. The first one was that the financial contribution had to be satisfied, the condition had to be satisfied and the condition which he had before him, which he had on his, in his office since 1983 was a figure of 120 something thousand had to be paid. That was that was the first condition.

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So I asked him, I said: "What you mean, have you any", he had no cause to dispute the figure, so I said "you should pay it" because that is what it says, you should pay it up front, and then I advised him that he should get in and do some works, and then on the 21st of June without much formality, he could make his application that he had, that he was seeking an extension. The position, the Council's position, it hadn't power to refuse, the odd thing about the powers, they hadn't power to refuse.

15 Q. In the event there is substantial works?

A. In any event they had no power to refuse. The situation is if they, the position is if they simply don't issue a grant or whatever it was, a consent within the prescribed period, then a permission or an extension would arise by default. So if the Council did nothing and he wanted to get a consent from them, he would have to move by mandamus proceedings or otherwise to get that; but you see, the whole idea about the extension, it was to make it simple.

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I mean it was generally felt and I was involved in the discussions about the legislation, that five years perhaps was a bit, you know, short; and it should be more, but anyway, that mechanism was there that people could get an extension without a great deal of bureaucratic formality.

16 Q. Okay. All I am just saying to you is there seems to be a dispute between yourself and Mr. Gogarty about whether this was discussed at all. Okay. Now, I wonder could the witness be given Mr. Gogarty's affidavit?

A. I am sorry. I mean, you can see in his statement where he refers, he refers to the fact of the advantages himself. I mean, I recall reading that.

17 Q. I am just going to bring you through that, Mr. Redmond, in a moment. I think you have outlined that the advantages of a renewal of the permission is that you don't have to advertise, you don't have to pay the planning fees, there is no possibility of objections, there is no appeal, that is the condition of a renewal?

A. It is nothing but advantage, all the way.

18 Q. Okay. In the case where there is to be a new permission, an 1988 permission but in some, by some other mechanism which I will come to in a moment, that the planning fees have been pegged and the services are been secured; am I correct in saying that in a new application in 1988 you would have to go through the advertisements. Would you have to face objections by parties and you would face an appeal; isn't that right?

A. Yes, all those things.

19 Q. Isn't it the case that the letter which was written by Mr. Gogarty and the response which was secured by, from Mr. Smith, that in no way took away from the obligation to advise and put in a new application, face objections and face an appeal; isn't that right?

A. If the 1983 permission had expired, certainly the letter didn't insulate them against the requirements, the statutory requirements of a new application. They would have to start completely de novo, but in fact on top of that of course the permission itself never became effective. I mean the position, the 1983 permission never became effective because the security bond condition was never fulfilled. Works were never commenced. So that it went by the affluxion of time and by noncompliance, it never become effective.

20 Q. Okay. Now could the witness just be given Mr. Gogarty's

affidavit? If he could also be given Mr. Smith's statement and Miss Collins' statement please? (Documents handed to witness). If you could turn, if you have Mr. Gogarty's affidavit there Mr. Redmond, if you could turn to paragraph 33 please?

Now, I wonder could you just read that paragraph. It is Mr. Gogarty describing what you said to him at this meeting. Could you read that please, into the record?

A. Oh paragraph 33?

21 Q. Paragraph 33. It is on page 14.

A. Yes.

22 Q. Could you just --

A. It says that: "George Redmond made it clear if a renewal of the Forest Road permission was sought by Grafton Construction without his, G Redmond's, intervention, the level of service contribution that could be designated in 1988 would be roughly double the level of the contribution in '83. He also said that any application for renewal of the application could entail objections by residents, as it had happened before and the matter could end up on appeal which would involve further delays. "

23 Q. If I could just stop you there now?

A. Yes.

24 Q. Am I correct in saying what he is describing here is, though you avoid those matters if you renew the permission; isn't that right, sorry extend an existing permission?

A. If you lawfully extend a permission of course you do, yes.

25 Q. Okay. Okay. And then he goes on I will read it: "By sending to Dublin County Council before the existing planning permission lapsed the letter and cheque advised that the amount would not require any further services

contribution to be paid under the renewal of the permission for two years". Then went on to say that you had agreed with Liam Conroy. I think you have already dealt with Mr. Conroy. I think you have said that you had no agreement with Mr. Conroy?

A. Absolutely none.

26 Q. Now, I think you have acknowledged, Mr. Redmond, that you did give Mr. Gogarty some advice about what to write, right? Although you don't believe you handed over the text of a letter, would that be fair?

A. I didn't give Mr. Gogarty - Mr. Gogarty doesn't say I gave him the letter, he said I gave the letter to Mr. Murphy and I never met Mr. Murphy.

27 Q. Well, do you say that you didn't give Mr. Gogarty the text of a letter?

A. Mr. Gogarty, as far as I recall, used to always take notes when he was with me and he would have taken notes on that day too, on days, it may have been over a period of time I gave him the advice.

28 Q. Now, it transpires in any case that for whatever reason Grafton did not decide to extend the permission; isn't that right. The letter of the 10th of May isn't an application for an extension or anything like it?

A. Well, you can't make, you can make an application, the application for an extension can be made within 12 months of expiration as far as I recall. But there would be no purpose in making an application for an extension unless you had carried out some works.

29 Q. Indeed.

A. Obviously when they sent into the money they were endeavoring to agree the '83 condition.

30 Q. Okay?

A. The works, I presume, would follow. In any event it would have been unlawful to carry out works before the contribution was made.

31 Q. Yes. Yes, think I you have seen Miss Collins' statement? Sinead Collins' statement?

A. Yes.

32 Q. Isn't that right?

A. Yes.

33 Q. Do you know what position she held within the Local Authority or holds?

A. I don't know what position she held in those days but she is now an administrative officer.

34 Q. Yes, she wouldn't be a professional person?

A. She wouldn't have any involvement in making any submissions to the manager or any submissions in relation to levies or giving any opinion in relation to levies. I asked particularly that I be given notice when she was giving evidence herself and Mr. Smith, but unfortunately I wasn't given notice, but the position, her position is, she assembled the papers. Of course she is a personal friend of mine, Miss Collins, I have nothing but the highest regard for her. She assembled papers, but she is not in a position to give competent opinion on levies or ever make a submission. She is at a grade, she is two grades below the level at which submissions are made on executive functions.

35 Q. I think at paragraph 34 of her statement she is referring to two reports and I am going to go into those with you, but I think she falls far short of saying that the charges which she has calculated would have in fact arisen. I think paragraph 34 says "on the basis of the two reports in question from the Sanitary Services Department and from the Roads Department, and assuming that the contributions as

recommended from those Departments were in fact inserted in any application, the following would appear to be the relevant figures"; isn't that right, that is very qualified; isn't that right?

A. Yes. Yes.

36 Q. And I think Mr. Smith, in his statement he refers to some of the anxiety which was felt at the time within the Planning Department as to the legality of the calculation of the charges; isn't that right?

A. Do you want me to say anything about that or just to say yes to it?

37 Q. Well indeed, I am going to lead on to another question then.

A. Oh, yes, I read Mr. Smyth's statement.

38 Q. And you agree that there was a question-mark in many people's mind as to the legality of the calculations?

A. Well, it is something certainly I would never have raised were it not for Mr. Smith raising it himself and - the powers in relation to financial contributions are very specific in the Planning Act. They weren't in the old 34 Act.

39 Q. Section 26, isn't it?

A. Yes, in the case of Dublin County Council where in the sixties most of the redevelopment and development was taking place, wasn't taking place in the city, it was in the county mainly, the question arose as to applying financial contributions. It came up in the late sixties. The first few years the Act came into operation on the 1st of October 64, and certainly the first year or couple of years there was no, well we were sort of groping in the dark, and certainly there was no application; but I recall a manager was instructed to have consultations with Counsel

as to the application of financial contributions in County Dublin, and I sat in on the, I sat in on the consultations.

40 Q. Do you remember who those Counsel were?

A. I do remember them, but as far as I recall, I can remember them all right, but one was a senior and one was a junior, but well --

41 Q. Can I just go back one step Mr. Redmond, before we come to this. As I understand it Section 26 of the 1963 Act permits the Local Authority to levy charges on planning permissions; is that right?

A. Well.

42 Q. I mean, that is correct; isn't that right?

A. Section 26 is the omnibus section in relation to the imposition of conditions.

43 Q. Yes?

A. And it is specific in two instances. You can say you can impose a condition in respect of expenditure which has been incurred and which clearly identifies, identifies itself with having facilitated a permission.

44 Q. A particular?

A. A permission.

45 Q. Yes?

A. The second one is more complex in that it identifies, it allows you to impose a condition in circumstances where you envisage that the Local Authority is going to spend money and in that case the local, you must be specific about where you are going to spend it, when you are going to spend it; you must put conditions about the refund of the money if you don't spend it, and also you have to put provisions in relation to interest bearing.

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So that when we went to Counsel on it, the position in

County Dublin at that time was very complex. If you go North of the Broadmeadow to the North county towns like Balbriggan, Skerries Loughshinny really you could say it went straight in untreated into the sea.

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When you came down to Swords which has a population, now North of the Broadmeadow in those days you had a population of 7,000, Swords probably less than 2,000. Swords had a ditch and which was virtually not treating anything. A whole range of the county went into the North Dublin drain. Straight in without any charge, straight in to the North Dublin drain. A lot of it on the south side went in to city sewers. When you got out to Dun Laoghaire some of it went in to Dun Laoghaire sewers.

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Then we were at that stage undertaking the Dodder Valley Drainage Scheme and the Greater Dublin schemes and the canal tunnel. They were all envisaged. In the consultation with Counsel it was proposed that what we wanted to do, I will give it the expression "we", was to have a flat charge per acre, make things convenient for water and drainage. And in fact the first charge that was introduced I think was £375. It was made clear to us that we hadn't got that general power, it was clearly, it was clear that we would have to take each case, identify it, establish a charge; take for example if you had a sewage works in Swords, you would work out the catchment, the cost, the cost per acre and apply a condition on that basis.

46 Q. Well can I just stop you, that is what the legislation entitled you to do; is that right?

A. That is the advice we got from Counsel, what we should be

doing. That we hadn't got a general taxation power to just put it in right all over the place. Take for example imposing it in a case like Balbriggan, well we were spending nothing or imposing it in a case in the north fringe of Dublin where it went straight into a Dublin sewer. Or even a south city sewer, they said "you can't do that" in those cases either there is no levy or you sit down and work out a levy, but in any event the situation was that in the heat of the hunt the decision was made, rightly or wrongly, to adopt a standard levy. It was very modest, £375.

47 Q. Is that per house?

A. No. £375 per acre, per acre. Now, I remember at the time the Construction Industry Federation, other people were belly aching. It was really very modest in relation to what development land was fetching, so there were never any, there were never any, it was never contested in the courts. Insofar as our defence was concerned, I remember the manager or the assistant manager at the time raising with the, with Counsel what were our chances under Section 26 (1) that is the generality, the general power to impose levy, we have a general power and then we have the particular powers.

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I remember very well that it was made absolutely clear to us that a general power certainly did not embrace a power to impose levy, especially when there were specific provisions in the legislation. Now, what happened after that of course, was that the, was the appeals. The appeals started against levies. And they had to be, they were dealt with in those days by the Minister for Local Government. And I remember endless discussions with the

Department, with officers in the Department in the planning appeal sections; not on particular sections but on the general policy in relation to the imposition of levies, and they shared the view of Counsel that we were on very sticky ground in proceeding as we were, and what they did in appeals, in appeals generally they never determined an amount. What the normal procedure was, that condition was that a sum was to be agreed with the Local Authority or with the Planning Authority.

48 Q. Mr. Redmond, can I just ask you another thing; I think added to this complication there is a sort of a seven year rule that that is only expenditure, it is only expenditure spent in the last seven years; is that right?

A. Well, that is getting down to the technicalities of the legislation. The legislation is if - Swords is a good example. Swords, the drainage scheme for Swords was designed in the late 1970's, and it was designed to take in all the zoned land at that time which would have included the Forest Road lands. Forest Road lands is down very near the town. That would have been part of the calculation. It was calculated that it would serve a population up to 22 and a half thousand plus, together with some industry, there was a certain amount of industry and commercial development. So that was the position.

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That scheme started, the work on it started sometime in 79 and it certainly was fully in operation in 1981. There was no doubt about it, that as Mr. Gogarty, you know spoke to me, the seven years had run out on that and the position there was although provision had been made in that scheme for Forest Road, if a new application came in we could not lawfully charge for that scheme in the new application.

There was no doubt about that in my mind. That may also have been Mr. Smith's apprehension about this particular case. But I think more importantly in relation to both Mr. Smith's letter and my position, at the time I saw Mr. Gogarty, this was before he sent in the letter, there were no special levies for Swords.

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The position about Swords was it was operating, insofar as the services were concerned, it was operating well within the 22 and a half thousand. And I mean I knew that, and certainly that was confirmed by Mr. Smith because he seems to have gone to the trouble of asking the Deputy County Engineer what was the position and he said, and these men were very conservative about saying anything, he said "well look, there is no problem for two years", I mean that was the position.

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There was no, the same with roads, there were no special levies. The position when Mr. Gogarty saw me was that the levy had gone up from 4,000 to 6,000. There was no question about that. That was the standard levy. But in the case of Swords, it was serviced by a particular scheme, an identifiable scheme and the seven years lawful rule had lapsed. In other words, any condition imposed, if it had been put to the test of litigation, wouldn't have withstood it in the case of Forest Road. I am absolutely certain about that.

49 Q. Because I want to deal now with three elements of the services charges; and one of the elements was there was a levy in the 1983 permission, correct me if I am wrong, of £4,000 per house; but that had been increased to £6,000 per house in any case in the intervening period, or sorry, per

acre in the intervening period?

A. I have said that, that is not in dispute.

50 Q. But there is also --

A. There was a standard levy, county charge, not for Swords, that was standard.

51 Q. And that related to services; drains, sewers?

A. Yes, indeed, yes.

52 Q. And there is a little question-mark about that, because seven years might be up whether all that could be levied in an 88 permission?

A. Put to the test of litigation it wouldn't have stood as a lawful condition.

53 Q. You might well have given this advice to Mr. Gogarty in different circumstances?

A. I didn't give him that advice. I didn't tell him anything about the expiration of the seven years.

54 Q. Could the witness have Miss Collins statement?

(Document handed to witness) Mr. Redmond, I think you might have it in front of you, Miss Collins statement. I want to deal - in her statement she makes up the apparent loss to the Council. And it is in three elements.

A. There was the £6,000 levy that is the first one. The second one is what is described as a special levy of £5,300 per hectare for services.

55 Q. Then?

A. Then the second one is £800 per house for roads. Now, we will take the first one first, because it is most important. As I said, Mr. Chairman, when I was speaking to Mr. Gogarty, there was ample provision for the 22 acres of Forest Road in the drainage scheme. There was no thought whatsoever of additions being necessary. We were going along and the position was the sort of population objective

was 22 and a half thousand. The drainage scheme was designed for that, and there was, there didn't seem to be, there was no problem, but what happened - and this is very important from your point of view in ascertaining the history of the planning history of these lands; at that time Dublin County Council as it was considering a very notable planning application from a company called Noteworthy Builders Limited, it was with respect to a hundred acres, well say 98 acres outside of Swords. For in the region of 800 houses.

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Now, obviously this is on unzoned land, unplanned for, unheard of, certainly in no way anticipated when we were preparing the drainage scheme in the 1970's. And the planning schemes of those years. But it would appear and this is where I have to be somewhat critical of the Tribunal's lawyers, I was endeavoring to establish for my own information the bona fides of the levies. I mean we had a sheet reporting on an application and an engineer saying £800 per house and we had another sheet from Sanitary Services which was just a handwritten note in this case, there is a special levy of some, no further explanation. I didn't understand it. And I asked my solicitor to write to the Tribunal and say to them, "look will you go to the County Council and ask them to produce the requisite executive orders and reports" and the position is, the reply I think is dated July, it came back, not the Tribunal's report, what they did they transmitted a copy of the County Council report, there are no orders. There are no orders.

56 Q. Can I just --

A. Sorry, excuse me.

57 Q. Mr. Redmond?

A. Mr. Harris, I will continue. There are no executive orders. So I said, "where do we get this special levy from?" And how the special levy arose was in the case of this Noteworthy Builders, the engineer reporting on it said, "look he says" by the way, at this stage can I refer to this document, Mr. Hanratty, you would have it. It is a copy --

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MR. HANRATTY: I am not sure of the document which the witness is referring to.

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58 Q. MR. HARRIS: Nor I am. Is this the document that came back from?

A. It came back from your solicitor. And it enclosed for me what was an unintelligible copy of this Noteworthy - but it is in this, it is in this report that we have a special levy established for this particular development.

59 Q. Mr. Redmond, just let me ask you a question, because whatever about the legality --

A. Excuse me Mr. Harris. I think, I mean I am somewhat of an expert in these matters, I mean we can't, this Noteworthy file is absolutely relevant and by the way it is of relevance to other parties here too. In the Noteworthy file it is, in that two things are established. Firstly a special levy to cover the special circumstances of that application and also the roads levy also arose in that file. So it is extremely important.

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In fact, having reached this point of merit it would merit certainly an adjournment until we can turn up the papers. They should have been, these are papers I feel myself

should have been circulated in relation to this whole levy question. They weren't. It shouldn't have been necessary for me to get this information out this way. I mean we are coming now to how did the charges arise. We have no manager --

MR. HANRATTY: Sir if I might just comment on that. We were asked to obtain certain documents from the County Council. Pursuant to that we wrote to the County Council and obtained the documents. Now, if the witness is proposing to give some relevant evidence in relation to the documents, let him give it. If he has identified that there are other documents which the County Council have which he considers relevant, if he could identify those documents and we will ask for those as well?

A. That was not the point I was making Mr. Hanratty. The point I was making was that if the Tribunal are putting forward figures as being valid, they had an obligation, they had under their Terms of Reference to endeavour to establish what gave rise to those figures. Now, I have been able to do it from very scanty information. What I am saying, Chairman, is your lawyers had a duty to go into these things and to produce them. Certainly --

MR. HANRATTY: Sorry Sir, could I just again correct the position. Sir, when this issue, when it become apparent that this issue and this whole matter was relevant and being inquired into by the Tribunal, the Tribunal went to the County Council and asked the County Council to provide them with all relevant documentation and received documentation and indeed received a very detailed statement from Miss Collins and an explanation from her, according to

her view of the situation as to what the position was, with extensive accompanying documentation.

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So I would have to reject any suggestion on behalf of this witness that the inquiries by the Tribunal were in any sense incomplete. And all I am saying is that any additional documents which Mr. Redmond informed the Tribunal ought to be sought were in fact sought. I am not yet clear what the relevance of these documents are.

Perhaps the witness could be asked to give his evidence in relation to these documents and how he says they throw light on this issue?

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60 Q. MR. HARRIS: I may be able to help Mr. Redmond, I just want to ask you a question. The mechanism for imposing charges is by way of manager's order; is that right?

A. Yes.

61 Q. That is the mechanism, whatever about the legality of it you must make a manager's order?

A. Yes, of course.

62 Q. In relation to the special roads contribution of £800, and the special levy of £5,300 per acre there is no manager's order that you have received; is that what you are saying?

A. There is no manager's - there was never any manager's order.

63 Q. Well. You haven't received one in any case. Now can I just ask you --

A. I am assuming when I asked for one and when I didn't get it, that there isn't one. But I would be certainly very pleased to see if there is one specific one.

64 Q. And you say that both of those road contributions and the levies arose from a planning application which was then

being processed, but those levies didn't get imposed until after you had your conversation with Mr. Gogarty; is that what you are telling me?

A. Certainly. The position about - they are extremely relevant, I mean especially the second one. The special levy of 5,300, because Miss Collins in her letter --

65 Q. This is her letter of the 24th of August; is that right?

A. Yes. Yes.

66 Q. Do you have that, Mr. Redmond. It is FCC GR1-1, Mr. Chairman.

A. Yes. You see in, she says in at Item 6.

67 Q. Item 6, if you just let everybody get to it. This is paragraph 6 on page three?

A. Yes.

68 Q. "In 1988"?

A. "In 1988 a special levy of 5,300 was included in a decision to grant permission for 736 houses in Swords". Now that was after I had met Mr. Gogarty. I mean this is something that had just come up in a report on the application, McDaid said that that development would necessitate.

69 Q. McDaid, I think, is the Sanitary Services Engineer?

A. He was one of the Sanitary Services Engineers. I think if you read the report on the planning application, what it said was that special works in relation to surface water and all sorts of things would have to be done up in the region of Brackenstown where this new permission was arising.

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I mean you have to accept we have 100 acres here out of the blue, an engineer is being said "can you take it" he says "no, I can't take it because it is not in the normal drainage scheme". In this case what happened then was that

7,500 acre was appealed apparently and it was reduced or per hectare was reduced by the Planning Board.

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The Planning Board decided £5,300 per hectare should apply in this particular case. And there were special reasons for it because it had been never included in any other drainage calculations. Now what happened after that in, it would appear, that the Council decided or, I am not saying the Council decided, but that it could have application everywhere, but it didn't have, it didn't have application in the case of Forest Road, which had been provided for in the 1970's, if the calculations in the 1970's, that was an old part of the town. There was plenty of provision in the drainage scheme for it and that 5,300 had no application.

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It says, by the way, "in new developments" now what did the engineer mean by "new developments"? Did he mean developments outside the drainage area? Because certainly when Mr. Smith wrote his letter Mr. Heneghan, the engineer, had told him "look, there is no problem for two years" and that was conservative, and insofar as I was concerned, at the time in '88 and '89 until I retired, nothing was ever refused in Swords. There was ample drainage, of course we had the situation now that the same works has been taken, there has been development 12 years after the event. But that is the position.

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I mean the point I am making is, Mr. Hanratty, it is extremely relevant. That is how you stand over the figure of 5,300. It was approved by the Planning Board in the case of a development which was in no way anticipated. It was way outside of the town. And would have had to be in

the subject presumably of material contravention. Again, I haven't seen the file. But it is relevant.

70 Q. And I think that would, that would be responsible for £46,900 of Miss Collins' calculations; isn't that right?

A. That's right.

71 Q. Okay. Now in relation to the road contribution of £800 per house, at the time that you were, first of all at the time that you were speaking to Mr. Gogarty, did this roads contribution, were you aware of it or had it arisen?

A. Certainly I am still not aware of it. There is no evidence of any Order having been made of a universal charge. I have asked Miss Collins, perhaps Mr. Hanratty might ask her. The question is of course she compiled the replies in relation to her own evidence. I feel myself perhaps the manager should be asked, the existing manager should be asked to provide the documents. Insofar as the road levy is concerned, having read the report on the Noteworthy Builders application, it says during the course of that, "the proposers have agreed to pay £800 per house". That is what it says. We are given no indication of what the levy is about, why it is £800 and the other thing about somebody agreeing something, here we had the case of an individual, whoever he was, having 100 acres, agricultural land, possibly a value of 3,000 to 4,000 and if he got his planning permission probably would put the value up to something in the region of 50,000 an acre.

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So I mean in those circumstances there would be no argument about a financial contribution. I mean if somebody said "look, would you pay £800 a house" they would probably say "yes" it doesn't have a basis. It has no basis. When you look at the provisions of the Act, the specific provisions

of '86 where you have got to identify something. Even in the general levies, we, you know, I remember certainly when I was manager we certainly put up figures to support £375 per acre or £1,500. In this case there is absolutely nothing.

72 Q. And there doesn't appear to be a manager's order either?

A. Well, I have asked for any executive order. I think it would have been provided if there had been one.

73 Q. I think this £800 per house would depending on the number of planning, the amount of houses in a subsequent planning permission, it would either account for £164,800 or 156,000, £153,600?

A. Whatever the figures are worked out at. They are clearly figures that in the case of a landowner who had already enjoyed a permission and paid his levy, they would have been the subject of appeal if ever they had applied. They weren't applied of course. And maybe there was good reason for not applying them. I can't say, but to suggest that they could have been applied I think is without foundation.

74 Q. Now, Mr. Redmond I would like to move on, if I may. It was suggested to you on the last day by Mr. Callanan, that your arrest earlier this year had something to do with your second statement; and I just want to ask you, I think that prior to making the second statement and prior to your arrest, you were having, in discussions with Tribunal lawyers; isn't that correct?

A. I was certainly interviewed on many occasions.

75 Q. And I think the information that is contained in your second statement was made known to the Tribunal lawyers prior to your arrest; isn't that correct?

A. Well I certainly, I made it known to them that I had an offshore bank account, yes.

76 Q. But in relation to the receipt of the monies from Mr. Gogarty?

A. Well, I can't remember that. I know my own lawyers knew about it, whether I told them before I made the statement, I can't say. Mr. Hanratty might be able to help me on that. I can't say that.

77 Q. Now Mr. Gogarty, or Mr. Redmond --

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MR. HANRATTY: Yes, I can help on that. The interview was after the statement was received in which this matter was discussed. That is after the second statement when he mentioned, as I understand it, for the first time, the question of this payment from Mr. Gogarty.
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78 Q. MR. HARRIS: Well --

A. That is true, I am quite, I wouldn't dispute that Mr. Hanratty says, if Mr. Hanratty says it. As far as my own solicitor is concerned, I had told him and you know, we delayed over doing the statement, but I mean the arrest had nothing got to do with it anyway.

79 Q. I just want to deal briefly. You called to Mr. Gogarty in 1997 and in his evidence he suggested that he was fearful of your call and that he thought it was part of a campaign of intimidation, I think, maybe that is putting it too strongly. He certainly felt it might be threatening. Did you intend in anyway to threaten him or in anyway put pressure on him?

A. Of course I didn't. At that stage I couldn't even, I couldn't even put a face on him. The only thing was, I couldn't recall - I have given evidence before on this, was that I had, all along I had said to him the lands without, on along the fringes, were without prospects. It would

appear in the intervening 12 years that some of them had, you know, become developable lands and he was then talking about rezonings and I felt that he, you know, the reason, he more or less suggested that a public official was also involved; and I took it that he was making these statements because he felt that I had mislead him. That I, you know, had told him that and that wasn't the case. And I just, that is what I went to see him about.

80 Q. I see. You certainly didn't intend to threaten him?

A. Of course I didn't.

81 Q. I think the note you left was "sorry you are unwell.

George" and you left your telephone number?

A. That is all I did and I never, he never telephoned me so I presume if he didn't telephone me he had no wish to talk to me and I never pursued it beyond that.

82 Q. Now, Mr. Redmond, it was suggested to you also by Mr.

Callanan that your expressions of regret at this Tribunal were self serving, if I could put it that way. I don't want to quote him exactly. I think of all the people who are involved in this Tribunal, you may have more reasons to regret your dealings with Mr. Gogarty than any. Is that right?

A. The regret is there, yes. Not in dealing with him. Not in advising him. I don't see, I mean I would have advised him and I gave him what I thought was good advice and advice I would have given anybody. What I regret, what I regret is, you know, taking the money.

83 Q. And I think the events of the last year have put a lot of pressure on you and your family; would that be fair?

A. That goes without saying.

84 Q. Okay. And in relation to the receipt of the payment I

think it is your evidence that that was for getting a

buyer?

A. At the time there was a certain amount of euphoria in the meeting, the understanding I had from him was that he was very pleased with the sale of the land and, you know, I don't know whether at that stage he was in other negotiations with Mr. Bailey, but he seemed to be very pleased and he didn't involve, it didn't involve him with agents and that is it.

85 Q. If I could just, finally, deal with one matter. On the last occasion Mr. Hanratty put some documents to you in relation to the Ward River Valley, I think I am saying it right, and you had made an Order in the dying days of your job accepting an offer from Mr. Bailey; isn't that right?
For the eight or nine acres; is that correct?

A. Yes. Yes.

86 Q. I just want to clarify something. That was for £30,000 isn't that what your order was?

A. Yes. Yes.

87 Q. But subsequently they were bought with the approval of the valuer for £39,000 and there may or may not have been a write off of some other contributions. That is the position as we know it. Now, am I correct in saying that insofar as you bound the Council by anything in your order, it would have to be contained in your order itself to have any effect on the Council?

A. There was an offer and acceptance. His letter, his letter of the offer and the manager saw it as acceptance, there was nothing beyond that.

88 Q. Mr. Bailey seems to think that there seems to have been a side agreement with the Council. I am just asking you the question if there was to be a signed agreement with the Council which would bind the Council, would that not to be

as part of your order?

A. What was suggested was beyond my province and powers. I mean, there was a condition and a permission and he was suggesting that it could be eliminated. It couldn't be. I don't see how it could be eliminated. The revocation or the amendment of a permission is a reserved function, I just simply can't see and it would have gone --

89 Q. Have you any memory?

A. No, none, absolutely none.

90 Q. Have you any memory of being contacted by officials from the Local Authority subsequent to your retirement to query --

A. I have no recollection.

91 Q. That is all the questions I have for the witness.

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THE WITNESS WAS RE EXAMINED AS FOLLOWS BY MR. HANRATTY:

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92 Q. MR. HANRATTY: Mr. Redmond, I just have a few questions if I may, arising out of some of the evidence you gave in your cross-examination and your examination by your own solicitor.

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Firstly two matters that arose in the context of your examination by Mr. Cooney. He did question you about a matter on which you had previously given evidence, namely when was the meeting with Mr. Gogarty, in which you received the money from him, whether it be £15,000 or £25,000.

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Now, previously your evidence to the Tribunal had been and I hope I summarise it correctly, that it could have been in the middle of 1988 but it could also possibly have been in

June of 1989. But on balance you thought it was 1988. But you weren't sure. That is, is that a fair summary on what evidence originally was on that topic?

A. I thought, I mean, I thought myself, Mr. Hanratty, that I had ruled it out for '89.

93 Q. Well, that is really what I want to clarify. Are you now ruling it out for 1989?

A. I can't, I can't rule out anything because I am not certain. I mean when, when - but at the time of making my statement and if I had to, you know, on oath at that stage say when I would have said '88. That's now what I would have said, but now Mr. Hanratty I mean I am not certain and I mean I have said that all along. I just am not certain. As for it being at the end of June, well I retired on the 25th. I can certainly remember some specific things I was doing around the time. It doesn't tie-in with my own recollection of the dates around my retirement certainly.

94 Q. Well, what I was really going to ask you --

A. Earlier in '89, I don't know.

95 Q. May I take it from your last answer then that you haven't uncovered any other information or recalled anything else which would throw any further light on the subject?

A. No, to establish it - well the only thing we have, I mean the only thing are the references in the '88 diaries of Clontarf Castle. That is all, nothing beyond that and you asked me, I think you asked me did it happen, and I couldn't say with certainty, Mr. Hanratty, nor can I on oath.

96 Q. Those references were there when you gave your evidence-in-chief. I was just wondering, you seem to be coming down more firmly in your cross-examination in relation to 1988 and I just wonder was there anything new

that we hadn't already seen that would have lead you to that view?

A. I can't go beyond my earlier statements. I am, I wouldn't deviate from them. It is sometime between, probably June and certainly before, I don't remember meeting him after I retired, certainly I have no recollection.

97 Q. The second matter arising out of questioning of Mr. Cooney was in relation to the, if I may call it the unaccounted for portion of your November 1989 lodgement. If you recall that lodgement does appear to include your pension lump sum net of deductions, but there was approximately 15,000, slightly less than 15,000 for which you couldn't provide a recollection as to what precisely that was.

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And I was, I think in your evidence-in-chief querying whether it might have included monies you received from Mr. Gogarty, if you had in fact received them in 1989. Really as a means of trying to see whether this would throw any light on when you got the money. But in answer to Mr. Cooney's questioning I understood you to say that you thought that the £15,000 approximately probably was salary cheques and pension cheques which you hadn't previously lodged; am I right about that?

A. Well, I think I have said that, they had to be lodged at some stage and as there was a gap between lodgements obviously at that time I would lodge those. There may have been other cheques but I mean, certainly they would have been included.

98 Q. Well, what I want to explore with you on that Mr. Redmond, is to first of all suggest that on the information which the Tribunal has and whatever the explanation for the 15,000 maybe, it does seem unlikely that it would have been

made up of salary cheques and pension cheques unlodged for the reason that as, on the information which we have received, your pension cheques per month at that stage would have been £1,000 per month and you would have been receiving those from the, presumably from the first month after you retired, which was June, and prior to that your salary cheques were £16,050, that is monthly salary cheques. So that if the £15,000 approximately was made up of arrears of salary and pension cheques which had not previously been lodged, we would have to go back to December of the previous year. I suggest to you that that seems unlikely, is that a proposition with which you would agree?

A. You haven't brought into account my allowances either.

99 Q. I am not aware what allowances there are, other than the information we have been given?

A. I have given you authority to all information in respect of all my affairs with the County Council.

100 Q. The information which we have been given you can tell us if it is not your salary cheques up to retirement were 16,050 approximately. Your retirement cheques were £1,000?

A. I had a travelling allowance as well.

101 Q. Approximately how much per month would that have been?

A. I think it was seven and a half percent of my salary. It was based on the old Devlin Report. Seven and a half percent; I can't help you. I can't help you with that.

102 Q. We know that you made a lodgement in May of approximately £23,000. That is May of 1989. Would I be right in thinking that if you had a number of arrears, or sorry, not arrears but salary cheques which you hadn't previously lodged, prior to May of 1989, that they probably would have been included in that lodgement?

A. That is a reasonable assumption.

103 Q. So that if we are considering the possibility of whether any salary cheques and pension cheques were included in the November lodgement, we are really only talking from May until November of that year; isn't that right?

A. Well, it is possible.

104 Q. On that basis doesn't it appear unlikely that that £15,000, whatever it may be, was made up of previously unlodged salary and pension cheques?

A. Well, they would want to go back a long while.

105 Q. The other thing that occurs to me, Mr. Redmond, you can correct me if I am wrong, again if you had salary cheques for over six months, you would have to have it rewritten to present it for payment; isn't that right, it would expire?

A. I think the normal rule of banks is six months. I don't know if I ever had a cheque returned because it was six months. That is the normal rule. I know the normal rule is six months.

106 Q. But --

A. Whether they would enforce it.

107 Q. You did in fact have cheques from your stockbroker block sums for I think it was £100,000 returned because you had them in your possession, uncashed, for over six months; isn't that right?

A. This is in?

108 Q. This was recently?

A. Last year.

109 Q. Yes?

A. Oh, yes. Yes.

110 Q. So you would know that if a cheque isn't lodged within six months it will expire and has to be rewritten?

A. Yes. Yes, I don't know whether the bank exercises

discretion in some cases or not. Or whether it is an absolute rule, I couldn't say. Perhaps in some cases they, you know, small amounts and maybe particular types of cheques that are, that the six month rule does not apply, I don't know.

111 Q. Well, what I am really suggesting to you Mr. Redmond is that all of these features would appear to indicate that whatever the £15,000 was, and I accept you can't remember what it was, it does seem unlikely that it was made up of salary cheques and pension cheques which had not previously been lodged.

A. Can the bank not give us a breakdown of how it was made up?

112 Q. I just ask you to agree or disagree with my proposition, in view of what I have just put to you, that it seems unlikely that this is what it is?

A. I suppose.

113 Q. Are you agreeing with me or not agreeing with me?

A. Sorry, can you repeat the question again, Mr. Hanratty.

114 Q. I have told you the approximate amounts of your monthly pension cheques and your monthly salary cheques?

A. Yes. Yes.

115 Q. I have pointed out to you that if the monies which were unaccounted for in the November lodgement was made up, as you suggested in answer to a question from Mr. Cooney, of pension cheques and salary cheques, that you would be lodging pension cheques and salary cheques since December of the previous year which had accumulated, effectively, and which had not previously been lodged in December of the previous year.

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I also drew your attention to the fact that you made a

lodgement in May of 1989 of approximately £23,000 which you agree would have included any salary cheques up to that point?

A. Yes.

116 Q. Which had not previously been lodged. I also drew your attention to the fact that cheques expire after six months and in view of all of those features I was putting to you the proposition that it seems unlikely, I am not putting it any higher than that, it seems unlikely that the lodgement of the unaccounted portion of the lodgement of November of 1989 was made up of unlodged salary and pension cheques. That is all I was putting to you and I wanted to know do you agree with that proposition or not?

A. Certainly it is a scenario that is possible.

117 Q. Yes. Now, if I could move on to some of the matters which your own solicitor was dealing with and firstly to deal with the meetings which you had with Mr. Gogarty, when you were giving him advice. You did draw our attention to the fact that Mr. Gogarty presented to you as a person that didn't have any great knowledge of the intricacies of the planning system?

A. Yes. I think that is a, I think that is my view, my recollection, and I think it is a fair assessment. Maybe I have underestimated him, but that was the position.

118 Q. And he was here looking for advice from you in relation to a particular matter, namely the imminent expiry or expiration of the Forest Road planning permission and what should be done about it?

A. Yes. No, I am just going back to some of the other evidence that he was in; he was in the office with Mr. Manahan earlier in the year about Forest Road. And I am just wondering, the difference between the position - it

was due to expire in six months at that stage and --

119 Q. Well, as I understood your evidence, when Mr. Gogarty came in to you it was due to expire within a month?

A. Yes.

120 Q. But?

A. I don't think - I don't think I ever said it was due to expire within a month, was it.

121 Q. I understood your evidence to be that he came in May.

A. Well, that is fair enough, if I said that. If that is my recollection. I don't know what I said in my statement.

122 Q. We know with certainty --

A. Certainly I know that he did come in about the fact that it was running out.

123 Q. Yes. The 9th of May I think was the date that we established as the first date that he came in relation to this matter. We know that the provision was due to expire in the middle of June or it was around the end of June?

A. In June.

124 Q. There was some difference between, as to what transpired, he has said in his evidence that you in fact provided him with a draft letter; you don't agree with that?

A. He said I provided Mr. Murphy Jnr. with a draft letter?

125 Q. Well, that you provided a letter, draft letter to be submitted. But also I think your evidence was that you told him exactly what to put in the letter and that he took notes?

A. Well, I certainly first of all I, first of all I didn't, his first statement was that I gave something to Mr. Murphy. I have never met Mr. Murphy. Well, I have met Mr. Murphy here, but I never met him up to that time. He was a great man for taking notes and my recollection was that I, I advised him as to what he should do.

126 Q. Well, your evidence-in-chief on this subject, when I first examined you on it, and I am quoting you, I think accurately "I told him exactly what to put in the letter"?

A. Yes.

127 Q. Do you resile from that?

A. Do I what?

128 Q. Do you resile from that?

A. You mean am I --

129 Q. Do you wish to change that account?

A. Oh no, I told him what he should write, yes.

130 Q. Well now, what I just want to explore with you Mr. Redmond is, given that Mr. Gogarty did not have any great understanding of the planning situation, given that he was coming in to receive advice from you on this particular problem that he had, that it seems inherently unlikely that we go off and do something fairly radically different to what you had advised, namely to apply for a brand new planning permission instead of a renewal of the existing planning permission?

A. That he would, no, the first thing?

131 Q. That it is unlikely that we do that. Given that he was relying on your advice, and that he knew very little on the subject himself; what I am saying to you is it is unlikely that he would go off and do something radically different?

A. Well, he didn't look for a new planning permission.

132 Q. But the letter which was written to the County Council refers to the event of an application for a new permission; isn't that right?

A. In the event, but you know, that is in the event of an application for a new permission.

133 Q. I will get out the letter, Mr. Redmond. I thought we were agreed on this but it is quite clear that what was being

inquired into in that letter was not whether the services would be retained and the services, and if the service charges were paid in advance of an application for a new permission, not a renewal of an existing permission.

A. No, the position was; the position is by paying the levy and starting works he would extend the existing permission, but even with an extension of an existing permission there was the question then if he had to put in a revision after that.

134 Q. And in fact what happened, we know that what happened was that the purchaser who made the application permission did in fact apply for a new permission and not a renewal of the existing permission, and in that application they made a number of significant changes, including changing it from one house type to four house types, changing the location of the entrance and consequent changes in the layout; isn't that right?

A. I don't know. I presume it is if you say so.

135 Q. Well that couldn't, that couldn't have been achieved with the renewal of an existing permission?

A. Any major change like that required a new application, no question.

136 Q. If I could just refer you to the letter which was in fact written pursuant to your meeting with Mr. Gogarty. I am really referring to the second page. I think you have it among the documents?

A. I will listen to it anyway.

137 Q. He says in the second paragraph; "in this connection it is noted that the current planning permission will expire on the 21st of June, 1988. We are considering paying the total financial contribution of £122,460 now. If we do make the necessary payment before the 21st of June, 1988,

please confirm:

(1). That when a fresh application is made for similar residential development that no additional levy will be imposed. (2). That water and drainage services will be reserved for the proposed development".

So what he is talking about is a fresh application for similar residential development. Not a renewal of an existing permission; isn't that right?

A. Yes, but you see what is the purpose of that letter Mr. Hanratty? What is the purpose?

138 Q. Mr. Redmond, what I am putting to you is that is that what Mr. Gogarty did in writing this letter was to refer to a new application, not a renewal of an existing application which is what you said you advised him to do.

A. Yes exactly. But the 1983 permission, Mr. Hanratty, as far as I recall, the Council, I think the Council refused it in the first instance and it was appealed and the appeal decision was made by An Bord Pleanala, and An Bord Pleanala's condition was always the standard one. And the standard one as I recall it, it is a long number of years ago, was sum to be agreed in default to come back to the Planning Board, that was the condition. Now, the position in June of 1988 was that from a very early date the County Council had determined the amount it wanted, it was as far as I recall 120 odd thousand to be paid forthwith; isn't that right?

139 Q. 122. Yes?

A. 122. That was the, what the County Council proposed. Now, looking at the file, what I describe as the "Miss Collins file", it would appear that from the correspondence in it that the company, Grafton, acknowledged that and did nothing. It was the condition that we were dealing with

was "sum to be agreed". The County Council, on its side, had put forward a figure of 120 odd thousand to be paid prior to commencement of development. Mr. Gogarty's Grafton's letter is his counter to that, that is his counter to that. What he is saying in that letter, is "look" he said, "I want to pay that now, if I do pay it" A and B - the two things about coming in for further permission, it was a matter for the Council to agree it. The condition, the Board's condition was not with what the Council determined but the sum to be agreed.

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Now the basis of the agreement comprises three letters. Or should I say, yes, four letters. First of all was the letter, there was the manager's order in 1983 determining the amount. There followed a letter from the County Council to Grafton saying the sum is so and so to be paid up front. Acknowledgment by Grafton according to the files and then a letter in 1988 from Grafton saying "well, we have your letter saying what you want and what we are saying is we will say it now, subject to A and B".

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There was an offer, there is not acceptance, there is conditional acceptance and then there is a reply from the County Council saying "yes, we will accept that".

140 Q. What I was exploring with you Mr. Redmond was --

A. Sorry, I take it you appreciate --

141 Q. Sorry Mr. Redmond, if you wouldn't mind?

A. I do mind, excuse me, I just want to continue on that.

142 Q. Mr. Redmond, you are not answering the question I am asking. I would merely ask you to answer the question that I asked. Namely what you advised Mr. Gogarty to do and what Mr. Gogarty in fact did. The next question I want to

ask on the subject is as I understood your original testimony, you said that you also advised Mr. Gogarty as an necessary prerequisite, as it were, of applying for a renewal of the original permission that he should do some works pursuant to the original permission?

A. That is not for a renewal, that is for an extension.

143 Q. Well an extension?

A. A renewal is different. A renewal you must make a formal planning application, an extension is different.

144 Q. Let's take your terminology then, "an extension"?

A. It is not my terminology. It is the law.

145 Q. Did you confirm that you did in fact advise him that some works should be done as a necessary prerequisite for an application for an extension of the existing permission?

A. Yes absolutely, I told him that, to absolutely copper fasten the situation. Whatever about the letter in relation - remember I think it is very important to recall that even if he got agreement on the letters, that didn't constitute the commencement of works. You must remember, Mr. Hanratty, that notwithstanding the fact that the Council made an offer, Mr. Gogarty made a counter offer, it was accepted by Mr. Smith, that didn't, that didn't keep the planning permission alive. That planning permission died by the affluxion of time because no works were carried out.

146 Q. That is my point, Mr. Redmond. I will just ask you to assist the Tribunal with that. Again, doesn't it seem unlikely given that we know that no works were carried out, that you advised Mr. Gogarty to apply for an extension which necessitated the carrying out of certain works, because no such works were in fact carried out and no such application was in fact made?

A. That is a matter for when he left me, I don't know where he went or who he consulted with, but the, no works were carried out. It would have been in the company's interest to carry out works.

147 Q. Doesn't it seem unlikely that Mr. Gogarty would --

A. They may not --

148 Q. -- go off and unilaterally decide on an entirely different course than the one that you had advised him on?

A. Well the letter from the Planning Department may have satisfied him. But the legal position, Mr. Hanratty, as far as - I wouldn't advise him, I wouldn't give him any advice that would put him in jeopardy. The legal position was on whatever date that permission expired, it expired notwithstanding the fact that money had been paid. There was no guarantee of a renewal of that permission, none. And I mean I, with the experience I had in relation to traffic hazards and how they could damage permission, there was evidence on the file from the engineer who said that in no circumstances should this be given. Now the Board gave it. But in the interval the County Council had obtained Counsel's opinion in a particular case, that if it got advice that something constituted traffic hazard that the manager couldn't give it. That is the position.

149 Q. Well --

A. When I saw him, when I saw him, I was very much alive to the position that this thing could wind up with a refusal.

150 Q. Well, you have told us about the legal position, Mr. Redmond, and I just want to discuss that with you briefly, if I may?

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As I understand your evidence is that the legal advice which was available to the County Council at the time was

that there was no legal basis for applying general levies based on all developments, but that they to be specifically referable to the particular requirements of a particular development or implications of a particular development.

Is that a fair summary of the legal advice which was given?

A. Yes. We had very, very clear advice that the, we had powers under Section 26 (G) and (H) and that if we wanted to raise money, that we would have to exercise them strictly in accordance with their requirements and that there was no general power of taxation, we hadn't the power to generally raise money.

151 Q. But notwithstanding that advice the local authorities nevertheless had the practical problem of having to provide these services and having to provide the money, find the money to provide these services; is it in fact the case, notwithstanding any legal advice, that there was in, they were in fact providing levies on a per house and per acre basis for roads and services, effectively?

A. Of course we were. We certainly are from the late 1960's until the 80's we certainly were. It was, there was the sword of Damocles were there all the time. I remember there were a few threats of doing it. I think they were settled. But it was there and certainly I remember in my case, because I was out of planning at that stage, after ten years, but I was involved in spending the money. I was, I was the manager who would be involved in spending the money on services and open spaces and there were two Local Government auditors who used to come in frequently to me and discuss this whole question and that the sword of Damocles was there all the time.

152 Q. Doesn't that mean that there was a divergence, shall we say, in what the legal position was and what the Council

was in fact doing, precisely for that reason, that they had to raise the money somewhere to get money to provide these services?

A. Well, the Council would always say that there was sufficient powers if you wanted to raise the money. The difficulty was administratively it was difficult, you would have a whole series of calculations and levies throughout the county. I remember the manager we had at the time in the sixties, he took a broader view of things. He said "look it is reasonable and fair". We have a county at large charge and it was adopted and like many things it went on for years and no one rocked the boat, but it was always there, the sword was hanging by the thread and all it needed was, you know, somebody to rock the boat.

153 Q. So the position on the ground, as it were, was that in the invariable practice in the County Council, in the 1980's was in fact to apply levies on the basis of per acre and per house basis for roads and services?

A. Yeah, well per acre for services.

154 Q. Yes?

A. Yes. Oh, that was the practice certainly.

155 Q. And not only was it the practice, Mr. Redmond, it was in fact the policy; isn't that right?

A. Oh, practice and policy yes, of course.

156 Q. Can I remind you of the document which has already been opened in evidence, this is the minutes of the meeting of the development Coordinating Committee dated the 14th of April, 1988, which was chaired by yourself in which it was agreed under "any other business" that it was agreed that the maximum levies required by the Council for roads and services etc., in respect of the development of any parcel of land, should be charged in planning permissions?

A. Yes.

157 Q. So that was a reaffirmation of that policy of applying those levies on that basis; isn't that right?

A. The only thing, in terms of statutory basis, it hadn't any - the only thing about that meeting, having read the minutes, that the manager in whom the planning powers were delegated, to whom the planning powers were delegated, didn't attend; but that was a general policy and I mean I was very much in favour of that myself. In other words, if levies were to apply they should apply in all cases, but all, to implement that policy; if for example you are going to impose taxation, we will call it taxation of £800 a house for roads; supposing you are, you want a report that you can stand over at appeals or in the court, and I mean in the case, in the case of this, in this particular Forest Road, you have nothing, I mean I am all for that.

I mean the first levy of £375 was introduced, I think if you go back on the records you will find very, he gave great details of what was being spent. The same when it was raised up to 1,500, it was 1,500 for a long time. But I have a distinct recollection of the engineer setting out the works they were going to do, the acreage it was going to serve, doing a division, getting a figure, at least even cosmetically it had something, but in the case of the two particular levies that we have in this case; the 800, there is nothing at all, and as I said it arose out of this maverick application for 100 acres as did the special levy. They were maverick applications, but I mean, all you say about the application of the levy is quite true, it is imposed on a county at large basis and that was it.

158 Q. But given that that was in fact the practice, the

invariable practice, indeed the policy of the Planning Authority, why do you criticise, as I understand your evidence, Miss Collins for simply setting out that fact? All she does in her statement to the Tribunal was to set out what the practice was and what the rates were at various times and does the relevant calculations. As far as we can see, correctly. What criticism do you make of her?

A. I didn't make any criticism of her saying that. What I was critical of the Tribunal was the status of the witness they got to give that evidence. I mean --

159 Q. But are you suggesting that she has no expertise, but what I am putting to you is that she is not relying on any expertise in providing this information for the Tribunal, she is simply giving a factual account of what the position was at these various points of time?

A. Take the special levy; the engineer wrote there is a special levy, there is a special levy of so and so now for new developments, but in view of the fact that this has been agreed, does not apply. Now, it would be better for the manager on the day or the Principal Officer to make an interpretation of that. He would say to himself, if I were the manager on that I would say what is this about a special levy in this case and I would say to the engineer look, when we designed the drainage scheme or Delapp and Walter were the consultant engineers; when they designed that drainage scheme in Swords, did it not take into account that 22 acres? It was zoned land, it had been zoned from the early seventies, it was situated in the centre of town. The Minister has already been - wasn't that already zoned? Hadn't they already had a determination of the levy? How can you possibly justify

putting an additional levy on that land now? How can you do it? You can't do it.

160 Q. All Miss Collins is saying is that was what they were doing at the time. I appreciate that you query the legality of it. All she is doing, she is going no further, she is relying on no expertise, she is simply telling the Tribunal that is what the Council was doing at the time?

A. No, it would do it in say, fresh - I am not certain, I haven't gone through the Council records for postdate '89 to see what exactly they were doing, that is --

161 Q. If that is the case do you not accept what she says as being accurate?

A. No, I don't.

162 Q. Because she did go through the records?

A. Oh she didn't say she went through the records, now Mr. Hanratty no one has asked the Council to produce all the decisions on new, on new housing planning applications in '88 and '89. If you would like I would ask you to do that.

163 Q. Are you suggesting that they weren't applying these levies?

A. I am asking you that, I have no certainty about it, have you? I have none.

164 Q. You raised the question, for example, of the special levy of 5,300 and you raised it in the context of these new documents which you asked the Tribunal to obtain. Could I draw your attention to paragraph 6 of Miss Collins' letter to the Tribunal in relation to that particular matter, that is the £5,300 levy.

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She says: "In 1988 a special levy of £7,500 per hectare was included in a decision to grant..." and she is quoting "the development would necessitate improvements to the

Swords Treatment Works, a special levy of £7,500 per hectare is being applied to all new developments within the catchment of the Swords Treatment Plant". This sum was reduced to £5,300 per hectare by An Bord Pleanala. This levy was charged on all permissions granted until January 1995 when the levy was further increased. A copy of the report dealing with the application reference 87 A.138 is attached and a copy of the report" (Quoted).

A. Yes, but you have --

165 Q. What she is saying there is that special levy was in fact applied, of £5,300 was in fact applied to all developments within the catchment area of the Swords Treatment Plant. And all she is saying to us is that application, as I understand what she is saying, had an application been made in 1989 for a new permission in circumstances where the £122,000 had not previously been paid, this is what would have happened?

A. No, it wouldn't have happened. A manager, in the light of the history of this application, that would not have happened Mr. Hanratty. The reports were there and which, by the way, I mean look what happened at the Board, who had much the same powers in determining decisions. The manager at the time would have considered the history of this case. And in this case there was no grounds, I mean the original drainage works as it stood and the Deputy County engineer when he was asked, and he was a very conservative man, when he was asked by Mr. Smith "is there drainage for this", he said "well, two years anyway". There was no, I was the manager for Sanitary Services. I can assure you insofar as zoned land was concerned, in Swords, at that time, there was absolutely no question of additional levies arising, none. There was adequate drainage there.

166 Q. Mr. Redmond, can I put this proposition to you; isn't the nub of the matter really this; that the value of the information which you gave to Mr. Gogarty was the inside knowledge which you had, that if £122,000 being the levy imposed on the original 1983 permission was tendered and paid before the expiration of the old permission, it would be accepted by Dublin County Council for the very reason that there were questions and doubts in Dublin County Council about the legality of these levies. You knew that if they tendered that money that it would be paid and that is the information which you were providing to Mr. Gogarty, that is the value which you gave Mr. Gogarty, that is information which Mr. Gogarty could not otherwise have got and was not widely available to members of the public?

A. Oh I think that is, that is fabrication Mr. Hanratty. The position, if I wished, if I had wished to advise Mr. Gogarty, I could have advised him whereby he could have avoided the vast majority of that levy, even the £122,000. I could have advised him, you know, put in your application, don't worry about it, the seven year rule, I will tell you all about that. I could have advised him in relation to the roads, that the scheme which was related to it, that's the £120 per house scheme, was it going to take place, that we didn't get it as part of the bypass of Swords. I could have given him that advice.

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As far as I was concerned, the best advice from the Council's point of view was pay it up front. I could have advised him by the way that he could have offered to pay that over five years. I could have told him that he could have written to the Council and say "look, I won't pay any until the first 30 houses are ready". It have been two

years down the road. I could have given him that advice.

The position as far as the advice I gave him was concerned, was in the Council's best interests. The Council was looking for £122,000 and I said, "why don't you pay it up front". That was in the Council's interest.

167 Q. Do you agree with me that the information that the Council had doubts at the time about the legality of the charges they were imposing was sensitive and confidential information?

A. Well, I mean we weren't, it wasn't being broadcast, if that is what you mean.

168 Q. Do you agree with me that it was sensitive and confidential information?

A. Well, I don't know, people gossip about these things. I couldn't say how confidential it was. I mean it was in operation since the 1960's.

169 Q. Do you agree with me that it was sensitive and confidential information?

A. Well certainly it was sensitive, so I suppose.

170 Q. Was it confidential?

A. No, I don't think it was confidential. Anyone who would read the provisions of 26 (G) and (H) would see what we were doing, would say "that doesn't comply". The great mystery was why it was never picked up, you know, earlier, perhaps by litigation; but as I said the amount was relatively modest and it was accepted as such.

171 Q. Do you think it was appropriate for the person then in the position of Assistant City and Council Manager to be giving out advice to somebody like Mr. Gogarty based on such sensitive and confidential information?

A. Sorry Mr. Hanratty, I think I have already established that when I spoke to Mr. Gogarty there were no special levies,

there were no special levies. The £5,300 per hectare and the £800 per house had not arisen. They may have been, you know, in somebody or something but they didn't, they arose directly out of a Maverick one hundred thousand, sorry 100 acre application; that is the first thing.

The second thing insofar as the, as the paying the levy is concerned, I certainly knew that the seven years had expired on Swords. I knew that. I certainly knew that if, if they had got into it in detail, it could have been the subject of litigation in that case. It was in the Council's interest, as I saw it, that he should pay it.

There was no, I mean there was no advantage, it wasn't an advantage to him. All the advantage to him was if I gave him advice, was not to pay it.

172 Q. Well even from the prospective of today, Mr. Redmond, do you think that looking back on it, do you think that it is appropriate that a person occupying the position of seniority and importance as you did, to be giving advice of that nature to Mr. Gogarty, or indeed to anybody, with planning problems?

A. In the particular case the merits, insofar as the County Council were concerned, was we were getting four acres of open space against a normal two acres of open space on a River Valley Park in which I had a very keen interest No.

1.

No. 2, we were getting 120 odd thousand up front which, if you extended it over a five-year period at 15 percent would be, equate to something in the region of 240,000, and by getting the four acres we were opening up the avenue to, or coming adjacent to other lands which were in the valley

which might also be required. As far as I was concerned the Council and obviously Mr. Smith, for whatever reasons, also agreed that the offer was in the Council's best interests; remember Mr. Smith and myself at that stage were certainly unaware of any other special levies.

173 Q. I have no further questions, Sir.

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CHAIRMAN: Well, thank you very much Mr. Redmond, for coming down. You are free to go now and thank you, for the moment. You may be recalled at a later date.

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: What is the position with regard to the next witness? Is he scheduled for two o'clock?

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MS. DILLON: The next witness is 2:15. He is an elderly gentleman. He wasn't available this morning. I understand he will be available at 2:15.

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CHAIRMAN: The only thing is that I can adjourn the Tribunal - in those circumstances, the only thing I can do is adjourn the Tribunal until 2:15, when, hopefully, Mr. O'Shea will be here. Thank you very much.

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THE HEARING WAS THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:
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MS. DILLON: Good afternoon, Sir.
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The first witness this afternoon is Mr. Bartholomew O'Shea. Mr. O'Shea is represented by Gerrard O'Shea and Company, Solicitors.. I should tell you, Sir, I have received a medical report in relation to this witness. He has a number of quite serious medical complaints, one of which is diabetes, and he has an Insulin dependency problem which requires some monitoring on behalf of his team. In those circumstances they have asked me can they be allowed to sit, as it were beside me, simply so they can monitor how he is. I have no objection to that. I have no objection provided you agree.

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I should also tell you that I have been asked in relation to this witness, that he needs to check his Insulin approximately every hour, and it will be necessary to take short breaks in the course of this witness' evidence.
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In those circumstances, if Mr. Creegan and his solicitor wish to move up here.
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MR. CREEGAN: Chairman, I am obliged for this courtesy. Perhaps this might be an appropriate time to make an application for limited representation on behalf of Mr. O'Shea.
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CHAIRMAN: Certainly, I will make an order giving you limited representation.

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BARTHOLOMEW O'SHEA, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. DILLON:
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174 Q. MS. DILLON: Mr. O'Shea, can you hear me?

A. I can yes, thank you.

175 Q. I understand that you have a hearing problem, Mr. O'Shea?

A. I have two of them.

176 Q. If at any time you cannot hear anything that I am asking
you or that the Sole Member may ask you, if you just ask us
to repeat the question we will deal with it?

A. Yes, yes.

177 Q. You have no difficulty now at the moment?

A. Not at the moment anyway.

178 Q. Mr. O'Shea, you were asked and provided a statement to the
Tribunal dated the 29th of October of 1999; is that
correct?

A. That's correct, yes.

179 Q. And in that statement you have detailed your knowledge of
and your dealings with certain individuals, namely Mr.
Joseph Murphy Snr.?

A. Correct.

180 Q. Mr. James Gogarty?

A. Yes, that's right.

181 Q. Mr. George Redmond?

A. Correct.

182 Q. Among others?

A. Yes.

183 Q. I want to take you through your statement relatively
slowly, and there are a number of documents that I will be
putting to you initially. These are company documents, so
that we can try and narrow down dates as to when certain

events occurred. If you have any difficulty understanding the documents we will take it very slowly, is that all clear to you?

A. That will be all right.

184 Q. If at any stage you get into any distress, Mr. O'Shea, just indicate that and we will take a break?

A. Thank you.

185 Q. I think you were born in Cahirsiveen in 1917?

A. Correct.

186 Q. You are presently 82 years of age?

A. Pardon?

187 Q. You are presently 82 years of age?

A. I am presently?

188 Q. 82 years of age?

A. Yes, 82, that's right, yes. That's correct.

189 Q. I think that you went to national school in a place called Knockeen in County Kerry?

A. That's correct.

190 Q. And I think one of your boyhood school friends was a man now known as Joseph Murphy Snr.?

A. Correct.

191 Q. He was a school friend of yours throughout your national school days?

A. He was, yes.

192 Q. I think you knew his older brothers?

A. I knew his older brothers, and his father was a great friend of mine.

193 Q. The person you were closest to was Joseph Murphy?

A. Joseph Murphy, that's right.

194 Q. After you left school you remained in Cahirsiveen where you became an apprentice as a carpenter?

A. Correct.

195 Q. You served your time to a local builder or contractor in Cahirsiveen?

A. Correct.

196 Q. At that stage was he still in Cahirsiveen?

A. He would, he was I think, it was just, I think he was, I am not sure. He was yes, he was.

197 Q. Now, I think after you --

A. He was correct, that's right, he was.

198 Q. Now, I think that after you had qualified as a carpenter, that you emigrated and went to England in or about 1946?

A. About that, yes.

199 Q. '47?

A. Correct.

200 Q. And you worked in England as a carpenter?

A. Correct.

201 Q. And this, you worked for a man called John Lange; is that correct?

A. John Lange, a very, very big firm. I was foreman.

202 Q. You were foreman. Did you work for any other builders while you were in England?

A. No.

203 Q. Only the one builder?

A. The one builder.

204 Q. When you were working in England were any of the Murphy Groups established in England at the time in 1946, '47?

A. I am not sure. I expect Sean was established, his brother, but I had no contact with him or I didn't hear very much about him.

205 Q. Did you meet him when you were working in England during that period?

A. No I did not, no.

206 Q. Now, I think that you returned to Ireland in or around

1950?

A. Around that yes, correct.

207 Q. Right. And you settled in Kilmacud?

A. Correct, yes.

208 Q. You worked for a small building contractor?

A. That's right.

209 Q. And were you still employed as foreman carpenter at that stage?

A. No, ah no, I was just a carpenter, that's all.

210 Q. You were working for him as a carpenter?

A. I worked as a carpenter, that's right.

211 Q. When you returned to Dublin in or around 1950, can you be in anyway precise, was it actually 1950 or was it later or earlier than that?

A. It was earlier. I think it was earlier, it might be a bit earlier than '50.

212 Q. 1947, '48?

A. About '48 I would say, '49.

213 Q. And when you --

A. I am not sure on that now.

214 Q. When you returned to Dublin in or around 1950 did you subsequently meet Joseph Murphy Snr.?

A. I did, yes.

215 Q. What was he doing when you met him?

A. He was in the Garda.

216 Q. At that stage?

A. At that stage. Yes.

217 Q. Right. And did you frequent the same public houses?

A. We did, yes. There was a Cahirsiveen crowd used to go to a certain pub and we all had a few jars there.

218 Q. During that period of time, which is between say '48, '50 did you meet Joseph Murphy Snr. on a regular basis?

A. I did not no, not on a regular basis, only just when we go to the pub, I met him in the street or things like that.

We had no, we didn't have any agreements or anything to meet.

219 Q. Yes. Did you renew your friendship with him at that stage?

A. I did yes, I did.

220 Q. Were you friendly with him during this period?

A. I was yes, we always had a drink together.

221 Q. And during this period was he a member of the Garda Siochana?

A. He was a Garda Siochana, that's right.

222 Q. At that stage?

A. Yeah.

223 Q. Now, subsequently I believe following this period you went to work for, as a shop fitter with DP McCambridge of Richmond Street?

A. Correct.

224 Q. I think that Mr. McCambridge employed another shop fitter called Thomas Shanahan?

A. Correct.

225 Q. You first met Thomas Shanahan in that company?

A. That company, that's right.

226 Q. You became friendly with Thomas Shanahan; is that right?

A. Yes, he was a good man, yes.

227 Q. And you set up a partnership?

A. That's right.

228 Q. Under the name of O'Shea and Shanahan?

A. Correct.

229 Q. As shop fitters?

A. Shop fitters.

230 Q. At this stage had you ceased to work for anybody else but

yourself?

A. No, no.

231 Q. Were you still --

A. When we started up business we kept on business until he died.

232 Q. You don't understand me, my fault, Mr. O'Shea. When yourself and Mr. Shanahan set up O'Shea and Shanahan in partnership, was that the only job you had then working for O'Shea and Shanahan?

A. Yes.

233 Q. You had given up the job with McCambridge's?

A. Yes, I had.

234 Q. So had Mr. Shanahan?

A. That's right, yes, we resigned. We told him we were starting out alone.

235 Q. You set up in partnership, you didn't have a limited company or anything?

A. No.

236 Q. You specialised in shop fitting?

A. Yes.

237 Q. Subsequently you started building houses; is that correct?

A. That's correct, yes.

238 Q. And can you explain to me approximately around what period of time you first started to build houses?

A. I forget now. Memory is very bad as far as dates are concerned. It would be around 1960, I am not sure.

239 Q. Did you get married at all, Mr. O'Shea?

A. I did, yes, I got married all right.

240 Q. When did you get married, Mr. O'Shea?

A. I think that was 1959, I think that's right.

241 Q. Had you started up with Mr. Shanahan building houses before you got married?

A. No, no. I started the houses was, I was building a house for myself and we carried, we proceeded after that.

242 Q. And did you build that house in order to get married?

A. Yes.

243 Q. So that the first house you built was around 1957, '58, '59?

A. '58 or '59, yes.

244 Q. You built that house with Mr. Tom Shanahan?

A. That's right.

245 Q. Following that then you started to get into house building?

A. That's right.

246 Q. But before --

A. We were still carrying on a bit of shop fitting.

247 Q. Yes, before '57, '58, you were working with, at the shop fitting business with Mr. Shanahan?

A. Yes.

248 Q. And then you gradually moved into building houses?

A. That's right.

249 Q. Right. Around the time that you got married you built your house in Ballymun Avenue in Glasnevin?

A. That's right.

250 Q. Are you still there?

A. No.

251 Q. And I believe a George Milner of George Milner Structural Engineers also lived on Ballymun Avenue?

A. That's right.

252 Q. Now, this was a structural engineering firm?

A. That's right.

253 Q. And I think this firm subsequently became known as J Joseph Murphy Structural Engineers?

A. That's right, Joseph Murphy took it over.

254 Q. In or around - did you meet Mr. Milner when you moved on

to Ballymun?

A. Yes, I met - it was there I got to know him.

255 Q. Around that time, around 1959 it was still George Milner Structural Engineers?

A. That's correct, yes.

256 Q. So at this stage did you have any contact with Mr. Joseph Murphy Snr.?

A. At that stage?

257 Q. This is around --

A. No, I did not, no.

258 Q. Did you, around this time, meet a Mr. James Gogarty?

A. Well, when I started building the houses I met Jim Gogarty.

259 Q. Now, you said that you started getting into the building of the houses around the time you got married, you got married in 1959?

A. Yes.

260 Q. In your statement at paragraph two, do you have your statement in front of you, Mr. O'Shea?

A. I have.

261 Q. If you look at Page 2 of that statement.

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MR. HERBERT: Mr. Chairman, I beg your pardon, I prefer if the witness told his story without the assistance of the statement - I am not - assisting My Friend not asking leading questions at present, because I think we are dealing mostly with historical matters. I think it will speed the matter up no end to permit leading questions to be asked at this stage, but I would prefer if the witness told his story, Sir, in the ordinary fashion.

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CHAIRMAN: Well --

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MS. DILLON: If I just respond. I am merely trying to clear up an ambiguity that appears between the direct evidence and what appears in the statement. It is in fairness to the witness that if there is an ambiguity it should be put by me, I think it is part of my job to put these ambiguities to the witness and have them clarified if they can, it is not of any major significance I think, this particular ambiguity.

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CHAIRMAN: What I suggest is that perhaps when the witness gets into difficulty in a particular matter you might indicate that he might like to refresh his memory from the statement and then, it can be taken at that point, "you now know the subject", and he can refresh his memory from the statement in front of him and you can make your own submissions at that point in time, because we want to just move reasonably rapidly in this area for the moment.

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262 Q. MS. DILLON: Yes, I will come back to that in a few minutes, if I may, Sir? I think that you said or did you say that you met Mr. Gogarty around this time?

A. I did.

263 Q. Yes, and around the time - the time that we are talking about was around the time that you got married, which was 1959?

A. Yes.

264 Q. And thereafter you started building more houses; is that right?

A. Yes.

265 Q. So are you placing your recollection of the time you first met Mr. Gogarty was around the time you first starting building houses?

A. Yes, that's right.

266 Q. As O'Shea and Shanahan?

A. Yes, correct.

267 Q. And if the first house you built was the house you got married into, as it were, in 1959?

A. Correct.

268 Q. It follows then you must have met Mr. Gogarty after 1959 or '59 at the earliest?

A. Well, we were in the office of Higginbothan and Stafford and Gogarty was mostly the chief man there, he was an engineer, and he told me that and he helped me, that he sorted out for us, you know.

269 Q. If you just pause there for a second, just a small matter about Higginbothan and Stafford. They were, can you explain what Higginbothan and Stafford were?

A. They were a firm of architects in charge of the estate, they designed the estate.

270 Q. And when you say designed the estate, what estate are you talking about?

A. It was called Clonmel Estates.

271 Q. And were O'Shea and Shanahan in partnership doing outfitting work for Higginbothan and Stafford?

A. What do you mean by "doing"?

272 Q. I mean shop fitting type work or were you fitting houses?

A. We did both together.

273 Q. What I am trying to establish, Mr. O'Shea, is the approximate date on which you first met Mr. Gogarty?

A. It was around 1959 when we started building the houses, sometime after that.

274 Q. Sometime after that?

A. That's correct, yes.

275 Q. Now, before you started building the houses had you done

any work for Higginbothan and Stafford?

A. No, no.

276 Q. So that the start date of the house building and your association with Higginbothan and Stafford was around the time you built the house, which was 1959?

A. That's correct.

277 Q. Now, Mr. Gogarty, you have told us, was an engineer working with Higginbothan and Stafford?

A. That's right.

278 Q. And you got to know him; is that correct?

A. Yes, I did, yes.

279 Q. Were you at that time taking a number of sites from Higginbothan and Stafford to develop those sites?

A. I was taking, site by site, that kind of stuff, you know.

280 Q. Yourself and Mr. Shanahan were starting up in the building business and you were moving fairly slowly?

A. Slowly.

281 Q. You subsequently became much more successful than that, that was sometime in the future at this stage?

A. That's right.

282 Q. So, I understand what you are telling the Sole Member then, is that the relationship, your partnership with Higginbothan and Stafford was you would take sites from them, build a house, sell the house and pay what's known as a "site fine"?

A. Site fine, that was it, yes.

283 Q. And I think that the agreement in relation to site finds in the industry at the time, and correct me if I am wrong, that you paid the site find when the house was built?

A. That's right.

284 Q. So you would get a piece of land to build on, build the house, sell it and then pay Higginbothan Stafford?

A. That's it.

285 Q. Was Mr. Gogarty the man who organised the sites for you?

A. Well, you just go into Higginbothan and Stafford or ring them and tell them you would be interested in such a site, and if it was available they would tell you and if it wasn't available they will search for one available.

Because there was quite a lot of builders on the estate.

286 Q. Builders like yourself?

A. That's right.

287 Q. And who laid out the sites for you?

A. I laid them out myself.

288 Q. And did you have much dealings with Mr. Gogarty during this period?

A. Not very much, not very much.

289 Q. And this is around the early 1960's?

A. I think so.

290 Q. Yes, and did you form a view about Mr. Gogarty, he was an engineer at that stage I think, was he?

A. He was an engineer, yes. Afterwards when I got to know him well, I thought he was quite a good engineer, but I didn't know an awful lot about engineering myself to be honest with you.

291 Q. Now, I think in or around this time, you also became involved in building a public house?

A. That's right.

292 Q. And this was a house, a public house known as "The Quarry House"?

A. That's right, it's still there.

293 Q. And this was built by yourself and Mr. Shanahan; is that right?

A. That's right.

294 Q. And at that stage you were still in partnership?

A. Yes.

295 Q. I would like to put, I think The Quarry House subsequently became a limited company; is that correct?

A. It did, yes, it did.

296 Q. Okay. I just want to put some documents, it might tie us down for dates a little bit in relation to The Quarry House Limited, if that's all right?

A. I don't know when it became limited.

297 Q. I am showing you a printout, Mr. O'Shea, from the company's office, and it is in relation to a company called Quarry House Limited. And this company was incorporated on the 7th of September of 1961?

A. That is right.

298 Q. Do you remember forming a limited company with Mr. Shannon in 1961 in relation to The Quarry House pub?

A. I don't remember it, I don't remember it to be honest with you. I know we formed a company, we were advised by our legal people to.

299 Q. To form a company?

A. To form a company, I couldn't tell you what year it was or it wasn't.

300 Q. Yes, Mr. O'Shea. It is in Tab 13, judge, in your book, first document in Tab 13. This company furnished its last annual return, Mr. O'Shea, in 1985 and subsequently in December of '88 from the document in front of you. Paul Wise of Oliver Freaney was appointed liquidator of the company?

A. Yes, I believe he was. He was, yes.

301 Q. Now, we will come on to deal with that in its logical place, but that's from the document that's in front of you, and that's the history, as it were, of Quarry House Limited?

A. It must be.

302 Q. Yes. Did Mr. Murphy Snr. have any involvement in that public house?

A. No, none whatsoever, but he used to always call to drink and he used to give me a ring.

303 Q. After you built the public house yourself and Mr. Shanahan were running it; is that correct?

A. That's right.

304 Q. This public house is in the Finglas/Glasnevin area?

A. Correct.

305 Q. Mr. Murphy Snr. became aware that you had a public house?

A. That's right.

306 Q. And it is there he used to come to see you?

A. That's right.

307 Q. And at this stage --

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MR. HERBERT: Mr. Chairman, I want to let My Friend have as much latitude as I can. The witness did not say he came to see the witness, he said he came to have a drink. They are quite two different things, Mr. Chairman, with great respect.

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CHAIRPERSON: It depends on which you like most.

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MR. HERBERT: Well, he didn't say he came to see Mr. O'Shea at all, he said he came to have a drink.

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CHAIRPERSON: We will see how he progresses from the froth of the pint.

.

308 Q. MS. DILLON: Why did Mr. Murphy Snr. come to have a drink in The Quarry House, Mr. O'Shea?

- A. Because we were friends and he heard a lot about it over in the other country and he was anxious to see it, and he rang me the first time he arrived there. He rang me and the foreman in charge there, he wouldn't give my phone number to anybody but when Mr. Murphy explained to him what he was and we went to school together and all that kind of stuff, who he was, Murphy over in London, he gave him the number because I wasn't in the book, a non directory, you know.
- 309 Q. Yes. So at this stage can you help us at all with the, approximately how long Mr. Murphy Snr. had been in London by the timing you built The Quarry House?
- A. By the time I built The Quarry House, he would be a few years there all right. I remember the morning he resigned from, I met him outside the ProCathedral.
- 310 Q. The morning he resigned from?
- A. From the Guards. And what he told, he told us he was going as a fisherman up to Navan or somewhere like that.
- 311 Q. But I don't think he did?
- A. Ha?
- 312 Q. I don't think he did?
- A. He did not, would he tell you anything?
- 313 Q. But having incorporated The Quarry House Company on legal advice in 1961, presumably the pub was built in or around this time?
- A. It could be, that's right.
- 314 Q. And Mr. Murphy when he returned to Dublin used to come and have a drink?
- A. Yes.
- 315 Q. To see you because you were his friend?
- A. That's right.
- 316 Q. Now, in or around this time, I think yourself and Mr. Shanahan bought a plot of land at Rathdeale in Swords?

A. That's right.

317 Q. And now can you tell me about the difficulties, if any, that you had in relation to that purchase?

A. Well, it was sold at public auction and I bought it, and we were able to get the money to close the sale after a long time. But we had no, we didn't have any money to get it, get it going, you know? To get it developed, get it developed. So I went over to meet Murphy, and Gogarty was aware of that, that I was going, gone over to meet Murphy, to see could he help us out. And when we met we were all talking and a good few drinks, all that kind of stuff, I wouldn't ask him for help because, I was kind of embarrassed, that kind of stuff, I would prefer to sell the land, but I am not going to ask him because he is a friend of mine, but about --

318 Q. Sorry, if I stop you there, Mr. O'Shea, I will come back to the next matter. You told Mr. Gogarty before you went over?

A. Yes. He understood, we were talking inside in Stafford's office, the position we were in, you know? Gogarty was listening and told him, Gogarty - "Joe Murphy is a friend of mine and he might help us out".

319 Q. Mr. Gogarty was aware of the difficulty?

A. He was aware of the difficult.

320 Q. With the lands at Rathdeale?

A. That's right.

321 Q. And was this land at Rathdeale which I think is Swords; is that correct?

A. Swords, yes.

322 Q. Was this the first large piece of land?

A. It was.

323 Q. That yourself and Mr. Shanahan had bought together?

A. That's right.

324 Q. So this was another progression away from the site situation with Higginbothan and Stafford's?

A. That's right.

325 Q. So you went to see Mr. Murphy, and your plan was, I think, to ask him for money?

A. Yes, that's right.

326 Q. But you didn't on that occasion ask him for money?

A. No, I did not.

327 Q. Why was that?

A. Well, I felt embarrassed because I used to drink in the pub, he thought I had a lot of money and it was this kind of stuff. But I didn't, I didn't have --

328 Q. Did you tell Mr. Murphy when you went over to see him in London, sorry did you go to London to see him?

A. I did, yes.

329 Q. Did you tell him on that visit?

A. My wife was with me.

330 Q. Yes.

A. And he entertained us well over there.

331 Q. Can you remember, did you stay with Mr. Murphy?

A. How do you mean stay with him?

332 Q. Stay in his house?

A. No, no, we did not, no.

333 Q. And can I ask you did you tell Mr. Murphy about the purchase of the lands at Rathdeale?

A. I did yes, I did.

334 Q. But did you not tell him about the fact that you needed money to develop it?

A. No, I did not, no.

335 Q. I think Mr. Murphy subsequently came to see you?

A. Yes, he did. A couple of months afterwards he came to see

me. He called, it was well in the pipeline that we were going to sell the land, we couldn't go ahead with the development because the, there was a bank squeeze on at the time and the banks wouldn't give any money at all whatsoever. So, Murphy came after a couple of months, we were about to sell it and he came in, "I hear you are stuck for money", he says, "to develop that land in Swords". "I am" says I. Well, he says, "I'll give you money to develop it provided we form a company, one, two, three. I will be 33 and a third percent".

336 Q. And the one, two, three were Mr. Joseph Murphy Snr., Mr. Bat O'Shea and Mr. Thomas Shanahan?

A. Correct, yes.

337 Q. And in return for forming the company what were you going to get?

A. He gave us a cheque, I don't know what it was, 40, was it £40,000 or maybe more? I think now, I can't exactly think of it, the exact number because I am hopeless at that.

338 Q. But, and did you subsequently form a limited liability company?

A. We did, yes.

339 Q. And that company was O'Shea and Shanahan Limited?

A. Limited.

340 Q. And O'Shea and Shanahan Limited was I think, I will show you the document now. I think it is at Tab 2, Sir. It was incorporated on the 12th of May of 1965?

A. 12th of May, 1965. If it says it on the document that's the setup. (Document handed to witness).

341 Q. Can we take it then, Mr. O'Shea, that your meeting with Mr. Murphy Snr., do you want to have a look at the document?

A. No, I - I can't see the bloody thing anyway. Excuse me, I didn't mean to be --

342 Q. That's quite all right. I think you can take it from me that it was incorporated on the 12th of May, 1965?

A. Yes.

343 Q. May we take it then that your meeting with Mr. Joseph Murphy in which he said one-third, one-third, one-third, and gave you the cheque was sometime prior to the date of incorporation?

A. It was, it was quite a while, yes.

344 Q. Right. When you say quite a while before that, Mr. O'Shea, can you give us any time approximately as to when you recollect?

A. Another fortnight I think he came over and we formed the company.

345 Q. Now, I think the returns of the company show that by the 31st of March of 1966 there were three Directors of that company, Mr. Bat O'Shea, Mr. Tom Shanahan and Mr. Joseph Murphy Snr.?

A. Yes, correct.

346 Q. Right. I think, I am not sure, I want to check this, I think Mr. Murphy Snr. had an address in London at that stage?

A. Quite possibly.

347 Q. I think it is on the screen. I think the shareholders of the company were divided equally, the shares in the company, between yourself, Mr. Murphy Snr. and Mr. Tom Shanahan?

A. Yes.

348 Q. And I think that document is 28, it's at Tab 2, Sir, Document No. 28. Now, I think subsequently, from the company documents, a charge or a mortgage was created on the 4th of November of 1965 in the sum of £40,000?

A. Yes, that's right, yes.

349 Q. And registered in favour of Mr. Joseph Murphy Snr.?

A. Yes.

350 Q. Against the assets of O'Shea and Shanahan?

A. Yes, that's right. I do remember that now.

351 Q. Right. And that was registered in the company's office on the 3rd of December of 1965?

A. That is so.

352 Q. Now, was that the full amount of the money that Mr. Murphy had given you?

A. No, he had given me money previous to that.

353 Q. Yes.

A. When he came into the office and said "one, two, three. I will give you money", couldn't develop the land unless we got money.

354 Q. Yes. So --

A. I know, it was about £40,000, maybe more he gave us at that time.

355 Q. But at a minimum Mr. Murphy Snr. gave you £40,000, and a debenture was registered in favour of Mr. Murphy?

A. I think so.

356 Q. That document I think is 16, it is Tab 2 of the judge's documents, 0S16.

.

So following this, a company is set up in which Mr. Murphy was a one-third shareholder and Director at this stage in around 1965, '66. Did you become a Director of any of the Murphy companies?

A. Oh, I did.

357 Q. Did you become in particular a director, in particular a Director of Grafton Construction?

A. I did, yes. I don't know how many companies I became Director of.

358 Q. I think you became a Director in 1968?

A. Quite possible.

359 Q. Now, the document I next want to show you, Mr. O'Shea, is a schedule of lands, this is at Tab 5, Sir, of the box, and this is a schedule of lands that was prepared, of lands purchased by Mr. Joseph Murphy in Dublin between the 30th of May of 1965 and the 30th of December of 1969.

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The document, Mr. O'Shea, that I am going to show you has very small writing on it, but we are putting it up on the screen beside you, you might prefer to look at it from the screen. (Document handed to witness).

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This document is JMSE, Tribunal reference JMSE 26.9-18. There is a corresponding letter from Mr. Brendan Devine to Mr. James Gogarty of the 1st of July, 1986, which bears reference JMSE 26.9.16. The document I want you to look at to help me, if you can, is the schedule of the lands headed up "Grafton Construction Company Limited"?

A. Right, will it show up here?

360 Q. It will, yeah.

A. Go ahead.

361 Q. That's, can you see that, Mr. O'Shea?

A. It is flying around there.

362 Q. Is it possible to make it any bigger?

A. Yes, I know Balgriffin. Poppintree - Poppintree, now I --

363 Q. Sorry, Mr. O'Shea, I will take you through the document purchase by purchase, as best we can, but I want to show you before I do that, a letter dated the 1st of July, 1986?

A. Yes.

364 Q. Which is from Mr. Brendan Devine, I think you knew Mr. Brendan Devine?

A. I did, yes.

365 Q. He was the accountant for the Murphy company's?

A. That's right.

366 Q. In the 60s and into the 70s in Ireland; is that correct?

A. Correct.

367 Q. And this is a letter dated the 1st of July, 1986, and it is document reference JMSE 26.9-16. It is addressed to Mr. James Gogarty and says as follows, it is headed up "Griffin Lynch & Company".

.

"Dear Jim, I enclose a rather poor copy of the land schedule which I was unable to locate when you were in the office this morning. The document was prepared by Midgely Snelling & Company and contains a number of errors but does give a basic summary of the lands acquired up to 1972. The options referred to in the document were of course abandoned. I will rewrite the document leaving space for comments were you are not in agreement with the detail" .

.

And this document, that's the letter, saying that in effect these were prepared by Midgely Snelling who were an English firm acting on behalf of Mr. Joseph Murphy Snr. and his companies. It gives a basic summary of the lands acquired up to 1972, so the document we were going to look at are the lands acquired in Dublin by Mr. Murphy during that period of time. So we will look at the document.

.

Can I ask you first of all - would it assist you at all, Mr. O'Shea, if we photocopied it to a larger size and you had the document in handwriting, not handwriting, but in its typed version and in a bigger size?

A. I might be a Director - I was a Director of so many

companies.

368 Q. I think if you look at the document, Mr. O'Shea, and --

.

CHAIRMAN: Ms. Dillon, if you pause for a moment, we will get a bigger copy because it is obviously stressing the man's sight, it is only a matter of two or three minutes.

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369 Q. MS. DILLON: Of course, Sir. We will wait, Mr. O'Shea, and get you a bigger copy of the document.

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CHAIRMAN: In bigger print, it will be much easier to work with.

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A. Thanks. You are confusing me to be honest with you.

370 Q. MS. DILLON: These are a schedule of lands, Mr. O'Shea, that were apparently purchased by Grafton Construction or the Murphy companies between the 30th of May, 1965, I think is the first date, and the 30th of December, 1969.

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MR. HERBERT: Mr. Chairman, if I may? The witness has indicated that he is confused, I think you could be more, preferable now if My Friend was to ask him what, if anything, he recognises from this list of documents, of lands or whatever it is, rather than to put to him what the Council says the lands are and ask him to agree or disagree with this.

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CHAIRMAN: Sorry, in that detail would it be preferable if she asked him, gave him the name of particular plots of land, asked him does he recall, what does he recall about that plot, in that way rather than trying to - at least try to simplify it for the man. I think that is perfectly

genuine, that he can't recall particular things over a period of years. So if it was done that way.

MR. HERBERT: Yes, I think so.

371 Q. MS. DILLON: I was just about to do that, Sir, that was the next exercise we were about to embark upon, Mr. Herbert is, as always, two steps ahead of me. So, but before we get into looking at these plots of land, now that you have something that you can see, Mr. O'Shea, can I ask you, from the time that O'Shea and Shanahan was incorporated --

A. Yes.

372 Q. -- were you, did you give any assistance to Mr. Murphy Snr. in buying land?

A. Well, any land he bought, I mostly bought it for him, but he had bought, Jamestown Greater, that's up - he had bought that before I had any dealings with him at all.

373 Q. So that you did buy some lands?

A. I did, yes.

374 Q. And the land that you bought, did you buy it at auction?

A. Well, Balgriffin now, Balgriffin, Scotts Farms - that was negotiated with, what was your man? What's the fellow was, inside in the Gresham, and he put it to Murphy that there was some, so much land involved that there was nobody able to buy it in this country, and Murphy said he would buy it, and he bought it and it was there. I wasn't in the buying but I was director of it afterwards.

375 Q. And when you say that you gave assistance in relation to buying of land, did you go to auctions for example for Mr. Murphy?

A. I did yes, I did.

376 Q. We will go through each plot of land in turn, but in

general, I just want to get a feel for what was generally happening at this stage. Did you have authority from Mr. Murphy to buy land?

A. He was with me on one occasion out in Donabate, that big plot of land he bought out in Donabate, I forget the name of it, Poppintree, Jamestown, Balgriffin, I was with him on that day - I wasn't actually there when he bought it. Poppintree - I forget that deal. Carrickhill, Carrickhill, that would be, that's in Portmarnock, Saint Helen's.

377 Q. Did you ever buy land at an auction when Mr. Murphy was not present?

A. I did, yes. I bought Forest Road, Forest Road.

378 Q. Right. And did you have authority from Mr. Murphy to do this?

A. I had, yes.

379 Q. And in the main what kind of land were you interested in buying?

A. Building land.

380 Q. And would this normally be zoned land?

A. No, the land in, off Forest Road wasn't zoned at the time.

381 Q. But --

A. But it would, it was in the middle, and you know it was about to be zoned some time.

382 Q. In general, insofar as you were looking at land, were you looking at zoned land?

A. Zoned land mostly, that's right, yes.

383 Q. And was that because you would be in a position to build on that land?

A. That's right, yes.

384 Q. And was that the system you operated with Mr. Murphy?

A. That's right.

385 Q. That you would on occasion, but not always find land for Mr. Murphy, that was zoned residential?

A. Yeah, that's right.

386 Q. Yes, that it would be bought by one of Mr. Murphy's companies?

A. Yes.

387 Q. Such as Grafton Construction?

A. Yes.

388 Q. And then O'Shea and Shanahan Limited would build houses on the land?

A. That's right, that was the idea, yes.

389 Q. And what, did you operate the same system of site finds that had been in place in Higginbothan and Stafford?

A. Yes, yeah.

390 Q. So that that was the situation generally that pertained?

A. That was it.

MS. DILLON: I am just wondering, Sir, I am about to take him through the document to see can he identify which pieces of land he may or may not have assisted in buying. He is 45 minutes giving evidence, I don't know whether it is felt that Mr. O'Shea might require a break at this stage?

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CHAIRMAN: Would you like a break Mr. O'Shea?

A. I do have to test my blood.

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CHAIRMAN: Right, we are just coming up to the hour, so if you like to take a break for ten minutes.

A. I would like to take a break.

.

CHAIRMAN: Right. We'll take a break for ten minutes.

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THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED
AGAIN AS FOLLOWS:

391 Q. MS. DILLON: Mr. O'Shea --

A. Yes.

392 Q. -- before the break I was going to show you a document that

I think has been blown up and is in front of you, it is the
list of the lands?

A. Yes, yes.

393 Q. Do you have that in front of you?

A. I have. Well, I tell you, I am completely mixed up in it,
I prefer me to tell you the lands which I bought.

394 Q. That's fine. There is no difficulty with that?

A. But the other thing is there now, I forget them.

395 Q. All right. There is no difficulty with that. Well, do

you want to tell us from that list? Can you tie it into
that list or do you just want to tell from your memory?

A. I will tell you from my memory.

396 Q. All right.

A. The first land was the land at Forest Road which I bought
at public auction for a very reasonable price at the time,
I am not going to disclose the price. The next was, which
Joe Murphy was with me, it was land out in Donabate, it was
a big track of land and there was a house and all attached
to it, I forget the name of the thing now.

397 Q. I wonder was that Turvey House?

A. I bought Turvey House too, but this is different, this is
land on the Donabate side of Turvey House. We bought that
at public auction and Joe Murphy was with me at the
auction, but I was bidding and he was telling me "go ahead,
go ahead, go ahead". And that's it, we bought it. I
bought Turvey House too. We were inside in the Gresham

and the owner of Turvey House came to, he knew Joe, telling him that he wanted to sell the land, he wanted to sell Turvey House and Joe ordered a taxi, I went out, he didn't go with me at all, I looked at it, I came back and reported and said it was a mature house, one room is leading into the other, you would never make a hotel out of it anyway, except it would cost you an awful lot of money, it, would be a proposition, anyway he bought it, I don't know what he paid for it.

.
I bought the Gaiety Theatre and I was Director of that too. He just did the very same, ordered a taxi down to look at the Gaiety, I looked up through the roof and I told him the roof is in bad shape and the parapets would want to be seen after, and after that he bought it.

.
And I was there, I was the Director of that anyway definitely because I got free seats. There was land up in Jamestown and it was a small lot of land, it was next to the factory, I can see it there, I forget the name anyway. Tony Morrissey auctioneer, he was selling it. And I think, Murphy advised me to buy it before it went to auction and I bought it, I am quite clear on that, and now.

.
Balgriffin, I didn't buy Balgriffin, no. I didn't buy Balgriffin.

398 Q. Poppintree?

A. Poppintree, Poppintree, I can't remember Poppintree now - had he bought before? Poppintree, I think he did, I think he had that bought before, before he asked me to buy, I think he bought it himself. I don't know if there is any

more, there might be but I can't get around to it.

399 Q. Lands at Portmarnock?

A. Portmarnock, yes I bought that, I did. I bought, I think both of us were together at the public auction.

400 Q. And did you bid at the public auction?

A. I did, yes.

401 Q. Did you buy the lands?

A. We did yes, yes, bought the lands.

402 Q. Did you subsequently buy more land at Portmarnock?

A. It was Joe Murphy himself that bought land from Dermot Moore, 40 acres just above that. We went in and we put in a surface water there, which cost a lot of money.

403 Q. I will come back to talk about that.

A. I am just finishing. Go ahead, yes. I think, I can't remember any more.

404 Q. Lands at Finglas?

A. Well, that would be the lands, Finglas, that we bought from Tony Morrissey.

405 Q. And I think you subsequently built at Finglas; is that right, Cedar Wood or Cedarstown?

A. No, that was Cartons, I remember that land. No, he had that bought himself before, before I did know it.

406 Q. Did you buy any lands in Skerries?

A. I did, yes, I bought land in Skerries.

407 Q. And did you subsequently build on the land?

A. I did, that was zoned land.

408 Q. Did you build on the land at Portmarnock?

A. I did, build there.

409 Q. I think in total in Portmarnock more than 100 acres was purchased?

A. I think so.

410 Q. Slightly over 100 acres, 107, 108 acres?

A. Something like that.

411 Q. Did O'Shea and Shanahan build on that land?

A. We did, yes.

412 Q. And did you build on all of that land bar --

A. No, we were building on the license, we were building on the license and we get so many houses up to such a figure but like that, we did that on three or four occasions, but like, if Joe Murphy didn't, if he didn't sign, if he didn't give us the signature for, to carry on to another figure, they always proceeded because several - he always said you have to have a degree of honesty.

413 Q. So the situation was that most of the land that you bought or were involved in buying for Mr. Murphy was zoned residential land, it was building land?

A. Building land. Yes.

414 Q. And included in that was approximately over 100 acres at Portmarnock?

A. Yes, that's right.

415 Q. And at that, on those lands in Portmarnock you developed, O'Shea and Shanahan developed the Martello Estate?

A. Correct, yes.

416 Q. And I think bar about seven or eight acres or maybe nine acres you built on all of the land?

A. I did, yes.

417 Q. And I will come back and talk to you about that. In addition I think you built on the land that was bought in Skerries?

A. I did, yes.

418 Q. That was O'Shea and Shanahan again?

A. That's right.

419 Q. And I think you also built in Finglas?

A. Finglas, no I think, Jamestown, it was Finglas, yes that's

right. We built, that was only about six acres or that, that was zoned and the rest of the land, Joe Murphy bought it previously, I think to meeting us.

420 Q. Yes. And I think you built at a place called Cedar Wood?

A. That's, that's the one I mean, Cedar Wood.

421 Q. That was at Finglas?

A. That would be Finglas I suppose, yeah.

422 Q. And that was the system that you had in operation with Mr. Murphy, that your company, O'Shea and Shanahan, was building houses under license from Murphy companies?

A. That's right.

423 Q. And did your company ever put up any money towards the purchase of the lands?

A. No, no, no.

424 Q. So the arrangement was Grafton Construction or some other Murphy company would buy the land?

A. That's right.

425 Q. And O'Shea and Shanahan would build under license from the land?

A. That's right.

426 Q. And you operated, as I understand, a system of site fines?

A. Site fines.

427 Q. Which was paying for the cost of the site to Grafton?

A. That's right, we do the developing and build the house and there was a site fine put on them.

428 Q. This became quite a successful venture for yourself and Mr. Shanahan?

A. Yes, of course.

429 Q. Were you, during this period when these lands were being purchased in the early 1960s onwards, in reasonable contact, with Mr. Murphy Snr.?

A. Pardon?

430 Q. Were you in touch with Mr. Murphy Snr. during this time?

A. I was, yes we were, we went on holidays together and that kind of stuff, all the families went together on holidays.

431 Q. As well as having a business relationship you were friendly and your families were friendly?

A. We were, I was with him most of the time as a matter of fact when he came to Dublin.

432 Q. When you were buying land for Mr. Murphy could you do so on your own say so or did you need to contact Mr. Murphy to say "yes, that's okay"?

A. I usually gave him a ring, it was such a good bit of land, promising bit of land coming up. Telling him, you know, I might give him an idea of the price or something like that, I am not sure now, but he said "buy it, buy it, buy it".

433 Q. So you actually bought or your company bought some land from Mr. Murphy in 1967?

A. '67.

434 Q. You bought, did you buy four acres at Poppintree from Mr. Murphy?

A. Yes, I did, for workshops, that is correct, yes.

435 Q. Now, Mr. Murphy's company had a large acreage at Poppintree; isn't that right?

A. They had a big farm there, yes.

436 Q. And out of that there was a house known as Poppintree House?

A. Yes, Poppintree House.

437 Q. And yards and sheds?

A. Yes.

438 Q. And O'Shea and Shanahan Limited purchased that house and sheds and yard from, I think it was Grafton Construction?

A. Quite possible.

439 Q. In or around 1967?

A. Something like that, that's right.

440 Q. The document in relation to this, Sir, is at Tab 6 of your book, JMSE 1.9-371, and the history of this transaction is set out in the replies to particulars in the arbitration proceedings between Messrs. Bailey/Bovale and Lajos Holdings and Helmdale?

A. I don't know where. I never had heard of all those names, I don't any of them anyway.

441 Q. They don't concern you, Mr. O'Shea, it is simply the history that was furnished in arbitration proceedings that subsequently took place setting out the date on which you purchased this land.

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MR. HERBERT: Wait now, the witness has said he doesn't know.

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CHAIRMAN: Well now, we have a reasonable knowledge ourselves without any witness, and he is just filling in the historic process, he really is a historian to date.

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MR. HERBERT: I agree, Mr. Chairman.

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442 Q. MS. DILLON: The document in question at paragraph 1 (D) sets out that the lands which are referred to there are the four acres at Poppintree, and they are recited in the history, and that they have been sold to O'Shea and Shanahan in or about the year 1967?

A. That's correct.

443 Q. By the Grafton Construction Company and the folio, 6262 F?

A. I don't know what folio it was, we bought four acres anyway so --

444 Q. I think after you purchased the four acres you set up a

joinery business at Poppintree?

A. We did yes, our original joinery business is in Buckingham Street and the place became very rough and it was put in --

445 Q. In Buckingham street?

A. Yes.

446 Q. I think you applied for planning permission?

A. I did, yes. We got some kind of a planning there anyway, I don't know was it --

447 Q. And the history of the planning, again I don't know if it is required to go into it, at Tab 10, JMSE 1.11.140, that establishes in 1976 you ultimately got planning permission for a builders yard on the four acres?

A. Yes, something like that, yes, that's right.

448 Q. But I think it is also correct to say there had been three unsuccessful planning applications?

A. That's right, I don't know. Quite possible.

449 Q. Now, in or around 1967 did Mr. Murphy Snr. become involved in a company called George Milner Structural Engineers?

A. Yes, that's right.

450 Q. And can you tell me who introduced who in relation to that transaction?

A. Well, George was a friend of mine and we were over in London for a trip anyway, and we met Murphy in the centre and we had several drinks and George was talking about his company anyway, what he was doing, all that kind of stuff, by God, it wasn't that, at that stage but later on anyway, I think, I think George approached him again and Joe bought it from him, from Milner.

451 Q. And did Mr. Murphy carry out this transaction from London, do you know?

A. I don't know.

452 Q. Do you know whether he ever came over to see the premises

before?

A. He did, yes. I was with him as a matter of fact when he went in to see the business, on a Saturday morning, I was with Joe Murphy. And he was, I was in with Joe when, when it was working, you know, when the men was working there, you know.

453 Q. So you introduced Mr. Milner to Mr. Murphy?

A. Correct, yes.

454 Q. And Mr. Murphy acquired an interest I think in the firm, as it then was, George Milner Structural Engineers?

A. That's right, yes.

455 Q. And I think there were some problems with the workforce at around that time?

A. There was yes, a big problem.

456 Q. With the workforce?

A. Yeah.

457 Q. And I think at that time would it be correct to say Mr. Murphy was looking for someone to (1) run the company?

A. Yes, he was.

458 Q. In effect what would be called now a Managing Director?

A. Managing Director, yeah.

459 Q. Did you make any recommendation to Mr. Murphy about who would be a suitable person?

A. I did, yes.

460 Q. And who did you recommend?

A. I recommended Jim Gogarty.

461 Q. Now, before you recommended Mr. James Gogarty to Mr. Murphy had they known each other?

A. Oh they - yes, they were, they soldiered together in the Guards.

462 Q. Who said they soldiered together in the Guards?

A. Murphy. He soldiered, maybe he was in the Guards with Jim

Gogarty.

463 Q. Are you saying that Mr. Murphy made that comment when you recommended Mr. Gogarty to him as a suitable person?

A. I don't know, I think so, I couldn't tell you when that was said now, but it could be said afterwards, it could be said - I couldn't tell you when it was said.

464 Q. Did, after you introduced Mr. Gogarty to Mr. Murphy was Mr. Gogarty appointed to George Milner?

A. He was, he was yeah.

465 Q. Did you leave Higginbothan and Stafford to take up that position?

A. I don't know. I think there was some kind of a split-up between himself and Higginbothan Stafford, and I think he was on the way out of Higginbothan and Stafford's.

466 Q. At that time?

A. As far as I know.

467 Q. And Mr. Gogarty took up the position in George Milner?

A. Yes, that's right.

468 Q. And again there are some company records here that might assist us in relation to dates. I think the, at Tab 3, Sir, it is Milners (JMSE 195), and that's dated the 12th of August of 1968. That establishes at that stage that Mr. Bartholomew O'Shea, Tom Shanahan, Mr. Brendan Devine, and Christopher Kavanagh were Directors of George Milner Structural Engineer?

A. That's right.

469 Q. So at that stage you were a Director also?

A. That's right, yeah.

470 Q. So presumably Mr. - it should be at Tab 3 and 195 - so that at that stage Mr. Murphy had made his initial investment at any stage in George Milner Structural Engineers. Again by 1968 Mr. Murphy Snr. had made an initial investment in

George Milner?

A. Yes, that would be right. I know the estimate, I know anyway he bought it out.

471 Q. And you and Mr. Shanahan were Directors?

A. That's right.

472 Q. I think that by the 31st of December of 1969, 1969, Mr. James Gogarty was added on as a Director of George Milner and Sons?

A. I think so, yes, I expect so.

473 Q. So that he had taken up his position at that stage as Managing Director or person in charge of George Milner and Sons?

A. Quite possible, yes.

474 Q. I think if one looks at the document dated the 31st of December of '68, the previous year, the annual return shows that the share holding was divided between George Milner and Grafton, but that subsequently Grafton Construction acquired the entire shareholding and had done so by December of 1989?

A. That's quite possible.

475 Q. So that at that stage Mr. Gogarty was established in George Milner and Sons and the entire shareholding was owned by the Murphy company?

A. Correct, yes. That's correct.

476 Q. And there was a special resolution of the company passed on the 17th of May of 1970 which changed the name from George Milner and Sons Structural Engineers to Joseph Murphy Structural Engineers?

A. Yes, that's right.

477 Q. That's JMSE 214 is the document. So at that stage Mr. Gogarty is in place, you were still, I think, a Director of the company?

A. Yes.

478 Q. It had changed its name to Joseph Murphy Structural Engineers?

A. That's right.

479 Q. Yes. Now, at this time, which is about 1970, O'Shea and Shanahan, were they still building on Murphy lands?

A. Indeed, we would be, yes.

480 Q. And throughout the early 1970s, from 1970 to '75 did O'Shea and Shanahan continue its profitable relationship with Mr. Murphy?

A. What year did you say?

481 Q. Between this time, around this period which is 1970, from the time that Mr. Gogarty got established in --

A. Yes, we were, yes we were carrying on, yes.

482 Q. And I think you were building at, the Martello Estate at Portmarnock?

A. Yes.

483 Q. And you built on over 95 acres out there?

A. Something like that.

484 Q. Approximately how many houses a week were you turning out?

A. We were turning out five a week, we had a --

485 Q. Five?

A. Five houses per week.

486 Q. You were turning out?

A. Yes, between two estates.

487 Q. During this period were you also friendly with Mr. Joseph Murphy?

A. Yes.

488 Q. Were you aware for example, Mr. O'Shea, that you were one of the beneficiaries and your wife was one of the beneficiaries named under the Armoy Trust --

A. I never heard a word about that.

489 Q. -- by Mr. Murphy?

A. I never heard a word about it. I didn't know what it meant to be honest with you.

490 Q. Did Mr. Murphy ever discuss it with you?

A. No, he never.

491 Q. And Mr. Shanahan likewise, I think --

A. I would say so.

492 Q. -- was also named as a beneficiary under the trust?

A. That's right.

493 Q. Did you ever have any discussion with Mr. Murphy about this?

A. No, no, I didn't understand the bloody thing anyway.

494 Q. Yes but, if you didn't understand it, it means somebody spoke to you about it?

A. I don't - I can't remember, I can't remember anyway anybody talking to me about that.

495 Q. You didn't know that you were a beneficiary?

A. No, I did not, no.

496 Q. Under the trust?

A. No.

497 Q. Now, in April of 1968 Joseph, Mr. Joseph Murphy Snr. bought 23 Fitzwilliam Place. Do you remember 23 Fitzwilliam Place?

A. I do, yes, I bought that for him as a matter of fact.

498 Q. Were you the person who bought 23 Fitzwilliam Place?

A. Yes, because he was, he wanted to get a house in Dublin at all costs at the time.

499 Q. In 1968 he wanted a house in Dublin?

A. That's right.

500 Q. And this is a fairly substantial house?

A. I knew the type of house he wanted. I knew he didn't want a suburban house or where everybody would be peeping at him

coming in and going out, kind of stuff, and 23 Fitzwilliam Square, it was zoned for offices but it made no difference, he made it his home when he was here in Dublin.

501 Q. Why did Mr. Murphy at that time want to, did Mr. Murphy return to live in Dublin?

A. He did, he lived here for a few years, that's right, yeah.

502 Q. It was around the time that he bought Fitzwilliam Place?

A. Yes, when he bought Fitzwilliam Square, he moved in there.

503 Q. When you say it was his home, were his family here with him?

A. They were. His wife was with him, I think that, I think the family were there too but they were going to college I think, you know.

504 Q. This is 1970?

A. I suppose it was, I couldn't tell you what year it was.

505 Q. That house was bought in April of 1968?

A. '68, is that right? It had to be, that would be correct.

506 Q. Had Mr. Murphy Snr. discussed his plans with you at that stage?

A. What plans?

507 Q. About why he wanted this house?

A. He did not, he did not tell me.

508 Q. So --

A. He just wanted to live in Dublin he said.

509 Q. He wanted to, it was your understanding he wanted to come back to live in Dublin?

A. Well I --

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MR. HERBERT: Wait now, Mr. Chairman, this is going one step too far. She can't ask the witness that. He told us he did not tell him what his plans were.
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MS. DILLON: I am only asking what his understanding was.

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MR. HERBERT: He can't be asked to speculate like that.

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CHAIRPERSON: Just a moment, look at the script, you are asked; "Had Mr. Murphy discussed plans with you at that stage and, about why he had the house? He said he just wanted to be in Dublin". I think that's as far as you can go, at that point. From our own knowledge we know that significant reasons arise, in relation to the trusts, they arise at or, not quite this time, but they were involved in this, and unless they can be tied into the trust I don't think it would be fair to let the witness come in on a hearsay basis.

.

He can certainly say how much he saw Mr. Murphy, when he saw him, how often he saw him, that sort of thing. The technical detail in relation to the trusts I don't think can be - unless he can show that he was party to a very personal discussion, by all means of course, I don't know what he is going to say.

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MR. HERBERT: He said "he did not tell me his plans" in answer to a direct question by My Friend.

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510 Q. MS. DILLON: I think you told us, Mr. O'Shea, that you bought 23 Fitzwilliam Place for Mr. Murphy?

A. That's right.

511 Q. Now, what instructions did you receive from Mr. Murphy before you bought that house for him?

A. To buy a house for him, what I thought best.

512 Q. Where you thought best?

A. Yes, that would be suitable for him. I had an idea what he would like.

513 Q. What he would like. I think you told us that Mr. Murphy Snr. wouldn't have liked living in a suburban house?

A. That's, that was my view of it anyway, that he wouldn't, because - I felt that way about it, you know.

514 Q. Right. Did you have any instructions about what use this house was going to be put to when it was purchased?

A. No, none whatsoever.

515 Q. Right. Did, were any works carried out to the house after it was purchased?

A. No, there wasn't any works, none whatsoever. There was a family living there previous to that, as far as I remember, they kept the house in great form.

516 Q. So the house before you purchased it was used by a family as a family home?

A. As a family home, yes.

517 Q. And were there any alterations made to the house after Mr. Murphy purchased it?

A. No, none whatsoever.

518 Q. It wasn't converted, for example, to offices or anything like that?

A. I think it was zoned for offices, if I am not mistaken, previous to that, although the family were in it, I am not sure now about that, but something tells me about that, but I am not aware of it.

519 Q. Yes. Did Mr. Murphy come back to live in that house?

A. He did, yes.

520 Q. Can you recollect for how long he lived in that house?

A. I don't know how long he lived - he lived in it a few years.

521 Q. In the house in Fitzwilliam Place?

A. Yes, yes.

522 Q. Was a muse developed at the back of that house do you know?

A. There was, there was a muse.

523 Q. It was there when he bought --

A. Correct, he bought muse and all.

524 Q. Was there any worked carried out to that mews?

A. There was yes, we did a bit of a job to the mews.

525 Q. When you say "we" that's O'Shea and Shanahan Limited?

A. That's right.

526 Q. What did you do to the mews?

A. Put a shower in and altered the kitchen, things like that,
you know.

527 Q. Was it also a house for living in?

A. Oh, yes.

528 Q. As opposed to offices?

A. He lived there, he used to often come there.

529 Q. I want to, we had stopped in relation to the purchase of
the lands and the work you were doing was around the early
1970s. I want to take you to the time when you first met
Mr. George Redmond?

A. Yeah.

530 Q. Can you recollect when you first met George Redmond?

A. I don't know, sometime after he, after I getting married we
met in a pub, when we used to go for a jar at night. I
would have a jar with George, with George Redmond, George
Milner.

531 Q. Milner. Yes, I was asking you, it is my mistake because I
didn't speak clearly enough, I was in fact asking you about
Mr. George Redmond who was the Assistant City and County
Manager?

A. Yes, that's right.

532 Q. Now, I think - are you all right, Mr. O'Shea?

A. I am all right, yes.

533 Q. I think that you, Mr. Shanahan, your partner --

A. Yes.

534 Q. -- knew Mr. George Redmond?

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MR. HERBERT: Mr. Chairman, please now, I think we are getting into an area where we can't have any form of leading questions. I think you accept that's very reasonable, there are lots of ways this question can be asked, I don't want to hinder My Friend in anyway at all, but I mean, at this stage we must have some semblance of an ordinary inquiry to the examination.

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CHAIRMAN: Well, there is some substance, I won't get too difficult. If we go about it the other way, inquire how did he become --

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MR. HERBERT: First of all, did he ever hear of Mr. Redmond and proceed from there and how did he hear of him, etc., etc..

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MS. DILLON: Thank you very much, Mr. Herbert, for your assistance. It is welcome, as always.

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MR. HERBERT: I don't mean to be sarcastic, Mr. Chairman.

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535 Q. MS. DILLON: I put that down for my performance, all right. Can I ask you, Mr. O'Shea, about your development at Martello?

A. Yes.

536 Q. I think, I hope I will not be accused of leading on this, you had a serious problem with the surface water drain?

A. Yes.

537 Q. Can you tell me exactly what that problem was?

A. We put a water drain down the road, a new water drain down the road to the cliff, to the bottom of the cliff.

538 Q. What was the purposes of that drain?

A. The surface water, the water comes off the house and the water comes off the road, that's surface water.

539 Q. And was the Martello development, just to clarify where the Martello development was, the Martello development I think was --

A. Just opposite the beach there in Portmarnock.

540 Q. Carrickhill and Saint Helen's?

A. That's right.

541 Q. And again if I, I am not trespassing on anything, this was Murphy land you were building on?

A. Yes, zoned.

542 Q. And so there was a problem with the surface water drain?

A. Yes.

543 Q. And what solution was found to the problem?

A. Well, the solution was found to the problem, we had to take the water in down to low water, we had, we had to cut down rock and every bloody thing, you know, which we thought was unnecessary, and we made an appointment with the Dublin County Council offices to discuss it with them, that is correct, we thought this was unnecessary, because we, the 50 acres we were building on, it was quite all right as it was, you know? Which is what happens all over the place. But then they wanted to take, when we bought the extra acreage from mill - from what would I call it, Moore, they wanted to take that water, so we had to do it.

544 Q. So you went into a meeting, you had a meeting I think you said?

A. I made an appointment with the Council.

545 Q. And who did you meet?

A. George Redmond was in there. The County Engineer was there, the Chief Engineer, Doherty was the name, a Donegal man, and there was two other geniuses there, I don't know the names at all, we discussed the drain with them.

546 Q. And when you say "we", who?

A. Tom Shanahan and myself.

547 Q. What did the Council tell you that you had to do?

A. That we would have to carry it down to the lower water.

548 Q. What was involved in carrying the drain down to lower water?

A. Well, you had to blast - you see the drain was running where there was rocks. We had to level off the rocks, we had to take rocks out of the way, and we had to put a big pipe down to lower water encased in concrete which was a very difficult job and expensive job.

549 Q. Did you have to blast through rock to do this job?

A. Well, it was a subcontractor that did it for us, Austin Hastings, he knew, he knew his job very well on that. I don't know whether they blasted it anyway, but I know they had terrible trouble, they could only work so many hours of the day when the tide would come in, they then had to abandon it, it washed away the concrete and every goddamn thing.

550 Q. How many acres of lands would this surface water drain?

A. A further 40.

551 Q. Have been able to surface?

A. Yes, any adjoining land we would charge them for going into it, which didn't make sense because if there was a drain on a public road, no man can stop it going into it.

552 Q. Did you ever discuss this incident with Mr. Gogarty for

example?

A. I am not sure now whether I did or not.

553 Q. Did you ever discuss it with Mr. Murphy Snr.?

A. I don't know, I probably did, I would say I did, yes.

554 Q. Was this a --

A. I am not sure, I am not sure who I discussed it with.

Jesus, it is a long time ago.

555 Q. Yes, I am aware of that. Was it a big additional expense to you at that time?

A. It was a big expense.

556 Q. Was that the first occasion on which you met Mr. George Redmond?

A. Well I think it was, but thinking back on that, I think I met him in a golf club out in Lucan, I think I, Tom Shanahan was there and introduced me to him, and we had a general chat about golf and that stuff and where I was a member and all that kind of stuff, and he said he would like to play in Elmpark because it had a lovely course, so I asked him there, this is, a good few occasions, to play golf.

557 Q. So you played golf reasonably regularly with Mr. Redmond?

A. Well, whenever there was an open competition, that's when you bring in visitors, and they were, not too often now.

558 Q. How often would you have met him on an annual basis?

A. I suppose I met him four or five times, I suppose.

559 Q. And did you ever have any occasion to go back to Mr. Redmond in the County Council?

A. Oh, yes I did now, you reminded me of that, yes.

560 Q. And --

A. We had, when he got the planning approval for a shopping complex there --

561 Q. Sorry, you had a planning approval for a shopping complex

where?

A. In Portmarnock.

562 Q. In Martello?

A. Yes.

563 Q. And what happened with the shopping complex?

A. We had a planning approval for a, looking for planning approval for a pub because we did pubs already, you know, and the residents there, they were up in arms against the pub, and I didn't blame them afterwards because they gave us terrible trouble, they had windowsills on us, and we were close to the holidays, they ran the tap into the cement silos, it rendered the cement silo useless and the foreman on the site said that the residents were very annoyed about the pub.

564 Q. So the residents were very annoyed about the fact that you had planning permission for a pub on the Martello Estate?

A. Yes.

565 Q. And you were having some difficulties of a trespass nature?

A. That's right.

566 Q. And property belonging to you was being damaged at the time?

A. Correct, yes.

567 Q. And you also had windows sills and that broken?

A. You are right.

568 Q. Who did you go and see about this problem?

A. I went to see George Redmond about it.

569 Q. Why did you go to see Mr. Redmond about it?

A. Well, I don't know. He was a City Manager at the time and I had known him and we went in to him, made an appointment and went in to him and told him what was happening, what was happening, which you said there and he said, well he said, "the parish are looking for a site for a church, why

don't you get Murphy to give them a site for the church on the lands that's not zoned and your road and drains running in front of it". So we gave him, we got, we gave the site to the church and abandoned the idea of building a pub.

570 Q. And in lieu of the pub what did you build?

A. Houses.

571 Q. All right. It seems to me somewhat unusual, Mr. O'Shea, that if your property is being damaged and broken by residents and you have acts of trespass being committed against your property that instead of going to the Gardai, which one would think would be the first port of call, you go into the Assistant City and County Manager?

A. Well, the Gardai - to go into the Gardai and tell them that they were trespassing on our land, they would tell you, "I am not going to go there and mind it for you", that's what they tell you.

572 Q. Did you actually go to the Gardai about the problem that you had?

A. I can't remember whether I did or not, no.

573 Q. But your recollection is it, that you felt the solution to your problem might lie with Mr. Redmond?

A. Yes, I just had a chat with him about it, you know.

574 Q. And Mr. Redmond put together a solution that solved the problem?

A. That's right.

575 Q. Right. Did you seek assistance anywhere with this problem other than with Mr. Redmond?

A. I can't remember, I can't remember, no.

576 Q. But you do recollect going to see Mr. Redmond about this problem?

A. That's right.

577 Q. And you don't recollect going to see anybody else about the

problem?

A. I don't, no.

578 Q. Mr. Redmond's solution was that if Mr. Murphy would agree to it --

A. Yes.

579 Q. -- the land, some land should be given to the local community for a church?

A. Yes.

580 Q. And you would then abandon the idea of building the pub and build houses?

A. Yes.

581 Q. So did you get those instructions from Mr. Murphy that you could do that?

A. No, we told Mr. Murphy the position.

582 Q. So when you say you told Mr. Murphy the position, did you tell him the history of the difficulties you were having out on the site?

A. Yes, I did, yes.

583 Q. Did you tell him about your visit to Mr. Redmond?

A. I don't remember. I don't know whether I did or not.

584 Q. Well, wouldn't it be reasonable to conclude, Mr. O'Shea, that if you were going back on Mr. Redmond's advices to Mr. Murphy for his agreement to abandon --

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MR. HERBERT: Mr. Chairman, I object to this question.

This again is trying to force the witness to say something.

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CHAIRMAN: Perhaps we will get it rephrased. We will get it rephrased.

585 Q. MS. DILLON: Mr. O'Shea --

A. Yes.

586 Q. You had a meeting with Mr. George Redmond following difficulties on the site?

A. Yes.

587 Q. Mr. Redmond advised you, amongst other things, to discuss with Mr. Murphy the idea of giving to the local community a piece of land on which a church would be built?

A. Yes.

588 Q. And abandoning the idea of having a public house?

A. That's right.

589 Q. And you proceeding to build houses instead of the pub?

A. Yes.

590 Q. Did Mr. Murphy subsequently make that land available for a church?

A. Oh he did, yes. The church got the site, they got planning permission for it.

591 Q. Did you speak to Mr. Murphy about --

A. I did yes, it was Murphy's land not mine.

592 Q. It was Mr. Murphy's land, you were only building on it under license?

A. Yes.

593 Q. Now, I would like you to think very carefully about the conversation you had with Mr. Murphy following the conversation with Mr. Redmond. I want you to tell me first of all did you explain to Mr. Murphy the difficulties you were having out on the site?

A. I did, yes. As far as I know I did, I was bound to, yes.

594 Q. Did you explain to him about the windowsills being broken?

A. Yes.

595 Q. Did you explain to him about the problem you had with the concrete silo?

A. I did, yes.

596 Q. And the water pipe being left running into it and the

general unrest there was in the community about this public house?

A. That's right.

597 Q. And did you explain to Mr. Murphy that you had received advice about how to solve the problem?

A. Yes.

598 Q. Did you indicate to Mr. Murphy from whom this advice had come?

A. I probably did, yes.

599 Q. So it would be reasonable to conclude that when you were making a full disclosure to Mr. Murphy about the difficulties you were having in Martello you told him it all from start to finish?

A. Yeah.

600 Q. Including the fact that you had gone in to see Mr. Redmond and Mr. Redmond had provided a solution to the problem?

A. I don't know now whether --

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MR. HERBERT: The witness is refusing to have words put in his mouth, Mr. Chairman. I am subject to correction by you in this because I wasn't in Guernsey, but from my reading of the transcript of the evidence which the Commissioner took in Guernsey I don't believe that any of this was put to Mr. Murphy. Now correct me, Sir, if I am wrong in this.

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CHAIRMAN: I think you are correct, now I am only speaking from recollection.

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MR. HERBERT: It is very frightening if that is so.

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CHAIRMAN: It is not, here you are getting an account, a

first hand account from this witness, as to how the problem in relation to it were solved. And the problem was solved by a donation to, a very well-known charitable organisation.

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MR. HERBERT: Yes, Sir. That's a matter --

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CHAIRMAN: It was a donation from the assets of Mr. Murphy.

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MR. HERBERT: That's --

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CHAIRMAN: I think that as there has been no suggestion that Mr. Murphy has ever objected to it, that his consent was obtained, and I don't think we should have an argument as to how his consent was obtained. It is a historical fact really.

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MR. HERBERT: Yes, but what my concerns are about are the words, Sir, I would have thought, being suggested to the witness about whether or not he was told about Mr. George Redmond, that is my principle concern.

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CHAIRMAN: Just a moment. While I appreciate you have an interest in this matter, it is not in the protection of Mr. George Redmond, I don't think that's going to affect you at this moment in time. I see a different drift to that question, at least I think I do.

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MR. HERBERT: I mean you are --

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CHAIRMAN: Let's try it another way.

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MS. DILLON: The answer, if I read back the transcript it might clarify the problem the witness has without any prompting from me, and the following is the sequence of the questions:

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"Did you explain" - we are talking about, this is the conversation between Mr. O'Shea and Mr. Murphy; "Did you explain to him about the problem you had with the concrete silo?".

A. As far as I know.

601 Q. You are all right, Mr. O'Shea, just for one second. "And the water pipe being left running into it and the general unrest there was in the community about that? That's right. Did you explain to Mr. Murphy you had received advice about how to solve the problem? Answer: Yes".

A. I probably did.

602 Q. "Did you indicate to Mr. Murphy from whom this advice had come? I probably did, yes".

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Now, there can be no suggestion in relation to that series of questions and answers, that either (A) the questions are leading to the witness or (B) that I'm attempting to put words in this witness' mouth. I am not attempting so to do. The witness has himself indicated that he probably did tell Mr. Murphy where the advice had come, and he has already told us that the advice has come from George Redmond.

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MR. HERBERT: Do you want to make him take the next step and connect the two between Mr. Murphy and the witness and Mr. Redmond?

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CHAIRMAN: That's not necessary.

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MS. DILLON: I am not seeking to make, I am not seeking to establish any connection. I am seeking to establish what this witness --

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CHAIRMAN: Simply has established, presumably, a knowledge in the hand of Mr. Murphy of how the problem was solved. That's all that evidence leads to. It doesn't go any further than that. At the moment.

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603 Q. MS. DILLON: That's right. So, following your discussion with Mr. Murphy, did Mr. Murphy agree to donate to the public the site for the church?

A. Yes.

604 Q. At Martello. And you abandoned your plans to build a public house?

A. Correct, I told you that before.

605 Q. And you built houses out there instead?

A. Yes.

606 Q. And this in fact is the advice you told us you were originally given by Mr. George Redmond?

A. That's right.

607 Q. I would like you to try and assist me at all, Mr. O'Shea, as to why it was you went to Mr. Redmond for this advice?

A. Well, he was the City Manager at the time. I had known him, I played golf with him, and he was the only one in the Corporation that I could talk to.

608 Q. Yes. And I am just suggesting to you that it seems to me, obviously I mean, I wouldn't have your knowledge of the entire circumstances but --

A. You have a fair good idea of it now.

609 Q. But the Assistant City and County Manager of Dublin is not a person I would normally think of running to if there was civil unrest on a building site?

A. I didn't run to him. He asked me to play golf with him, I didn't run to him, he asked me to play golf, that's why I came to him.

610 Q. I am saying in relation to this problem that you had, Mr. O'Shea, that the first port of call you made for assistance was to Mr. George Redmond?

A. Yes, that's right. I told you that, yes.

611 Q. Would that seem to you the natural place to go for assistance with a problem like that?

A. To the Corporation or the Council, whatever they were, whatever the problem was. He was the only person I knew in there, knew in the offices there.

612 Q. And was he the person you always dealt with if you did have a problem?

A. I never had any other problem than that, because the land we built on, it was zoned so there was no problem with anything. It was zoned land we always built on.

MS. DILLON: Sir, it is nearly 4 o'clock. I am moving on to something else.

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CHAIRMAN: I think if it is 4 o'clock the witness has virtually two full hours and has been very helpful. We will leave it until half past ten tomorrow morning?

A. Oh heavenly God.

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CHAIRPERSON: Would that be too early?

A. It would be a bit early for me.

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CHAIRMAN: Will we say 11 o'clock?

A. Make it 11 o'clock if there is any chance.

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CHAIRMAN: We will say 11 o'clock tomorrow morning and we will see each other again. Very good, we will do that.

A. God, sure I am worn out of it.

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CHAIRMAN: You never know what could stop on the way home.

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THE HEARING THEN ADJOURNED TO THE 10TH NOVEMBER, 1999, AT 11 AM.