

THE HEARING RESUMED ON THE 18TH OF JANUARY, 2000, AS
FOLLOWS:

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MS. DILLON: Good morning Sir. Miss Carol O'Farrell
barrister, instructed by Mr. Michael Burke, of Dublin
Corporation appears for Mr. Michael McLoone who is probably
the last witness that will be called today, and they have
an application for limited representation. Mr. McLoone was
the valuer who dealt with the valuation of the nine acres
that will be dealt with today, Sir.

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MS. O'FARRELL: Mr. Chairman I have been instructed by the
Law Agent of Dublin Corporation on behalf of Mr. McLoone,
Chief Valuer, for the purpose of giving his evidence to the
Tribunal and in those circumstances I am making an
application for an order of limited representation.

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CHAIRMAN: I will make the order for limited
representation at your request.

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MS. O'FARRELL: Thank you.

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MS. DILLON: First witness this morning Sir, is Mr. Peter
Mycroft.

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MR. COONEY: Before Mr. Mycroft is called to the
witness-box, there are a number of matters I would like to
raise with you, if I may, Mr. Chairman. And I will do so,
because it appears that this segment of the Tribunal will
be ending shortly, perhaps in the next two weeks, fortnight
or three weeks at the most.

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The matters I want to raise with you, Mr. Chairman, were referred to in two letters written to you by my instructing solicitors on the 14th of January. I differentiate between these two letters by saying that one of them contains three queries and the second letter contains one query only.

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This letter Mr. Chairman is addressed to Miss Howard, the solicitor for the Tribunal. It says as follows: " Dear Miss Howard".

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MR. O'NEILL: Before Mr. Cooney goes into this matter, this is the subject of correspondence as Mr. Cooney rightly says. Correspondence is receiving attention and he will receive in the post, a reply to the queries which are being raised. I do not believe that it is appropriate that the concerns that be expressed in that correspondence are matters which are to be aired in this particular venue. The response which will go to My Friend in due course, may be considered by him and if in the event he feels that there is an entitlement to pursue the matter further, of course application can be made to you for that purpose.

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However, the matters which are listed for today are matters of evidence and witnesses are here to give that evidence, and in the circumstances I would say that this matter should not proceed in the format that is intended by My Friend.

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MR. COONEY: Well if Mr. O'Neill tells me that we are, we will get a reply and a full an adequate reply very shortly, Mr., Chairman I am content with that, but these are matters of extreme importance for my client and they must be

attended to, Mr. Chairman, before the conclusion of this segment of the inquiry. And the fact that they raise them in correspondence does not in my respectful submission, preclude me from raising them now as they are of urgent importance to my client. I propose, Mr. Chairman, subject to your ruling of course, to put these matters now on the public record in case we don't get satisfactory reply.

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CHAIRMAN: Mr. Cooney, I have every wish to facilitate you but I think that one must look at this matter as a global unit. And the response in correspondence to you must be part and parcel of what ever submission you make, because it is a total unit and I have to consider it as such. I will certainly facilitate you once you receive the correspondence and have had an opportunity of considering it. If you mention the matter to me I shall certainly make time available for you.

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MR. COONEY: It is a question, Mr. Chairman, of when this information is to be furnished to us because it is essential that we have it before the evidence in this segment of the Tribunal is completed, in fact before we have it, that we have it before some of the intended witnesses are called.

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Now, if Mr. O'Neill can assure me that we will have not merely an acknowledgment but a full response setting out the information which we require within the next two or three days, I am happy to leave it at that, Mr. Chairman. If I can't get that assurance, Mr. Chairman, then I regard it as essential to my clients interests that I put these matters now on the record of the Tribunal.

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MR. O'NEILL: The letters to which My Friend refers Sir, were received by the Tribunal yesterday morning. They are here as and from yesterday morning Sir.

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MR. COONEY: One of them was faxed on Friday last, Mr. Chairman.

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MR. O'NEILL: I repeat that the letters that My Friend is referring to were received by the Tribunal yesterday morning. They have receiving consideration and in the normal course of events a reply will be issued to My Friend. If he is unhappy with the content of that the matter can proceed further.

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MR. COONEY: All I am asking is Mr. O'Neill to tell me when we may expect that correspondence, will it be sometime this week or next week?

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MR. O'NEILL: It will be when the matter has been considered. I would expect in the normal course that would be as early as tomorrow and if, if it is a matter that has to be dealt with by, it is not being dealt with by me; at present some other member of the legal team are dealing with the matter; I cannot answer for him, there is no mystery in the matter. My Friend will receive a reply in the normal course. I cannot see how he is making an issue out of something which is not an issue.

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MR. COONEY: It is an issue, Mr. Chairman, because the information which we seek is of vital importance to my client. It is equally vital that we have it before this

segment of the Tribunal finishes. Now if Mr. O'Neill assures me here at an opening sitting of this Tribunal that this information will be furnished to us within the next few days. That is an end to the matter.

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MR. O'NEILL: A reply to My Friend's letter will be given to him in due course. I cannot predict when that would be. I would find it extraordinary if it isn't within the next couple of days, if it isn't within the next couple of days it is because there is a specific reason which will be dealt with. I don't know that such a reason exists. I anticipate that the reply will be within the next couple of days maybe as early as tomorrow, more than that I cannot say Sir.

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MR. COONEY: Well, will the reply contain the information which has been requested, Mr. Chairman? That is what I am asking --

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CHAIRMAN: Mr. Cooney, I don't know the answer to that neither does Mr. O'Neill since he is not dealing with the correspondence. What I suggest, and I do so with every consideration and courtesy to you, that you leave the matter stand and return to the matter in say 48 to 72 hours if you haven't reached satisfaction. I think that is the appropriate way to deal with it and it will be dealt with. I give you this assurance, you will be given time, whatever matter is under consideration, at or about that time.

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MR. COONEY: Very well.

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CHAIRMAN: I can't go further. I am not party to what is

being, going on, in the sense that I haven't actually seen the correspondence.

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MR. COONEY: Very well. I understand that Mr. Chairman.

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CHAIRMAN: I will see it between now and then obviously.

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MR. COONEY: Very well, Mr. Chairman. I accept that.

Just for the record, may I say Mr. Chairman that one of the letters had been faxed to the Tribunal on Friday last.

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CHAIRMAN: Well can we go on with the business of the day. Thank you very much, Mr. Cooney. I will deal with the matter in due course.

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MR. COONEY: May it please Your Lordship.

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MS. DILLON: There are four witnesses today. The first witness is Mr. Peter Mycroft; Mr. Doherty, Mr. Tom Doherty will follow him; Mr. Michael Lynch will follow him; Mr. McLoone is likely to be the last witness. In case of Mr. Burke and Miss Farrell I can say that they are unlikely to be reached before lunch but they are likely to be reached almost immediately after lunch, if that is of any assistance to them.

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MS. CARROLL: Thank you.

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CHAIRMAN: That is for yourself.

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MS. DILLON: Mr. Peter Mycroft.

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PETER MYCROFT, HAVING BEEN SWORN, WAS EXAMINED BY MS.
DILLON AS FOLLOWS:

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1 Q. MS. DILLON: Good morning Mr. Mycroft. Thank you for
travelling over --.

A. Good morning.

2 Q. -- to give your evidence. My name is Patricia Dillon, I am
a barrister with the Tribunal and I am going to ask you
some questions about the statement that you furnished to
the Tribunal. Which is an undated statement and a copy of
which I will now hand to you (document handed to witness).
The solicitor to the Tribunal will hand to you. Well, if
we get some background details out of the way while we are
finding your statement, Mr. Mycroft.

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I understand that you are an engineer by qualifications; is
that correct?

A. I am, yes.

3 Q. Can you tell us when you qualified and what your experience
in general has been?

A. I served an apprenticeship in a very large factory in the
west midlands and I gained an electrical engineering
qualification.

4 Q. And where did you --.

A. Since then I have worked for many employees, employers.

5 Q. As an electrical engineer Mr. Mycroft; is that correct?

A. Yes.

6 Q. And can you tell me when you first commenced employment
with the Murphy Group of companies or with the Murphy Cable
Laying company in England?

A. In 1986.

7 Q. And prior to that where you had been employed?

A. I had been employed with the government of the United Arab Emirates and with the government of Saudi Arabia.

8 Q. And all of this work was in relation to electrical engineering work?

A. It was in relation to electrical and civil engineering work.

9 Q. Yes; and when you commenced your employment with the Murphy Group of companies, what particular company employed you?

A. Sorry?

10 Q. Which particular company was your employer in the Murphy Group of companies?

A. Murphy Limited Cable Contractors and Civil Engineers.

11 Q. Yes; and you were employed as a site engineer; is that correct?

A. That is correct.

12 Q. And can you just explain, in general, what type of work the company was involved in?

A. I took on responsibilities for major projects for the Murphy Cable Contracting and Civil Engineering Company. My first project being to install a 33 KP ring main in the Shell refinery at Stainlow (?). Following that I moved to London to begin other major projects of a similar nature.

13 Q. And in 1988 you were involved in the cable laying at Wimbledon Grid to Lots Road; is that correct?

A. That's correct.

14 Q. And can you explain, again, in general what is involved in a project of that size?

A. We have a start point and a finish point of several kilometers long.

15 Q. Yes?

A. And the intention is to lay in this particular project

132,000 vault cables and auxiliary cables between the Wimbledon Grid Site and Lots Road site, in general sections of about 500 metres.

16 Q. And were you the design engineer as well as the site engineer? Did you draw up all the plans for this job?

A. No, we are handed plans from the client which dictates the route we take and the cables we put in and we are, or the Murphy company are installers.

17 Q. And you were the site engineer in charge of the entire project?

A. That's right.

18 Q. And I think you have said that you made detailed records in relation to this job. It was a very difficult job, this particular job; is that correct?

A. It wasn't difficult in the general sense, some of the sections were rather difficult.

19 Q. Um hum. And you said, I think, in your statement, that you made detailed records?

A. Yes.

20 Q. When you were doing this job. Can you explain to me what type of records you would have kept?

A. The records I kept are for the purposes of payment, so I would take detailed records of the trench that was dug, the ground that was met, the conditions; in other words whether it was wet or required pumping, day work records, and installation records and all would be for the purpose of payment.

21 Q. For submitting to the client?

A. That's right.

22 Q. At the end, or in the course of whenever payment was due?

A. That's right.

23 Q. And was that your responsibility?

A. Indeed it was.

24 Q. And in relation to the matter of labour, for example, was that your responsibility?

A. Claims for labour payment would be my responsibility. Payment of wages was not my responsibility.

25 Q. Yes, but insofar as the client was concerned, you dealt with the client and you were the person who produced the records for onward transmission to the client?

A. Yes.

26 Q. For payment on foot of the contract?

A. That's right.

27 Q. And this would have been a significant contract?

A. Indeed it would.

28 Q. And would it have carried with it significant extras?

A. Yes.

29 Q. And these would all have had to have been costed?

A. Yes.

30 Q. And these would all then have to be supported by estimates or documents?

A. That's correct.

31 Q. And would this, as site engineer, would it have been your function then to produce these documents for onward transmission to the client in respect of both the contract and the extras?

A. Yes.

32 Q. So you were the person who would have prepared all of these and sent them on?

A. Yes.

33 Q. And I think you said in your statement that Mr. Joseph Murphy Jnr. worked closely with you throughout this project?

A. Yes.

34 Q. Now, you commenced work on this project in 1988?

A. Yes.

35 Q. According to your statement. Did Mr. Murphy Jnr. commence work in 1988 with you?

A. Yes.

36 Q. And can you tell me who, how did he come to end up working on this project?

A. I think he was assigned to a major project primarily perhaps to gain experience, but also to assist me in the general running of the job.

37 Q. Yes; and who --.

A. As an assistant on the job in other words.

38 Q. He was assigned to you?

A. Yes.

39 Q. Yes, and who was - who assigned him to you?

A. The company.

40 Q. You are not aware of who assigned him?

A. No.

41 Q. Did you have any say in the selection process, as it were?

A. No.

42 Q. So did Mr. Murphy Jnr. have any qualifications or experience in carrying out this type of work?

A. I never queried that aspect.

43 Q. What job did Mr. Murphy perform when he was working with you?

A. All sorts of duties, generally helping out. He perhaps ordered materials, he would check on materials, he would assist me with measuring, he would be a gopher if you like; go for this go for that, generally assisting me.

44 Q. When you say he would have been ordering materials, would he have been in a position to form a view himself that materials need to be ordered or would he have to take an

instruction from you or somebody else in relation to that?

A. I would think it would generally come from me.

45 Q. And in relation to costings, were these costings, if he was preparing costings, was he working with you on costings or was he doing costings himself without any assistance?

A. I think it was a joint effort.

46 Q. The costings was a joint effort?

A. Yes.

47 Q. What exactly is involved, Mr. Mycroft, you must excuse my ignorance in preparing costings?

A. I would want to know how much wages had been involved each week, how much plant and transport had been costed to the job, and how much work was in progress and I would balance one against the other to see how the job was going.

48 Q. And you would do that job?

A. I would.

49 Q. And when did you do that job, can you recollect? Was it done on a daily basis?

A. No, I don't think so. It was done one day a week I would think.

50 Q. And would Mr. Murphy have been present when you were doing that job?

A. Perhaps, but it wasn't, it wasn't something that required his presence, let me put it that way. It was something done, that was done for my benefit and for the benefit of the company.

51 Q. I see. Can I ask you, you have said in your statement that you recollect this project very clearly because it was a very big project from your point of view and you were the site engineer with total responsibility?

A. Yes.

52 Q. And it was a project of which you were very proud and it

was ultimately concluded successfully?

A. It was.

53 Q. And you have said that you have examined the records of the works carried out in May and June of 1989?

A. Yes.

54 Q. And you then go on to say "in the light of my own recollection of the works and my own recollection of Mr. Murphy Junior's involvement and the records detailing the dates on which particular aspects of the work were undertaken". You then proceed to set out various matters?

A. Yes.

55 Q. Can you tell me what records you checked?

A. I checked the cable installation, I checked the day work records, I checked; in fact those are the records that I checked for those two weeks.

56 Q. Now, can you tell me, you checked the cable installation records?

A. Yes.

57 Q. What would they show?

A. They would show the day that the cable installation was started, and the day the cable installation was basically finished.

58 Q. And when you are talking about cable installation, are you talking about pulling the cables or are we talking about preliminary work prior to the cables, prior to the cables being pulled?

A. There are two different documents for the same work. One, for instance, showed the day work that I had claimed for; night watch men, guarding of the site, when the cables were delivered and being prepared. The second record shows the day that we actually started pulling the cable.

59 Q. Um hum; and you also said that you checked the day work

records?

A. Yes.

60 Q. What are the day work records, Mr. Mycroft?

A. This is the day work record, for instance, would be the night watchman, with his vehicle and the times he has worked.

61 Q. But how would that record be of any assistance in establishing where any other employee was or was not?

A. That record only indicates to me that I had a watchman on a certain day from a certain time and that's all that record of the watchman showed. It didn't show anyone else.

62 Q. Right. And are there day work records in relation to the other employees who worked on that project in May and June of 1989?

A. No.

63 Q. So the only record of any person's presence on the premises is the night watchman, the day watchman?

A. Yes. Only because that was an extra.

64 Q. I beg your pardon?

A. Because it was an extra, recorded separately.

65 Q. And did you. For example, were you in a position to check the wages or the employee presence or do you have a clocking in system for example, on a job such as that?

A. No, wages were of no concern to me on that project.

66 Q. So you then proceed to set out in your statement relying on those records, you are able to state the matters set out below and then you go on to detail what the matters were, and you say the second paragraph of your statement:

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"The months of May and June, 1989, were highly significant to me personally as the work involved in the construction of the heading below a major roundabout south of Wandsworth

Bridge carried out in very difficult wet conditions from deep shafts. The traffic situation called for a high level of traffic management in the open trench sections and ducted road crossings carried out in what was regarded as a high profile traffic sensitive area"?

A. Yes.

67 Q. And I think you appear to be saying there that you had two problems. You had a problem above the surface of the ground and a problem below the surface of the ground and that it all had to be managed?

A. Yes.

68 Q. And what function would Mr. Murphy Jnr. have performed in dealing with those problems that you have identified there?

A. He had no responsibility for solving any of the problems. That was the responsibility of myself and the senior agents on the job.

69 Q. Yes; and then you say that the,"this section of the project came to a climax on the 6th of June, 1989, when the cables were actually pulled into place. There being a particular concern for cables through the ducted heading"?

A. That's correct.

70 Q. Do you remember when that job started, what time it started on that particular job?

A. That job would have started very early in the morning, perhaps at 6 o'clock on the 6th of June, which was in fact the Tuesday.

71 Q. Um hum; and would it be normal practice in a job that involves traffic to carry out as much of the work as possible either very early in the morning or, if necessary, at nighttime?

A. There was a great deal of preparatory work done before the cable is pulled and it is practice to start early in the

morning to get a start before traffic conditions deteriorate.

72 Q. Yes; and do you recollect Mr. Murphy Jnr's being there on the 6th of June?

A. I do.

73 Q. And can you recollect what his function was on that date, what he was doing?

A. I would say his function on that date was to take an interest.

74 Q. Was it a project he was particularly interested in?

A. It was. It was a quite a major civil engineering project as well as an electrical cable installation.

75 Q. Yes?

A. But the point of that day is that most of the work was, preparatory work has been done, which is the secret of correct installation.

76 Q. Yes; and was Mr. Murphy there for all of this?

A. Not, I would say not.

77 Q. Was it his normal practice to stay there all day?

A. I don't recall that his duties would have needed him to be there all day.

78 Q. So on average, how long did Mr. Murphy spend on this project on a daily basis?

A. It is difficult to be specific as to the hours Mr. Murphy was on the project. I would think, generally, ten till three or ten to four would be his hours.

79 Q. Yes; and Mr. Murphy Junior has told us that he flew back on the morning, I think, of the 6th of June, 1989, from Ireland and went out to work on this project at Wimbledon Bridge sometime perhaps in the course of the morning. Do you recollect Mr. Murphy arriving on that occasion later than normal, maybe after ten o'clock?

A. No, I recollect Mr. Murphy being on that job with the cable drums on that day when we were pulling cable. It is difficult to be specific of the time because it was ten years ago, but I am specific that he was there on that day because I remember it absolutely clearly.

80 Q. And can you recollect whether it was before lunch or after lunch that the cable drums were pulled?

A. It was ongoing, all day.

81 Q. Um hum; and Mr. Murphy was there for all of it?

A. I can't say he was there all day.

82 Q. Um hum. I think that you say in your statement then that the work continued throughout that week with some urgency in order to return the area to normality?

A. Yes.

83 Q. And on the 10th of June, 1989, which was, I think, a Saturday, "work started to bentonite the ducts through the heading and this involved sealing the duct ends in order to pump a liquid bentonite mixture into the ducts occupied by the cables that were installed the week before"?

A. Yes.

84 Q. So by the 10th of June of 1989, the major job had been completed?

A. That's correct.

85 Q. And this was a sealing up operation?

A. Yes.

86 Q. And that operation you say, continued from the 10th to the 16th of June of 1989?

A. Yes.

87 Q. And are you in a position to tell us what documents you might have looked at in order to come to that conclusion that they were the relevant dates, that you would have looked at in relation to that operation?

A. My claim for payment shows when I started the operation of sealing and bentoniting the ducts and my records for payment showed it continued the following week.

88 Q. Yes; so that those documents would establish that between the 10th of June and the 16th of June, 1989, you were on that job?

A. Yes.

89 Q. And you were the site engineer?

A. Yes.

90 Q. And do you recollect Mr. Murphy being there on the same basis?

A. Yes, I do.

91 Q. So between the 10th and the 16th of June, you recollect Mr. Murphy being there?

A. No, the 10th was a Saturday.

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MR. COONEY: Mr. Chairman, that can't be right. Ms. Dillon knows that very well.

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MS. DILLON: Sir, if the witness could be allowed to deal with the matter?

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MR. COONEY: It is a misleading question.

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MS. DILLON: It is not a misleading question. The witness is being asked to give his recollection and he has been asked does he recollect Mr. Murphy being there on the same basis between the 10th and the 16th of June and his answer, before he was interrupted by Mr. Cooney was "no, the 10th was a Saturday".

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MR. COONEY: Why would Ms. Dillon ask this question when

she knows well that Mr. Murphy Jnr. was --

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CHAIRMAN: Mr. Cooney please.

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MR. COONEY: May I finish? Why would she ask this question when she knows well from other evidence that Mr. Murphy was in Ireland at a funeral at that time. What is the point of asking the witness that when she knows that that can't be the case?

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CHAIRMAN: She is perfectly entitled to ask the question to test this witness' recollection and accuracy of this witness and that is the object and she is entitled to ask the question. Continue Ms. Dillon.

92 Q. MS. DILLON: Now, Mr. Mycroft, you were working full-time between the 10th of June, 1989, which was a Saturday to the 16th of June 1989, on the bentonite operation?

A. The 10th is a Saturday. The 11th is a Sunday. I don't work weekends. So if you ask me the question, was Mr. Murphy with me on the 10th and the 11th, I have to say "no" because I am away from that site at the weekend.

93 Q. Yes; but work continued, did it, if I understand your statement correctly, on the bentoniting job over the weekend?

A. I would assume so.

94 Q. Because there was an urgency involved in getting the situation --

A. To finish the job.

95 Q. To finish the job. But you would have returned to work on Monday the 12th of June, 1989?

A. That's correct.

96 Q. And worked the five day week leading on?

A. Yes.

97 Q. Do you know or can you recollect Mr. Murphy Jnr. being present in the course of that week?

A. Yes.

98 Q. And can you tell me the basis upon which you can recollect Mr. Murphy being present?

A. On the Monday that I returned to the project I recall Mr. Murphy being in my office when I walked in and he was, to put it politely, a little upset. That is very unusual for, I believe it to be an unusual circumstances, and I recall commiserating with Mr. Murphy because he told me of the lost of his grandmother, who I know understand may, was not his grandmother, but he regarded the lady as his grandmother.

99 Q. Yes; can you recollect what time you met Mr. Murphy on that occasion?

A. I can't be specific as to the time. I just as, again, it is ten years ago, but it is very clear in my mind that that event occurred.

100 Q. Yes; and you then go on to say in your statement that "throughout the cable installation and associated works on the 6th, 7th and 8th of June you have a clear recollection of Mr. Murphy Jnr. being with you and generally helping out and with regard to the following week which would be the week beginning the 12th, I clearly remember Joseph Murphy Junior being at the site office during that week. I have a clear recollection of finding him somewhat sad, I recall also that was due to a family bereavement, Mr. Murphy Jnr. I clearly recall commiserating with him on that occasion" at that time, sorry; at that time?

A. Yes.

101 Q. Can I ask you then in relation to the cable installation

which started on the 6th, and which finished before the 10th of June, because the bentoniting stopped, can you recollect him being there on a daily basis?

A. I do, yes.

102 Q. And are you saying that he was there from the time that the job started in the morning until it finished in the evening or was he more flexible than that?

A. Mr. Murphy was flexible in his attendance hours.

103 Q. Yes?

A. Yes. He was flexible.

104 Q. Yes; and was he subject to your supervision or authority in relation to his attendance at the site?

A. No.

105 Q. Was he subject to anybody's supervision in relation to his attendance at the site that you are aware of?

A. Not that I am aware of.

106 Q. Right. And then you recollect Mr. Murphy Jnr. being with you the following week, which is the week beginning the 12th and was it on the same basis?

A. Yes.

107 Q. And was that the normal basis on which Mr. Murphy attended on the site from the time you started working with him?

A. Yes.

108 Q. Did Mr. Murphy have occasion to attend the site office or the Head Office of Murphy Structural, not structural engineers but the Murphy company on occasion?

A. Yes.

109 Q. And would he leave the site in order to attend to that business?

A. Yes.

110 Q. How often would that happen, can you recollect?

A. I have no idea.

111 Q. Right. Now, I think that in or around the 13th or 14th of June there were negotiations in relation to your appointment as chief engineer?

A. Yes.

112 Q. And I think you received a letter of the 14th of June, 1989, from Mr. Joseph Murphy?

A. I recall the content of that letter and I recall discussing it with Joseph.

113 Q. Did you receive the letter, can you recollect, on the 14th of June?

A. I believe it was the 14th of June.

114 Q. And you spoke to Mr. Murphy about that?

A. I did.

115 Q. And did Mr. Murphy bring the letter to you?

A. Under normal circumstances on a site office letters would be delivered by anyone who would be coming from the Head Office. That could be drivers, it could be agents, it could have been Mr. Murphy. I don't recall how it was delivered.

116 Q. And I think that in that letter Mr. Murphy says he had a meeting with "Moss" and that is a Mr. Moss O'Reardan?

A. Yes.

117 Q. I think he is now retired but he was the operations manager; is that correct?

A. That's correct.

118 Q. And as a result of which you were going to be appointed chief engineer, as a result of this meeting?

A. Yes.

119 Q. And the letter details certain matters that we don't need to go into, but you have a clear recollection, have you, of receiving that letter on the 14th of June of 1989?

A. Yes.

120 Q. At the site office?

A. Yes.

121 Q. But you don't know how it was delivered to the site office,
you can't recollect that?

A. No.

122 Q. And that refers to a meeting that Mr. Murphy Jnr. had had
the previous day, the 13th in the Tottenham office with Mr.
O'Reardan?

A. Um hum.

123 Q. Presumably he had left the job that he was working on with
you, if he was at a meeting with Mr. O'Reardan in the
Tottenham office?

A. Presumably.

124 Q. This would not have been an unusual occurrence, from what
you have said to us in relation to Mr. Murphy Jnr.

A. No.

125 Q. So when you say, in your statement, that by no reason of
the matters which I have described, which we have gone
through "I am quite satisfied that Mr. Murphy Jnr. was in
London involved in the work that I have described above
during the week commencing Monday the 12th of June, 1989",
you are describing Mr. Murphy attending as he normally
attended without supervision and not subject to clocking in
to any particular person?

A. That's correct.

126 Q. And not answerable to any particular person?

A. That is correct.

127 Q. And somebody who attended in the course of the week of the
12th of June, 1989, at least one meeting in Tottenham?

A. Presumably.

128 Q. With Mr. O'Reardan, and who I think has told us in evidence
that he then attended at the Head Office of Murphys on the

following day, the 14th, in order to dictate the letter
that he subsequently sent to you?

A. Um hum.

129 Q. Would it be fair to say that Mr. Murphy was a free agent in
relation to his attendance or non attendance?

A. I would say very flexible.

130 Q. Very flexible. Thank you very much Mr. Mycroft.

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THE WITNESS WAS THEN CROSS EXAMINED AS FOLLOWS BY MR.
CALLANAN:

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131 Q. MR. CALLANAN: I have just some very brief questions for
Mr. Mycroft. This was a fairly unusual arrangement as far
as it involved Mr. Murphy; isn't that so?

A. The arrangement being what?

132 Q. His attending with you at the work, at Wandsworth Bridge?

A. To all intents and purposes Mr. Murphy is the Governor.

133 Q. Exactly. Exactly, and we know he is?

A. And he was assisting me so that is an unusual arrangement,
yes.

134 Q. And we know that he was a non-executive director of the
Irish companies and it was Mr. Murphy indeed, who in an
executive capacity wrote to you on the 14th of June,
effectively confirming in writing the offer of your
appointment as chief engineer; isn't that so?

A. Yes.

135 Q. So he had executive responsibilities in Murphy Limited at
the time?

A. I have no idea who has executive power or non-executive
power. Mr. Murphy, to me, was Mr. Murphy.

136 Q. Well I think you used the phrase "the Governor" he had some
executive responsibilities, I am not asking anything more

than that?

A. Yes, I assumed that because he is Mr. Murphy.

137 Q. Yes; and likewise you are not saying that Mr. Murphy was continuously present on the cable laying work in and around the vicinity of Wandsworth Bridge in early June, the first part of June of 1989. He wasn't continuously present Mr. Mycroft?

A. He didn't keep the same hours I had to keep.

138 Q. Well, it is a bit more than that. We know for example that he took a fairly extended break in Ireland, on his evidence, centering on a wedding on Saturday the 3rd of June that he was, he went to Ireland flying out on his evidence, on the 31st of May, flying back on the 5th of June. That's immediately prior to the pulling of the cables into place on the 6th of June; isn't that so?

A. As I understand it, yes.

139 Q. Do you recollect Mr. Murphy being absent for that period?

A. I have no recollection that he went to a wedding.

140 Q. I see. I see.

A. I think I have already said he is a very private person.

He wouldn't have advertised it to me that he was going to a wedding.

141 Q. And I think in answer to Ms. Dillon, you could just remember his being present for a part of the, the 6th of June; isn't it?

A. Um hum.

142 Q. When the cable was pulled?

A. Yes.

143 Q. You can't relate that to a particular part of the day I think you said?

A. I don't wish to relate it to any particular part of the day because it is such a long time ago.

144 Q. Yes; and likewise Mr. Murphy has told the Tribunal that he would have been in and out of the office, or he could have visited other jobs while he was working with you or assisting you on the cable laying at Wandsworth Bridge?

A. Yes.

145 Q. So can I suggest to you that your evidence is really that you had a general impression of Mr. Murphy being round over that period?

A. I have --

146 Q. But you wouldn't -- sorry?

A. I think I have stated that I have a clear recollection of Mr. Murphy being with me during those days on that particular element of the installation.

147 Q. But would it have been, I think you accept that there could have been parts of days when Mr. Murphy was absent?

A. I did.

148 Q. And isn't it just as possible, doing the best that you can, that Mr. Murphy could have been absent for individual days over that period?

A. I don't recall that he was absent for any day during that period.

149 Q. But that is in the context that you couldn't remember his being away for the six day period prior to the pulling of the cable?

A. I was not asked to look into that period.

150 Q. I see. It was a different stage of the work at Wandsworth Bridge that was going on, on the week commencing the 12th of June; isn't that so?

A. Yes.

151 Q. Was there, was Mr. Murphy present less frequently that week than the previous week, or do you have any recollection of that?

A. I have no recollection of him being there any less time.

152 Q. You see Mr. Murphy's evidence to the Tribunal was that it was the pulling of the cables which was of specific interest to him and that the work after that was of less interest to him. You have no evidence to offer in relation to that?

A. I can tell you that the second week was most interesting to me.

153 Q. Well, I will just put to you, just for the record, what Mr. Murphy said at page 27 of the transcript for Day 110. He says:

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"These were big heavy high voltage cables, this is something, again, of a specific interest to me. I was very close to the operations manager at the time and he would have been in charge of this job. So certainly the cables, I think, were pulled in on the 6th and some peripheral work, then they would have been sanded and slabbed, maybe 7th and 8th of June the main work would have been completed. As far as I am concerned there would have been still stone reinstatement and all of that, but that is not something that I would have been particularly interested in. So the actual, what was actually going on, on the 6th, 7th and say 8th, maybe 6th up to the 10th of June was of interest to me". You have no comment or observation on that, Mr. Mycroft?

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MR. COONEY: What is the question Mr. Chairman?

A. I would think that is very reasonable. It was a technical exercise.

154 Q. MR. CALLANAN: I am simply putting to Mr. Mycroft and I think you have already given me an answer, that that would

suggest that Mr. Murphy would have been present on a less frequent basis on the, in the course of the week commencing the 12th of June than in the preceding week?

A. Not necessarily, because the second week beginning the 12th was of particular significance to me because I was negotiating another job; and because that negotiation had happened during that week that it is so clear in my mind as to what happened.

155 Q. Well, the negotiations in relation to your contract are obviously quite distinct from any assistance that Mr. Murphy was giving to you in relation to the laying of the cable in the vicinity of Wandsworth Bridge; isn't that so? It is distinct from his --

A. Regardless of negotiations going on, there was still a tremendous amount of work being carried out to finish that particular 500 metres section of the project. So to say that the, it was of no interest, I can't really accept that.

156 Q. Thanks Mr. Mycroft.

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CHAIRMAN: Anyone else, Mr. Cooney?

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MR. COONEY: I just have a few questions.

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CHAIRMAN: I just want to check that there isn't anyone before you go. There doesn't appear to be any. Mr. Cooney, at your pleasure.

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THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. COONEY:

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157 Q. MR. COONEY: May it please you, Mr. Chairman. Mr. Mycroft I just want to ask you a few questions about some of the

matters discussed by my colleagues with you. It is apparent from your evidence that Mr. Murphy Jnr. wasn't present at this site for the same number of hours per day as you were present; isn't that correct?

A. That's correct.

158 Q. And he himself, has said that during the hours that he wasn't there he was likely to have been attending other aspects of the company's business. I take it you wouldn't disagree with that?

A. I would not.

159 Q. In fact I think it is, you are unlikely to know precisely what other aspects of the company's business he might have been attending when he wasn't present on this site; isn't that correct?

A. That's correct.

160 Q. But we do know from correspondence of one particular company business that he was attending to which was not connected with this site and that was your position in the company; isn't that correct?

A. Correct.

161 Q. And the letter of the 14th of June establishes that on the previous day, Wednesday the 13th of June, or Tuesday the 13th of June, Mr. Murphy was in the Head Office of the company in Tottenham; isn't that correct? And that part of the business of the company which he was conducting at that time, at that location, was your future career within the company; isn't that correct?

A. That's right.

162 Q. And he was conducting that business with another senior member of the management of the company, Mr. Moss O'Reardan; isn't that correct?

A. I understand that.

163 Q. Yes; and that's one example of other company business that Mr. Murphy Jnr. was attending to during this particular time; is that right?

A. Yes.

164 Q. I think you would agree that it is likely that when he wasn't on this site on the other days, he was equally attending to other matters of company business; is that correct?

A. Correct.

165 Q. I see. But you are absolutely certain, Mr. Mycroft, that on the days in question, Mr. Murphy spent at least part of the day on the site at Wandsworth, in your presence?

A. Yes.

166 Q. That's on the 4th, 5th, 6th and 7th of June and then on the days in the following week; isn't that correct?

A. 6th, 7th?

167 Q. I beg your pardon, 6th, 7th, 8th of June?

A. 6th, 7th and 8th of June.

168 Q. Then on the 12th, 13th, 14th and 15th; isn't that correct?

A. Correct.

169 Q. And you have no doubt what so ever but that he was present on the Wandsworth site at least for part of that time; isn't that correct?

A. Correct.

170 Q. Now, Mr. Mycroft, you were asked to recollect all of these events a considerable number of years after they had occurred; is that right?

A. Yes.

171 Q. And normally I think you would agree that most people would have difficulty in remembering precisely events which had occurred ten years previously; isn't that correct?

A. Yes.

172 Q. I think that you were, your memory in this regard was prompted (A) by your recollection of the distinct and particular characteristics of the job that you were supervising at that particular time; isn't that correct?

A. Yes.

173 Q. This is an especially challenging piece of work that you were supervising; isn't that correct?

A. Yes.

174 Q. And the challenge arose (A) from the technical difficulties of the job itself, or the unique difficulties of the particular piece of work itself; isn't that correct?

A. Yes.

175 Q. And secondly, that you had an obligation to keep traffic disruption at the Wandsworth roundabout to the minimum possible; isn't that correct?

A. Yes.

176 Q. In other words, to get this job done as quickly as possible and while it was being done to keep the roundabout open for traffic to the greatest extent possible; isn't that correct?

A. Yes.

177 Q. I see. And in addition to that particular memorable fact which remains in your memory, you were also able to verify your memory by reference to records which were made contemporaneous with that event; is that correct?

A. Yes.

178 Q. And that is partly the basis of the evidence which you have given to the Tribunal here today?

A. Yes.

179 Q. At that time I think Mr. Murphy hadn't assumed, hadn't assumed direct managerial control of the company; isn't that correct?

A. Yes.

180 Q. As he did subsequently?

A. That's correct.

181 Q. I think that subsequent to 1988 and indeed shortly after, 1989, I beg your pardon, Mr. Murphy became de facto your managerial director and boss; isn't that correct?

A. That's correct.

182 Q. But at that time he was, to some extent, although not completely learning the job; isn't that correct?

A. That's correct.

183 Q. And he was in both the learning and the supervisory role, but under your supervision when he visited the site at Wandsworth on this particular occasion; is that right?

A. Yes.

184 Q. I think at that stage Mr. Murphy was still in his 20's; isn't that correct? He was a young and relatively inexperienced man at that stage I think?

A. He was a young man.

185 Q. Yes. Thanks Mr. Mycroft.

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THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY MS. DILLON:

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186 Q. MS. DILLON: Just very briefly arising out of that. At the same time that Mr. Murphy was working effectively with you on this project, you were also negotiating with him as a director, I presume of the Murphy Group of companies for the position of chief engineer?

A. Yes.

187 Q. So that both of these activities were going on at the same time in June of 1989?

A. Yes.

188 Q. Yes. Did you ever have any occasion on which you indicated

to Mr. Murphy that he should have been more diligent in his attendance at a particular site?

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MR. COONEY: Oh Mr. Chairman?

A. No.

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189 Q. MS. DILLON: Thank you. Thank you very much Mr. Mycroft.

The Tribunal is obliged that you came over from England to give your evidence?

A. Thank you.

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CHAIRMAN: Thank you very much Mr. Mycroft. You are free. Thank you for coming.

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THE WITNESS THEN WITHDREW.

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MR. COONEY: Mr. Chairman before the witness the next witness is called, just for the record, I just want to call out between the contrast between the detailed way in which this witness is cross-examined by the Tribunal concerning dates and times and places with the manner in which Mr. Gogarty was treated by the Tribunal in relation to his evidence in this critical period. I just want to put that on the record.

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MS. DILLON: Yes, Sir I want to put on the record that I reject that there has been any difference in the treatment between this witness and any other witness. On each occasion Mr. Cooney makes this submission to you I will equally be making a submission rejecting it. We can go on like this forever or simply decide to stop. It is entirely a matter for Mr. Cooney.

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MR. COONEY: Now, Miss Dillon.

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CHAIRMAN: Now that is the end of the commentary,
totally.

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MS. DILLON: Mr. Doherty, Mr. Tom Doherty please?

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Before Mr. Doherty is sworn in to give evidence he is
furnishing two statements. We will be dealing initially
with the Turvey House statement and the DCC Turvey file.

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TOM DOHERTY, HAVING BEEN SWORN, WAS EXAMINED BY MS. DILLON
AS FOLLOWS:

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190 Q. MS. DILLON: Mr. Doherty, you have, I think, furnished two statements of the Tribunal detailing your involvement in relation to two separate matters; once is the demolition of Turvey House which has already been referred to in evidence and the second is in relation to the acquisition of nine acres as part of the Ward River Valley Linear Park; is that correct?

A. That's correct, yes.

191 Q. I propose dealing in the first instance if that is all right with you, with the Turvey House demolition file because I think you were the only witness who will be dealing with that matter?

A. Okay.

192 Q. All right. Can you just tell me for the record your present position, Mr. Doherty?

A. I am employed as a Principal Officer with South Dublin County Council with duties assigned as Deputy Manager.

193 Q. Yes. So in effect you are presently Deputy Manager of Dublin County Council?

A. Effectively, yes.

194 Q. Yes; and at the time when these events were occurring which was between 1985 and the years subsequent to 1985, you were a Principal Officer in the Development Department of the former Dublin County Council?

A. That's correct.

195 Q. And can you tell me briefly what the functions of the Development Department were?

A. Well, we dealt with the acquisition, management and

disposal of County Council property and also derelict sites and dangerous buildings.

196 Q. Right. Insofar as we are dealing with the Turvey House demolition, it is the function concerned with dangerous buildings with which we are concerned?

A. That's correct.

197 Q. Now, I think you have the original Turvey House file in front of you?

A. I have.

198 Q. Yes; that you brought with you and I think Sir, that I should tell you, for the record, that attached to this file there are a number of Polaroid photographs that Mr. Doherty brought with him this morning which it has not been possible to reproduce or replicate in any way.

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CHAIRMAN: They can be circulated if and when the problem arises, handed from one person to another.

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199 Q. MS. DILLON: May it please you. I think. Mr. Doherty, that the matter first came to your attention in 1987 that there was a problem with Turvey House and its condition?

A. That's correct, yes.

200 Q. And I think you went out and conducted an inspection and as a result of what you found you were satisfied to sign a Manager's Order for the demolition of the building?

A. That's correct.

201 Q. But I think, in fairness, that there is further documentation on the file that indicates there had been concerns in the Department of Dublin County Council, going back a significant number of years in relation to the condition of Turvey House?

A. Yes; there is a report dated January, 1973, from the

Planning Department which describes --.

202 Q. This document, just one second. This document is at DCC Turvey, page 240. I wonder would it be possible, Mr. Doherty, if we gave you a file with Tribunal references on it would that be of assistance?

A. I haven't seen such a file.

203 Q. Very good?

A. Up to this point in time.

204 Q. If you want to use your file. But the document number in question, Mr. Doherty, if you want to tell us about the question?

A. Yes. It is a document from the Planning Department signed by an architect, M Hughes, dated the 23rd of January, 1973. Which is some 13 or 14 years before the issue of the demolition of Turvey House arose. And it says:

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"Turvey House, Donabate, has obviously been allowed to deteriorate considerably in recent years and I fear that it has gone beyond the point where preservation is possible. There are hardly any windows left unbroken. The door is left open. There is no attempt to prevent vandalism. Fireplaces have been ripped out and destroyed and balustrading has been removed from the staircases. It is now in a dangerous condition and if left in its present state the internal structure will start to collapse".

205 Q. Yes; and I think over the following number of years there are some other references in relation to the condition of Turvey House. The more recent of the references is a note that in January of 1986 that the roof had fallen in and it was in a very dangerous condition, and that is DCC Tur, 248 and 247. This would be towards the very beginning of the file, I think Mr. Doherty. Do you have those? I think if

we give you a file Mr. Doherty with the Tribunal references. It is a complete copy of the file that you have except for the photographs (documents handed to witness).

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MR. COONEY: We have a file, Mr. Chairman, but we don't have the references on it, perhaps if we could get a copy it would save time?

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MS. DILLON: Absolutely.

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CHAIRMAN: Yes, if we have it you can have it.

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MR. HARRIS: I am in a similar position.

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CHAIRMAN: Whatever we have, if you have been circulated with the documents, I understand?

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MR. HARRIS: They were circulated very early, Mr. Chairman, but they didn't, the ones that were circulated didn't have reference numbers. I wonder if Ms. Dillon could refer to the date of the document, I may be able to find it in each case that she is referring to?

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MS. DILLON: Yes the last document was the 15th of January, 1986. It is page 248. If we just have one moment we might be able to obtain a file for Mr. Harris.

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CHAIRMAN: I am all right.

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MR. COONEY: All of these documents were gone through before, Mr. Chairman.

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CHAIRMAN: I know that. But it is just to get the thing moving. There is a limited number of copies obviously available.

206 Q. MS. DILLON: Do you have the file now?

A. Yes, I have now.

207 Q. Yes Mr. Doherty. And I would ask you to look at page 246 using the Tribunal referencing?

A. Yes.

208 Q. This is a report by Douglas Hyde in the Planning Department addressed to Mr. P Murray who was Principal Officer in the Sanitary Services Department of the Council. And it says:

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"Turvey House is now in a an extremely ruinous and dangerous condition. The house is one of only two houses listed included in the County Development Plan List 1 for preservation. I note from the file that a dangerous building notice was served on the owner in 1974. Perhaps you would inform me of any follow-up action taken on the property since then. Access into the structure is presently possible and there is evidence on a recent inspection of children having been inside. I would request that you take the necessary steps too have the building made safe and secure". Something entry. "From entry" I think?

A. From entry. "Demolition of the house is not recommended and would be opposed by this Department".

209 Q. And that Department was the Planning Department, Mr. Doherty?

A. That's correct, yes.

210 Q. And when a premises is listed as on List 1 for preservation, what does that mean?

A. It means that the Applicant cannot demolish the building without obtaining planning permission and that it is an objective of the County Council to preserve the building.

211 Q. Yes; and that would account for the Planning Department being of the view that the demolition would was not recommended and would be opposed by the Department at that time?

A. That's correct, yes.

212 Q. I think following receipt of that report on the 6th of February '86 it is document 244?

A. Yes.

213 Q. That was referred?

A. That document was referred to.

214 Q. To Mr. O'Brien?

A. Who was the senior executive architect in charge of dangerous buildings.

215 Q. And he was asked to furnish a report in respect of the matter?

A. That's correct.

216 Q. And I think that that report didn't come in for some time, but in March of 1986, the County Council carried out works in order to secure the premises against trespassers and boarded up the premises; and that document is page 233 and 235?

A. That's correct, yes.

217 Q. And the Council then calculated the cost of the boarding up of the premises and they were seeking to recover those funds from the owner of the property?

A. That's correct, yes.

218 Q. And I think that document can be found at 235 and 236?

A. Yes; the sum in question was £274.

219 Q. Yes. The next document I want you to look at is the 10th

of April 1986, which is document 232. And that's a memorandum signed NM of the 10th of April, 1986, and it says:

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 "Discussed with MD Harold, Building Inspector. Mr. P Lenihan and Mr. J Stack, architects, inspected Turvey House and recommended that the house should be immediately boarded up as it was in a very dangerous condition. Demolition was not recommended as the building was listed for preservation"?

A. That's correct, yes.

220 Q. Now, this would appear to suggest that Mr. Harold the Building Inspector had gone out and formed a view that it was in a very dangerous condition, but it shouldn't be demolished because it was a listed building?

A. That's right, yes.

221 Q. I think then that the County Council made efforts to establish who the owners were in relation to the property. And I think again on the 29th of April, which is document 226, the Council were seeking?

A. Document 226 isn't in the folder that I have.

222 Q. Right. Well we will leave document 226 at for the moment. It is actually a further page, it is next after 228.

A. Oh, yes sorry.

223 Q. That is a report by Mr. Harold who is the Building Inspector and signed by Mr. Maurice O'Brien who was the senior executive architect in relation to Turvey House, "as a result of the inspection carried out on the above premises it was decided that the house was very dangerous. The premises which was a listed building secured against trespassers as a temporary measure depending on a decision in relation to the future of the house"?

A. That's correct, yes.

224 Q. I think by that date in April of 1986 the Council has taken such steps as they could at that time to board up the house?

A. Yes.

225 Q. But the view of Mr. Harold and the senior executive architect was at that stage that the house was in a dangerous condition?

A. Yes.

226 Q. Now I think subsequently in February of 1987 the owners of the property were identified as being Turvey Estates Limited and that Mr. James Gogarty was the person to contact in respect of that and that the full owner was given as Stephen's Court, 18-21 St. Stephen's Green, Dublin 2. And that is Document 215. And that's a letter, a report by Mr. Michael McIvor that while the house wasn't registered in the Land Registry, he had "contacted Mr. James M Gogarty of Turvey Estates Limited and arranged to meet him on the site. He informed me that he was a director of Turvey Estates Limited and they were full owners of the house" and their address is set out there?

A. That's correct, yes.

227 Q. And I think that between 1986 and February of 1987 there is correspondence that the Corporation had been seeking to establish who the owners of the property were?

A. Yes. The County Council were seeking to establish.

228 Q. I beg your pardon, the County Council were because they were also interested in trying to recoup their £274 which had it cost them to board up the premises?

A. That's correct.

229 Q. They were, I think, instituting proceedings in respect of that?

A. Correct.

230 Q. The next document I would like you to look at is Document

209. And this is a report a draft order signed by Mr.

Maurice O'Brien dated the 30th of April 1987.

A. Yes.

231 Q. And Mr. Maurice O'Brien was the senior executive architect

and here he is drafting, it is a draft order for demolition

of the outbuildings and Turvey House?

A. Yes, there are two separate. There is one document in

respect of the outbuildings.

232 Q. Yes?

A. And the other is in respect of the house itself.

233 Q. Yes. The draft if relation to the outbuildings is Document

209 and in relation to the house itself it is Document

210.

A. Yes.

234 Q. And was this, were these sent on to you?

A. Yes.

235 Q. For your investigation?

A. They were sent to me as a recommendation to serve notice to

that effect on the owner.

236 Q. Yes; and what did you decide to do before you served the

notice on the owner?

A. I inspected the house to see if there was any alternative

to it; and it should be remembered that the house and

outbuildings were situated in approximately 70 acres of

land, and the outbuildings were scattered in courtyard form

around the house and we considered whether it was possible

to arrange palisade fencing around the entire site, but

that would have been extremely difficult to effect because

of straggling walls and also because the cost would mean

enclosing about two acres of land altogether.

At the time of the inspection the roof timbers were partly in place, part of the slates were in place, all of the internal house was gutted. There was evidence of vertical cracks in the house. There was also evidence of children having been playing in the house, and as I recollect there was evidence of a small fire, a picnic type fire set on the floor the embers were set on the floor of the property.

And following that inspection I came to the conclusion that there was no alternative but to demolish the house in accordance with the recommendation of the professional architect.

237 Q. And that was Mr. Maurice O'Brien had so recommended on the 30th of April, 1987?

A. That's correct.

238 Q. Can you recollect, did you make any report to any person on foot of your inspection?

A. I don't recollect having -- sorry, I asked somebody to check, one of my staff to check in the Office of Public Works was it a listed building under the National Monuments Act and that person has notated on the file at Document 208 that she checked with the Office of Public Works. It was not listed as a National Monument. That was a phone call to the Office of Public Works.

239 Q. I think, we don't have to worry about that for the moment, but other than that, did you take -- sorry, were you accompanied on this inspection?

A. I was, yes.

240 Q. Can you recollect who was with you?

A. I can't recollect, but I know I was accompanied because I remember discussing with another official the options and whether there was an alternative to what the senior

executive architect had recommended.

241 Q. Um hum. Did you take photographs of the condition of the premises as you found them when you carried out your inspection?

A. I personally didn't take the photos. I arranged with another Inspector to take photos and those photos are available here.

242 Q. They are on the file?

A. They are, yes.

243 Q. Do the parties wish that these photographs be circulated?

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MR. COONEY: I don't need to see them.

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MR. HARRIS: Certainly Mr. Chairman, I would like to see them in any case before I ask any questions.

(Photographs handed to the witness)

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CHAIRMAN: We will arrange that. I will tell you what, we will rise?

A. There are two sets of photographs.

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CHAIRMAN: We will rise for ten minutes just to break for ten minutes and then the photograph can be inspected off the file and --

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MS. DILLON: May it please you, Sir. Sorry, if Mr. Doherty could just give the description of the two different sets of photographs just before you rise, Sir?

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CHAIRMAN: Certainly?

A. There are two sets of photographs. One set are taken on the 24th of January, 1986, and they show the condition of

the house at that time which was some 15 months earlier.

The second set of three photographs are dated the 1st of May, 1987, and they compliment the 1986 ones. It was considered not necessary to retake - the obvious condition as was displayed in 1986 --.

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MS. DILLON: Thank you Mr. Doherty.

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CHAIRMAN: I will sit again in ten minutes.

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

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MS. DILLON: Thank you. I think everybody has had an opportunity to examine the photographs and they can be returned to Mr. Doherty. (Photographs handed to witness)

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244 Q. MS. DILLON: I think, Mr. Doherty, that following your inspection of Turvey House you signed the record of executive business and managers orders, two orders in respect of Turvey House and the outbuildings and they are Documents 203 and 204 on the file.

A. That's correct, yes.

245 Q. And I think you signed those documents on the 4th of May of 1987?

A. Yes.

246 Q. And these, I read Document 203 which is headed:

"Dangerous, derelict dwelling known as Turvey House, Donabate, County Dublin. The structure consisting of the derelict dwelling known as Turvey House, Donabate, County Dublin, was inspected on the 30th of April, 1987, and is considered dangerous to persons in the vicinity by reason

of structural instability.

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The senior executive architect has recommended that a notice pursuant to section 3 (1) of the Local Government (Sanitary Services) Act 1964 be served on the secretary of Turvey Estates Limited, Stephen Court 18/21 Saint Stephen's Green, Dublin 2. And on Mr. James Gogarty, Director of Turvey Estates Limited, care of Murphy Structural Engineers Limited, Shanowen Road, Santry, Dublin 9. Requiring them within three days from the date of service of the notice to demolish the premises and adequately tamp down the debris on site to the satisfaction of the dangerous building section of the Council.

.
I concur in the recommendation of the senior executive architect and I recommend, if necessary, the institution of legal proceedings pursuant to section 3 (5) of the Act if the terms of the notice are not fully complied with"; and I think that is signed by a Senior Administrative Officer whose name is Sheehan?

A. That's correct, yes.

247 Q. Beneath that it says: "Order: Service of statutory notice pursuant to Section 3(1) to be followed, if necessary, by legal proceedings pursuant to Section 3(5) of the Local Government, (Sanitary Act), 1964, on the Secretary, Turvey Estates Limited, Stephen's Court, 18-21 Saint Stephen's Green. Dublin 2, and on Mr. James Gogarty, Director of Turvey Estates Limited, care of Murphy Structural Engineers Limited Shanowen Road, Santry, Dublin 9. As recommended by Senior Executive Officer is hereby authorised". That is signed on the 4th of May, 1987, by T Doherty?

A. That's correct.

248 Q. And?

A. The fact that the recommendation gave three days to do the work is indicative of the condition of the house as viewed by the senior executive architect.

249 Q. And I think you signed a similar order in relation to the outbuildings?

A. Yes.

250 Q. And that is at Document 204. I don't propose to read that. It deals in a particular fashion with the outbuildings which had also been inspected?

A. That's correct, yes.

251 Q. So was it your view then on the 4th of May, 1987, that these buildings should be demolished and demolished as soon as possible?

A. It was, yes.

252 Q. And I think subsequently that the buildings were in fact demolished in July of 1987?

A. That's correct, yes.

253 Q. And I think there is a letter to you of the 16th of July of 1987 which bears the reference 126 and 127 in the folder from Mr. Maurice O'Brien, senior executive architect, in relation to that?

A. Yes, that's correct.

254 Q. And that is a report by Mr. Maurice O'Brien, senior executive architect and also signed for Derek Jago, the county architect in respect of the demolition of the premises?

A. That's right, yes.

255 Q. Now, I think that this was a report that was prepared following the public outcry that arose following the demolition of Turvey House?

A. Yes.

256 Q. But that record sets out in historical sequence what happened in relation to Turvey House; is that right?

A. That's right, yes.

257 Q. And he says that he is: "Enclosing to you a memorandum for central file, prepared for record purposes in February of 1986 following an inspection by senior professional staff on Tuesday the 18th of February, 1986, almost one and a half years ago.

.
This memorandum is relevant in the light of recent events, it will be noted that in the light general condition of the building at that time was referred to in a number of ways to emphasise its advanced stage of dilapidation.

E.g. "ruinous nature of the building", "extremely dangerous condition of the fabric", "very advanced stage of dilapidation", "beyond any reasonable level of renewal or preservation", "highly dangerous", "major structural walls have split vertically and are very hazardous", "serious injury or death could occur to persons" etc."

And then it says "since that time further inspections were carried out with the Dangerous Building Inspector who reported on its condition from time to time. The Inspectors were instructed not to enter the building at any time due to its highly dangerous condition. Discussions on this listed building and others in the county which are in a similar condition have taken place with the Planning Development staff at various times who are aware of the Council's dilemma in these situations. There is a working arrangement whereby "listed" buildings deemed to be dangerous to the extent of requiring demolition under the Local Government (Sanitary Services Act) 1964, take precedent over the requirements of the Planning and other

Acts related to listed buildings.

.

In the case of Turvey House, the Planning Department has been aware for sometime of the possibility of the house being dangerous, to the stage of requiring demolition and demolition was deferred for as long as possible.

.

In April 1987 the situation had deteriorated to the level where further action became an urgent consideration. On the basis of a final inspection by the Senior Executive architect following consultation with the then acting county architect and senior executive, a draft Section 3 notice was prepared on the 30th of April, 1987, "to demolish the premises known as Turvey House" and tamp down the debris on site to the satisfaction of the dangerous building section of Dublin County Council. (All coloured red on the attached map). The outhouses were not listed and separate Section 3 notice was prepared for this. (All coloured green on the attached map).

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These were processed through the normal channels, and the owner (Mr. J Gogarty), arranged for an experienced demolition contractor to carry out the work. This work started on the morning of July the 13th, Monday the 13th of July, 1987, and was well advanced by noon on the Tuesday, 14th of July, 1987. It was expected that the house and outhouses would be completed by Thursday the 16th of July, 1987.

.

It must be stated that there is always a deep sense of regret in this department when any listed building reaches an advanced stage of dilapidation due to neglect and

requires to be demolished under the Local Government (Sanitary Services) Act 1964. Every consideration given to alternatives which might delay the fatal day. However, within the framework of present legislation there appears that there is little that this or any other Council can do to assist in the preservation of such buildings particularly at very important early stages before the onslaught of weather and vandals" and that report was signed by Mr. Maurice O'Brien?

A. Yes.

258 Q. And the house was, I think, demolished starting on the 14th of July, on the 13th of July 1987?

A. That's right, yes.

259 Q. And following the demolition of the house and premises, I think that there was a public outcry?

A. That's correct, yes.

260 Q. And there are on file, I don't propose to go through them, a number of copies of newspaper reports dealing with the demolition of Turvey House and the failure to contact the Office of Public Works?

A. That's correct, yes.

261 Q. Following the demolition and the public outcry that arose I think a Section 4 motion was put down by members of the County Council?

A. That's correct.

262 Q. That can be found at DCT Tur 85. And "the proposed resolution pursuant to Section 4 of the City and County Management (Amendment) Act 1955 submitted by councillors A Devitt; C Boland and S Ryan for consideration to be held at the meeting in September next";

.

"We, the members of Dublin County Council, pursuant to

Section 4 of the City and County Management (Amendment) Act 1955 hereby require and direct the Dublin City and County manager or delegated officer to present a report indicating what safeguards will be taken in future to prevent the demolition of a listed building without consultation of this Council or the Board of Works (as occurred recently at Turvey House as a result of the actions of the Council)?"

A. That's right, yes.

263 Q. So the effect of this Section 4 motion as I understand it was to compel the manager or his delegated person to produce a report in respect of what had happened in relation to Turvey House?

A. Yes.

264 Q. And who was the person who was going to have to deal with this matter in the council chamber?

A. Well, the Assistant City and County Manager, George Redmond, was the senior official at the County Council meeting and I would have been the person who would have the detailed knowledge of this particular Section 4.

265 Q. So, did you speak to Mr. Redmond about how he was going to respond to this Section 4 on behalf of the County Council?

A. I would have consultation at that point, yes.

266 Q. And did you assist him in the preparation of a report which was dealt with at the County Council meeting?

A. Yes.

267 Q. And who was the person who dealt with all the press queries and all of the public outcry that arose when this house was demolished?

A. Well, there were very -- like, Mr. Redmond probably had some consultation. I had some consultations, and possibly people in my office had consultations with the press. At that stage after the demolition there was a lot of

controversy.

268 Q. And all of those newspaper extracts are set out in the file. I don't think there is any necessity for us to read through them in any great detail but there was quite a lot of public controversy at the time?

A. Yes.

269 Q. Which culminated in the putting down of the Section 4 motion by the County Councillors?

A. That's correct, yes.

270 Q. Was Mr. Redmond the person then that dealt with the matter at the County Council meeting?

A. Yes.

271 Q. Had he also dealt with some of the press inquiries and matters in relation to, he seems to be quoted quite extensively?

A. He would have, yes.

272 Q. In relation to the matter. If we can turn back then to deal with the report that was presented to the Council at page 85 of the file, and was this a report that was prepared in conjunction with Mr. Maurice O'Brien's report that we have just looked at of the 16th of the 7th, '87 and information that you had furnished?

A. Yes.

273 Q. So it was a joint effort between the Development Department and also the architects office were also dealing with it?

A. Yes.

274 Q. So, and at the meeting where this report was dealt with, was Mr. Redmond the person who dealt with it and presented the report on behalf of the Council?

A. He would have dealt with the general aspects of the report. If there were any detailed questions arising out of it I probably would have had to comment on to.

275 Q. Yes. Can you recollect whether there were in fact any such questions put to you?

A. I cannot. What I can recollect is that there were slides made of the photographs and they were shown in the chamber, and when the members saw the condition of the house, the general feeling was that if this is what the entire controversy is about there appeared to be no option left to the Council other than to demolish the house. The photographs shown in the press at that time in the immediate days after its demolition showed the house in its heyday, and that was the impression given by some of those photographs, that this house was in extremely good condition, was wantonly demolished and the general consensus of the County Council meeting at the time was that when they had actually seen the photographs showing its then condition at the time of demolition, that it was a different story to what appeared to be conveyed by the controversy.

276 Q. Yes; and indeed I think the photographs, there is an illustration for anyone's interests at page 145 of the file. In any event Mr. Redmond presented his report following discussion with you and with the architects department and the compilation of the various factual information that is already set out in the file?

A. That's right, yes.

277 Q. And you also prepared slides which were based on the photographs which you have shown us here today?

A. Yes.

278 Q. And they were shown to the councillors?

A. And they are still on the file.

279 Q. And they are still on the file. And the report sets out as follows: At page 85. I think that is the correct --

A. Do you want me to read the report.

280 Q. Yes please, Mr. Doherty?

A. "The recent controversy concerning the Council's role in the demolition of the ruins of Turvey House, Donabate, has again brought into focus one of the dilemmas facing local authorities since the introduction of the Dangerous Buildings/Places Legislation, that is, how to reconcile the Council's stated objective of preserving those historical, architectural or archaeological buildings and sites with the necessity to safeguard the public under the Dangerous Buildings/Places code. The difficulty arises where the owner is unable or unwilling to secure his property and a potentially dangerous situation comes to the attention of the Council for appropriate action under the Dangerous Building/Places Legislation. The Council is immediately placed in an a "no win" situation - if it ignores the danger and an accident occurs it will be held responsible, while its actions in ordering a demolition will inevitably be held up to ridicule as an act of "public vandalism" or "sabotage".

.

The kernel of the problem is that the body, is that the body given the powers and responsibilities to preserve these national monuments, namely the Commission of Public Works, have very limited funds to conserve, maintain or restore them, and appear seldom in a position to respond adequately when the needs arises. Turvey House which was at all times in private ownership was listed in 1972 under the National Monuments Act. In January 1973 the premises was described by a County Council official;

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"Turvey House, Donabate, has obviously been allowed to

deteriorate considerably in recent years and I feel it has gone beyond the point where preservation is possible.

There are hardly any windows left unbroken. The door is left open and there is no attempt to prevent vandalism.

Fireplaces have been ripped out and destroyed and the balustrading has been removed from the staircases. It is now in a dangerous condition and if left in its present state the internal structure will start to collapse"

.

Since that time, over 14 years ago, the building has been rapidly deteriorating from a habitable state to a mere shell of a building. The progressive deteriorating of this house and the loss of its valuable ceilings and fittings due to vandalism and exposure have been highlighted by the various historical and conservation groups over this period to no avail. Presumably because there were no funds available to the Office of Public Works to step in and preserve the building.

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Finally, the time arrived last May when the building shell presented a real threat to human life and the council, as a last resort following numerous failed attempts to prevent trespass authorised its demolition in the interests of public safety. Council officials, being satisfied that it had long since passed any reasonable level of renewal or form of restoration and there being evidence of trespass by young persons into the structure.

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Prior to its demolition the Council made informal contact about with the office of the Commissioners of Public Works.

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There is now a procedure set out in Section 5(8) of the National Monuments (Amendment) Act 1987, to be observed before any person, including a local authority who proposes to carry out or cause or permit the carrying out of any work at or in relation to the monument or area which provides that he must obtain the consent of the Commissioners.

Arrangements and procedures have been agreed with the Office of the Commissioners where such building places are found to have become dangerous and requiring the attention on foot of the Local Government (Santry Services) Act 1964.

Similarly in view of the wishes of members expressed in the motion, arrangements will be made to notify by way of report, to the appropriate district Committee, any proposed action pursuant to the dangerous building legislation in relation to listed buildings or national monuments, except in cases of such urgency as to require immediate works in accordance with the procedure in the National Monuments Acts".

281 Q. Now, Mr. Redmond makes reference there to communications that had taken place between the office of the Commissioner and the County Council?

A. Yes.

282 Q. And I think that following the demolition of Turvey House, a Mr. N Lynch who was the Director of National Parks and Monuments wrote to the county manager in respect of Turvey House, it is at DCT Tur 110.

A. Yes.

283 Q. And he says: "Dear Sir, this office wishes to express its

concern in regard to the recent demolition of Turvey House near Donabate, County Dublin, as the building was listed in 1972 under the National Monuments Act. It was incumbent upon the owner to give us two months notice of any proposed interference with the building, your Council having been likewise notified of the National Monument Act expected prior consultation of the issue of a Demolition Order. While it might be possible in theory to prosecute the owner for failure to give us notice (and even in and circumstances of urgency the Commissioners consent is obligatory). It seems futile to proceed in this case when your Council, itself a preservation authority under the National Monument Act, issued the order for the demolition (within three days) of the building.

.

I understand that your records indicate that a call was made to this office in the month of May, as to whether Turvey House was a national monument or not and answer was received that it was not. We have not been able to verify this but the person into whose area of responsibility Turvey House would come are adamant they would not given this reply. It is possible that somebody without direct connection with that area confirmed that Turvey House not among the national monuments care for management and maintenance purposes. If at the time of telephone call demolition of the house was in view it would have been opportune to mention the fact, this would have alerted us to the seriousness of the position, it is the fact that this information was withheld from us that causes great uneasiness in this office".

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It seemed there that the public works were annoyed over the

fact that even if there had been a telephone communication that the Council hadn't alerted them to the fact that there was a proposal to demolish Turvey House?

A. That's correct.

284 Q. Yes; and I think Mr. Redmond dealt with that correspondence at page 109, and he responded to the letter of Mr. Lynch of National Parks and Monuments and the Office of Public Works:

"I wish to acknowledge receipt of your letter dated 30th of July 1987 regarding the demolition of Turvey House, Donabate Co. Dublin.

.
 Insofar as the Council is concerned the safety of the public is the main criteria where dangerous structures are concerned. In this case, Turvey House due to continuing vandalism, has reached a point where it had become so dangerous that it was apparent that the only effective method of eliminating danger was to have the house demolished. It is regretted that the Council officials that contacted your department neglected to mention the council's involvement and intentions in relation to the house. This was due to an oversight and no slight on the Office of Public Works was intended".

.
 That seems to accept that in relation to the telephone call that had taken place or contact with the Office of Public Works, the Council were accepting that the Office of Public Works had not been told that there was an intention to demolish the house?

A. There is no record of the conversation that took place at this point in time or at that time, other than the fact that contact was made.

285 Q. Um?

A. And that it was the person in question in the Council was informed that it was not a listed building.

286 Q. Yes; but Mr. Redmond says whatever the source of his information is, "it is regretted that the Council official who contacted your department neglected to mention the Council's involvement and intentions in relation to the house". It seems clear from that I suggest to you, Mr. Doherty, that Mr. Redmond in writing that letter was of the view that whoever had spoken to the Office of Public Works had not told them of the intention of the Council to demolish the house?

A. Well, there was no record of the content of the conversation.

287 Q. I mean --

A. The official in the, the Director of the Office of Public Works stated that the Council, that that person had neglected to state that.

288 Q. Yes; but we are discussing now Mr. Redmond's letter, Mr. Doherty, and that is at page 109?

A. I appreciate that.

289 Q. And that Mr. Redmond in writing that letter seems to accept that the Council official did not mention the council's plans to demolish Turvey House when talking to the Office of Public Works?

A. When Mr. Redmond was dealing with that letter he would not have been aware, there was no record of what exactly was said in the conversation, so he was not in a position to contradict Mr. Lynch in the Office of Public Works as to whether or not demolition of the house was mentioned in that telephone conversation.

290 Q. Yes; but be that as it may, Mr. Redmond appears to be

accepting in that letter that whoever spoke to the Office of Public Works they did not tell them that there was an intention or a plan to demolish the house, and he says, he goes on to say: "This was due to an oversight and no slight on the Office of Public Works was intended"?

A. No slight on the Office of Public Works was intended.

291 Q. And he seems to be saying there that it was this failure to tell the Office of Public Works of the County Council's plans was due to an oversight on the part of the person that spoke on the telephone?

A. Yes. He is accepting that the Director said that it was not recorded that demolition was intended at the time.

292 Q. I suggest to you, Mr. Doherty, that the letter in fact doesn't say "our record is inaccurate or limited in anyway in relation to this telephone call". The letter says "it is regretted that the Council official who that contacted your department neglected to mention the council's involvement and intensions in relation to the house. This was due to an oversight and no slight on the Office of Public Works was intended".

A. That is what it says, yes.

293 Q. Then it goes on to say: "Regarding the future, the Council is at present drawing up a list of national monuments, which are or are likely to be dangerous to any person or property and when the list is compiled we will notify your office in good time before action is taken under the relevant dangerous building legislation. In order to set up a satisfactory method and acceptable procedure for dealing with these structures it is suggested that perhaps a meeting between the relevant Council and Office of Public Works Officials should take place. If you are agreeable to this course perhaps you will let me know so that a suitable

time and place for the meeting can be arranged". I think subsequently from the file it appears that such meetings did in fact take place?

A. Yes.

294 Q. Insofar as a complaint was made by the Office of Public Works in relation to this matter, this again was a matter that was dealt with by Mr. Redmond?

A. Yes.

295 Q. I think that the Council received a number of pieces of correspondence from heritage groups such as An Taisce and the Georgian Society and matters such as that and they were all responded to in a similar convenient?

A. Yes.

296 Q. And the person who appeared to have overall control in relation to the matter at this stage was Mr. Redmond?

A. That's correct.

297 Q. Yes. So that he was the person who was dealing with all of the complaints that were made, dealing with the media and dealing with the elected members insofar as he had to go in and deal with the Section 4 motion and furnish a report to the members in relation to what had happened?

A. That's correct.

298 Q. Now, I think subsequently following on this a structure was put in place for better communication between the Office of Public Works and Dublin County Council?

A. That's right, yes.

299 Q. And I think that structure is still in place?

A. Yes.

300 Q. And I think that the person with whom the Council dealt with at all times once it established who the owners of the property were was Mr. James Gogarty?

A. Yes.

301 Q. And that Mr. Gogarty was the person who organised the demolition of the Turvey House?

A. That's right.

302 Q. In July of 1987?

A. Yes.

303 Q. Yes; and who subsequently I think wrote to the Council in July of 1987 at page 125 asking the Council where were they satisfied with the way the work had been done. Page 125?

A. Yes.

304 Q. And Mr. Gogarty has written to the Development Department addressed to a Mr. Coleman, senior staff officer: "We wish to advise that the demolition work at the above has been carried out by Messrs. Burke Plant Hire Developments Limited, and was inspected on a number of occasions by your inspector, Mr. Harold.

.

We would be obliged to receive your confirmation at your earliest convenience that the demolition works have been carried out and completed to your council's satisfaction. And the both your Council notices, dated 4th of May 1987 under Section 3 of the Local Government (Sanitary Services) Act in respect of Turvey House and (2) outbuildings adjoining Turvey House have been duly complied with.

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We would also be obliged to hear from you that you have made arrangements to have the court hearings and summons issued by your Council struck out. Thanking you for your cooperation in the matter. J M Gogarty, Director"?

A. That's correct.

305 Q. I think following that and following inspection the Council did write to Mr. Gogarty and say that they were satisfied

that the job had been complete?

A. That's right, yes.

306 Q. Yes. I have nothing further. If you would like to answer any questions that anybody else. Sorry, I do I beg your pardon, prior to you making your decision to inspect the premises and the signing of the order of the 4th of May, Mr. Doherty did you have any communication with Mr. George Redmond in relation to the matter?

A. I have no recollection of ever speaking to Mr. Redmond in relation with that matter before I signed the order to authorise demolition of the house.

307 Q. Do you have a recollection of ever meeting or speaking to Mr. James Gogarty in relation to the matter?

A. I never met Mr. Gogarty.

308 Q. Thank you.

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MR. COONEY: Just a few questions, perhaps if somebody else wants to go?

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CHAIRMAN: Mr. Harris.

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MR. HARRIS: I am just wondering, Mr. Chairman, is this witness going to deal with his second statement or when is that going to --

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MS. DILLON: Turvey House was a separate matter. The two other witnesses and this witness deal with the Ward River Valley land acquisition. For those who may only have an interest in Turvey House, I was proposing to let them cross-examine if there is no objection at this stage and deal with the other matter as a separate issue.

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CHAIRMAN: That sounds like a reasonable proposition.

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MR. HARRIS: I have no difficulty.

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MR. COONEY: I have no concern with the other matter at all.

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CHAIRMAN: You have no concern with the other matter?

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MR. COONEY: Only with this one here, Mr. Chairman.

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CHAIRMAN: Well Mr. Harris, have you any concern with the other matters?

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MR. HARRIS: Well, I will have concern, I think. I don't know if it is proposed to deal with those today.

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MS. DILLON: Yes.

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CHAIRMAN: Yes, I presume.

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MR. HARRIS: So-be-it. I can go ahead in relation to the Turvey House cross-examination now.

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MR. COONEY: I just have a few questions for Mr. Doherty because the matter has been canvassed extensively before.

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CHAIRMAN: The matter has been canvassed in detail. Mr. Cooney you take those questions now.

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THE WITNESS WAS CROSS EXAMINED AS FOLLOWS BY MR. COONEY:

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309 Q. MR. COONEY: Mr. Doherty, in answer to Ms. Dillon you referred to something called a "Section 4" resolution?

A. Yes.

310 Q. Could you tell us what a Section 4 resolution is?

A. A Section 4 resolution is pursuant to Section 4 of the City and Council Amendment Act (1955) and it is a means for elected members of directing the manager to perform some action.

311 Q. Yes, I see. It is, in other words, a statutory provision which reserved certain powers to the elected members of a County Council; is that correct?

A. Yes.

312 Q. And if the elected members adopt a resolution under that section, the executives must implement that resolution; is that correct?

A. Yes, they must respond to what the manager is directed to do.

313 Q. Can you tell the Tribunal Mr. Doherty, whether or not such resolutions are ever adopted or could be adopted in relation to planning matters?

A. They were adopted in the past in relation to planning matters.

314 Q. Yes, in which and this is a resolution which directed - by which the elected members directed the executives of the County Council to issue particular orders or to make certain decisions in relation to planning matters; is that correct?

A. Yes.

315 Q. Yes; and have such resolutions. Are they capable or indeed have they ever been used in respect of the Development Plan affecting a particular local authority area? In other words, can they be used to change the zoning which is

already established by a current Development Plan?

A. I am not quite sure what the questioner is leading to.

Section 4 motions were used regularly in the old Dublin County Council, with varying degrees of success, and for various purposes. In many cases because it was a 78 member body it was quite usual that a Section 4 be passed and listed on the agenda because it has to be dealt with as the first item on the agenda.

316 Q. Yes?

A. And in many cases it was used purely to jump the agenda and directed the manager to do something which he would have been quite willing to do in any case, but that it might not have been reached at a County Council meeting.

317 Q. Yes?

A. Until, because of the length of the agendas and the number of members.

318 Q. Yes?

A. So that the implication that it was directing the manager in all cases, does not necessarily follow that the manager would have been unwilling to supply that information in any case.

319 Q. Yes, I am sure?

A. Quite willingly.

320 Q. I am sure not. The question I asked you was this, Mr. Doherty, was can a Section 4 resolution be adopted for the purpose of affecting the zoning that exists under the then current Development Plan?

A. There are two procedures to change, effectively, the zoning in a County Development Plan. One is a variation of the plan. The making of a variation is a reserved function.

321 Q. Reserved to the executive?

A. To the elected members.

322 Q. To the executive.

A. No sorry, the elected members.

323 Q. Yes okay.

A. The executive would be the manager.

324 Q. Yes, I understand.

A. The other procedure is where there is a planning application before the Council and which in normal course of events would be decided by the manager, and if a Section 4 is put down in relation to a planning application, it means that he has to initiate a procedure which is reserved to the elected members for the making of a material contravening in the County Development Plan in respect of that application.

325 Q. In respect of that application. Very well. Now, can you tell the Chairman what are the mechanics or what is the procedure that an elected member of the County Council would have to follow in order to introduce and achieve the passing of a Section 4 resolution which might have effect on a material contravention of the Development Plan? How would he go about it? Say a councillor had been approached by somebody to achieve a material contravention of a Draft Development Plan, what procedures would the councillor have to do if he wished to meet the request?

A. Sorry, I don't see any relationship between this questioning and Turvey House.

326 Q. I don't think it is any of your business to make that comment, Mr. Doherty. You are here to answer questions and please answer this question now, Mr. Doherty.

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CHAIRMAN: First of all Mr. Cooney, would you advise me as to where is its relevance?

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MR. COONEY: This witness has already referred to a Section 4 resolution which was before the Council in respect of Turvey House. I now wish to ask him some more general questions about Section 4 resolutions, particularly as he was a very senior officer with Dublin County Council at the relevant time, Mr. Chairman. I think on that basis alone I am entitled to ask him.

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CHAIRMAN: You brought it into focus.

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327 Q. MR. COONEY: May it please you, Mr. Chairman. I am asking you this, Mr. Doherty, how would, you are familiar with the procedures which are followed at County Council meetings; isn't that correct?

A. Yes.

328 Q. Yes, I am asking you this on the basis of your experience with these proceedings, to tell the Tribunal, how would an elected member of the County Council go about implementing a request from some member of the public to obtain a material contravention of the Development Plan?

A. In the event that a planning application was current for a development which contravened material, the County Development Plan, the manager, of his own volition could not grant permission without going through a statutory procedure. That statutory procedure is commonly known as the "material contravention procedure". The material contravention procedure can be initiated voluntarily by the manager or he can also be directed by the members.

329 Q. Yes?

A. To initiate the employed procedure.

330 Q. And directed --

A. Now, there are two distinct procedures.

331 Q. Sorry?

A. If he initiates it voluntarily it requires him to give public notice of the intention of materially contravening the plan. That notice is published in newspapers and has the effect of extending the period for the consideration of a planning application for a period of two months. During that two months the public may make observations or submissions in relation to the proposed material contravention and the manager must bring a report on the proposal, the application, and the submissions received from the public, and the members must pass a resolution deciding to contravene the plan before the manager.

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He is then in a position to make a positive decision in relation to the planning application. Having made such a decision the period of appeal, the normal period of appeal to An Bord Pleanála then commences, and the application is subject to review by An Bord Pleanála.

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If the elected, the second part of the procedure is if the elected members put down a Section 4 motion directing the manager to grant planning permission, he must then, on foot of that notice, within seven days, publish the material contravention procedure notice, and the procedure I have outlined kicks in.

332 Q. Right. So the initial --.

A. The Section 4 has no further effect as a Section 4 and the members in due course will consider the application following the receipt of submissions from the public and decide then whether to, to resolve that permission should be granted; and if they resolve that permission should be granted, effectively, they are making the decision and the

manager merely activates that decision by an executive order and attaches conditions to, permissions to issue.

333 Q. So, I understand, the second procedure then necessarily involves a consideration on two occasions at least by the elected representative; is that correct?

A. It does not.

334 Q. How many times does it require to be considered by the elected representative?

A. It requires a Section 4 motion.

335 Q. Yes?

A. Which can be signed by four members of the Council and once that Section 4 motion is put down, the members of the Council, as such, do not consider the Section 4 any further.

336 Q. Right.

A. The manager initiates a procedure and the members consider it on one occasion having gone through that procedure.

337 Q. Okay. And is the matter implemented only on a majority decision of the members?

A. My recollection is, and I did not expect this line of questioning, my recollection is that it was a majority decision of the members up to the 1991 Act.

338 Q. Yes?

A. And after the 1991 Act it required three quarters of the members to vote in favour.

339 Q. All right. So if there is a planning permission which would amount to a material contravention of the planning, of the Development Act, which is initiated by the second of the two procedures that you have referred to, initially the resolution must be put down in the names of four elected members, and ultimately before 1991 if it was to be effective it had to be carried by a simple majority of the

elected members; is that correct, who were present at the meeting?

A. That is my recollection, yes, of the procedure at that time.

340 Q. How difficult would it be for a member of the public, or indeed somebody who is not quite, say a member of the public, say a lawyer carrying out inquiries; how difficult would it be for them to discover whether or not the elected County Councillors had in fact adopted the second procedure that you have outlined in respect of any parcel of lands?

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MS. DILLON: That question is not a question that this witness can answer, Sir.

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MR. COONEY: Of course he can answer it.

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MS. DILLON: He can not answer that question. This line of questioning is a line of questioning to disparage the Tribunal and its work. It is directly connected, I suspect, with the application that Mr. Cooney made this morning. This witness has given viva voce evidence in relation to his involvement in a matter known as the demolition of Turvey House.

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Now, insofar as Mr. Cooney is now embarking on a line of questioning that seems to be directed at a witness, more appropriately I would have thought from the Tribunal than this witness. This witness has no notice. This witness has no preparation in relation to this line of questioning. I suggest that Mr. Cooney is well aware that if any matters, if any member or party before this Tribunal wishes any matter addressed with the witness all they have to do

is write us a letter and we will deal with it. We received no notice that he intended to pursue this line of questioning with the witness. If he has any questions about Turvey House, they are relevant. A line of questioning which is based on how difficult would it be for the Tribunal to get records of this or records of that, is (A) not relevant to this witness' evidence and (B) not a matter that this witness can answer. And in my submission, Sir, this line of questioning should now cease.

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MR. COONEY: Mr. Chairman, this witness has already agreed that he is a senior member of the staff of Dublin County Council and he described himself in the statement as Principal Officer of the Development Department of the former Dublin County Council. Now it may be that as a matter of practice his experience in that position doesn't enable him to answer the question which I have asked. If he says so that is the end of the matter. On the other hand so far his answers indicate that he does have such experience and I think that the question is perfectly proper and it is a matter for him, Mr. Chairman, to say that he is not sufficiently qualified or experienced to answer the question, if that be the case; it is a perfectly proper question, Mr. Chairman, and it should be allowed and I cannot understand why any member of the Tribunal's legal team would seek to prevent me from asking such a question, Mr. Chairman.

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MS. DILLON: Just briefly in response. The question that was put by Mr. Cooney is "how difficult would it be for the Tribunal legal team to obtain --

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MR. COONEY: That is not the question I asked, Mr. Chairman.

MS. DILLON: I will read it back.

CHAIRMAN: Just a moment.

MS. DILLON: That is that is not a proper questioning. This line of questioning is not relevant to the statement of this witness that was circulated. It is not relevant to the direct evidence this witness has given. If Mr. Cooney wants to put these questions in a letter form to the Tribunal, we will bring back this witness to deal with them when he has notice. It is in any event entirely unfair to this witness to spring this on him without any notice.

MR. COONEY: Mr. Chairman, first of all I am not shocked at all by this obstruction on the part of Ms. Dillon, not at all. I am somewhat surprised that what is, what is a matter of what I expect to be almost common knowledge to this witness is not been allowed to come forward in evidence, particularly having regard to the Terms of Reference of this Tribunal of Inquiry.

But in any event the way I phrased it was, the question was how difficult would it be for a member of the public, and I am, I will restrict it to that; how difficult would it be for a member of the public? Let's indeed put it another way, how easy would it be for a member of the general public to discover if four members had signed a Section 4 resolution, and the majority of the County Council had considered such a resolution, whether they accepted or

rejected it in respect of a planning permission in relation to a particular parcel of land? That is all I am seeking to establish, Mr. Chairman. I think if Mr. Doherty says he does not know the answer to that question so-be-it. If he does --

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MS. DILLON: I think it is very important for the record Sir, in view of what Mr. Cooney has just said that we read back to Mr. Cooney the question he asked the witness, and it is this question. "How difficult would it be for a member of the public or indeed somebody who was not quite, say a member of the public, say a lawyer carrying out inquiries; how difficult would it be for them to discover whether or not the elected County Councillors had in fact adopted the second procedure that you have outlined in respect of any parcel of land". It is quite clear where he is going with that.

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MR. COONEY: It is just extraordinary.

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CHAIRMAN: Just a moment. First and foremost, Mr. Cooney, is perfectly entitled to inquire into matters that are relevant that he sees as relevant to his case. I have some doubt as to the relevance of this matter and I propose to consider it over lunch, and to advise you as to what my position is, because I want to just check a matter of law, because I think the matter probably is a matter of law, not a fact matter of fact.

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I will check that over lunch and I will discuss the matter with you and hear anything you wish to say afterwards. I just want to check something. I am not clear at the moment

myself. I don't want to walk in "where angels fear to tread". We will sit again at a quarter past two.

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

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CHAIRMAN: Mr. Cooney, over lunch I have thought about the submission you have made to me; and I have come to the conclusion, that the question is not in fact, and does not appear on the perusal of the transcript, of any relevance to the evidence of the witness in the witness-box, and I do not intend to accept it or permit the line of questioning to continue as it is not relevant and does not revise.

That's my ruling.

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MR. COONEY: May it please, Mr. Chairman. I am finished with the witness.

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CHAIRPERSON: Thank you.

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THE WITNESS WAS THEN CROSS-EXAMINED BY MR. CALLANAN AS FOLLOWS:

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341 Q. MR. CALLANAN: Just one question. I take it that the legal argument contained in the report given to the members of the Council in relation to the provisions of The National Monuments (Amendment) Act and Local Government (Sanitary Services) Act, that would have emanated from Mr. Redmond, would you accept that?

A. It would have been a combination of a number of officials and Mr. Redmond, myself included.

342 Q. Yes. And Mr. Redmond would have had a certain expertise in relation to the matter of the two acts and the apparent hiatus which the two Acts left in relation; isn't that so?

A. Well, at this point in time I couldn't say whether there
B.

was - the Law Agent was brought into the discussion.

343 Q. There is no doubt Mr. Redmond was involved, Mr. Redmond was involved?

A. He was involved in drafting that, but there were a number of other officials involved as well.

344 Q. He would have been the most senior person involved?

A. That's right.

345 Q. Thank you very much.

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CHAIRMAN: Thank you very much.

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MS. DILLON: Mr. Harris.

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MR. COONEY: Before Mr. - Mr. Callanan represents Mr. Gogarty, is he not going to put to this witness Mr. Gogarty's allegation that Mr. Redmond stuck his neck out --

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CHAIRMAN: Mr. Cooney, I do not give directions to anyone. Thank you very much.

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MR. COONEY: Very well.

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CHAIRMAN: Sorry, Mr. Harris has --

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MR. CALLANAN: Mr. Cooney well knows that what Mr. Gogarty said in his evidence was that he was present --

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CHAIRMAN: Hold on, just a moment please. Mr. Harris, before the witness leaves the witness-box, do you want to ask him any questions?

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MR. HARRIS: I do indeed.

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CHAIRPERSON: I thought you were reserving your position until after all, that you were dealing with this matter through the other two witnesses or three witnesses?

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MR. HARRIS: I think it is convenient, seeing as everybody asked questions in relation to Turvey House.

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CHAIRMAN: Wait now just a moment, what aspect of this evidence that that witness gave is in anyway affecting you, your client?

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MR. HARRIS: Well, I mean he has for instance said, that he couldn't recall that, there being any representations. It seems to me that the allegations against my client were that he received money in relation to sticking his neck out

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. CHAIRMAN: This witness made no such representations.

. MR. HARRIS: I understand that, of course.

. CHAIRPERSON: None whatsoever. He simply said, he set out what had happened de facto as he understood it, in the circumstances which the house came to be demolished pursuant to the Local Government Act of 1954. That's all. He did not in anyway, as I recall it, impugn, he didn't impugn Mr. Redmond.

. MR. HARRIS: I fully accept that.

. CHAIRMAN: Well, if he didn't impugn Mr. Redmond I don't

see what complaint you have. The fact that Mr. Cooney may or may not is a different matter. But he is, this witness didn't --

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MR. HARRIS: Of course, perhaps we are at cross-purposes, Mr. Chairman. I do have several questions to put to this witness which relate to the legal position in relation to the demolition order. And I, they are of a technical nature.

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CHAIRMAN: If they are matters of law surely they are matters of submission to me?

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MR. HARRIS: They are not matters of law, they are matters of modus operandi, I suppose. But I have matters, Mr. Chairman, which I deem it appropriate that I ask questions.

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CHAIRMAN: All right. Whatever you want to ask, let's keep it in relevance.

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THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HARRIS AS FOLLOWS:

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346 Q. MR. HARRIS: Indeed. I was just saying to Mr. Chairman, that it was in the context of the allegation made against my client of receiving monies for sticking his neck out for Turvey House, I think that's how Turvey House came into the equation, and that particular allegation is of concern to my client, but in any case, Mr. Doherty, I would like to ask you some questions a little bit about the way demolition orders function.

Am I correct from your evidence this morning, that there is no functions in the Council, there is the reserve functions for the member and then the Manager has the other functions, the executive functions?

A. That's correct, yes.

347 Q. And am I correct also that in respect of various executive functions they would be delegated to various officers of the Council by Managerial Order?

A. That's correct.

348 Q. And can I assume therefore, that because you signed the demolition order in this case, that you, I think you were a principal officer at the time, were the person to whom the delegated functions had been given by order?

A. Yes.

349 Q. And that would be the same for all delegated functions, including the planning function?

A. Yes.

350 Q. And in relation to a demolition of a listed building, I think your evidence this morning was that planning permission is required if it is a List 1 building?

A. Yes.

351 Q. So in some regards once a demolition order under the Sanitary Services Act or a Dangerous Building Notice had been served, there might be some planning aspect to it, would that be fair? There seems to be a bit of a cross-over?

A. It was listed for preservation in the Development Plan. The information that was conveyed in the telephone conversation with the Office of Public Works was that it was not listed as a national monument, they are two separate listings.

352 Q. Indeed. No, I understand that, and I will come to that.

But - well, let me put it this way; some other functionality of the Local Authority had the planning function, isn't that right, not yourself?

A. That's right.

353 Q. And I think in respect of any, when an order is to be made and it is made by the delegated officer, it is made on the basis, it seems from the documents that I have seen, of a recommendation first of all which is made to be officer and then it is signed at the end by the officer with the delegated responsibility to make it an order, is that so?

A. That's correct.

354 Q. That's the way it goes. And I think that all of those orders are, and certainly in dangerous building circumstances are based on technical and professional reports from the appropriate officers, in this case being the architect and inspector; is that right?

A. That's correct.

355 Q. Now, in the event that somebody wanted to demolish a house without an order, I want to explore this very briefly, and then I will leave it; there would have to be an application to, for planning permission to the Planning Department? I am asking you this in view of the correspondence that was opened this morning, and there was a letter from the Planning Department, I think addressed to the Sanitary Services Department saying that the Planning Department would oppose a demolition order, do you recall that being drawn to your attention?

A. Yes. I want to know are you asking the question in relation to current law or the law as it stood then?

356 Q. It would be the law as it stood then. If you can remember, well it is not law so much that I am concerned

about. I want to know this, would an objection from the Planning Department, would I be correct in assuming an objection from the Planning Department would only be relevant in the context of an application for demolition and not in the context where you had a technical report before you and you have an order to make?

A. The Planning Department was acting in an advisory capacity as to what its attitude to Turvey House and its demolition or treatment was. It was accepted that the Dangerous Buildings Code and the safety of public people, or members of the public, would take precedence in the event over the objectives of the planning, County Development Plan with respect to preservation.

357 Q. Okay. No, I understand. I think it was listed in the County Development Plan and I can see, if I can draw your attention - I wonder has the witness got the documents in relation to the demolition? Page 207, if you could just look at that document there? This is, it says "List 1" at the top, and I see Turvey House is listed at No. 8, do you see that?

A. That's right.

358 Q. Yes, yes. Now, I just want to ask you a question about this: In respect of some of the buildings, I see No. 6 there for instance and No. 11, No. 15, 17, 19, 20., that there is national monument numbers opposite those?

A. Yes.

359 Q. Now, there doesn't seem to be one opposite Turvey House?

A. There is not.

360 Q. Can you tell me what this document is?

A. It is an extract from the County Development Plan, showing buildings which are listed for preservation in the County Development Plan as objectives of that plan.

361 Q. And if it is a national monument it should have a number; is that right?

A. Yes.

362 Q. And can you say factually that it was a national monument or not?

A. It was in some type of list in the National Monuments Office. There are various categories of listings in the National Monuments Office in which I, which I am not very familiar with without preparation.

363 Q. Okay. Sorry.

A. But I would have relied on the fact that there was not a national monument listing opposite it in the County Development Plan.

364 Q. The numbers which are assigned to national monuments would presumably be assigned by another authority, not the Local Authority?

A. No, they would be assigned by the Commissioners of Public Works at that time.

365 Q. Okay. And I think on the next page, there is a note at the end of the page, "Checked with OPW. Not listed as a National Monument"?

A. That's correct, yes.

366 Q. And you said she, I think you referred to a female?

A. Yes.

367 Q. Who made that inquiry?

A. Yes.

368 Q. Now, now in respect of the particular demolition order - sorry, I just want to deal with one other matter. Am I correct, if there is, it is not a national monument it would not be necessary to give two months notice for its demolition, although if it is on a list you have to get planning permission? Am I stating the law correctly?

A. My understanding is that there was a new National Monuments Act introduced in the year in question, and I am not familiar enough to know the requirements of that without prior notice.

369 Q. I think it may --

A. Of how that impacted on the requirements here. The primary consideration here was the protection of members of the public and particularly children, of which there was evidence of trespass.

370 Q. Yes. I think there was Coca Cola cans or something, wasn't that, there was evidence of a fire?

A. Yes. A picnic type fire as distinct from a major fire.

371 Q. Yes. Now, I think the evidence was that from 1973 first, the building first came to the attention of the Local Authority?

A. Yes.

372 Q. And I don't know whether you are familiar with the evidence given by Mr. Gogarty to the effect that he deliberately allowed the building to fall into disrepair, were you familiar?

A. Anything I know of, that I read in the papers.

373 Q. Okay. Can I ask you then, the order that you made on the recommendation of the appropriate officer, am I correct in saying that that was based on the technical and professional reports and recommendations that were made to you and your own observation of the condition of the premises and that alone?

A. Yes.

374 Q. And I think your evidence was that you cannot recall Mr. Redmond making any representations to you about it?

A. I have no recollection whatever of discussing it with Mr. Redmond prior to the demolition.

375 Q. Indeed. And I want to know, I think you gave evidence this morning that you had no choice but to sign the order, and I just want to clarify the matter here. Is it your evidence that in your opinion you had no legal option but to sign the order in view of the technical reports which were before you?

A. You always have a legal option, like - the advice and recommendations from the architect was that this building should be demolished within three days. Normally you would have two weeks, three weeks, a month in which to carry out action. I could have ignored that recommendation, but I would then be liable in the event of any child being killed in the building.

376 Q. Indeed.

A. And there would be another type of out-cry. I have no basis on which I could defer a decision, reasonably, given the professional advice in front of me.

377 Q. And your own inspection of the premises?

A. That's right.

378 Q. Well, you have actually anticipated my next question, and it is that had you not acted a liability may have arisen, either civil or criminal?

A. Yes.

379 Q. And obviously given that you did so fact act, even if there was a degree of an option in your part, you must have been satisfied that there was no alternative but to serve the notice?

A. I was satisfied the proper course of action was to serve the notice in the public interest.

380 Q. And you say you received no representations from Mr. Redmond about this demolition. Did you ever receive any representations from him in relation to any other?

A. In relation to, what do you mean "any other"?

381 Q. Any other case?

A. By and large my delegation as approved officer was from the City and County Manager, Mr. Feeley, it did not come directly from Mr. Redmond, although he would have an influencing fact, a substantially influencing fact into the duties that would be delegated to me.

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Now, in the course of exercising delegations there is an obligation to consult with the Manager delegating, as the case may be, on any particular issue, and I found no reason to go to Mr. Redmond, prior to signing that order.

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The whole purpose of delegation is to remove relatively routine work from a Manager.

382 Q. Okay.

A. I felt I had sufficient grounds for signing the order without special consultation with either Mr. Redmond or Mr. Feeley.

383 Q. And you have no knowledge of him perhaps having stuck his neck out in relation to Turvey House?

A. No.

384 Q. He had no involvement?

A. No, none what ever that I know of.

385 Q. That's all the questions I have.

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CHAIRPERSON: Thank you. Thank you very much. This time, goodbye and thank you very much.

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MS. DILLON: Mr. Doherty is the next witness in relation to the Ward River Valley Linear Park. It is the second issue this witness is going to deal with.

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CHAIRPERSON: I beg your pardon.

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MR. CALLANAN: Sir, before Ms. Dillon takes up that part, it doesn't appear any of the further witnesses pertain to Mr. Gogarty, and in that case with your leave we propose to withdraw?

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CHAIRMAN: Certainly.

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MR. CALLANAN: Thank you.

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CHAIRMAN: Now Ms. Dillon.

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THE WITNESS WAS FURTHER EXAMINED BY MS. DILLON AS FOLLOWS:

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386 Q. MS. DILLON: We want to deal now with the acquisition of nine acres of land at Forest Road for The Ward River Linear Park, and I think you are familiar with certain aspects of the file, and the file reference that we will be using in the main for this is the file reference FCC 3.320. Do you have the Tribunal copy of that file, that's index --

A. No.

387 Q. We will hand you a Tribunal copy. It will be easier for you to work from that. (Document handed to witness).

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First of all, Mr. Doherty, if you can tell us in 1989 what was your position with Dublin County Council?

A. Well, it was the same as in '87, I was Principal Officer in the Development Department with responsibility for the acquisition, management and disposal of property, including derelict sites and dangerous buildings.

388 Q. Yes. And who was your immediate superior?

A. Mr. Redmond was my immediate superior.

389 Q. And were you working primarily in the area of acquisitions or had you any particular function?

A. Primarily acquisitions, yes.

390 Q. And the County Council would acquire land for any number of reasons; Compulsory Purchase Orders for road widening, parks, all manner of matters such as that?

A. Yes.

391 Q. And the, in the normal case can you outline, because most of us don't really know an awful lot about how one goes around acquiring land for a County Council, if you are aware of land and you decide to acquire it, what is the normal procedure?

A. Well, at that particular time because of financial constraints on resources, most land was acquired for roads and motorways, national roads and motorways, very little was acquired for open space purposes, or other purposes. Primarily because it was the Government was financing the major roads and motorways and the Local Authority had very severe financial constraints in the discretion that it could divert or use, raise monies for open space purposes.

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But nevertheless there was a certain amount, limited amount of open space acquisition as opportunity presents itself, and in the County Development Plan there would be objectives as to where and what land should be acquired or should be retained or reserved for open space purposes, and one such tract of land was The Ward River Valley.

392 Q. And --

A. Part of that land had been acquired by Compulsory Purchase

Order in the early 70s, and there was a continuing objective to continue the development of a public linear park in the valley, and at the time that we are speaking about here, that objective would only be pursued as appropriate opportunities present themselves rather than targeted action to acquire by Compulsory Purchase Order.

393 Q. Yes, but in the normal course in dealings with acquisitions, Mr. Doherty, what was the normal procedure that was followed in relation to the acquisition of lands, be they small amounts of open space or whatever else?

A. Well, because of the --

394 Q. Do they --

A. Very limited opportunity.

395 Q. Do they require for example a Manager's Order?

A. Yes.

396 Q. Yes. All right. All right. So I am looking for the internal procedure in the County Council in relation to the acquisition of land?

A. Yes. The normal position would be that land would be identified, the Chief Valuer would negotiate or alternatively negotiations might be held directly with the landowner, depending on the circumstances, and following agreed terms the Manager would make a formal order on behalf of the Council, determining to purchase the land setting out the terms of acquisition, and deciding to instruct the County Solicitor to acquire and transfer the title to the land to the Council.

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That would be then recorded as a formal decision of the Council to acquire the land.

397 Q. Would that Manager's Order be normally accompanied by a map showing the lands in question?

A. Yes. Yes, or such a map would be on the file accompanying the Manager's Order.

398 Q. So that you would be able to identify the order by reference to the map?

A. Yes.

399 Q. And vice versa?

A. Yes.

400 Q. Now, in relation to the purchase of the nine acres for The Ward River Valley Linear Park, these were the lands owned by Princess Homes. I think that your involvement commenced on the 20th of June of 1989?

A. Yes, that's right.

401 Q. Yes. And I think can you tell me where you were stationed at that time? Where you were actually working?

A. My office was actually located in 2/3 Parnell Square.

402 Q. And Mr. Redmond's office was in O'Connell Street?

A. 46-49 Upper O'Connell Street.

403 Q. And I think that you were furnished with some documentation on foot of a memo by Mr. Redmond, and the memo is at FCC 3.3, 22. Page 22.

A. Yes, I got a number of documents, including a memo, from Mr. Redmond.

404 Q. And that memo is dated the 20th of June of 1989. It doesn't say "1989", it is the 20th of June?

A. I am just trying to identify the memo at the moment.

405 Q. 22. Page 22?

A. Right. Thank you. Yes, that's right. On the 20th of June there is a document addressed to myself which is signed by or initialed by George Redmond and it says: "Myself and Mr. Lynch have been endeavoring for some time to get this land. Added to four acres of open space in the housing development will add a further 13 acres to The

Ward River Valley Park. Price is most reasonable.

Submit please for my order". And it is initialed by
George Redmond.

406 Q. When he was referring, "We have been endeavoring for some
time to get this land", I think he also furnished you with
a copy of the letter from Mr. Bailey?

A. That's right, yes.

407 Q. And a map?

A. Yes.

408 Q. And the letter from Mr. Bailey is also dated the 20th of
June of 1989, and it is at page 20 in the file?

A. That's right, yes.

409 Q. And that is a letter addressed to the County Manager, and
it doesn't appear to have a date, received stamp on it, and
it is dated the 20th of June, 1989.

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"Dear Sir, we wish to refer to the discussions we have
been having with you regarding the company land shown on
the annexed plan which the Council wishes to acquire to
the, add to the Brackenstown Valley Park. The area of
your site is about eight or nine acres. We thought we
might have had successful negotiations with you to set off
the cost of open space against the development works. As
this was not possible your estimate of your costs being in
the region of £80,000, we are now offering to sell you the
open space for £30,000, and we will do our own development
works, upgradings, etc.. Please let us hear from you by
return. Yours faithfully, Michael Bailey on behalf of
Princess Homes Limited"?

A. Yes.

410 Q. Did that letter or a copy of that letter accompany the
handwritten memorandum dated 20th of June signed by Mr.

Redmond?

A. Yes.

411 Q. Did the map at page 21 of the file also accompany --

A. Yes.

412 Q. If we just look at that map briefly for a moment, Mr.

Doherty, that's a map of the nine acres, 8/9 acres in question; is that right?

A. That's right, yes.

413 Q. And is this a map that was prepared by the County Council, page 21?

A. It looks like a Land Registry map. There is no evidence to suggest that that particular map was prepared by the County Council.

414 Q. Yes, it --

A. But there were two other maps accompanying that memorandum, at 19 and 18 and 17, a number of other maps.

415 Q. 17, 18 and 19.

A. The 17 map is a copy of the County Development Plan showing the lands with a notation on it, "9.05 acres - high amenity".

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The next map, No. 18, is a copy of a map prepared by the Parks Department, which would be a copy of the Ward River Valley Linear Park overall scheme, showing within the area how the land might be developed.

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And then there is a further map, No. 19, page 19 which shows a housing scheme and also the land that we are talking about with the name "Grafton Construction & Company Limited" marked on it. All of those maps, together with No. 21 were given to me accompanying the letter of Princess Homes and the note from Mr. Redmond.

416 Q. So they were the documentation that you were furnished with on the 20th of June of 1989?

A. Correct.

417 Q. And you were requested to prepare a, an order for signature by Mr. George Redmond in relation to the acquisition of these lands?

A. That's right.

418 Q. Were you requested to obtain a valuation in respect of the lands?

A. No.

419 Q. Wouldn't it have been normal to have had the lands valued?

A. As I say, there was very little land purchased for open space purposes at that time, so to say what was normal and what wasn't is very difficult. I would have been satisfied that compensation at 30,000 for nine acres of land was quite reasonable, and I wouldn't have deemed it necessary or appropriate to have obtained a valuation of the land separately or to delay making the order determining to purchase the land until such a valuation was obtained.

420 Q. But what was the urgency with making a Manager's Order on the same day?

A. Well, I understand that Mr. Redmond was about to retire within four or five days, or five days or six days, sometime around that, and I was quite satisfied that at £30,000 for nine acres it was a very reasonable price anyway.

421 Q. Were you influenced at all by what Mr. Redmond had said in his instruction to you on the 20th of the 6th to - Mr. Redmond doesn't appear to be seeking your opinion in relation to whether it is good value or bad value. Mr. Redmond says: "The price is most reasonable, submit please

for my order"?

A. I would have had no difficulty with his note. If I had had difficulty I would not have proceeded immediately to prepare a Manager's Order. I would have sought a valuation.

422 Q. But in the normal course of events are Manager's orders normally prepared on the same day that the offer to sell the land comes into the County Council?

A. No, it would be quite unusual.

423 Q. Right. So what was the reason for the speed with which this particular transaction moved?

A. As I said, Mr. Redmond was due to retire within a week or ten days of that, I haven't got the exact date, but it was certainly within a week or ten days of that. And it was quite clear to me that it had been a long standing objective of the Council to acquire land for the previous 17 or 18 years in the Ward River Valley, and that obviously there had been discussions between Michael Bailey and Mr. Redmond and Mr. Lynch, of which I was not aware other than receiving the note, and in order to capitalise on those discussions, as it were, and bring them to a quick conclusion and ensure that a decision was made by the Council to acquire the land, there was no reason why an order should not be prepared formally recording that event.

424 Q. Yes.

A. And instructing the Law Agent to acquire the lands.

425 Q. When was the Law Agent instructed in relation to acquiring the lands?

A. On the 4th of July.

426 Q. It was some two weeks after the Manager's Order had been prepared; isn't that right?

A. That's correct.

427 Q. Yes.

A. It is quite possible that there may have been oral discussions with the Law Agent before that, but there is nothing to indicate that.

428 Q. On the file?

A. On file, yes.

429 Q. There is nothing to indicate there is any oral submissions. The urgency was, as you saw too, to acquire the lands as soon as possible for the County Council?

A. Yes.

430 Q. Yes. So what was done on the 20th of June was a letter came in from Mr. Michael Bailey making an offer to sell the land for £30,000, and Mr. Redmond sent a note to you with an instruction to prepare an order for his signature, which you did?

A. Yes.

431 Q. Yes. Following that then, sometime early in July, the 4th of July, contact was made with a solicitor for the County Council?

A. That's right.

432 Q. And did anybody contact Mr. Michael Bailey to accept his offer formally?

A. No, that would not be the normal course of events other than perhaps a phone call being made.

433 Q. Is there anything on the file to indicate --

A. There is nothing to indicate that. Normally what would happen would be the Law Agent would be instructed and the Law Agent would seek the details of title from the vendor's solicitor.

434 Q. But nothing could proceed about the acquisition of the property until the Law Agent had been instructed; isn't that right?

A. That's correct, yes.

435 Q. The Manager's Order of itself was nothing more than a confirmed decision by the County Council to acquire the land for the stated price?

A. That's right, yes, but I mean there could have been a phone call made to suggest to Michael Bailey that a decision, such decision had been made.

436 Q. Is there anything on the file?

A. There is nothing on the file to record it.

437 Q. So despite the urgency and the desire of the County Council to acquire these lands for the linear park and the Manager's Order being made on the same day Mr. Bailey made his offer, there was no contact with the Law Agent until the 4th of July?

A. That's right.

438 Q. Some 14, 15 days later?

A. Yes.

439 Q. And the file does not indicate that anybody wrote formally to Mr. Bailey accepting his offer or that any phone calls were made to Mr. Bailey indicating to him that a Manager's Order had in fact been made?

A. That's right, yes.

440 Q. So where was the urgency in making the order on the 20th of June of 1989?

A. Two weeks is not a very long time in conveying that to the Law Agent. It must be remembered that this matter was being dealt with in the context of several hundred files.

441 Q. Yes.

A. So there wouldn't be urgency.

442 Q. No?

A. Like - I mean, as it transpired it took over 12 months or certainly over six or eight months later to complete the

acquisition.

443 Q. Yes. You indicated earlier, Mr. Doherty, that the reason, one of the reasons for the making of the order by the County Manager on the same day that the letter of offer came in from Mr. Bailey was the desire of the County Council to acquire the lands and the fact that it was shortly before Mr. Redmond was due to retire?

A. That's correct, yes.

444 Q. If the County Council were desirous or so anxious to obtain these lands, once the Manager's Order had been made what further urgent steps did they take?

A. I am not quite sure what further other steps were made but it, the Manager's Order was a formal decision to acquire the land, to reserve finance for the purchase of the land in the sum of £30,000 and as such, it was an important decision in determining that this land was to be acquired and completed, and I would have agreed with that decision.

445 Q. I am not disputing, asking whether you agreed or disagreed, you have indicated it was an urgent matter, it was clearly dealt with urgently because the letter of offer and the Manager's Order are dated the same day. This was apparently the desire of the Council to add to the Ward River Valley Linear Park. If the matter was urgent, Mr. Doherty, what, once the order had been made on the 20th of June, 1989, what further urgent steps did the Council then take, from the perusal of the file?

A. I am not aware of any other.

446 Q. Any other steps. So the only urgency was obtaining the order?

A. Was making a formal decision, yes.

447 Q. And that decision was made without the lands being valued; is that right, by the valuer?

A. Without a professional valuation, yes.

448 Q. Without a professional valuation?

A. Yes.

449 Q. Could a professional valuation have been obtained inside two or three days?

A. Normally it would take longer.

450 Q. But in the particular urgent circumstances of this particular acquisition, do you think you might have been able to organise a valuation?

A. I didn't see the need for organising a valuation.

451 Q. So it was your view that a valuation wasn't necessary?

A. Absolutely.

452 Q. You, I think, did prepare the Manager's Order which is at 23 in the folder before you, and this was signed on the, even though the signature is quite poor, on the photocopy, on the 20th of June of 1989, signed by Mr. Redmond in relation to the acquisition of nine acres, approximately, at Highfield, Forest Road, Swords, The Ward River Valley Linear Park. On drawing SS54 the price was £30,000?

A. Yes.

453 Q. Now, the original letter that had been sent in by Mr. Bailey to Mr. Redmond, and which had been sent on to you referred to the area of the site being eight or nine acres?

A. Yes.

454 Q. And in the Manager's Order of the same date it is referred to as nine acres approximately?

A. Yes.

455 Q. How did you manage to resolve the difficulty of whether you were buying eight or nine acres or resolving to buy nine acres?

A. There was a map which accompanied the documentation which shows the land as measuring 9.05 acres high amenity.

456 Q. Yes. And it was from that?

A. I am quite satisfied that I had that map at that time, because otherwise I would not have known that it was nine or eight acres, if I had that map.

457 Q. Yes. So because of that map came with the documents, do you have a specific recollection of having that map when you were drawing up this order?

A. I have a recollection of getting the memo, the letter from Mr. Redmond and a number of maps, and I am quite satisfied now, that that map was among them, because there is no other way I could have known that it was nine acres was the appropriate area to acquire.

458 Q. So you are deducing by looking at the map now that because that map refers to nine acres, that you probably had that map when you were preparing the order?

A. I am very happy that I did have that map at that time.

459 Q. Now, following your preparation of the Manager's Order what did you do with it?

A. I would have passed it to other officials to pursue, prepare letters to the County Solicitor and to Mr. Lynch, Parks Superintendent, and I would have passed it for attention to other officials.

460 Q. Yes, but it had to be signed by Mr. Redmond?

A. Yes, but it is not a Manager's Order until it is signed, so I presumed --

461 Q. I accept that. The first thing you would have done is signed it as Principal Officer, and it had to be brought down to Mr. Redmond?

A. Yes. I beg your pardon? Yes.

462 Q. Did you bring it down to Mr. Redmond?

A. I probably did, but I haven't a specific recollection of doing that, but I probably did. It would not have been

unusual to send numbers of Manager's orders with their appropriate files down by a more junior official for signature, particularly where I would be aware that the Manager would already been out, fully conversant and aware of the proposal. I can't not say whether I brought it personally for his signature myself or not. But, I certainly was the instigation of it being signed.

463 Q. Yes. And would this be unusual in your experience, in relation to Manager's orders, that things would happen all in the space of one day?

A. No, it is quite unusual.

464 Q. Yes. Thereafter, I think you organised the preparation of various maps; is that correct?

A. That's correct, yes.

465 Q. And you also referred the matter on to Mr. Loftus, the County Solicitor?

A. Yes.

466 Q. On the 4th of July of 1989?

A. That's right.

467 Q. And you are on, by reference to page 24 and 25 the senior staff officer whose initial appears; is that correct, on the bottom of that, or are you?

A. Sorry, am I what?

468 Q. If you look at page 25?

A. Yes.

469 Q. It is a letter to Mr. Loftus?

A. Yes.

470 Q. And there is "senior staff officer", "development" and an initial beside that, is that your initial?

A. It is not mine, no.

471 Q. Would you have directed the persons who organised the maps and who sent the matters onto the solicitor to deal with --

A. Yes.

472 Q. -- that? So would the file have come back to you after Mr. Redmond had signed it?

A. Probably did.

473 Q. And from there on in, would you have been the person who would have been pursuing the matter in relation to the acquisition of these nine acres?

A. Absolutely.

474 Q. And that would have been part of your function?

A. Yes.

475 Q. I think in fact that maps were, in fact, prepared and furnished on the 29th of June, sorry on the 29th of June of 1989, at page 24. You requested maps and they were ultimately furnished by, I think Mr. Michael Lynch's department, Parks Department?

A. That's right, yes.

476 Q. And you also on the 4th of July sent the matter on to Mr. Dermot Loftus, the County Solicitor, to arrange for the transfer of the fee simple?

A. That's right, yes.

477 Q. And on the 10th of August, 1989, further maps were sent on to Mr. Loftus, that's at page 26, and that indicates it was 9.01 acres?

A. Yes.

478 Q. And those maps have a reference LA 45289; is that so?

A. That's correct, yes.

479 Q. And these were the maps now prepared by Dublin County Council?

A. Yes.

480 Q. And they were available on the 10th of August of 1989?

A. Yes.

481 Q. And I think they originated from Mr. Michael Lynch's

department, the Parks Department?

A. That's right.

482 Q. And I think on the 4th of August, 1989, Mr. Michael Lynch wrote to you and told you that the acreage was in fact 9.01 acres?

A. Yes.

483 Q. And furnished you with maps which were subsequently sent on, I think, to Mr. Loftus?

A. Yes.

484 Q. And the matter was proceeding and everybody assumed it was going to proceed normally?

A. To finality,.

485 Q. Yes. The next document I want you to look at is Document No. 29, which is a copy of the letter of the 20th of June of 1989?

A. Yes.

486 Q. And it contains handwritten notes at the top. Do you know whose writing that is? It seems to suggest a meeting on the 13th or the 17th of October with Mr. Bailey, and beneath that may be the 28th of October?

A. I don't recognise that handwriting.

487 Q. Is it your handwriting?

A. It is not my handwriting definitely.

488 Q. Were you aware in October of any problems in relation to the processing of this purchase?

A. I am not aware of any problems, no.

489 Q. When did you first become aware that there were problems?

A. The first I became aware that there were problems is in a letter from Michael Lynch to Dan O'Sullivan, dated the 1st of December, 1989.

490 Q. Yes. That's at page 35, I think, of the file?

A. Yes, page 35.

491 Q. And that letter details what Mr. Lynch had discovered when he had tried to move the matter along?

A. Yes.

492 Q. And that in fact he had met with Mr. Michael Bailey in October and Mr. Bailey had told him that there was an aspect to the agreement with Mr. Redmond which had not been dealt with by the County Council. "On inquiry Mr. Bailey informed me that as part of the agreement to sell the land to the County Council, Mr. Redmond had agreed to withdraw the County Council's requirement to comply with Condition 28 of Planning Permission P/270/89 imposed on Caslan Developments Limited in respect of a 37 unit housing development at Mill Road, Blanchardstown. The condition required a financial contribution of £500 to be paid per house towards the cost of the development of the Tolka Valley, ie £18,500. Caslan Developments is another building company with which Mr. Bailey is associated"?

A. Yes.

493 Q. This was a report prepared by Mr. Lynch on the 1st of December of 1989, and I think received by your department on the 9th of January of 1990?

A. Yes, it was received by my department on the 9th of January.

494 Q. When you received that, Mr. Doherty, what did you do?

A. I asked an official in my department to check, "Please advise me if we are in a contractual position here in, as yet? If not please discuss with me".

495 Q. And your official establish whether or not you were in a contractual position?

A. She did.

496 Q. And --

A. That's noted at Document No. 37.

497 Q. And following receipt of that information did you contact Mr. Bailey?

A. I did, yes.

498 Q. And when did you meet Mr. Bailey, can you recollect?

A. I am not sure whether I met him or spoke to him on the phone. I would have known Mr. Bailey well enough to speak with him on the phone without having to meet him personally.

499 Q. And in any event do you have a recollection of meeting him face-to-face in relation to this matter?

A. I haven't got a recollection of meeting him face-to-face, I imagine I probably have spoken to him by phone, but I have no recollection, but I have a note on file that I have discussed the matter with Mr. Bailey of Caslan Developments and Princess Homes would agree to complete for a consideration of £39,000".

500 Q. Condition No. 28 on the planning permission, P270/'89 imposed a levy of £18,500 on the Caslan Developments; isn't that right?

A. That's right.

501 Q. And Mr. Bailey was contending to the Council that in addition to agreeing to sell the land for £30,000 there had been an agreement that that condition would be waived?

A. That's right.

502 Q. When you met Mr. Bailey or, sorry, contacted Mr. Bailey in relation to the matter, did you discuss with him this allegation, that there had been a separate agreement in relation to the levy on the Caslan Developments site?

A. I am satisfied that I indicated to him that I had no knowledge of any such condition attaching to this acquisition and that I refused to incorporate that term as a condition, as a term of the acquisition.

503 Q. What was Mr. Bailey's response in relation to that?

A. Well, the first point goes back to - I established first of all whether we were in a contractual position. If we were in a contractual position then there was nothing Mr. Bailey could have done about it, he would be bound by contract to complete on the basis of £30,000. If we were not in a contractual position then we were in a new situation of negotiation, and I am satisfied that we were in a new situation at that point, which is some six months after the original Manager's Order was signed, and that we did negotiate, and as a result of that negotiation I agreed to adjust the consideration to 39,000 from 30,000.

504 Q. And is that the only record in relation to your conversation with Mr. Bailey on this issue?

A. Yes.

505 Q. That handwritten memo on page 35?

A. Yes.

506 Q. Mr. Lynch in his report, had recommended that Mr. Redmond be contacted and requested to confirm this aspect of the agreement with Mr. Bailey?

A. That's correct.

507 Q. Did you contact Mr. Redmond to seek to establish whether there was any truth in the contention that this had, in fact, been agreed?

A. I did not.

508 Q. Can you tell us why you didn't contact Mr. Redmond?

A. Mr. Redmond was six months into retirement at this stage and it was immaterial whether I contacted him or not. We were either in a contractual position or we were not. I established that we were not, so therefore, it was immaterial at that stage whether or not Mr. Redmond had agreed with Mr. Bailey to arrange to have the condition in

the planning permission waived, because it was quite obvious that Mr. Bailey was not prepared to go ahead on the basis on which was outlined in the Manager's Order of the 20th of June, '89. So therefore, it would have been a futile exercise to contact Mr. Redmond at all.

509 Q. But surely Mr. Redmond could have shed some light on this contention by Mr. Bailey as to whether or not this had been agreed or not agreed?

A. It was immaterial if Mr. Bailey was not prepared to go ahead with the acquisition. We were in a new situation and I was anxious, the primary purpose here was to acquire the land for the benefit of the Council, and I was anxious to move on from that point, rather than going back and saying "Did you agree or did you not agree?", when one party was not prepared to complete on the deal that was done in June 1989.

510 Q. Do you recollect that Mr. Bailey was of the view that such a term had, in fact, been agreed?

A. I am satisfied that he was alleging that such a term had been agreed and that we reached a compromise whereby he would not pursue that if the consideration was increased by £9,000.

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CHAIRMAN: Would this be a convenient moment to take a short break? Take ten minutes.

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

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511 Q. MS. DILLON: Subsequent to your discussion with Mr. Bailey, Mr. Doherty, did you then refer the matter on to Mr. McLoone, the Chief Valuer, on the 15th of January,

1990, page 38?

A. Yes.

512 Q. So that your reference to your conversation on page 35, that the, he had agreed to complete for a contribution of £39,000 must have taken place sometime between the date you received the letter, which is date stamped the 9th of January, 1990, and the date you wrote the letter to Mr. McLoone, it was the 15th of January, 1990?

A. That's right, yes.

513 Q. So sometime in that period you met Mr. Bailey and you wrote to Mr. McLoone and you told him that, you set out briefly the history of the matter and furnished to him the first Manager's Order which had been prepared for the acquisition of the lands, and then that "Mr. Bailey of Princess Homes Limited and Caslan Developments Limited is adamant that a further condition of the agreement was excluded for the Manager's Order dated 1st of December, 1989.

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Mr. Bailey has now informed the Council that he would agree to complete this transaction on the terms set out in Manager's Order LA/240/89 for a consideration of 39,000 instead to 30,000". And then you asked him to let you know if he would recommend the Council required the fee simple on the land shown outlined in red on the drawing, increased from 30 to 39,000?

A. In your question there you said I met Mr. Bailey?

514 Q. I meant to say when you spoke?

A. I believe I did not meet Mr. Bailey, I believe it was done by phone.

515 Q. Following your conversation with Mr. Bailey?

A. Everything else is correct.

516 Q. Which must have taken place before the 15th of January, and

you wrote this letter to Mr. McLoone?

A. Right.

517 Q. Were you not happy to proceed on the basis of your own opinion on the value of the lands in January of 1990?

A. I was happy, but in view of the fact that we were adjusting the consideration from 30,000 to 39,000 I believed it was prudent in that eventuality to have Mr. McLoone's opinion on it.

518 Q. And what documents can you recollect were furnished to Mr. McLoone?

A. Well, it says "The attached Manager's Order LA/240/89 was prepared following agreement with Princess Homes Limited for the acquisition of 9.01 acres of land which is shown outlined red on copy of drawing No. 452/89", which was prepared by Mr. Lynch, so he would have at least got the drawing and the Manager's Order which set out the previous terms.

519 Q. Yes. And you also say in paragraph 2: "See attached copy of report from Mr. M Lynch, Senior Parks Superintendent, dated 1st of December, 1989". So presumably you furnished that as well?

A. I did, and that would have been notated with the notes I have written on top of that.

520 Q. And I think that Mr. Lynch when he prepared his report and sent it in, also sent in a copy of the Caslan Developments planning permission?

A. Well, there is a copy of the planning permission on the file at that stage.

521 Q. Do you know whether a copy of that planning permission was forwarded to Mr. McLoone on the 15th of January of 1990?

A. It appears unlikely that it was because it wouldn't be, have been relevant. I couldn't answer that question, like

I don't know whether it was forwarded, but it appears that it would have been unlikely that it was.

522 Q. I think then on the 28th --

A. Wait now, sorry. Yeah. I don't know how the planning permission was attached to it, I don't know.

523 Q. On the 28th of March a reminder was sent to Mr. McLoone to let the, your department have the recommendation further to your letter of the 15th of January, and that's at page 40.

Do you see that?

A. Yes.

524 Q. Do you see that there are handwritten notes at the bottom of that?

A. Yes.

525 Q. Whose handwriting is that?

A. That's my handwriting.

526 Q. And that's dated the 12th of April of 1990?

A. Yes.

527 Q. And it says: "Spoke to Mr. McLoone. He is to give me a letter confirming this. Then revised M/O to be prepared"?

A. Yes.

528 Q. That's "Manager's Order"?

A. That's right.

529 Q. So on the 12th of April, 1990, you spoke to Mr. McLoone and he confirmed that he would be recommending the purchase?

A. That's right.

530 Q. And on the other side there is a note, "A refund of levy paid pro temp from planning or a transfer of open space levies paid on foot of Manager's Order, P/270/89, planning permission for Caslan Developments, Blanch, Con. No. 28 will apply". That's in your handwriting also?

A. That's right, yes.

531 Q. And can you explain what that notice is?

A. It appears that I was somewhat confused at that time as to whether or not the, there was an appropriate adjustment to be made on the condition in the planning permission. I do not know at this point in time, and I did not know I think at that time, whether the condition had been complied with or not.

532 Q. This is Condition No. 28, is that what you are talking about?

A. That's right.

533 Q. Yes, Caslan Developments planning permission which is, I think, a condition that requires Caslan Developments to pay £18,500 as a contribution towards open space?

A. Yes.

534 Q. And what particular reason would you have had for noting that matter at this stage in March of 1990 on the file?

A. It looks as if there was a requirement on Mr. Bailey to pay £18,000, £18,500 to the Council on foot of the planning permission, and that the 9,000 which we agreed eventually to pay extra for the land was more or less a splitting of the difference of what Mr. Bailey was seeking and what had been originally agreed back in the previous June.

535 Q. Yes, but if --

A. And at that point in time I would have not, I would not have known as to whether any part of that 18,000 had been paid to the Planning Department.

536 Q. Yes.

A. So there is somewhat of an interconnection at that point as regards payments to be made.

537 Q. The note says: "A refund of levy paid pro temp from planning or a transfer of open space levies paid on foot of Planning Permission P/270/89. Planning permission for Caslan Developments, Blanch, Con. No. 28 will apply"?

A. Well --

538 Q. There is nothing there, I suggest to you --

A. The implication from the pro temp is, and I am going back 13 years or eight years, nine years at this point in time, it appears that Mr. Bailey was contending that the 18 and a half thousand should have been waived and that he paid it under protest or paid part of it under protest to the Planning Department, and that therefore the pro temp was in inverted commas, and I would not have known at that point in time whether or not, at what stage the account was in the Planning Department.

539 Q. But if the £9,000 increase from 30 to £39,000 was in effect a splitting of the 18,000, approximately, levy for Caslan, and that was the agreement you had with Mr. Bailey, that agreement had been concluded by the 15th of January when you sent the matter on to Mr. McLoone; isn't that right?

A. That's right, yes.

540 Q. So this discussion, whatever it relates to, is taking place in April of 1990?

A. That's right, yes.

541 Q. So between the time that you made your agreement in, on or before the 15th of January, of 1990, and the 12th of April of 1990, what other event occurred that would have caused you to be confused about whether or not Mr. Bailey was entitled to a refund of the levies he had paid in respect of the Caslan Development?

A. I am not aware of any other development that occurred in that time.

542 Q. So, can you give us any --

A. It is quite clear from a reading of the file that at some stage around that time, and bear in mind that this was only one file of several hundred files that I was occasionally

involved with, periodically, it is quite clear that I was somewhat confused as to whether a levy should have been partly waived or not or whether, what payments were made, from a number of notes that were made at that time, but in the event, those notes are of no significance in that the acquisition eventually was completed for a sum of £39,000, as was agreed by me in or around the 15th of January, 1990.

543 Q. Yes. If you come on to look at the next document, which is again dated the 12th of April of 1990, and it is FCC 3.3.41. Do you see that document?

A. Yes.

544 Q. And that, is that in your handwriting?

A. It is, yes.

545 Q. And that refers to an £18,000 levy in "Blanch", which I presume is a reference to the Caslan Development's levy in Blanchardstown?

A. Yes. It also indicates, looking back on that, in preparation for this Tribunal, that at that time Documents 40, 41, 42 and 43, that there was a confusion in my mind as to the status of the account in the Planning Department and whether or not the 9,000 extra that was to be paid by the Council would be paid by a partial refund or directly from the Finance Department of the Council. As I said, as I said, the acquisition was completed and this is the important part, the acquisition was completed for a sum of £39,000, as was agreed by me with Mr. Bailey in January 1990.

546 Q. Yes. Well, if we look at this document, Mr. Doherty, dated the 12th of April of 1990, were you in any further negotiations or discussions with Mr. Bailey at that time?

A. No, I don't believe I had any other negotiations or discussions with Mr. Bailey after the deal was done in

January 1990.

547 Q. And this document then says "£30,000 for land in Ward Valley to be adjusted to (A) £39,000 for land in Ward Valley". That seems to suggest an increase of £9,000?

A. Yes.

548 Q. And it says "(B) Drop the levy in Blanch because of misinterpretation of negotiation with G W Redmond"?

A. It is quite obvious that that was a confused statement.

549 Q. And beneath that it says: "£9,000 to be written off in revised negotiation. (1) New MO for acquisition to be prepared", which was an acquisition for £39,000; isn't that right?

A. That's right.

550 Q. And "(2) Planning will have to prepare Manager's Order writing off £18,000 open space levy subject to Manager's Order approval", and that your initial at the bottom?

A. That's right.

551 Q. It was dated the 12th of April of 1990?

A. Yes.

552 Q. Can you explain to me at all, Mr. Doherty, why having sent the matter to Mr. McLoone, on the 15th of January of 1990 to prepare an approval for the sale of the lands for £39,000, why in April of 1990 you were writing about dropping the levy in Blanchardstown and preparing a new Manager's Order for the Planning Department?

A. It was quite apparent that between, as I said, this was one of several hundred acquisitions going on at the time, and at the time that that note was made, the primary purpose of the note was to ensure that there was a letter on file confirming that Mr. McLoone was in agreement that 39,000 was a reasonable sum. The other matters were matters of, consequential to that, and it was quite apparent to me now,

that I was confused at that time as to the next actions.

553 Q. Yes. But --

A. And it must be remembered that at that particular time the primary focus of the department would have been the acquisition of land for the western M 50 motorway, from the Naas, the Blessington Road up to the Navan Road, and the entire focus would be on the pursuit of acquisitions to accommodate that motorway, as well as the provision of the Tallaght Town Centre, The Square, there were other major issues.

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This file is one which in relative terms would be of very little significance, and that while I had some dealings with the file on the 12th of April, it would appear that my recollection of set-offs and the relationship between the Planning Department levy and the acquisition of the land and the payment for the land was a little confused, and that those notes did not reflect exactly what was agreed.

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But I must emphasise, that the agreement that was made was the one that was completed at £39,000.

554 Q. Yes. But this document which was prepared by you, appears

to suggest that in addition to paying an increased £9,000 in respect of the Ward River Valley lands, that there would be some agreement to drop the levy in Blanchardstown, that's what the document appears to suggest?

A. As I say, I have touched on this file occasionally over a period of a year for maybe five or six minutes at a time, to keep it on line, and it appears that at this particular point in time, the focus of the, having the file was to get from, ensure that there was a confirmation that the sum of £39,000 was reasonable and that the other aspects were the

result of my confusion from the earlier discussion arising out of Mr. Lynch's memo of the 1st of December to Dan O'Sullivan.

555 Q. Yes. You say --

A. I have said I was confused and I was confused, and those notes reflect the fact that I was confused.

556 Q. Are you saying that these notes are wrong?

A. I am saying that they do not reflect the agreement.

557 Q. That you had with Mr. Bailey?

A. Yes.

558 Q. But none the less they are there and they are dated the 12th of April, 1990, and can I ask you, was it your view when you prepared these notes in April of 1990 that these notes reflected the agreement you had with Mr. Bailey, when you were writing that, when you were preparing that document?

A. My agreement with Mr. Bailey was set out in the Manager's Order made, agreeing to £39,000. The others notes were a confusion of consequential actions which might or might not have been appropriate given the state of play of payments by Mr. Bailey to another department in another building of the Council, and in another part of the city, of which I was not familiar.

559 Q. Yes, but, Mr. Doherty, the Manager's Order was not prepared until July of 1990, the second Manager's Order in relation to the acquisition of lands, so that at the date you prepared this memorandum in April of 1990 there was no Manager's Order in existence in relation to the acquisition of these lands at £39,000; isn't that correct?

A. The actual conversation that took place with Mr. Bailey took place in January 1990.

560 Q. Yes, that wasn't my question, Mr. Doherty. My question was

that the Manager's Order in respect of the acquisition of these lands for £39,000 was not made until the 13th of June of 1990?

A. That's correct, yes.

561 Q. That's correct. So at the date you made these notes on the 12th of April of 1990, there was no Manager's Order in existence in relation to the acquisitions of the lands at £39,000?

A. That's correct.

562 Q. So --

A. And the reason probably that that Manager's Order was not made until July was, apart from the workload in the department, the fact that there was not a letter available at that time confirming that the Chief Valuer agreed with the revised valuation.

563 Q. Except that you had on the 12th of April of 1990 spoken to Mr. McLoone, if you look at page 40, you had spoken to Mr. McLoone, "He is to give me a letter confirming this. Then revised Manager's Order will be prepared". I think you have already told me, Mr. Doherty, that you spoke to Mr. McLoone on that date and he confirmed he would be furnishing you with the letter?

A. That's right, yes.

564 Q. That's right. So that when you made this note on the 12th of April of 1990 you had on the same day spoken to Mr. McLoone who had apparently confirmed to you that he would be recommending the acquisition?

A. That's right.

565 Q. So you were aware of that at or around the time that you made this note on the 12th of April of 1990?

A. Yes, Mr. McLoone confirmed that by letter dated the 8th of May.

566 Q. Yes.

A. And the Manager's Order was subsequently signed on the 13th of July.

567 Q. And the Manager's Order would be prepared once Mr. McLoone's formal notification had been received?

A. Yes.

568 Q. But you had received verbal communication from Mr. McLoone that it was going to be forthcoming?

A. Yes.

569 Q. And on the same day you were of the view that the levy in Blanchardstown for Caslan would have to be dropped because of the misrepresentation of the negotiation with Mr. Redmond?

A. As I said I was confused about that issue.

570 Q. And I had asked you, and ask you again, Mr. Doherty, are you saying that you were wrong when you made this entry on the 12th of April of 1990?

A. Yes, I was wrong. I shouldn't have made that note, it was a misinterpretation of what was agreed and the consequences of what was agreed, insofar as the interchange of monies would take place.

571 Q. And can you tell me how you came to this confused view in April of 1990, when there is nothing in the earlier note of your dealings with Mr. Bailey in relation to this matter? What caused this confusion in your mind in April of 1990?

A. Well as I said, the original Manager's Order was signed in June, I would have had the file at that point in time in June '89. The next time I would have had the file was in January when Mr. Lynch's memo arrived, and I would have indicated what the, to staff what the revised negotiation outcome was, and told them to again speak to Mr. McLoone or get confirmation from him that 39,000 was reasonable.

.
 Again, the next time I would have had the file was the 10th, the 12th of April, so there are several months between each occasion I had the file, and it would have been at the back of my mind that this business of the levy in Blanchardstown was in some ways a factor in the overall equation and the basis of the negotiations, and I again emphasise that this was a minor acquisition and not the real focus of the workload of the department at that time.

.
 And it is quite apparent from the notes made on the 12th of April that I had got the question of set-offs as between the Council and Mr. Bailey confused and I made notes which are now wrong and which were then wrong.

572 Q. You subsequently, I think on the same date, gave an instruction to Mr. E Maher, Senior Staff Officer, I presume in the Development Department?

A. Yes.

573 Q. And that document is at page 43, and it says: "(1) Pursue reply for Mr. McLoone. When received prepare new Manager's Order for acquisition of land at £39,000"?

A. Yes.

574 Q. So at that stage this note must have been made subsequent to your telephone call with Mr. McLoone on the 12th of April where he had indicated he would be responding favourably?

A. Yes.

575 Q. Because he seemed to know there that you are getting the new Manager's Order. "No. 3: When the Manager's Order is signed, write to planning and explain to them what has happened and ask them to prepare Manager's Order. Writing

off open space levy in Blanchardstown of £18,000 and (4) either refund the amount paid or transfer it to acquisition fund"?

A. Numbers 3 and 4 are in the same category as the previous two notes.

576 Q. And this is initialed by you, I think. This is a direction to somebody else to carry out certain works?

A. Yes.

577 Q. And you appear to have been of the view when you prepared that document for Mr. Maher, that not alone had you agreed to pay £39,000 to Mr. Bailey in respect of the Ward River Valley lands, but in addition the open space levy of £18,000 for Caslan was going to be written off; is that correct?

A. That is what I wrote at the time, and I have now a recollection that Mr. Maher came back to me and said "Why are we doing No. 3 and 4 if we are paying them an extra 9,000?" And on consideration the, it became apparent to me that the question of set-off of levy in Blanchardstown was not appropriate.

578 Q. Yes. Is there any document on the file there, Mr. Doherty, that refers to that query by Mr. Maher or your response in relation to it?

A. I am not aware of any, no.

579 Q. And it would appear to be the position that even though you had been of the view on the 15th of January of 1990 when you had sent the documents on to Mr. McLoone that the agreement with Mr. Bailey was to pay an extra £9,000 to acquire this land, that you changed your mind in respect of that sometime between January and April of 1990, and were then later of the view that a refund of £18,000 levies should be repaid to Mr. Bailey, and you now say that you

are wrong in respect of your views in relation to that; is that --

A. What I am saying is, I saw this file on three occasions in a period of nine months for very short durations.

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It was one of several hundred files. It appears that I got confused about the implication of payments and set-offs and that between the Planning Department and the Finance Department for the payment of the lands, and that as a result of that I gave an instruction to Mr. Maher, suggesting that he do a number of things, and that No. 3 and 4 were wrong, and I am quite satisfied now on recollection, since I saw this file earlier this year, that Mr. Maher came back to me and said "If we are paying 39,000 why are we doing anything with the planning levies?" And we decided then that it was inappropriate to do anything about the planning levies and the sale was completed for £39,000.

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CHAIRMAN: Could I intervene here? Do I understand the end product is that you paid a sum of £39,000 and did not either cancel or repay the levy of 18?

A. That's right.

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CHAIRMAN: That's the end product?

A. Mr. Bailey paid the levy of 18,000 in the Planning Department.

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CHAIRMAN: And you paid him 39?

A. In full payment of his requirements under the planning permission. I paid an extra 9,000 for the land.

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CHAIRMAN: So long as I understand.

A. Midway through that process I got confused, on the 12th of April, and made certain notes which were inappropriate to the deal because of the infrequency at which I was dealing with this issue.

CHAIRMAN: I can understand that. But what I want to know, what I want to be clear about, is the end product.

When all was done, 39,000 for the lands, in other words an extra 9,000 and you got 18,000 of a levy paid in due course?

A. That's right.

CHAIRMAN: Thank you very much. I just want to make certain I understood you.

580 Q. MS. DILLON: That is your view, Mr. Doherty, of what transpired from the contributions file?

A. Yes.

581 Q. There were set-offs in relation to the Caslan development and in relation to roads and matters of that sort; isn't that right, also?

A. There were, but they were totally unrelated to the matter we are discussing.

582 Q. And a set-off of £7,000 odd in relation to the open space levy, also which is not a matter for you but for somebody else from the contribution department to deal with that?

A. Yes, there were totally unrelated to this deal, the other set-offs that you are speaking of.

583 Q. Yes, I don't want to mislead you. Yourself, it is your view that they were unrelated to --

A. Yes.

584 Q. I think subsequently on the 8th of May of 1990 that you

received from Mr. McLoone a recommendation that £39,000 would be fair and reasonable?

A. That's correct.

585 Q. And thereafter a Manager's Order for acquisition of the lands was prepared and signed by you as Principal Officer, and that's at page 47?

A. That's right.

586 Q. And that recites that when the County Solicitor subsequently attempted to make arrangements for the transfer of land to the Council, "No response was forthcoming from the solicitors acting for Princess Homes. A representative", I presume Mr. Bailey, "Was contacted and he indicated that his firm were not satisfied with the compensation of £30,000 in the context of the terms as detailed in Manager's Order LA/240/89". Then it goes on to recommend £39,000 as fair and reasonable?

A. That's right.

587 Q. And that was signed by you, I think, on the 13th of June?

A. Yes.

588 Q. And I think on the 8th of October you spoke to Mr. Bailey, and that's at page 48?

A. Yes.

589 Q. And this was about the title, and it appears that Ballymore Homes, he had sold out Ballymore, he had sold out his share in respect of Ballymore Homes and Ballymore Homes effectively were now going to sell the lands to Dublin County Council?

A. There is a note in my handwriting of the 8th of October of 1990, "Spoke to Mr. Bailey re: submission of title about a week ago. He informed me that he had been a partner with Mr. Mulryan of Ballymore Homes in this development, but recently had sold his share to Ballymore. I suggested to

him that the deal should still stand. He spoke to Ballymore Homes re this and informed me that Mr. Mulryan said he would deal directly with Mr. Lynch about this, as he had other matters to discuss with him, re open space requirements at Scholarstown, Knocklyon areas. I informed Mr. Lynch of the above and await developments".

That was a note to my assistant.

590 Q. Yes. And I think subsequently there were some legal difficulties in relation to the Manager's Order being in the name of Princess Homes and the vendor of the property, subsequently being Ballymore Homes; isn't that right?

A. Ultimately the sale was closed with Ballymore Homes on the same terms, £39,000. There were obviously some arrangements between Mr. Bailey and Ballymore Homes of which the Council was not a party to.

591 Q. Yes. And then at page 58 there is a reference to "Caslan Developments, Mill Lane, Blanchardstown. Condition No. 28. Levy paid? And paid in full per D Brady". Do you see that document?

A. I do, yes.

592 Q. Can you recollect when or why that was prepared, or why there was a query about whether or not the levy in Blanchardstown had been paid?

A. There is no date on that memorandum.

593 Q. Do you know whose --

A. I don't know what date it was prepared. It was prepared by one of my assistants, Eamonn Maher, the greater part of it, and someone else confirmed that the levy of 18 and a half thousand pounds was paid in full.

594 Q. And when you say in your statement that you are satisfied that "the levy was paid in full", is this the document on foot of which you are relying?

A. Well, subsequent to therein preparing my statement, I also prior to preparing my statement, I also got a copy of the Planning Department file to confirm that the levy was paid in full.

595 Q. The contributions file?

A. Yes, which confirms more or less what is stated on Document No. 58.

596 Q. We will have somebody else to deal with that. But in relation to - there were certain offsets that were made in relation to the Caslan development; isn't that right, Mr. Doherty?

A. There were, but I had no bearing or influence on those.

597 Q. In relation to any of those, but subsequently the sale did close, and in May of '91 it was transferred to Dublin County Council?

A. For a sum of £39,000.

598 Q. For a sum of £39,000?

A. Yes.

599 Q. And as far as you were aware there was no, the levy was paid in full?

A. Yes.

600 Q. And other than that you have no explanation for, apart from confusion for the documents and the notes on the documents we were referring to?

A. I have no explanation other than I was confused, giving a few minutes to a file once every three for four months.

601 Q. Did you on any occasion ever go back to Mr. Redmond to see could he throw any light on the agreement at any stage?

A. I never went back to Mr. Redmond at any stage after his retirement.

602 Q. Thank you very much Mr. Doherty.

CHAIRMAN: It is just coming up to four o'clock, I don't know if anybody wants to make any inquiries from this witness by way of cross-examination?

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MR. HERBERT: Just one inquiry I would like to make, Mr. Chairman. In the letter of the 1st of the 12th, 1989, which has been exhibited on the monitor, which appears to be from a Senior Park Superintendent to a Mr. D O'Sullivan, Principal Officer, on what, which Mr. Doherty appears to have made two handwritten notes, FCC 3.3 35, Sir.

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CHAIRMAN: Are you talking about the actual number of the document or is that the note?

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THE WITNESS WAS THE CROSS-EXAMINED BY MR. HERBERT AS FOLLOWS:

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603 Q. MR. HERBERT: The document seems to be numbered by the Tribunal, Sir, FCC 3.335, it is this document. I wonder could the witness identify the name of the Senior Parks Superintendent for me?

A. Michael Lynch.

604 Q. Mr. Michael Lynch, is Mr. Lynch present in the Tribunal?

A. Yes.

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MR. HERBERT: Is Mr. Lynch going to give evidence? Then I have no questions of this witness. Thank you.

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MR. HARRIS: Mr. Chairman, I will certainly have some questions for the witness now. I may be half an hour, I certainly couldn't guarantee I would finish within a half hour.

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CHAIRMAN: There is a problem, there is another session of a different type about to start at 4 o'clock or thereabouts, 4 or 4.30. We have another meeting here at 4.30.

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MR. O'NEILL: There isn't a time fixed, it was to take place at the conclusion of the evidence. I am just discussing the matter with my colleague, who informs me that the next witness is likely to take something in the region of an hour to an hour and a half in direct, so perhaps it might be appropriate to deal with the other issue now and put this back.

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CHAIRPERSON: Tomorrow we are starting a witness who is coming from London, and he is committed to a full day or slightly more than a full day.

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MR. O'NEILL: That's so.

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CHAIRMAN: Now, as I understand the situation at the moment in time, and I am thinking out loud, there appears to be, we appear to have solved the problem of inconsistency, if I may use the phrase, in relation to the finances of this matter, so far as I understand it, is that correct Ms. - inconsistency has been solved by the witness?

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MS. DILLON: It is his view of the contribution file, yes Sir.

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CHAIRMAN: Well, does the contribution file, really what I

am saying to you is this; Mr. McLoone and there is another witness from --

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MS. DILLON: Mr. McLoone will be a very short witness.

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CHAIRMAN: Could we perhaps - consult with all those three witnesses and see if we can get an agreed state of play, so we know exactly, there is little point in three witnesses going one after the other if we have now reached a state of affairs where we now understand what happened, and apparently by virtue of no cross-examination, nobody disagrees with us. There doesn't seem to be much point in having three witnesses doing something if we can get perhaps by consultation here this afternoon before they go away, a witness who will say "This is what happened and I am satisfied from the documentation produced". Is that possible?

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MS. DILLON: I suppose everything is possible, Sir.

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CHAIRMAN: Might we try to reduce the amount of people talking, people talking across the footlights too?

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MS. DILLON: Of course.

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CHAIRMAN: That's what I suggest. It seems to me the thing has now come together, what was apparently a difficulty has been resolved by the way this witness has explained it, provided his explanation is acceptable to everybody? As I understand it, as I say in the light of no cross-examination I assume it to be accepted, is it acceptable to you Mr. Harris, you look doubtful?

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MR. HARRIS: Certainly I have, I think, about a half hours worth of questions to this witness, I am happy to come back on Thursday.

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CHAIRMAN: The question is I am trying to get things reduced to cut down Thursday. All right, if you have an inquiry to make of this witness on Thursday you will have to be given an opportunity.

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MR. HARRIS: Thursday at 10:30am, will that suit?
Whatever?

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MR. O'NEILL: I don't know, Sir, that we can guarantee that Mr. Oakley will be finished tomorrow. We can resume this witness at the conclusion of Mr. Oakley's testimony.

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CHAIRMAN: That's all, you will have to come in and see how we are progressing tomorrow and find out what happened on Wednesday afternoon.

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MR. HARRIS: I'm assuming the witness tomorrow is not of concern to my client, I don't know who he is?

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CHAIRMAN: Mr. Oakley is the solicitor in England, from the Isle of Man, sorry from Pickering Kenyon.

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MR. HARRIS: I imagine he is not of concern. I will keep tabs.

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CHAIRPERSON: Keep the situation under review late tomorrow afternoon.

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MR. HARRIS: Thank you, Mr. Chairman.

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CHAIRMAN: So we will say tomorrow morning at 10 for something else as well.

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MR. O'NEILL: There is the remaining issue which was put back until the conclusion of evidence today, that is the outstanding issue of, regarding the failure of the Bailey/Bovale interest to provide telephone information necessary to pursue the inquiry as to telephone contact between the parties. They are on notice that it is a matter which will be dealt with not before 4 o'clock, and I think Mr. Simons is here possibly to deal with that issue. I expect, Sir, that it wouldn't take more than half an hour, possibly less I suggest. So if you were of a mind to hear that?

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CHAIRMAN: I will, I will try and get everything done as soon as possible. If it doesn't concern everybody else, you are free to go.

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MR. COONEY: It concerns us, Mr. Chairman. I think it hinges upon Mr. Gogarty's credibility to that extent, as it is a matter I raised in cross-examining Mr. Bailey.

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MS. DILLON: Mr. Doherty can be let go?

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CHAIRPERSON: Mr. Doherty can go, and does anybody want five minutes before we resume?

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MR. SIMONS: Perhaps I should indicate, where as I am

here, Mr. Smith, my solicitor, hasn't yet arrived. The Tribunal had indicated this matter might be taken at 4:30, if you rose for five minutes I might be able to ascertain where he is.

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CHAIRMAN: Where he is and what's his movements. All right, I will rise for five minutes to enable you to do that.

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MR. SIMONS: I am obliged, Sir.

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

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MR. SIMONS: Thank you, Chairman. Mr. Smith has now arrived and I apologise.

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CHAIRMAN: Not at all. That's perfectly acceptable, Mr. Smith.

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MR. O'NEILL: So you are aware, Sir, there is an outstanding issue regarding the continued failure on the parts of the Bailey/Bovale interests to complete an authority authorising Telecom and now Eircom and Eircell, to release to the Tribunal a complete record of all telephone calls which were made from the Bailey/Bovale interests to James Gogarty, to Raphael Burke or to the Murphy interests.

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This was agreed at the conclusion of the business of the Tribunal on Day 80. It is contended in correspondence which has been extensive and passed between Smith Foy &

Company representing the Bailey/Bovale interests and the Tribunal, that the consent which was given at the public sittings was limited to the telephone records relating to calls made over the relevant period between Mr. Michael Bailey personally and Mr. James Gogarty. And that it did not extend to dealing with telephone communications with Mr. Raphael Burke or the Murphy interests.

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Now, this contention seems to be at odds with the correspondence, the earlier correspondence of Smith Foy & Company, and in particular their letter of the 8th of September of 1999, where they were seeking from the Tribunal details of the telephone numbers of Mr. James Gogarty, Mr. Raphael Burke and the various Murphy companies and individuals, so that they might include those numbers in their client's letter of authority.

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It appears between that date, the 8th of September of 1999 and the 21st of September of 1999, that they elected to limit the consent to the communications from Mr. Michael Bailey personally and limited to specific communications or potential specific communications with Mr. James Gogarty and not others.

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Now, the Tribunal's belief is that the consent originally given extended to cover all of the individuals concerned and irrespective, Sir, of whether or not it is, the Tribunal's contention or the contentions of Smith Foy & Company which should prevail as to what the agreement was on the Day 80, it does seem clear, that it is material the Tribunal have this information.

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I should say that since the 13th of September consents have been executed by all other parties, consenting to the inquiries being made of Telecom, and that Telecom should furnish the information to the Tribunal. Telecom advises the Tribunal and is continuing to work in this regard and hopes to be in a position to report shortly on telephone communications which may have taken place between all other parties, save the Bailey/Bovale interests.

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I say therefore, that the issue before you now, is as to whether or not it is necessary and material that you make an order which I say you are entitled to make, under the provisions of Section 1(1), subsection B directing and ordering the Bailey/Bovale interests, to produce to the Tribunal the appropriate telephone records of all communications between their clients and James Gogarty, and Raphael Burke and the Murphy interests as have been defined already, Sir.

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I don't believe that it is necessary to go through the correspondence in depth. I know, Sir, that you have read it prior to your directing that a letter be written to Smith Foy & Company on the 22nd of December, indicating that unless the consent which was signed in the same format by other parties was signed by the Bailey/Bovale interests prior to the 12th of December that this matter would be raised at a public session and you would hear submissions as to why an order should not be made under Section 1, subsection 1(B).

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CHAIRMAN: Mr. Simons?

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MR. SIMONS: Thank you, Mr. Chairman. As Mr. O'Neill hasn't opened the correspondence I don't intend to deal in anyway in detail with the correspondence that passed between the party, save to note the following point; that the position that our clients have taken is that whereas they are prepared to consent, and have indicated to the Tribunal that they are prepared to consent to records in relation to telephone calls between them and Mr. James Gogarty being disclosed, and that consent is open-ended in terms of time, they are not prepared to consent to a more general order or a more general consent which would include parties such as Mr. Ray Burke or what are described as the "Murphy interests".

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If you like that's the closing line from our correspondence. I don't intend to dwell on that. I move directly to submissions urging you to make an Order for Discovery and Production.

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Mr. Chairman, upon a number of occasions you have indicated that the test for deciding whether or not to make an order is necessity. You have given a number of detailed rulings, that's the watch word, is "Discovery", is Production necessary? And I say that in this particular context it isn't.

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The whole matter of telephone records arose during the course of Mr. Michael Bailey's evidence, and it arose in relation to an allegation which had been investigated by the Tribunal, that Mr. Michael Bailey and/or his company made payments to Mr. James Gogarty in relation to the purchase of the lands, so that issue, the issue of payments

to Mr. Gogarty was the genesis of this request for telephone records. That issue is itself a collateral issue, it isn't a matter specifically referred to in the Terms of Reference, it is a matter which goes to credit and a matter which the Tribunal is investigating.

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Counsel on Day 80 on behalf of Mr. Bailey indicated in order to assist the Tribunal with that collateral issue a consent would be forthcoming in order to allow the Tribunal to check had there in fact been telephone communication between Mr. Bailey and Mr. Gogarty during the relevant period. That issue, that collateral issue has now been used as a spring board upon which the Tribunal now seeks a very general, a very wide screening disclosure of telephone records, encompassing not just Mr. Gogarty, but Mr. Ray Burke and also what was described as the "Murphy interests".

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Furthermore, this spring board extends in periods of time to cover, and the draft order or proposed order has indicated to us from January 1989 to November 1997, a period of some eight years, so what was a very small collateral issue has now given rise to a huge trawl or a proposal for a trawl through telephone records.

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I say that order isn't necessary. And I can demonstrate it is not necessary by reference simply to the timing at which this application was brought. In order to satisfy you that the order is necessary Mr. O'Neill will have to explain away the fact why no application was made for this order until now, January 2000, some two years after the Tribunal was established. We know that the Tribunal has

been carrying on its work, and it has managed to obtain extensive bank records during that period. If Mr. O'Neill and his team really felt it was necessary to have access to telephone records for the general purpose of the Tribunal, I say that an application of this sort would have been made much earlier.

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The reason that it wasn't, is that these documents aren't necessary, and as I say the whole genesis was the collateral issue of the payment to Mr. Gogarty, and I say it is wrong for that collateral issue now to be used to bring in under the heading of "necessity", a huge trawl through my clients' telephone records.

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As you are aware telephone records are sensitive, they are publicly protected by constitutional privacy in the same way bank records are, in that it reveals a great deal about person's affairs, private confidential affairs, not business of this Tribunal, if an order is to be made. As you are also aware there are safeguards built into legislation whereby telephone communication for example can't be intercepted, save in very limited circumstances. I say that the fact that privacy attaches to these records is a further factor militating against the making of an order.

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These, the discovery in the wide terms sought isn't necessary and it isn't, there isn't a countervailing inference to set aside the privacy which attaches to those records. I am obliged.

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CHAIRMAN: Mr. -

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MR. O'MOORE: I wonder if I might make an intervention?

Mr. Cooney is here to deal with the Murphy interests.

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CHAIRMAN: I would have thought it is only people concerned, I can't see Mr. Cooney's concern at the moment, certainly you are concerned as a party who is offered the telephone, in respect of whom this order primarily applies.

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MR. O'MOORE: The point I want to make is straightforward and won't take much time. Mr. Simons makes a number of criticisms of Mr. O'Neill in relation to this application, firstly in relation to the times, which he says proves the application is a misguided and unsustainable one, and second, whether or not in regard to the privacy of the telephone records attaching to the Bailey/Bovale interest. Mr. Simon inadvertently mislead lead you into the circumstances of how the question of telephone records arose, it didn't arise on Day 80 when Mr. Allen made an offer of access to the Bailey/Bovale telephone records, it in fact arose earlier on Day 80 at page 43 of that day, where Mr. Allen indicated an intention of making an application at 2 that afternoon for discovery of Mr. Gogarty's telephone records. It didn't begin by them volunteering their telephone records over a selected period, it arose because Mr. Allen wanted to get access to my records, and I made those available, Mr. Allen obviously to reciprocate, so I am the first person who offered access to telephone records and breached the question of my own privacy and confidentiality, which I was happy to.

Secondary, with regard to the timing of Mr. O'Neill's application, he is being taken to task for making the application after two years after the Tribunal is set up, I look forward to the explanation of Mr. Simon, Mr. Allen or Mr. Leahy as to why it was, the question of telephone calls of Mr. Gogarty arose in the first place not during the cross-examination of Mr. Gogarty at all by Mr. Allen which took place on Day 32 to 35, but on Day 80 when Mr. Bailey came to give his evidence? In other words what is sauce for the goose is sauce for the gander, if Mr. Bailey believed my telephone records were relevant he would have put to Mr. Gogarty in the cross-examination of that witness over a week that these telephone calls had taken place, when in fact the topic of these never arose at all until the Day 80 of the public sittings.

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The final thing Mr. Simons says is, which on behalf of Mr. Gogarty I must take issue with is this; he suggests that this access to telephone records is justified in relation to a collateral issue, namely the contact or alleged contact between Mr. Gogarty and Mr. Bailey. If he is right about that, and I don't dispute that, how much more relevant they are to the essential issues at the heart of this, which is the contact between Mr. Burke and Mr. Bailey and not just Mr. Michael Bailey but Mr. Thomas Bailey and their companies?

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I would have thought certainly Mr. Gogarty as an interested party, as you have suggested, Sir, has a definite interest in seeing the disclosure of phone records being made by all relevant parties, and to an extent, and in a scope that allows a proper disclosure to be made of material to this

Tribunal.

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CHAIRPERSON: Mr. O'Neil?

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MR. COONEY: Mr. Chairman, may I say something please?

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CHAIRMAN: Mr. Cooney, I have no desire to exclude you but I must have some basis which you --

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MR. COONEY: Yes, I will give you the basis, Mr. Chairman.

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CHAIRMAN: Subject to that, and I want to make it clear, it is an invitation to tell me, I have no desire to in anyway exclude you, but I am not going to extend this Tribunal to every person coming to have a few chat words with me.

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MR. COONEY: Mr. Chairman, I have been here for a year now and I can assure you I share your views on that. I will be brief. My interest arises in this regard: Mr. Gogarty has sworn twice that he had no contact with the Bailey's between 1990 and 1996. The Baileys say otherwise and they say that an examination of Mr. Gogarty's telephone records will establish that.

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Now, the importance of this so far as I am concerned is this, Mr. Chairman, this contact relates, according to the Baileys, to the payment of £150,000 which they say they made to Mr. Gogarty arising out of the sale of my lands, largely negotiated by Mr. Gogarty to them. Obviously the matter is very important to my clients' interest for that

reason, Mr. Chairman, and indeed when Mr. Bailey was in the witness-box I put questions to him about this.

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Now, I have no interest or no concern with the dispute which is now taking place between the Tribunal and Mr. Bailey, and the dispute Mr. O'Moore seems to be joining, I am concerned merely with the production of Mr. Gogarty's telephone records, Mr. Chairman, because I think they are relevant to two pieces of sworn evidence given by Mr. Gogarty which we --

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CHAIRMAN: I follow your basis.

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MR. COONEY: Now, can I make this final point, Mr. Chairman? Irrespective of what has been discovered at this stage, Mr. Chairman, it seems fairly clear now, that in view of Mr. Gogarty's consent of his records being produced, these records are either with the Tribunal now or should be immediately available. If that's the case, Mr. Chairman, I would like a copy of them, at the first available opportunity.

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CHAIRPERSON: Again Mr. O'Neill perhaps will deal with that aspect of the matter.

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MR. COONEY: Very well.

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MR. O'NEILL: Yes, Sir, Telecom and Eircom have not in fact provided the details necessary to enable us to consider whether or not there is a matter which should be circulated to other parties, in other words whether there has, in fact, been any communication between the parties in

question, they have assured us that they are dealing with the matter as expeditiously as they can, and we expect that this inspection will come to us over the course of time.

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They have, however, not given us a timescale as to when it is that that documentation will be made available to us.

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The Tribunal's interest I should say, Sir, is not limited solely to the question of testing or otherwise the credibility of Mr. Gogarty on this issue, but deals also with a number of denials which have been made by other parties of their having had communications with the parties named herein, so it is not an inquiry which is limited solely to the Gogarty issue, but also to deal with communications, if there were such, from any other of the parties who are signatories to the consents which have been furnished to Telecom to date.

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The remaining issue, as I say, is that of the failure of the Bailey/Bovale interest to execute a document in the format that all other parties have found acceptable to them, and their documentations were signed upon the conclusion of the long vacation.

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This matter was a matter which was raised in July and has not been raised for the first time now in the year 2000, it is as a result of it being raised in July, and the other parties and not the Bailey/Bovale parties entered into the consents which were furnished to them, so it is a matter which extended for quite a considerable amount of time.

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As I say there is a considerable volume of correspondence

on the issue, but the issue reduces itself to a net issue, and that is whether or not this particular line of inquiry may assist the Tribunal in resolving issues of fact which have been displayed in varying conflicting accounts of events which have come to the Tribunal from various witnesses.

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If the inquiry will resolve any one of these issues it is material, and the order therefore is necessary, in my respectful submission, and should be made.

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MR. COONEY: Could I inquire, Mr. Chairman, when the inquiries have been made from Telecom Eireann and if, if there is any difficulty about a printout of Mr. Gogarty's telephone records for such period as these records have become available? We know, Mr. Chairman, as a matter of practice that if a telephone subscriber requires to obtain a detailed list of his telephone calls during the billing period, that will be supplied immediately and it is done automatically. Now, Mr. Chairman, I can't see --

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CHAIRMAN: I don't propose to enter into a discussion on that matter.

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MR. COONEY: Well, Mr. Chairman, has any information been obtained?

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CHAIRMAN: You have just heard that we have made the necessary inquiries from Telecom Eireann, they have said they are processing with all due speed, and that's the furthest information, as I understand it.

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MR. COONEY: Can I ask when --

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CHAIRMAN: The answer is "no". We carry out our investigations when we obtain information which is relevant and which we consider relevant. We circulate it before we in anyway advance it in public. We are not going to advise as to what we are doing in our office.

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MR. COONEY: Mr. Chairman, may I just make this objection; when this matter was raised last July, it seems well nigh incredible that Mr. Gogarty's telephone records have not become available in that period of time. Is it the position that some records have become available and others have not, but there will be no disclosure of any records until the Tribunal say they are entitled to actually become available?

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MR. O'NEILL: I indicated already to you that no information had been provided by Telecom and Eircell to date, that is the factual position. However, Sir, I do feel that what My Friend is doing is trespassing directly into the area of involvement of the conduct of this Tribunal, which is exclusively a matter for you, it is not a matter for My Friend to quiz the Tribunal as to what inquiries it is making, how it is making such inquiries or what the status of those inquiries is.

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This and all matters elicited from the Tribunal as a result of its inquiries of others is confidential to the Tribunal, and it is only when you have considered the information, when you have decided that a particular party has a particular interest in receiving that information that that

information will be circulated to others.

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The suggestion, as I understand it, from Mr. Cooney, that he should have some form of commentary as to how the Tribunal is progressing is not a matter which is appropriate, in my respectful submission.

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MR. COONEY: That's not my point, Mr. Chairman, my point is merely to get such information as affects my client's interest, and with respect, I think I am entitled to make that point and that there should be no --

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CHAIRMAN: Mr. Cooney, you have, not only have I a statutory duty under the, certainly under the Terms of Reference, to make available to you, the process is that you cannot in anyway be impugned or in any manner whatsoever with out being given notice of the mode of the matter which is being impugned and the source of the imputation, that has been religiously carried out.

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MR. COONEY: With respect, Mr. Chairman, I respectfully disagree. For instance you have never given us notice of the allegations formally which we have to deal, however I am merely putting that on the record.

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CHAIRMAN: Mr. Cooney, this is something you recited like the Lords's prayer, probably with as great a frequency. We are now dealing with a simple matter.

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Please, Mr. Cooney, I have already dealt with your suspicions and I don't propose to canvass them further.

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MR. COONEY: I understand that, Mr. Chairman. At the same time you must give me an opportunity to correct what I believe is a misleading statement. This matter, Mr. Chairman, was raised over six months ago. I believe that if this Tribunal was concerned about justice for my clients this information would have been made available long before now, Mr. Chairman. I asked --

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CHAIRMAN: I note your comment and that is an end to the matter.

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MR. O'NEILL: For the record, Sir, may I say that there has been no misleading statement from the Tribunal to My Friend. If he would care to identify it I would like to hear it, it is a serious allegation made against the Tribunal that it is in some way offering either misleading accounts or incomplete accounts, and in the absence of evidence of that I take grave exception to My Friend's comment.

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MR. COONEY: Well, Mr. O'Neill can take such exception as he sees fit, I am merely putting on the record the fact that this matter was raised over six months ago. I merely asked when were the actual inquiries directed to Telecom Eireann, Mr. Chairman, and you say I am not entitled to hear that because it is confidential to the --

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MR. O'NEILL: I am asking Mr. Cooney to state what the misleading statement is that he says emanated from the Tribunal.

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MR. COONEY: Yes, the misleading statement is that I am

not entitled to make these inquiries on the basis of the Tribunal's -- .

CHAIRMAN: That's not a misleading statement.

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MR. COONEY: I believe the excuse of confidentiality has been used, Mr. Chairman, to deprive me of information.

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CHAIRMAN: Mr. Cooney, you have never been deprived of any information to which you are lawfully entitled.

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MR. COONEY: I respectfully disagree, Mr. Chairman.

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CHAIRMAN: In my view the order should be made, the test is not whether information may, it is whether it might, assist in the resolution of any matter or any issue. It is manifestly clear the telephone records may come within that category. There is an abundance of authority, which I have already recited, and which is according to Mr., everybody accepted as the true basis on which these orders are made. Accordingly, I am going to make the order.

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MR. O'NEILL: Very good.

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MR. SIMONS: Mr. Chairman, just one technical matter as to the form of the order. The letter we have received is in very general terms, and I make no criticism of that. It was indicated an order would be made in relation to records or what are described as records. I wonder when your Registrar is drawing up the order, would it be possible to identify a request for specifics, what the particular documents that are sought are, telephone bills or records of telephone calls --

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MR. O'NEILL: The form of consent which was delivered to the parties clearly sets out what is required, and I would imagine that the order will be in terms requiring the parties bound by the order to take the preliminary steps that are set out in that consent form and to procure on the basis of that consent form. The information which has been sought, namely all telephone communications between the parties named and the parties bound by the order.

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MR. SIMONS: With respect, Mr. Chairman, that's exactly the situation I was trying to avoid. That is not what the letter giving us notice of that application says, it suggests documents we would have, clearly the only relevant documents --

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CHAIRMAN: Mr. Simons, the documents are documents in your power and procurement, they will be sent presumably by Telecom Eireann in the first instance to you. It is your obligation to discover the document. It is as simple as that, as I understand the situation. I may be wrong, once the documents are yours and they are in the procurement, i.e. in the custody of somebody, it is up to you, the person the subject matter of the Order for Discovery to procure them and furnish them to me. Under, and listed under oath with an affidavit.

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MR. SIMONS: In order to do that we need to know what the documents are? I am not trying to be difficult,
Mr. Chairman.

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CHAIRMAN: The documents, as I understand, I stand subject

to correction, because I haven't actually sat down and worked out precisely what they are; Telecom Eireann may have an electronic process. When you telephone a number it records the number you call, that's all, it also records the time, the period of time, we are not interested in that. And it is that list, they are obtained in some other context here, yes, they were obtained, it is that list, that Telecom Eireann printout, the electronic printout, and then they are fed into a computer which identify, there may be 30,000, whatever number, telephone calls, the computer picks out the relationship between your number and the defined numbers called or alternatively the reverse way around. If Mr. Gogarty is calling you it will do exactly the same, it is those chosen, sorry, computer chosen numbers that are in fact information required, but presumably what you do is you will get the information from Telecom Eireann, presumably off the printout, identify in some manner and you simply furnish it to us with - well, I don't know whether Telecom will do it or whether we have to do it, make the computer do the search.

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MR. O'NEILL: I would respectfully suggest the order is one which would direct My Friend's clients to produce the completed match to the Tribunal, it is within their power and procurement to do so. I accept that they may well not have the document in their possession at the present, but it is a matter for them to write to Telecom to indicate that they have a request to make of them, and to produce the result of that request to the Tribunal.

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MR. SIMONS: Again, Mr. Chairman, I request that the order be in such form as is made clear as to what is required.

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CHAIRMAN: May I put it to you this way, Mr. Simons, we will make up a draft of the order outline and if you find difficulty with the draft or to its clarity, not what it says, to its clarity, we will be available to hear your views on the matter by letter or alternatively if you come to the office we will sort them out. We are here to try and cooperate and get what you want and what we want.

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MR. SIMONS: I am obliged, Mr. Chairman.

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CHAIRMAN: I understand your problem, at this remove I can't possibly understand here and now.

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MR. SIMONS: One final matter: For the purposes of the record I want to indicate at the moment we are not necessarily accepting those documents are within our procurement, I don't want anything that's said today to suggest that we consent to them being in our procurement.

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MR. COONEY: I take it, Mr. Chairman, that's not the order served on us so far as the production of our telephone records are --

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CHAIRMAN: Wait now, are we --

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MR. O'NEILL: The information which is coming to the Tribunal through Mr. Cooney's client is not coming on foot of an order but on foot of a consent and authority which was executed by his clients at the request of the Tribunal.

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MR. COONEY: Yes. So it is coming directly from Telecom Eireann, is it?

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CHAIRMAN: Does the letter direct, give us consent to apply to Telecom Eireann?

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MR. O'NEILL: It indicates that the information should be provided directly to the Tribunal.

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MR. COONEY: Very well. Can I ask this, Mr. Chairman, has the request in relation to our telephone records already been made to Telecom?

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MR. O'NEILL: I can't understand My Friend's apparent incomprehension of the description and statements I have already made to him on five occasions, that this information was sought from Telecom a considerable period of time ago, and they are dealing with it.

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MR. COONEY: Good.

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CHAIRPERSON: And when it comes to hand it clearly is information that goes, a copy of it goes to you.

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MR. COONEY: Thank you very much, Mr. Chairman.

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THE HEARING THEN ADJOURNED TO THE 19TH OF JANUARY, 2000.