

LOT 4.

PARAGRAPH A.I.

IDENTIFICATION AND OWNERSHIP

Identification and Ownership

255 acres (approx.) at Donabate (Turvey House and Beaverton House)."

Identification as of 8th June 1989

The lands comprised in Lot 4 are partly registered lands and partly unregistered lands. The registered portion of Lot 4 were lands in the Townland of Beaverstown, Barony of Nethercross, in the County of Dublin, and were comprised in Folio 4327 of the Register County of Dublin, comprising 29.438 hectares or 72.7413 acres; and the unregistered portion of which were lands at Turvey, Donabate comprising an area of one hundred and fifty-three acres one rood and thirty-seven perches or thereabouts as identified in a Deed of Conveyance of the 31st July, 1969, details of which are set out below.

Beneficial ownership as of the 8th June 1989

Helmdale limited was the full registered owner of the lands comprised in Folio 4327 of the Register County of Dublin, being lands situate in the Townland of Beaverstown, Barony of Nethercross, in the County of Dublin, comprising 29.438 hectares or 72.7413 acres. Helmdale Limited was a company registered in the Isle of Man and had its registered office at PO Box 23,28 Victoria Street Douglas Isle of Man. In relation to the unregistered land in Lot 4, as of the 8th of June 1989, the lands were in the ownership of a company known as **Turvey Estates Limited**, having its registered office at Charter House, 5 Pembroke Road, in the City of Dublin, pursuant to a Deed of Conveyance dated the 31st of July 1969 and made between **LIVESTOCK AND ESTATE LIMITED** of the first part, **C. RUSSELL MURPHY** of the second part, **GRUNO SHIPPING LIMITED** of the third part, **ULSTER BANK LIMITED** of the fourth part, the **CEMENTATION COMPANY LIMITED** of the fifth part, **WILLIAM FANAGAN LIMITED** of the sixth part and **Turvey Estates Limited** of the seventh part.

The lands were described in the said Conveyance as "ALL THAT part of the lands of Turvey containing one hundred and fifty-three acres one rood and thirty-seven perches or thereabouts Statute Measure with the residence known as Turvey House and out offices thereon in the Barony of Nethercross and County of Dublin being the lands edged red on the map or plan," annexed to the Conveyance.

Changes in Beneficial Ownership since the 8th June 1989 and prior to their Development

Folio 4327

By Transfer dated the 12th of September 1991, the date of the Composite Indenture, and made between Helmdale Limited of the one part and Bovale Developments Limited of the other part, the lands comprised in Folio 4327 were assured to Bovale Developments Limited and on the 3rd of March 1992. Bovale Developments Limited, having its registered office at 59 Fitzwilliam Square, in the City of Dublin, became registered owner of the lands comprised in Folio 4327 of the Register County of Dublin. Since then there have been the following dispositions of the registered lands comprised in Folio 4327.

Portion of the lands comprised in Folio 4327 of the Register County of Dublin was transferred to Brendan Kinane (Company Director), Turvey Avenue, Donabate, in the County of Dublin and Denis Kinane (Company Director), Turvey Avenue, Donabate, in the County of Dublin, by Bovale Developments Limited.

Brendan Kinane and Denis Kinane became registered as owners of the lands transferred to them on the 4th of May 1993 and upon becoming registered owners the relevant portion of the lands comprised in Folio 4327 of the Register County of Dublin was transferred to Folio 92339 of the Register County of Dublin. Denis Kinane and Brendan Kinane remain the registered owners of Folio 92339. These lands have not been developed..

Also on the 4th of May 1993 **Oakston Property Company Limited**, having its registered office at 47 Hardwicke Street, in the City of Dublin, became full owner of the remainder of the lands comprised in Folio 4327 of the Register County of Dublin. It would appear that in or around the years 1995/1996, Oakston Property Company Limited commenced developing the said lands by erecting dwellings thereon and Folio 4327 lists as burdens a series of leases (forty-seven in number) which are all granted for terms of nine hundred and ninety-nine years subject to a yearly rent of £1.00, the covenants on the part of the lessee and the conditions therein contained.

Unregistered lands

On the 12th of September 1991, on foot of the Composite Indenture referred to above the unregistered lands comprised in Lot 4 held by Turvey Estates Limited, under the Conveyance dated the 31st of July 1969, were conveyed to Bovale Developments Limited. Turvey Estates Limited had been placed in liquidation on the 18th of December 1989 and the Liquidator joined in the Composite Indenture. There have been a number of dispositions affecting this land since 1991:

(i) By Deed of Conveyance dated the 16th of September 1993 and made between BOVALE DEVELOPMENTS LIMITED of the one part and BLANE TRADING LIMITED having its registered of at Derrygoan, Ballinamore, Co. Leitrim of the other part, portion of the lands as set out below were conveyed to Blane Trading Limited. The lands conveyed on foot of this Deed of Conveyance dated 16th of September 1993 are described as:

‘ALL THAT AND THOSE that part of the lands of Turvey situate in the Barony of Nethercross and County of Dublin which for identification purposes only are delineated on the map annexed to the said conveyance and thereon edged in red comprising 48.840 hectares or thereabouts being part of the lands more particularly described in the Schedule of an Indenture of Conveyance made the 31st of July between Livestock and Estates Company Limited and others to Turvey Estates Limited and on the map annexed thereto and thereon edged in red held in fee simple subject with other property to an annual tithe rent charge of £8.16s.6 but primarily liable to an annual sum of £4.2s.11 part thereof and indemnified against the balance.’

(ii) By Deed of Conveyance dated the 16th of September 1993 and made between BOVALE DEVELOPMENTS LIMITED of the first part, BLANE TRADING LIMITED of the second part and MAINWELL LIMITED of having its registered office at High Street, Ballinamore, Co. Leitrim of the third part, a portion of the lands as set out below were conveyed by way of sub-sale to Mainwell Limited.

The lands conveyed in this Conveyance are described as:

‘ALL THAT AND THOSE that part of the lands of Turvey situate in the Barony of Nethercross and County of Dublin which for identification purposes only are delineated on the map annexed to the said Conveyance and thereon edged in blue comprising 2.1496 hectares acres being part of the lands more particularly described in the Schedule of an Indenture of Conveyance made the 31st of July 1969 between Livestock and Estates Company Limited and others to Turvey Estates Limited and on the map thereto and thereon edged in red held in fee simple subject with other properties to an annual tithe rent charge of £8.16s.6 but primarily liable to any annual sum of £4.2s.11 part thereof and indemnified against the balance’.

Effectively, the site of the former Turvey House and about 5 acres around it were being conveyed to Mainwell Limited.

(iii) By Deed of Conveyance dated the 16th of October 1995 and made between BLANE TRADING LIMITED of the first part, MAINWELL LIMITED of the second part and BRETON

PROPERTIES LIMITED of Turvey Lane, Donabate, Co. Dublin of the third part Blane Trading Limited conveyed to Breton Properties the following lands:-

'ALL THAT AND THOSE part of the lands of Turvey situate in the Barony of Nethercross and County of Dublin as described and delineated on the map annexed to the Conveyance and thereon edged in red and shaded in red.'

Mainwell Limited on foot of the same Deed conveyed to Breton Properties Limited the following lands:-

'ALL THAT AND THOSE that part of the lands of Turvey, situate in the Barony of Nethercross and County of Dublin, adjoining the reserved lands, which said hatched lands are delineated on the map hereto and thereon coloured blue and hatched in black.'

Mainwell Limited on foot of the same Deed reserved to itself the following lands:-

'ALL THAT AND THOSE that part of the lands of Turvey situate in the Barony of Nethercross and County of Dublin as more particularly described and delineated on the map hereto and *thereon edged in red and hatched green and bounded on one boundary thereof by the hatched lands and on all other boundaries by the premises (that is to say the lands conveyed by Blane Trading Limited to Breton Properties Limited).*'

As of 16th October 1995, all but the site of former Turvey House and about 5 acres around it, are held by Breton Properties Limited.

(iv) A Deed of Rectification was executed on the 13th of November 1996. The parties to the Deed of Rectification were;

TURVEY ESTATES LIMITED
JOHN EDDISON (AS LIQUIDATOR OF TURVEY ESTATES LIMITED)
BOVALE DEVELOPMENTS LIMITED
BLANE TRADING LIMITED
MAINWELL LIMITED
BRETON PROPERTIES LIMITED

It was provided that this Deed was supplemental to the Composite Deed and that a doubt had arisen as to whether the Composite Deed was effective to assure to Bovale Developments Limited the lands thereby assured. The Deed of Rectification confirmed the above assurances of the unregistered Lot 4 lands, commencing with the Composite Indenture.

(v) By Deed of Conveyance dated the 5th of December 1997 and made between BRETON PROPERTIES LIMITED of the one part and CLODAREN DEVELOPMENTS LIMITED having its registered office at 15 Upper Fitzwilliam Street, Dublin 2 of the second part, a small portion of the lands conveyed to Breton Properties Limited on foot of the Deed of 16th October 1995 and the Deed of Rectification was conveyed to Clodaren Developments Limited. The property conveyed to Clodaren Developments Limited is described as:

"ALL THAT part of the lands of Turvey situate in the Barony of Nethercross and County of Dublin as delineated on the map annexed to the said deed dated the 5th of December 1997 and thereon edged red."

The remaining lands retained by Breton Properties Limited have been developed as a golf course. The Tribunal received copy title documents, records of which were not in the Land Registry which evidence minor changes in the ownership of these lands in 1996.

(vi) By Deed of Conveyance dated 2nd August, 1996, Blane Trading Limited assured to Mainwell Limited the remaining lands at Turvey held by Blane Trading Limited. The lands thus assured were:-

"ALL THAT AND THOSE that part of the lands at Turvey situate in the Barony of Nethercross and County of Dublin which are delineated on the map annexed hereto and shaded purple being part of the lands more particularly described in the Schedule of an Indenture of Conveyance dated May 31st July 1969 [that is the wording in the deed although the Tribunal believes "May" should read "the",] between Livestock and Estates Company Limited and others to Turvey Estates Limited and on the map thereto and thereon edged in red held in fee simple subject with other properties to an annual tithe rent charge of £8.16s.6 but primarily liable to any annual sum of £4.2s.11 part thereof and indemnified against the balance."

(vii) By Deed of Conveyance dated 31st May, 1996, between Mainwell Limited and Breton Properties Limited Mainwell Limited assured to Breton Properties Limited:-

"ALL THAT AND THOSE that part or portions of the lands of Turvey situate in the Barony of Nethercross in the County of Dublin as described and delineated on the map" annexed to the Deed "and thereon edged in purple and marked with the letters "B" and "C", and Breton Properties Limited assumed to Mainwell Limited:-

"ALL THAT AND THOSE that part o the lands at Turvey situate in the barony of Nethercross and County of Dublin as described and delineated on the map annexed hereto and thereon edged in pink and marked with the letters "A" and "A1."

(viii) By Deed of Conveyance and Surrender dated 27th November, 1996, between Mainwell Limited and Breton Properties Limited, a deed which was said to be supplemental to the Deed between these parties of 16th October, 1995 referred to above, the parties exchanged, granted and surrendered various rights of way.

(iv) The small portion of land retained by Bovale Developments Limited was the subject matter of a contract dated the 2nd of April 1996 between BOVALE DEVELOPMENTS LIMITED of the one part and PATRICK CASSIDY of the other part. This contract was completed with a Deed of Conveyance to Beaver Investments Limited dated the 27th day of May 1996. Beaver Investments Limited appears, from the Land Registry records and correspondence, to continue to be the owner of these lands. It appears from correspondence the lands are undeveloped.

PARAGRAPH A.2. PLANNING HISTORY

These lands are described in the Schedule as being "255 acres (approx) at Donabate (Turvey House and Beaverton House)."

Part of the lands are registered on Folio 4327 County Dublin and extends to 29.438 hectares (72.7 acres) and part on Folio 92339F comprising approximately 3.25 hectares (8 acres). The balance of the lands are unregistered and extend to 61.75 hectares (152.6 acres). It appears that the total area is about 94 hectares (233 acres). The lands in question are situate to the east of the N1, north of Turvey Avenue and northwest of Donabate Village and are shown in part on map 5 of the 1993 County Development Plan and part on map 1A of that plan.

Paragraph A.2 (a) of the Terms of Reference namely the planning status of these lands in the Development Plan of the Dublin Local Authorities current at the 8th June 1989

The Development Plan current as of the 8th June 1989 was the 1983 Development Plan for the County of Dublin wherein these lands were zoned "B" "to protect and provide for the development of agriculture." In the 1972 Dublin County Development Plan, the lands comprised in Lot 4 were zoned "P" (to provide for the further development of agriculture). On the 8th of June 1989 the lands were still zoned "B" (to protect and provide for the development of agriculture). In the 1990 Draft Dublin County Development Plan, it was proposed that the lands would remain zoned "B" (to protect and provide for the development of agriculture). In the 1991 Draft Dublin County Development Plan which was put on public display for

three months, the proposed zoning of the lands was shown as "B" (to protect and provide for the development of agriculture).

In 1993, after the first public display and before the second public display, a motion was passed by the Council resolving that 38 hectares (94 acres approx.) be re-zoned to "A1" (to provide for a new residential community in accordance with approved action area plans) and that Phase 1 (consisting of not more than 300 houses) be completed before Phase 2 commences. In the 1993 County Development Plan 18.42 hectares (45 acres) of Lot 4 were re-zoned "A1" (to provide for new residential communities in accordance with approved action area plans) and the balance of 76 hectares (188 acres approx.) remained zoned "B" (to protect and provide for the development of agriculture). In the 1999 Fingal County Development Plan, an additional 8 acres (approx.) of the lands of Folio 4327 was zoned "A1" and a site in the unregistered land on Turvey Avenue was re-zoned residential with the objective to provide a maximum 7 houses. The remainder of the unregistered land was zoned F (to preserve and provide for open space and recreational amenity.).

Paragraph A.2(b) of the Terms of Reference. The position regarding the servicing of the lands for development as at the 8th of June 1989

This area is partially located within the catchment of the Donabate Treatment plant, located to the south of Portrane Hospital. The catchment is divided into three main sub-catchments. The Donabate and the Burrow sub-catchments pump to the central catchment draining Portrane, which in turn is pumped to the treatment plant. The treatment plant had a design capacity of a population of 6,000 which remains unchanged. The overall foul system drained on the separate system but the operation of the treatment plant was effected by considerable combined flows (foul and surface water) which were generated within the Hospital system. This situation remains the same today.

In September 1986, a report was presented to the Dublin Fingal District Committee meeting of Dublin County Council. This report established that an estimated population of 3,768 drained to the treatment plant. In addition, planning permission existed for a population equivalent of 2,340 and planning appeals had been lodged in respect of a further population equivalent of 1,108. The combined total of these amounted to a population equivalent of 7,216.

The above population estimates were based on house counts assuming an existing and potential occupation of 4 persons per dwelling. These population estimates also included the population of the Hospital.

The area depicted has an area of 203.5 acres which would have had a potential population of 8,120, based on 10 houses per acre were these lands to be fully developed. Environment Services would have recommended that no permission be granted for this area pending the doubling of the treatment capacity of Donabate Treatment Plant. The adequacy of the gravity sewer, pumping station and rising main would also have been a constraining factor.

Surface water

Historically, the surface water system to which Donabate drains, both east and west of the Dublin Belfast Railway line is based on water retention for irrigation purposes rather than its rapid disposal to the Rogerstown Estuary. Two surface water pumping stations were utilised to control the water table. The drainage infrastructure consisted of wide, deep water-courses in canal-like form to provide storage. A pumping station on the east side of the Railway line pumped to a second pumping station on the west of the line, which pumped to the upper Rogerstown Estuary. During extreme weather conditions the area was subject to flooding and the minimum floor level for development was set at 7.5 metres above Ordinance Datum (OD)(Poolbeg).

In the late seventies/early eighties, the developer to the south-east of the site carried out works to the north, beyond his site through lands now occupied by Beaverstown Golf Club. This work consisted of deepening the water course which formed the main outfall. This allowed the pumping station on the west of the Railway to be removed. For this work, the developer was allowed offsets against development charges levied on his development and future development. The only constraint on development west of the Railway line in respect of surface water drainage would have been the requirement for finished floor levels to be a minimum of 7.5 metres above O.D.

Water supply

Water would have been available subject to the provision of an acceptable water main infrastructure.

Paragraph A.2(c)(i) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of proposals put forward by Dublin Local Authority officials pursuant to a review of Development Plans or otherwise.

No such changes were made or proposed by Dublin Local Authority Officials save that an additional 8 acres were proposed by officials for residential zoning in the 1998 Draft Fingal County Development Plan, and is so zoned in the 1999 Fingal Development Plan and the unregistered land was proposed to be zoned "F" (to preserve and provide for open space and recreational amenities) in the 1998 Draft Fingal Plan.

A-118 Paragraph A.2(c)(i) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of proposals put forward by Dublin Local Authority officials pursuant to a review of Development Plans or otherwise

During the three month display of the 1991 Draft County Dublin Development Plan, a representation was received from Allan S. Tomkins, Architect, on behalf of Bovale Developments Limited seeking to have the zoning of the lands shown on the map accompanying his letter, stated to be 72 acres approximately, zoned for residential use (Reference 000044). In his letter of the 26th November 1991 addressed to the Planning Department Mr. Tomkins said as follows:-

"Dear Sir,

**Re: County Draft Development Plan 1991 – 72 acres approx. Beverton, Donabate for
"Bovale Developments Limited"**

On behalf of my clients, I wish to make representations and list these below in support for changing the zoning of these lands to residential use.

I enclose a location map showing the lands edged red and further small scale plan showing how a pedestrian link could be planned to accommodate a short safe way to the school and shops.

Also enclosed is a layout plan showing a suggested layout for a housing development of 510 houses and incorporating a leisure centre.

There is an existing golf course to the north of this site and a new one to be built to the western boundary of the site known as Turvey House, these form natural boundaries for development. The site is also close to the centre of village and on the eastern side of the railway which means vehicles leaving this site quickly connect to the Belfast/Dublin Road without passing through the centre of the village.

These lands are immediately adjacent to the Kinane Development lands and any service road or footpath connections could be provided.

Bovale Developments Limited have built many houses in the Swords area and the only available lands now left for development are in a few hands, my clients therefore see this site in Donabate as a well located site for development which has the advantage of a good rail service for people working in Dublin and good roads for travelling to Dublin and the Airport.

The site is located within easy reach of the village school and shops and has the advantage of the local amenities such as beaches and Newbridge House and grounds.

Should this site be rezoned for residential development, my clients would be willing to phase the development in order that integration with the local community and services could take place at a reasonable pace.

There is a 12" diameter public foul sewer in adjoining lands and surface water could be discharged through water courses to the tidal outfall to the north of this site.

It is understood that all other services would be available for the development proposed.

It is, therefore, our contention that the above lands are well located and adjacent to the existing village with its amenities and would form a logical extension to same and would enhance the area with a good choice of house designs together with a new leisure centre which would be available for use by all the residents of the area.

We therefore urge your Council to give careful consideration to these lands and rezone them for residential use."

At a meeting of the Council held on the 12th of May 1993, this representation and others relating to the Donabate area were considered. The Manager's report to the meeting recommended that having regard to the drainage restrictions to the area that no further lands be zoned for development in the

Donabate/Portrane area. The full text of the Manager's report to the meeting of the 12th May 1993 is contained in pages 553-561 and pages 567 & 568 of the Minutes of the Meeting and was as follows:-

"The development strategy for Donabate/ Portrane was considered at three Special Meetings of the County Council.

At the meeting held on 15th December 1989 Map No. 5, dealing with Donabate/Portrane was presented. The proposals outlined on that map were generally for a continuance of the existing zoning, catering for a population in the region of 6,000 persons.

At that meeting, Map No. 5 was noted, subject to a further report on proposals for future development.

In response, Draft Map No. 5A and an accompanying report were presented on 22nd June, 1990. Map 5A showed possible zonings in the Donabate/Portrane area to cater for a potential population in the order of 12,000 persons. The report stated that:-

However, the Council has to be advised of serious difficulties that would arise in attempting to cater for such development."

These difficulties were detailed. It was reported that "in addition to the augmentation of the foul drainage system, the existing waste water treatment works would have to be increased in size and the existing outfall to the sea extended in order to comply with the requirement for the discharge of treated sewage effluent to marine waters. This would be an addition to work on the improvement of the water supply."

To cater for an approximate population of 12,000, the approximate cost of foul drainage and water supply works was reported to be £3.80 million.

It was further reported as follows:-

"The Deputy Chief Engineer states that if an increase in zoned lands is approved by the Council, planning permission which would give rise to an increase in the population of the area in excess of 6,000 persons would have to be refused until such time as the services as listed above had been improved.

In addition to the expenditure listed above it is estimated that the cost of the improvements to the road infrastructure, including the crossing of the railway line, would be of the order of £3.4m.

It is apparent that expenditure of this order could not reasonably be funded by way of contributions from intending developers, nor would it be available from other sources.

Accordingly, the Council has to be advised that the zoning proposals set out on Draft Map 5A could not be realised within any reasonable time span and that accordingly the Council should adopt Map No. 5, i.e., the original proposal put forward for its consideration."

Following discussion at this meeting it was AGREED that a further report in relation to surface water drainage of the Council owned lands and in relation to possible zoning adjustments to provide for a maximum population of 6,000 for the Donabate/Portrane area be submitted to a future special meeting of the Council dealing with the Development Plan Review.

At a special meeting on 14th September 1990, Map 5B relating to the area of Donabate/Portrane was presented. The proposals provided for some zoning adjustments to provide for a maximum population of 6,000.

Map 5B proposals, for the Portrane area, were similar to those of Map 5 with the exception of additional residential zoning adjoining the Seaview Park.

Map 5B proposals, for the Donabate area, differed from Map 5 insofar as 5B proposed additional residential zoning adjoining the "Viking Green", Turvey Avenue, development and at Beaverstown, east of Beaverstown

Road and north of Council owned lands. There were also revised zoning objectives for the village and adjoining areas.

Following discussion it was AGREED that Map 5 as presented to the Council in December 1989 be ADOPTED.

PLANNING OFFICER'S REPORT

Having regard to the drainage restrictions on the area as outlined above, it is recommended that no further lands be zoned for development at Donabate/Portrane. The present population of the drainage area, including St. Ita's Hospital, is approximately 5,000 persons. The capacity of the undeveloped zoned lands would increase the population to well in excess of the 6,000 population limiting capacity.

It is recommended therefore that no additional lands be zoned for development, except for two adjustments to reflect development commitments at (B) and (D) hereunder
LANDS AT BEAVERSTOWN, RAHILLION, BALLISK

REPRESENTATION NO. 000044 - LANDS AT 'BEVERTON', DONABATE -BOVALE DEVELOPMENTS LIMITED

(B) REPRESENTATION NO. 000097 - LANDS AT BEAVERSTOWN ADJOINING THE 'VIKING VILLAGE'- SWORDS DEMESNE DEVELOPMENT CO. LIMITED REPRESENTATION NO. 000204 - KINANE DEVELOPMENTS LIMITED

(C) REPRESENTATION NO. 000152 - LANDS AT PROSPECT HOUSE, DONABATE VILLAGE - E. HOPKINS.

REPRESENTATION NO. 000214 - LANDS AT BALCARRICK ROAD, DONABATE - S. CAMPBELL.

REPRESENTATION NO. 000046 - LANDS AT BEAVERSTOWN, BEAVERSTOWN SPORTING & DEVELOPMENT COMPANY.

REPRESENTATION NOS. 000232, 000233 & 000357 - LANDS AT BEAVERSTOWN, RAHILLION & BALLISK COMMON - J. HENEGHAN/P. CASSIDY & N. McALLISTER. [App. 4.3]

(G) REPRESENTATION NO. 000256 - LANDS AT RAHILLION - M. COLLINS, OTHER REPRESENTATION NOS. 000059, 000335, 000359 & 000441.

Representations requesting change of zoning to development: -

(A) Land at "Beverton", Donabate - Bovale Developments Limited - Representation No. 000044

SYNOPSIS OF REPRESENTATION

Request that approximately 29 hectares of land at Turvey Avenue, which adjoin the Kinane (residential) Development Lands and Beaverstown Golf Course, be zoned for residential development.

DEVELOPMENT PLAN

The subject site is zoned "B" for agriculture in the 1983 Development Plan and in the 1991 Draft Plan.
Lands at Beaverstown adjoining the

"Viking Village" residential development at Turvey Avenue - Representation No. 000097 - Swords Demesne Development Co. Limited and Representation No. 000204 - Kinane Developments Limited [App. 4.3]

SYNOPSIS OF REPRESENTATION

Representation No. 000097 is dated January 1989 and is superseded by Representation No. 000204 which requests that 15 hectares approximately be re-zoned from agricultural to an appropriate residential zoning.

SITE HISTORY

PLANNING APPLICATIONS

Reg. Ref. YA. 362 - Outline permission was granted on appeal on the 13th August 1984 for housing development on a site of 8 hectares (south-west section of the site, the subject of Representation 000204) at

Beaverstown, Donabate, subject to not more than 50 houses being erected and development being limited to the eastern part of the site.

Since then a number of applications for residential development have been lodged on the eastern and western part of the site of Reg. Ref. YA. 362.

A number of permissions have been granted consequent on the passing of Material Contravention of the Development Plan resolutions as follows: Reg. Ref. 89A/213 and Reg. Ref. 90A/584. [App. 4.3]

DEVELOPMENT PLAN

The site of Representation No. 000204 is zoned "B" for agriculture in the 1983 Development Plan and in the 1991 Draft Plan.

To the south-east, Representation No. 000204 adjoins the housing development known as "Viking Green" (Reg. Ref. YA/362) the lands of which are zoned "A" and "F." In addition, Representation No. 000204 also adjoins an apartment development (Phase 1 of which is nearing completion Reg. Refs. 91A/1776 & 92A/0933 refer), the lands of which are zoned "B."

It is recommended that the "A" zone be extended to include the lands for which planning permission has been granted and which are partially developed. D.P. 92/190 refers.

(C) Lands at prospect House, Donabate Village - Representation No. 000152 - E. Hopkins

SYNOPSIS OF REPRESENTATION

Re-zoning is requested from 'B' for agriculture to "C2" "to protect and enhance the special physical and social character of town and village centres", of that portion of the 4 hectares of lands which surround the former Parochial House (namely Prospect House) in Donabate Village and which are north of the reservation for the proposed long term Donabate By-Pass Road.

The representation advocates that the "C2" zoning objective would allow for a proposed low density high quality development.

SITE HISTORY

(i) PLANNING APPLICATIONS

Reg. Ref. 91 A/0071 - refers to a refusal of outline permission for 19 houses on a site which comprised part of the site the subject of this representation as well as the road reservation and Mr. Hopkins lands to the south of this proposed long term road. The refusal reasons included: zoning, prematurity regarding road layout, traffic hazard regarding proposed access on the existing road, no capacity in existing sewerage facilities, no surface water available for proposed development.

(ii) DEVELOPMENT PLAN

The site of this representation is zoned "B" for agriculture in the 1983 Development Plan and in the 1991 Draft Plan.

There is a long term road proposal/objective to the south-east of representation No. 000152.

(D)Lands at Balcarrick Road, Donabate - Representation No. 000214 - S. Campbell.

SYNOPSIS OF REPRESENTATION

Re-zoning to residential use requested on lands - at Balcarrick Road, which adjoin "The Strand" residential development, at Balcarrick Road, Donabate.

SITE HISTORY

(i) PLANNING APPLICATIONS

Reg. Ref. YA.1517 - refers to permission granted (by decision order the 6th April 1984) consequent to a resolution for a material contravention of the Development Plan, for a housing development on lands off Balcarrick Road on a site of 4 hectares which includes a small strip of land fronting onto Balcarrick Road and which is part of the site of this representation.

Subsequently a number of applications were lodged for residential development including revised layout and revised house types but excluding that strip of land which forms part of the site of this representation (Applications include Reg. Refs. ZA. 1495, 89A/2028, 89A/2279, 92A/0760, 92A/0800, 91A/1 723).

Phase 1 of this residential development which is known as "The Strand" has been completed and Phase 2, which adjoins the site of the subject representation, is nearing completion.

(ii) DEVELOPMENT PLAN

The site of this representation is zoned "B" - for agriculture in the 1983 Development Plan and in the 1991 Draft Plan.

A long term road proposal/objective (the Donabate By-Pass Road) affects the site.

It is recommended that the "A" zone be extended to include the lands, for which planning permission has been granted and on which development is nearing completion. D.P. No. 92/191 refers.

(E) Lands at Beaverstown, Donabate - Representation No. 000046 - "Beaverstown Sporting and Development Company"

SYNOPSIS OF REPRESENTATION

This representation requests that favourable consideration be given to re-zoning approximately 8 hectares of land, which is located to the immediate north of Beaverstown Orchard residential development, from "B" to "A" low density.

SITE HISTORY

(i) PLANNING APPLICATIONS

Reg. Ref. 85A/1109 - permission refused by the Council and on appeal for the erection of 192 houses on a site which included the site the subject of this representation.

Reg. Ref. 89A/688 - permission refused for 151 houses at Beaverstown on a site including the site of this representation.

Reg. Ref. 91A/1331 -outline permission refused for 9 houses on a site at Beaverstown which forms part of the site of this representation. Appeal was subsequently withdrawn.

(ii) DEVELOPMENT PLAN

The site is zoned "B" - for agriculture in the 1983 Development Plan and in the 1991 Draft Plan.

(F) Lands at Beaverstown, Rahillion and Ballisk Common, Donabate

Representation Nos. 000232 and 000233 - J. Heneghan, P. Cassidy

Representation No. 000357 - N. McAllister

SYNOPSIS OF REPRESENTATIONS

Representation No. 000233 requests that 8 hectares at Beaverstown be re-zoned from "B" to "A."

In addition, Representation No. 000232 requests that the above 8 hectares (Rep. No. 000233) as well as an adjoining 20 hectares to the south and east at Beaverstown, Rahillion and Ballisk Common (and owned by Mr. McAllister) be re-zoned from "B" to "A."

Representation No. 000357 requests that the main portion of Mr. McAllister's landholding of 26 hectares at Beaverstown, Rahillion and Ballisk Common, be re-zoned from "B" to "A."

This representation advocates that the remainder of Mr. McAllister's lands at Rahillion retain the "G" zoning designation for High Amenity, as indicated in the 1991 Draft Plan.

SITE HISTORY

(i) PLANNING APPLICATIONS

Reg. Ref. ZA.421: Permission refused for a housing development of 99 houses at Beaverstown, on a site which formed part of the 8 hectares site of Representations 000232 and 000233.

DEVELOPMENT PLAN

The lands of Representation Nos. 000232 and 000233 and that portion of Representation No. 000357, which is the subject of the requested re-zoning, are zoned "B" – for agriculture in the 1983 Plan and the 1991 Draft Plan.

(G) Lands at Rabillion, Donabate - Portrane - Representation No. 000256 - Ms. Mary Collins

This representation requests an extension of the development area to include a field of approximately 2 hectares at Rahillion. That the field has road frontage along a laneway "but if the property was considered for re-zoning, I would hope to be in a position to purchase either of two sites with road frontage adjoining this site."

DEVELOPMENT PLAN

The site is zoned "B" - for agriculture in the 1983 Development Plan."

Following discussion of the Managers Report, the following motion was proposed by Councillor Gallagher, seconded by Councillor Devitt (Ref 16(1)(A) & (B)(i)):-

"Dublin County Council hereby resolves that the lands outlined in red on the attached map which has been signed by the proposer and seconder of the motion, be zoned "A1" with the Objective that the area hatched in yellow be zoned "A" and be developed immediately and the remainder be developed in accordance with an area action plan."

The lands included in the motion were those covered by the representation on behalf of Bovale Developments Limited and adjoining lands in respect of which a representation on behalf of Swords Demesne Development Company Limited (Reference No. 000097) and a representation on behalf of Kinane Developments Limited (Reference No. 000204) had been received.

As the time fixed for the meeting expired before the motion was put the matter was deferred to the Meeting of the Council held on the 14th May 1993.

At the meeting of the 14th May 1993, the following motion was proposed by Councillor Devitt, seconded by Councillor Gallagher at 16(1): -

"Dublin County Council hereby resolves that in view of the immediate surface water drainage difficulties relating to land already zoned but not developed and to the immediate demand for land to be developed for housing in Donabate and to the capacity in the existing treatment plant that additional land be zoned for residential development to allow for a phased development pattern in Donabate and to allow for a balanced development east and west of the railway line."

The motion was passed by 44 votes in favour, 6 against, and 5 abstentions. The names of those voting in favour and against are given on Page 575 of the Minutes of the Meeting.

The meeting then resumed consideration of the motion which had been proposed by Councillor Gallagher, seconded by Councillor Devitt at the meeting of the 12th May 1993. During the course of discussion on the motion, an amendment was proposed by Councillor Devitt, seconded by Councillor Gallagher and passed on a show of hands which had the effect of making the following the substantive motion – page 576 of minutes: -

"Dublin County Council hereby resolves that the lands outlined in red on the attached map which has been signed by the proposer and seconder of the motion be zoned for residential development and that not more than 300 houses be constructed in Phase 1 which is the area hatched in yellow on the attached map and that Phase 2 not be constructed until Phase 1 has been completed."

This motion was passed by 35 votes in favour, 18 against and 2 abstentions.

For: Councillors C Boland, P Brady, S Brock, L Butler, B Cass, B Coffey, LT Cosgrave, MJ Cosgrave, L Creaven, A Devitt, JH Dockrell, M Elliott, M Farrell, T Fox, C Gallagher, S Gilbride,

R Greene, T Hand, F Hanrahan, C Keane, M Kennedy, J Larkin, M McGennis, C McGrath, J Maher, D Marren, T Matthews, T Morrissey, C O'Connor, A Ormonde, N Owen, C Quinn, N Ryan, S Terry, GV Wright.

Against: Councillors M Billane, F Buckley, M Doohan, K Farrell, N Gibbons, E Gilmore, L Gordon, D Healy, J Higgins, T Kelleher, M Muldoon, M Mullarney, D O'Callaghan, G O'Connell, S Ryan, T Sargent, D Tipping, C Tyndall.

Abstentions: Councillors S Laing, T Ridge.

This proposed amendment of the Draft Plan was put on public display for the statutory one month as required by the Planning Acts as Map 5 Change 9.

At the meeting of the Council on the 15th September 1993, to consider the proposed amendments to the Draft Plan for the Donabate area, a report from the Manager was presented to the meeting which included the following (ref. page 977 of minutes): -

"There were approximately 150 representations received in relation to Map 5. These were divided almost equally between those supporting and those against most amendments. The main issues concerning those objecting are:

- (1) the inadequacy of the roads and sewerage system and the cost of upgrading same when existing services remain under utilised in other areas;
- (2) the existence of adequate zoned, serviced land elsewhere;
- (3) the desire to preserve the rural/village nature of the area."

The main issues concerning those supporting the amendments are:

the preservation of employment;
the development of community services and infrastructure - including bus, train, medical etc.;
to take advantage of the amenities the area has to offer.

General Report on Donabate

Foul Drainage

The capacity of 6,000 persons in the treatment works is now being used or is committed in planning permissions granted and hence there is no further foul drainage capacity for development. There is provision in the design of the drainage works for duplication which if built would provide for a further 6,000 persons. However, no further development can take place until the proposed duplication of the works is built and in operation.

Development Plan

There are 140 acres approximately of undeveloped residential zoned land on the eastern side of the railway line in Donabate. These lands if developed would have the capacity to accommodate 4,000 people approximately. This would leave an additional capacity of 2,000 persons equivalent to 600 houses. At the last Development Plan meeting which discussed this matter, the members considered it appropriate that these 600 houses be divided 300 east of the railway line and 300 west of the railway line.

The present rezoning proposals if developed to their full extent would provide for a total of 1,200 houses approximately comprising 430 east of the railway line and 760 west of the railway line. This considerably exceeds the capacity which will be available in the event of duplication of the sewage works.

Hence, it is advised that the amount of houses to be built on lands it is proposed to rezone, be limited to 300 east and 300 west of the railway line."

In summary, the Manager's report then listed a number of areas where these 600 houses might be located and included the recommendation in regard to Change No. 9 that the amendment be confirmed subject to not more than 300 houses being built on the entire site.

Mr. William Murray, Deputy Dublin Planning Officer explained, with the aid of slides, the proposals contained in the Manager's report and this was followed by a discussion to which Councillors Tipping, Higgins, Buckley, McGennis, Sargent, O'Callaghan, Laing, Kelleher, S. Ryan, Gilbride and Cass contributed. The Manager replied to queries raised and further consideration was deferred to the next meeting to be held on the following day, 16th September 1993 (ref. page 981 of minutes). At the meeting on the 16th of September 1993, the following additional report at page 983 by the Manager was considered: -

"At the meeting on the 15th September, 1993, some reservations were expressed regarding the Donabate proposals as presented. To meet these reservations, it is suggested that the northern and western limits of the residentially zoned areas be drawn in accordance with DP 93/136 and that the overall density be restricted to 6.6 houses per acre (16.3 per hectare). These changes would allow for a similar number of houses to those stated in the report presented to the Council – that is Change 1 – 40 houses, Change 2 – 100 houses, Change 3 – 120 houses and Change 9 – 300 houses."

Following discussion to which Councillors Devitt, Higgins, S Ryan, Tipping, Sargent, Quinn, Gallagher, Boland, Butler, Cass, Maher, Lyons, O'Callaghan and Kelleher contributed, the Manager replied to queries raised by the Members. Having considered the various other changes on the agenda, the Council then went on to consider Change 9 in relation to Beaverstown, Donabate (Reference C/729/93). The following is a quote from page 989 of the minutes:

BEAVERSTOWN, DONABATE

"Change 9: Change of zoning of lands north of Turvey Avenue from "B" to "A1", Phase 1 consisting of not more than 300 houses to be completed before Phase 11 commences.

The following motions relating to Change No. 9 were not moved:

- Motion in the names of Councillors T. Kelleher and S. Ryan:

"Dublin County Council hereby resolves that the lands referred to as 9 on Map Number 5 of the Dublin County Council Draft Development Plan Review 1993 Amendments be zoned B - to protect and provide for the development of agriculture."

- Motion in the name of Councillor T. Sargent:

"Dublin County Council hereby resolves that the lands involved in change no. 9 on map 5 of the proposed amendments to the 1991 Draft Development Plan be zoned "B."

- Motion in the names of Councillors D. Tipping, C. Breathnach, E. Gilmore, D. O'Callaghan and M. Billane:

"This Council resolves that the lands referred to at Map No. 5 Change No. 9 in the public display of proposed amendments to the County Dublin Draft Development Plan 1991 revert to its former proposed zoning as shown in Draft maps displayed in September - December 1991."

The following motion was proposed by Councillor Devitt, seconded by Councillor Gallagher:-

"That the Manager's proposal of the 16th September, 1993, be amended to provide that the lands outlined in red on the attached map signed for identification be zoned for residential development."

The motion was put and passed unanimously and the subject lands were zoned for residential development in the 1993 Development Plan. The passing of this motion had the effect of reducing the amount of land proposed for rezoning in the proposed amendment to the Draft Plan from 38.00 hectares to 18.42 hectares. This included other land in addition to part of Lot 4.

Paragraph A.2(c)(iii) of the Terms of Reference. Changes made or proposed to be made to the 8th of June 1989 planning status of the lands by way of applications for planning permission (including any involving a material contravention of the Development Plan)

Material contraventions

No planning permission was granted which materially contravened the zoning of these lands.

Applications for planning permission

A review of the Planning Register together such available files as are within the Council's possession reveal the following;

Planning Application Register Ref. A214

The planning history of the lands as appears from the planning register commenced in 1968, when a planning application register Reference A214 was submitted to the Council seeking Planning Permission for 280 houses at Turvey Estate, Donabate. Outline permission was refused by the Council by Order No. P518/68 dated the 18th April 1968 for the following two reasons: -

"1. The proposed development is premature by virtue of the non-availability of public piped sewerage facilities in the area and the period within which such is expected to be provided.
Reason: In the interests of the proper planning and orderly development.

2. The proposed temporary sewage disposal system for the development does not meet the requirements of the Chief Medical Officer who has a basic objection to the discharge of the effluent as shown into the existing stream at Turvey House and which drains into the tidal estuary of the Turvey River.
Reason: In the interest of health."

The application was made by Nicholas O'Dwyer, Son & Partners on behalf of Turvey House Limited. The original file is not available.

Planning Application Register Ref. E 2252

This application was made by D. McCarthy on behalf of Forest Homes and was an application for outline permission for a housing development at Beaverstown, Donabate. By Order P294/73 dated the 2nd February 1973, the Council decided to refuse permission for the proposed development for the following reasons:

1. The proposal for housing development within an area indicated for the further development of agriculture in the Development Plan would seriously conflict with the plan and would not be in accordance with the proper planning and development of the area.
2. There is no sewer available.
3. The existing adjoining road network is inadequate to serve the proposed development.

Planning Application Register Ref. G 1270

In or about 1974, an application for planning permission for a residential development was submitted by Kieran O'Malley Consultant, Town Planner on behalf of O'Shea & Shanahan Limited for a residential development at Turvey, Beaverstown, Corballis and Portrane. This application was withdrawn by letter dated the 13th June 1974, but as the file is not available to the Council, the Tribunal could not identify the exact location of the lands.

Planning Application Register Ref. G1406

In 1974, an application for outline planning permission for a residential development at Turvey, Beaverstown, Corballis and Portrane was submitted to Dublin County Council. The application submitted by Consultant Town Planner, Kieran O'Malley in association with P. Shaffrey and D. Fearon was made on behalf of O'Shea and Shanahan Limited, Farrell Homes Limited, Connolly Construction Co. Limited, F. Sharpe and James Wood and was refused for the following 8 reasons: -

- "1. The lands to which the application relate are contained in the Donabate Planning Study lodged as part of the proposal, as small parts of the overall development. The proposals contained in the Study run counter to the County Dublin Development Plan, envisaging as it does, a major development (i.e. a new town of 30,000 population) in an area for which the zoning objective is to provide for the further development of agriculture and it would create a counter magnet to the planned major development areas (i.e. the Western towns) proposed elsewhere in the County area as a definite policy. It is, therefore, not considered to be in accordance with the proper planning and development of the area.
2. There are no existing sewage services to accommodate the proposals and the Council has approved no plans to provide such services on the scale necessary for this development.

3. The proposed development would be premature by reason of the said existing deficiency in sewerage facilities and the period within which such deficiency may reasonably be expected to be made good.
4. The existing rural road network serving the area is of insufficient capacity to cope with the proposed development without endangering public safety by reason of traffic hazard and obstruction of road users caused by the excessive amount of traffic generated by the proposed new urban area.
5. The road patterns proposed for the area have not been provided for in the Council's Development Plan nor by the Minister for Local Government in any appealed decision.
6. The proposed development would endanger public safety by reason of traffic hazard, as it would considerably increase the number of turning manoeuvres at uncontrolled junctions on the already heavily trafficked National Primary Road at Turvey Avenue and Hearse Road.
7. The site of the proposal is located in an area which is not indicated in the Development plan for short term development and is primarily for agriculture. It is also proximate to the areas of high amenity and scientific interest, which it is Council policy to safeguard. The proposal therefore is premature in the absence of an approved Action Plan for the area.
8. The development of the individual parcels of land proposed in the application would constitute piecemeal development and as such would be contrary to the proper planning and development of the area."

It is not possible from available records to establish precisely the location of this application.

Planning Application Register Ref. XA 802

On the 26th April 1983, Conroy Manahan & Associates applied for planning permission for the open storage of steel on lands at Turvey House, Turvey Avenue, Donabate Co. Dublin. The application was submitted on behalf of Turvey Estates Limited, Stephen Court, St. Stephen's Green, Dublin 2 and on the 25th June 1982, the Council decided to refuse permission for the following four reasons: -

- "1. The location of the proposed development is within an area zoned in the County Development Plan for the further development of Agriculture. The proposal conflicts with this objective and would be contrary to the proper planning and development of the area.
2. The proposed development would be seriously injurious to the rural amenity of the area.
3. The proposed development would be seriously injurious to the amenity of the nearby Turvey House which is listed for preservation in the 1972 Development Plan and 1980 draft review of the Development Plan.
4. The proposed development would endanger public safety by reason of traffic hazard due to the creation of turning movements of heavy vehicles at the existing inadequate junction at the National Primary Route N1 and the existing inadequate Turvey Avenue"

Planning Application Register Ref. 92A/0112

On the 7th of April 1992, an application for planning permission for development described as "*club facilities and accommodation comprising 12 hotel bedrooms and 24 self catering units including wastewater treatment system*" at Turvey Demesne, Turvey Avenue, Donabate was submitted by Grainne Mallon, 6 Merrion Square, Dublin 2 on behalf of "Turvey Golf and Country Club," Turvey Avenue, Donabate, Co. Dublin. Additional information was sought on the 26th March 1992 and additional information was furnished on the 7th April 1992. On the 8th May 1992, Fingal County Council decided by Order P/2044 to grant permission for the proposed development subject to 15 conditions. That decision was the subject of an appeal to An Bord Pleanála but the appeal was withdrawn and a decision to grant permission issued the 23rd September 1992 subject to the 15 conditions. In September 1997, an application was received to extend the duration of this permission and an Order was made on the 16th of October 1997 extending the life of the permission to the 30th September 1998. A further extension of the duration of this permission to the 30th of October 1999 was granted by Order dated the 11th December 1998.

Planning Application Register Ref. 92A/0873

On the 29th May 1992, Grainne Mallon, Merrion Sq. Dublin 2 applied to Fingal County Council for planning permission for "*28 Self catering units and 12 hotel bedrooms to rear of approved club facilities*" at Turvey Avenue, Donabate. On the 18th August 1992, Dublin County Council decided to grant permission for 28 self catering units and 12 hotel bedrooms subject to 11 conditions. Condition No. 9 required that before the development was opened to the public that the applicant enter into an agreement under Section

38 of the Local Government (Planning & Development) Act 1963 which would require that the accommodation in the hotel and self catering be operated as an integral part of the overall development of the golf club and that it not be used for long term residential use (in excess of two consecutive calendar months at any one time). On the 13th January 1997, a Section 38 agreement was entered into between Fingal County Council of the one part and Mainwell Limited of Derrygon, Ballinmore, Co. Leitrim of the other part to give effect to condition no. 9 of the above planning permission.

Planning Application Register Ref. F93A/0095

This was an application for permission for alterations to approved golf based development comprising clubhouse facilities, driving range, 12 hotel bedrooms, 48 self-catering units and treatment plant, made by Grainne Mallon on behalf of F.L.C. Turvey Management Company. A decision to refuse permission was made on the 1st February 1994. An appeal was made to An Bord Pleanála against this decision and by Order dated the 27th June 1994, An Bord Pleanála granted permission for the clubhouse facilities, driving range, 12 hotel bedrooms and treatment plant and refused permission for 48 self catering units.

Planning Application Register Ref. F94A/0446

On the 21st of June 1994, Ronnie Martin of Kilmonin, Enniskerry, Co. Wicklow applied on behalf of Turvey Golf and Leisure plc for planning permission described as "*Change of use of existing site office to a temporary changing facility for Members of "Turvey Golf and Country Club" pending the erection of a permanent club house.*" No fee was submitted with this application and the application was not determined.

Planning Application Register Ref. F94A/0577

On the 19th of August 1994, an application for planning permission for the construction of 37 houses and 76 apartments on a site at Turvey Avenue/Turvey Woods, Donabate was submitted on behalf of Kinane Developments Limited (47 Hardwicke Street, Dublin 1) to Fingal County Council. The application was submitted by "McCrossan, O'Rourke Architects", 12 Richmond Row, Portobello Harbour, Dublin 8. On the 17th of October 1994, Fingal County Council decided to refuse permission for the following 5 reasons: -

- "1 The site is located in an area zoned in the County Development Plan "to provide for new residential communities in accordance with approved Action Area plans."
- The development would be premature until such time as an Action Plan for these lands has been prepared and approved by the Planning Authority.
- 2 There is no capacity within the Donabate Treatment Plant to cater for this development. The proposal is thus premature because of this existing deficiency in the provision of sewerage facilities serving this site and the period within which this constraint may reasonably be expected to cease. The proposal would thus be prejudicial to public health and contrary to the proper planning and development of the area.
- 3 In the absence of an Approved Action Plan the development would be premature pending the determination by the Planning Authority of a road layout for the area.
- 4 The drainage proposals are unacceptable to the Environmental Services Department on the grounds that the prospective public sewers are within 5 metres of proposed buildings. The proposal would thus be prejudicial to public health.
- 5 The proposal is unacceptable to the Environmental Services section by reason of the proposed layout of the watermain."

The applicants appealed to An Bord Pleanála against the refusal of Fingal County Council to grant permission and by Order of the 9th March 1995, An Bord Pleanála decided, for the reasons as set out in the First Schedule to this decision, to grant permission for the erection of the 76 no. apartments in accordance with the plans and particulars lodged, subject to conditions set out in the Second Schedule to the decision. However, the Board refused permission for the erection of the 37 no. houses applied for the reasons set out in the Third Schedule to the decision.

Planning Application Register Ref. F95A/0036

This was an application for permission for refurbishment and two-storey extension to gate lodge submitted by McCrossan O'Rourke, Architects on behalf of G. Leahy. Additional information was requested on the 7th of March 1995 but was not supplied.

Planning Application Register Ref. F95A/0782

This was an application made by McCrossan O'Rourke, Architects on behalf of Kinane Developments Limited, for permission to construct 37 no. Houses at Turvey Avenue. This application referred to the portion of the site F94A/0577 in respect of which permission had been refused by An Bord Pleanála for the erection of 37 houses. This application would normally have been dealt with prior to the 27th of December 1995 but the applicant consented, in writing, to the extension by the Council of the period for considering the application (on four occasions) to the 31st of January 1996, the 15th of February 1996, the 5th of March 1996 and the 8th of March 1996. These consents were furnished in accordance with Section 26(4)(A) of the Local Government (Planning & Development) Act 1963 as amended by section 39(f) of the Local Government (Planning & Development) Act 1976. On the 4th of March 1996, Fingal County Council decided to grant permission for the proposed development subject to 21 conditions. The decision of Fingal County Council was the subject of an appeal by the Turvey/Viking Resident's Association and by Order PL/06F/098598 made on the 31st July 1996, An Bord Pleanála decided to grant permission for the construction of the 37 no. houses in question subject to 12 conditions. The effect of the board's decision was to reduce the number of houses from 37 to 33.

Planning Application Register Ref. F97A/0921

On the 28th of October 1997, McCrossan O'Rourke Architects applied to Fingal County Council on behalf of Mr Charles Gallagher, Inisfree, Nashville Road, Howth, Co. Dublin for a change of house type from a four bedroom to a five bedroom house at site no. 33 on lands adjacent to Beaverstown Court, Turvey Avenue, Donabate. On the 29th of April 1998, the Council decided to grant permission for the change of house type on site no. 33 subject to six conditions.

Planning Application Register Ref. F96A/0393

On the 31st of May 1996, McCrossan O'Rourke Architects applied to Fingal County Council for planning permission for Kinane Developments Limited for development described as: -

"182 detached and semi-detached houses comprising 93 no. three bedroom houses and 89 four bedroom houses; site development works and landscape works and including reservation of site for community facilities as per "Donabate Action Plan" prepared by Fingal County Council Planning Department; vehicular access via existing approved Road off Turvey Avenue; all on a site of 25.8 acres approximately"

Of the 25.8 acres referred to, approximately 11 acres are outside the area shown on Folio 4327 but are within that area which was re-zoned "A1" in the 1993 Development Plan. On the 29th of July 1996, Fingal County Council decided to seek additional information from the Applicants in relation to the proposed development. The additional information was received on the 6th of December 1996.

On the 4th of February 1997, Fingal County Council decided to grant permission for the proposed development for 180 houses subject to 25 conditions. This decision was the subject of an appeal to An Bord Pleanála and on the 2nd July 1997, An Bord Pleanála granted permission subject to the following 13 conditions:

"1. The development shall be carried out in accordance with the plans and particulars submitted to the planning authority on the 31st day of May 1996, the 14th day of June 1996 and the 6th day of December 1996, except as may otherwise may be required by the conditions attached hereunder.

Reason: To define the nature and extent of the permission granted in the interests of clarity.

2. The development shall be phased in accordance with a scheme, details of which shall be submitted to and agreed in writing with the planning authority before any development is commenced on the site. The first phase to be implemented in the first year of the development, shall include not more than 65 houses, namely houses numbers 1 to 65 outlined in red in drawing number 02 REV.A submitted to the planning authority on the 6th day of December 1996.

The public open space adjoining the access road and the landscaped open spaces included within the area outlined in red on drawing number 02 REV. A shall be developed as part of the first phase.

In addition, all services necessary to serve the first phase houses and the main access road and sanitary services required to serve adjoining lands shall be developed as part of the first phase.

Reason: To match the rate of development to the capacity of the Donabate Sewage Treatment Works in the interest of public health and amenity.

3. The phasing scheme shall provided for the erection of not more than 30 houses per year in the second and subsequent years of development.

Reason: To match the rate of development to the capacity of the Donabate Sewage Treatment Works in the interest of public health and amenity.

4. Houses numbers 66 and 67 indicated on drawing number 02 REV.A shall be omitted from the development and the resulting area shall be incorporated into the landscaped open space immediately adjoining these sites.

Reason: To prevent the houses backing onto the public open space area in the interest of amenity.

5. The area shown and conditioned as public open space shall be fenced off during construction work and shall not be used for the purpose of site compounds or for the storage of plant, materials or spoil. The area shall be levelled, soiled, seeded and landscaped to the satisfaction of the planning authority and shall be available for use by residents on completion of their dwellings.

Reason: In the interest of residential amenity.

6. The existing hedgerows along the western and northern boundary of the Phase 1 development shall be carefully preserved and augmented as necessary. These hedgerows shall be fenced off and protected from site development works during the course of development. Arrangements for the treatment of existing hedgerows and trees on the remainder of the site shall be agreed in writing with the planning authority, before each subsequent phase is commenced.

Reason: In the interest of amenity.

7. All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

8. Screen walls block or similar durable materials not less than two metres high, suitably capped and rendered shall be provided at the necessary locations to be agreed with the planning authority, so as to screen rear gardens from public view.

Reason: In the interest of residential amenity.

9. All service cables associated with the proposed development (such as electrical communal television, telephone and street lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

10. Water supply and drainage arrangements, including the disposal of surface water. shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

11. Prior to the commencement of development. the developer shall lodge with Fingal County Council a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the Council of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the Council to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Council and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

12. The developer shall pay a sum of money to Fingal County Council as a contribution towards expenditure that was and/or that is proposed to be incurred by the Council in respect of the provision of a public water supply and sewerage facilities facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be as agreed between the developer and the Council or, in default of agreement, shall be determined by An Bord Pleanála. In the case of expenditure that is proposed to be incurred, the requirement to pay this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and

development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that was and/or that is proposed to be incurred by the Council in respect of a public water supply and sewerage facilities (including the upgrading of Donabate sewage treatment works) facilitating the proposed development.

13. The developer shall pay a sum of money to Fingal County Council as a contribution towards the expenditure that is proposed to be incurred by the Council in respect of road improvement works facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be as agreed between the developer and the Council or, in default of agreement, shall be determined by An Bord Pleanála.

Payment of this contribution is subject to the provisions of Section 26(2)(h) of the Local Government (Planning and Development) Act 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order.

Reason: It is considered reasonable that the developer should contribute towards the expenditure proposed to be incurred by the Council in respect of road improvement works facilitating the proposed development.

In deciding to grant the permission in question, An Bord Pleanála said that: -

"Subject to compliance with the conditions set out in the Second Schedule, the proposed development would be in accordance with the Development Plan for the area and the Area Action Plan, would not seriously injure the amenities of property in the vicinity and would be in accordance with the proper planning and development of the area."

Planning Application Register Ref. F97A/1141

On the 23rd of December 1997, McCrossan O'Rourke Architects applied for planning permission on behalf of Kinane Developments Limited for a "minor variation to approved site layout in vicinity of house nos. 35-61 incl. and a change of house type on site nos. 35-36 incl. and 47-61 incl. all on site of 25.8 acres approx. with vehicular access from existing approved road." On the 7th of May 1998, permission was granted by Fingal County Council for the proposed changes subject to 9 conditions.

Planning Application Register Ref. F97A/0525.

On the 18th of June 1997, application for planning permission for dwelling-house and septic tank was submitted on behalf of Gerry Andrews, 67 Seaview Park, Portrane, Donabate by Grainne Mallon & Associates.

On the 14th of August 1997, the Council refused to grant permission for the proposed development for the following 5 reasons: -

- "1. The site is located in an area with the zoning objective in the current development plan for the area "to protect and provide for the development of agriculture", which objective is considered reasonable. The proposed development would contravene materially this zoning objective and would, therefore, be contrary to the proper planning and development of the area.
2. The proposed development would introduce suburban style ribbon development to this long established attractive, tree-lined avenue. The proposed development would seriously undermine the established enclosure and rural character of the avenue and would be detrimental to the visual amenity of the area.
3. The proposed development by virtue of its scale and design, would be visually obtrusive and detrimental to the established character of the Avenue.
4. The applicant has failed to detail satisfactory arrangements for the retention of existing trees and hedgegrows and the landscaping of the site as a whole.
5. The applicant has failed to demonstrate satisfactory arrangements for water supply and the disposal of foul water to serve the proposed development. In the absence of such information the proposed would be prejudicial to public health."

Planning Application Register Ref. F97A/0205

On the 1st March 1997, an application for planning permission for development described as "*Minor alterations to approved apartments*" at Turvey Golf and Country Club was submitted on behalf of Mainwell Limited, Derrygoan, Ballinamore, Co. Leitrim. The Council on the 26th June 1997, granted permission for the proposed development subject to 6 conditions.

Planning Application Register Ref. F98A/0869

This was an application made by Grainne Mallon & Associates on behalf of Turvey Golf & Leisure Limited of Turvey Avenue, Donabate for Planning Permission for 21 additional bedrooms at Turvey Golf and Country Club. Planning permission was refused on the 22nd October 1998 for the following three reasons: -

"1. The proposed 3 storey building incorporating a mansard roof, by reason of its roof design, its height and its bulk is not in keeping with the character and design of the approved clubhouse. The proposed development would seriously detract from the visual appearance of the approved building and would thereby seriously impinge on the visual amenities of this area and be contrary to the proper planning and development of the area.

2. Condition No. 6 of Decision Order No. P/3267/92 (Reg. Ref. 92A/0873 refers) and P/2044/91 (Reg. Ref. 92A/0112 refers) states: -

In order to comply with the requirements of the Sanitary Services Department, the Applicant is required to submit to the planning authority for written agreement details of the following matters:-

- (i) a complete description of the expanded bicycle plant and the design figures for the quantity of effluent it is intended to treat;
- (ii) satisfactory proposals showing how it is intended to follow the recommendations of the Consultant Hydrogeologist in respect of the percolation area and the recommendation that effluent should be discharged to the deeper sand layer;
- (iii) satisfactory proposals for following the recommendations of the Consultant Hydrogeologist for a seven day injection test (in a revised location if necessary) for the production of a computer model, to assist in assessing the impact on the water table, the quality of ground water, the form and type of percolation area;
- (iv) an unqualified certificate from the Consultant Hydrogeologist stating that in his opinion that the effluent within the stated parameters will not have an adverse affect on groundwaters, taking into account any background conditions;
- (v) satisfactory proposals for fencing off the percolation area from the public;
- (vi) satisfactory proposal for the surface water drainage of the site and for cleaning the water courses to the estuary;
- (vii) details of the drainage arrangements carried out under the advice of Teagasc;
- (viii) details of the design of proposed oil inceptors;
- (ix) details of the water regimes for the lake, and whether it is intended that these lakes will be used. The above details to be submitted to and agreed with the planning authority prior to the commencement of development.

Note: The Applicant must apply for a licence under the Water Pollution Acts 1977 - 1989.

Reason: In order to comply with the Sanitary Services Acts, 1878 - 1964."

The Applicant has not complied with this condition to date.

The proposed development which involves further intensification of use on the site of the approved development would result in additional effluent being disposed of to an independent treatment plant (no details of which have been submitted) which would be prejudicial to public health.

3. The proposal to locate a three storey building in such close proximity to the existing self catering units would by reason of its design, scale, height and location at a higher ground level, be visually intrusive as viewed from these units and would seriously injure the amenities of property in the vicinity"

Planning Application Register Ref. F98A/1111

This was an application received on the 29th October 1998 for outline permission for a house adjacent to 2 Beverton Grove submitted by Donal McNally, architects for Martin Kenny, 2 Beverton Grove, Turvey Avenue, Donabate. Outline permission was refused on the 15th December 1998.

Planning Application Register Ref. F99A/0373

This was an application received on 31st of March 1999 for outline permission for a house at No. 2 Beverton Grove, Turvey Avenue, Donabate, submitted by Donal McNally architects on behalf of Martin Kenny of the same address. Outline permission was granted on the 7th of July 1999 for a dwelling adjacent to 2 Beverton Grove subject to four conditions.

A-121 Paragraph A.3. Resolutions, Applications or Requests. Paragraph A.3(a) – (g) of the Terms of Reference. Whether the lands in Lot 4 at Turvey House and Beaverton House Donabate were the subject of any of the resolutions, applications or requests referred to in paragraph A.3(a) – (g) of the Terms of Reference

A.3(a)- whether the lands were subject to rezoning resolutions

The Tribunal has dealt with this at paragraph A.2.(c)(ii) above.

A.3.(b) whether the lands were the subject of resolutions for material contravention of the relevant Development Plan

The Tribunal has dealt with this at paragraph A.2.(c)(iii) above.

A.3.(c) whether the lands were the subject of an application for special tax designation status.

This site was not the subject of any special tax designation status pursuant to the Finance Acts.

A.3.(d) whether the lands were the subject matter of applications for planning permission.

The Tribunal has dealt with this at paragraph A.2.(c)(iii) above.

A.3.(e) whether changes made or requested to be made with regard to the servicing of the lands for development.

These lands in particular were not the subject of any changes with respect to the servicing of the lands for development. However, certain of the outstanding planning permissions taken into consideration in 1986 and one, in particular, was refused resulting in a compensation claim. The claim was successfully defeated by Fingal County Council. The Drainage Design Department accepted that demographic population changes had taken place and were prepared to estimate potential population on the basis of 3.5 persons per dwelling. No other changes were made or were requested to be made regarding the servicing of the land.

A.3.(f) Whether the lands were the subject of applications for building bye-law approval in respect of buildings constructed on the lands

There are no records available.

A.3.(g) Whether the lands were the subject of applications for fire safety certificates

F95F/084 – Fire Safety Certificate granted on the 23rd of August 1995 to Kinane Developments in respect of Phase 1 apartment development at Turvey Avenue. This certificate was issued in respect of Building Blocks C, D, and C1.

F95F/085 – Fire Certificate issued on the 23rd of August 1995 to Kinane Developments in respect of Building Block E at Phase 1, Turvey House.

F95F/086 – Fire Certificate granted on the 24th of August 1995 to Kinane Developments in respect of Building Block A and B of Phase 1, Turvey Avenue.

F96F/174 – Fire Certificate granted on the 16th of August 1996 to Kinane Developments in respect of Building Blocks A and B, Phase 2 of apartment development at Turvey Avenue.

F96F/175 – Fire Certificate granted on the 16th of August 1996 to Kinane Developments in respect of Block E, Phase 2 of apartment development, Turvey Avenue.

F96F/176 – Fire Certificate granted on the 16th of August 1996 to Kinane Developments in respect of Blocks C, D and C1 of Phase 2 of apartment development, Turvey Avenue.

F96F/202 – Fire Certificate granted on the 23rd of September 1996 to Grainne Mallon & Associates on behalf of Hoydale Limited in respect of Block B, Turvey Golf and Country Club, Turvey Avenue.

97/4082 – Fire Certificate granted on the 23rd of May 1997 to Grainne Mallon & Associates on behalf of Hoydale Limited in respect of Block A, Turvey Golf and Country Club, Turvey Avenue.

97/4083 – Fire Certificate granted on the 23rd of May 1997 to Grainne Mallon & Associates on behalf of Hoydale Limited in respect of Block C, Turvey Golf and Country Club, Turvey Avenue.

98/4051 – Fire Certificate granted on 3rd of April 1998 to Grainne Mallon & Associates on behalf of Turvey Golf and Leisure plc in respect of golf and country club/house/hotel for hotel related public functions and golf club functions.

Paragraph A.3.(i). of the Amended Terms of Reference namely to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;

The identity of the Beneficial Owners of the property as of 8th June 1989 together with changes in the Beneficial Ownership between then and the development of the lands has been established at paragraph A.1. above. The Beneficial Ownership as of the 8th June 1989 as defined in the Tribunal's interpretation of its terms of reference on the 21st October 1998 rested with Mr. Joseph Murphy Senior.

Paragraph A. 3. (ii) of the Amended Terms of Reference namely to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above

Other than the members of the Oireachtas and the Local Authorities referred to above the Tribunal at this time is unable to pronounce further on this term of reference.

Paragraph A. 3. (iv) of the Amended Terms of Reference namely to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority;

The outcome of all applications, resolutions and votes are detailed above under paragraph A. 2 (c) (i) to (iii) inclusive and A 3 (a) to (g) inclusive.

LOT 5.

PARAGRAPH A.1.

IDENTIFICATION AND OWNERSHIP

250 acres (approx.) at Balgriffin.

Identification as of the 8th of June 1989

Lot 5 comprised both registered and unregistered lands, as follows: -

Registered lands; Folio 3212

Lands comprised in Folio 3212 of the Register County of Dublin, which said lands are situate in the Townland of Balgriffin Park, Barony of Coolock and County of Dublin, comprising 61.735 hectares or 152.5472 acres.

Unregistered lands

The balance consists of unregistered lands as identified in a Deed of Conveyance dated the 30th of December 1967 comprising 50 acres or 122 acres approx.

ALL THAT AND THOSE that part of the lands of Balgriffin now known as St. Doolagh's and Snuborough containing eighty acres, one rood and twenty-four perches Statute Measure and situate in the Parish of Balgriffin, Barony of Coolock and County of Dublin and shown on a map endorsed on an earlier Conveyance dated the 23rd of July 1945 and thereon coloured green, and

ALL THAT AND THOSE part of the lands of Balgriffin otherwise known as the Pier Field containing fourteen acres, three roods and thirty perches Statute Measure or thereabouts situate in the Barony of Coolock and County of Dublin, which said lands were shown on the map endorsed on the same earlier Conveyance and thereon coloured blue, and

ALL THAT AND THOSE part of the town and lands of Balgriffin, otherwise St. Doolagh's, in the Parish of Balgriffin, Barony of Coolock and County of Dublin, containing seven acres, three roods and twenty-one perches and shown on the map annexed to the same earlier Conveyance and thereon coloured brown.

Beneficial ownership as of 8th June 1989

Folio 3212 of the Register County of Dublin.

The Grafton Construction Company Limited, having its registered office at 26 Lower Baggot Street, in the City of Dublin, was registered as owner of these lands on the 25th of January 1968, and was so registered as of 8th June 1989. The land certificate had been issued to James Marshall, Solicitor, of 2 Gardiner Row, Dublin 1, on the 26th of March 1968. There is nothing on the folio by way of caution or inhibition as of 8th June 1989.

Unregistered lands

By Deed of Conveyance dated the 30th of December 1967 and made between **R. AND W. SCOTT (FARMS) LIMITED** (as vendor) of the one part and **THE GRAFTON CONSTRUCTION COMPANY LIMITED** (as purchaser) of the other part, the unregistered lands described above were conveyed to The Grafton Construction Company Limited for all the estate, right, title and interest of R.W. Scott (Farms) Limited therein, and were in the ownership of the Grafton Construction Company Limited as of the 8th of June 1989.

Changes in beneficial ownership since the 8th of June 1989 and prior to their development

On foot of the Composite Indenture, the lands comprised in Folio 3212 of the Register County of Dublin were also assured to Bovale Developments Limited, which continues to be the registered owner. On the 12th of September 1991, by the Composite Indenture, the unregistered lands in Lot 5 described above were assured to Bovale Developments Limited in whose ownership they remain to date. The Grafton Construction Company Limited was a party to the Composite Indenture by way of sub-sale. The Tribunal understands that there has been no development of the lands comprised in Lot 5.

PARAGRAPH A.2. PLANNING HISTORY

Part of the lands contained in the Folio are now in the functional area of Fingal County Council and part are within the functional area of Dublin Corporation. The boundary between the two areas is shown by a thick black line on the map. The area now in the functional area of Dublin Corporation was transferred into the functional area of Dublin Corporation under the Local Government Boundary Changes of 1985. The unregistered land lies north of the Drumnigh/Balgriffin Road between the Malahide Road to the west and the Hole-in-the-Wall Road to the east. The Tribunal considers it expedient to deal with the planning history of Lot 5 in two parts: -

- (i) Lands in the functional area of Fingal County Council;
- (ii) Lands in the functional area of Dublin Corporation.

(I) LANDS IN THE FUNCTIONAL AREA OF FINGAL COUNTY COUNCIL

Paragraph A.2 9(a) of the terms of reference namely the planning status of these lands in the Development Plan of the Dublin Local Authorities current at the 8th of June 1989

These lands were zoned "P" in the 1972 Development Plan i.e. "to provide for the further development of Agriculture." These lands were zoned "B" in the 1983 Development Plan i.e. "to protect and provide for the development of agriculture." These lands were zoned "B" on the 8th June 1989.

In the 1990 Draft Development Plan, the Lands were proposed to be zoned "B" to protect and provide for the development of agriculture. In the 1991 Draft Development Plan, the lands were proposed to be zoned "B" to protect and provide for the development of agriculture. These lands were zoned "B" in the 1993 Development Plan i.e. "to protect and provide for the development of agriculture."

In the 1998 Fingal Draft Development Plan, it was proposed that the lands north of Drumnigh Road would be zoned "H" (green belt) and the lands south of Drumnigh Road were proposed to be zoned mainly "A" (residential) and a small portion was proposed to be zoned "H" (green belt).

In the 1999 Fingal County Development Plan, the land north of Drumnigh Road was zoned "H" (green belt) and the land south of Drumnigh Road was mainly zoned "A" (residential) and a small portion was zoned "H" (green belt).

Paragraph A.2. (b) of the Terms of Reference. The position with regard to the servicing of the land for development as of the 8th of June 1989

The following is the position in relation to the servicing of the lands in the functional area of Fingal County Council measuring approximately 65 hectares or 162 acres: -

Foul sewer

There were no foul sewers available to serve the designated lands within the Dublin County Council administrative area. The only facilities were those, which served Balgriffin cottages, a County Council housing estate. These consisted of a small treatment plant discharging treated effluent to the Santry River. This plant was totally committed to the existing development and could not accept any additional flows.

Surface water

There were a number of streams draining from west to east across the site. Development of this site would have required extensive study of the impact on the down stream catchment, in particular, its effect on the flood plain north of Baldoyle in the area of the racecourse.

Water supply

A water supply would have been available from a 300mm cast iron main located in the Malahide Road.

Paragraph A.2(c)(i) of the Terms of Reference. Changes made or proposed to be made to the 8th of June 1989 planning status of the lands by way of proposals put forward by Dublin Local Authority officials pursuant to a review of Development Plans or otherwise

Officials made no such proposals to the elected members of the Council until 1998. In the 1998 Draft Development Plan for Fingal County which was prepared by the Manager, part of the site south of Drumnigh Road was proposed to be zoned residential and the remainder green belt. This zoning was confirmed in the 1999 Fingal Development Plan.

Paragraph A.2. (c)(ii) of the Terms of Reference. Changes made or proposed to be made to the 8th of June 1989 planning status of the lands by way of motions by elected members of the Dublin Local Authorities proposing re-zoning.

No such changes were made or proposed by the elected members.

Material contraventions

No planning permission was granted which materially contravened the zoning of the lands.

Planning permissions

For a full understanding of the Planning status of the lands, the Tribunal sets out hereunder, details of all planning applications as disclosed on the planning register and the results of each such application.

Planning application register Ref. H 2620

Outline permission was refused for residential development at Balgriffin Park, Balgriffin, Dublin 5 (townlands of St. Doolagh's and Snugborough) by Order P 339/76, dated the 5th February 1976 for the following four reasons: -

- "1. The site is located in an unserviced rural area zoned as an objective of the County Development Plan, for primarily agricultural use. The proposal is in serious conflict with this objective and is contrary to the proper and planning and development of the area.
2. The proposed development would be premature by reference to the existing deficiencies in the provision of water supply and sewerage facilities and the period within which such deficiencies may reasonably be expected to be made good.
3. The proposed development would be premature because a road layout for the area or part thereof has not been indicated in the Development Plan or has not been approved of by the planning authority or by the Minister on appeal.
4. The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users."

McCabe, Delany & Associates, on behalf of O'Shea & Shanahan Limited, made the application. A first party appeal was withdrawn.

Planning application register Ref. 86A/1342

On the 22nd of September 1986, an application for planning permission for "proposed Manor House Hotel & Sheltered Cottages" at St. Doolagh's Park, Malahide Road, Kinsealy, for Doolagh's Manor Limited, by Raymond F. McDonnell, architect was submitted to Dublin County Council. The permission sought was for provision of a manor house-type hotel having 12 bedrooms and a caretaker's room with facilities for disabled persons, 8 no. 1 bed roomed units overlooking the ornamental garden, 27 No. A type 1 bed roomed units in the walled garden and 2 no. 2 bed roomed units in the walled garden making a total of 52 bed units with 109 car parking spaces.

By a decision Order No. P500/87 of the 16th February 1987, the Council decided to grant permission for the proposed development subject to 18 conditions. This decision was the subject of an appeal by the Applicants to An Bord Pleanála. By Order PL6/5/73478 of the 21st of July 1987, An Bord Pleanála decided to grant permission for the proposed development subject to 11 conditions.

The Board decided to grant permission for the reason set out in the First Schedule to the decision which was in the following terms: -

"Having regard to the communal residential nature of the established land use on this site, it is considered that on the scale which is proposed, the proposed development would constitute an appropriate land use which, subject to compliance with the conditions set out in the Second Schedule hereto, would accord with the proper and planning and development of the area."

Paragraph A.3. Resolutions, applications or requests. Paragraph A.3. (a)-(g) of the Terms of Reference. Whether the lands in Lot 5 at Balgriffin the functional area of Fingal County Council were the subject of any of the resolutions, applications or requests referred to in paragraph A.3.(a)-(g) of the Terms of Reference

A.3. (a) whether the lands were subject to re-zoning resolutions

The Tribunal has dealt with this matter at paragraph A.2.(c)(ii) above.

A.3.(b) whether the lands were the subject of resolutions for material contravention of the relevant Development Plan

The Tribunal has dealt with this matter at paragraph A.2.(c)(iii) above.

A.3.(c) whether the lands were the subject of an application for special tax designation status

This site was not the subject of any special tax designation status pursuant to the Finance Acts.

A.3.(d) whether the lands were the subject matter of applications for planning permission.

The Tribunal has dealt with this matter at paragraph A.2.(c)(iii) above.

A.3.(e) Whether the lands were subject to changes made or requested to be made with regard to the servicing of the lands for development

Foul sewer

By agreement with the Dublin Corporation in 1995, a scheme was prepared to drain the equivalent of 40 dwellings. This included existing premises in the area of St. Doolagh's and the system serving Balgriffin Cottages. The scheme had no implication for these lands comprised in Lot 5 since the capacity of the scheme was extremely limited and was designed simply to relieve difficulties created by the existing septic tanks and the existing treatment plant in the area of St. Doolagh's and Balgriffin Cottages. This scheme has yet to be implemented.

Surface water

No changes were requested or made with respect to surface water.

Water supply

No changes were requested or made with respect to water supply."

Paragraph A.3. (f)- Whether the lands were the subject of applications for building bye law approval in respect of buildings constructed on the lands

There are no records available.

Paragraph A.3.(g) - Whether the lands were the subject of applications for fire safety certificates

There were no applications for fire safety certificates on or after the 20th June 1985.

Paragraph A.3.(i). of the Amended Terms of Reference namely to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;

The identity of the Beneficial Owners of the property as of 8th June 1989 together with changes in the Beneficial Ownership between then and the development of the lands has been established at paragraph A.1. above. The Beneficial Ownership as of the 8th June 1989 as defined in the Tribunals interpretation of its terms of reference on the 21st October 1998 rested with Mr. Joseph Murphy Senior.

Paragraph A. 3. (ii) of the Amended Terms of Reference namely to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above

Other than the members of the Oireachtas and the Local Authorities referred to above the Tribunal at this time is unable to pronounce further on this term of reference.

Paragraph A. 3. (iv) of the Amended Terms of Reference namely to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority;

The outcome of all applications, resolutions and votes are detailed above under paragraph A. 2 (c) (i) to (iii) inclusive and A 3 (a) to (g) inclusive.

LANDS IN LOT 5 WITHIN THE FUNCTIONAL AREA OF DUBLIN CORPORATION

Paragraph A.2 (a) of the terms of reference namely the planning status of these lands in the Development Plan of the Dublin Local Authorities current at the 8th of June 1989:

In the 1972 Dublin County Development Plan, these lands were zoned "P" (to provide for the further development of agriculture). In the 1983 Dublin county Development Plan, the lands were zoned "B" (to protect and provide for the development of agriculture). On the 8th of June 1989, the lands were zoned "B" (to protect and provide for the development of agriculture). In the 1991 Dublin City Development Plan the lands were zoned "L" ("agriculture.") In the 1999 Dublin City Development Plan, the bulk of the site is zoned "Z16" (to be developed in accordance with approved residential action area plans). The remainder of the site is zoned "Z10" ("to be developed in accordance with mixed use action area plans.")

Paragraph A.2 (b) of the Terms of Reference. The position with regard to the servicing of the lands for development as of the 8th of June 1989.

No services were provided by the Water Division to this site. There appears to be no written correspondence in relation to the Poppintree site. The lands in question fall outside the area currently drained by the north Dublin drainage area. Furthermore, no additional capacity exists in the Corporation drainage system. Any proposed development of this site, or indeed, any lands in the north fringe area, would be dependent on the provision of new sewerage infrastructure.

Paragraph A.2. (c)(i) of the Terms of Reference. Changes made or proposed to be made on the 8th June 1989 Planning status of the lands by way of proposals put forward by Dublin Local Authority officials pursuant to a review of Development Plans or otherwise

Officials made no such proposals to the elected members of the Council until 1998. However, in the 1998 Draft Development Plan for the city which was prepared by the Manager, part of the site within the administrative area of Dublin Corporation was proposed to be zoned "Z16" (to be developed in accordance with approved residential action area plans) and part of the site is zoned "Z10" (to be developed in

accordance with mixed use action area plans). This zoning was confirmed in the 1999 City Development Plan.

Paragraph A.2. (c)(ii) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of motions by elected members of the Dublin Local Authorities proposing re-zoning

No such changes were made or proposed.

Paragraph A.2.(c)(iii) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of applications for planning permission (including any involving a material contravention of the Development Plan)

Material contravention

No planning permission was granted in respect of these lands, which materially contravened their zoning while they were within the functional area of Dublin County Council. No planning permission has been granted in respect of these lands, which materially contravened their zoning since they were transferred to the functional area of Dublin Corporation.

Planning permissions

The Tribunal sets out hereunder, details of planning applications as disclosed in the Planning Register of all planning applications which have been made in respect of that part of the lands in Lot 5 in the functional area of Dublin Corporation.

Planning application register Ref. 86A/0373

On the 24th of March 1986, an application for outline planning permission for construction of 40 semi-detached houses at Hole-in-the-Wall Road, Balgriffin, County Dublin, was submitted to Dublin County Council by Conroy, Manahan & Associates on behalf of Grafton Construction Company Limited. On the 22nd of May 1986, Dublin Corporation decided to refuse permission for the following three reasons: -

- “1. The proposed site is located in an area zoned “B” in the Development Plan with the objective “to protect and provide for the development of agriculture.” The proposed development would materially contravene this objective of the Development Plan.
2. The proposed site is located in an area where there are no public sewerage facilities available. The proposed development would be premature by reason of the said deficiency and the time within which it may reasonably be expected to be made good and would be contrary to the proper and planning and development of the area.
3. The proposed development would by reason of the additional traffic on a substandard Road network endanger public safety by reason of a traffic hazard.”

No other planning applications were made since the site was transferred to the functional area of Dublin Corporation.

Paragraph A.3. Resolutions, applications or requests. Paragraph A.3. (a)-(g) of the Terms of Reference. Whether the lands in Lot 5 in the functional area of Dublin Corporation were the subject of any of the resolutions, applications or requests referred to in paragraph A.3.(a)-(g) of the Terms of Reference.

A.3. (a) whether the lands were subject to re-zoning resolutions

The Tribunal has already been dealt with at paragraph A.2.(c)(ii) above and no such changes were made or proposed.

A.3.(b) whether the lands were the subject of resolutions for material contravention of the relevant Development Plan

The Tribunal has already been dealt with at paragraph A.2.(c)(iii) above.

A.3.(c) whether the lands were the subject of an application for special tax designation status

This site was not the subject of any special tax designation status pursuant to the Finance Acts.

A.3.(d) whether the lands were the subject of applications for planning permission

The Tribunal has already dealt with this at paragraph A.2.(c)(iii) above.

A.3.(e) Whether changes were made or requested to be made with regard to the servicing of these lands for development

The Tribunal has already dealt with this at A.2(b) above.

A.3.(f) Whether the lands were subject to applications for building bye-law approval in respect of buildings constructed on the lands

There are no records available.

A.3.(g) Whether the lands were the subject of applications for fire safety certificates

There were no applications for fire safety certificates on or after the 20th June 1985.

Paragraph A.3.(i). of the Amended Terms of Reference namely to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;

The identity of the Beneficial Owners of the property as of 8th June 1989 together with changes in the Beneficial Ownership between then and the development of the lands has been established at paragraph A.1. above. The Beneficial Ownership as of the 8th June 1989 as defined in the Tribunal's interpretation of its terms of reference on the 21st October 1998 rested with Mr. Joseph Murphy Senior.

Paragraph A. 3. (ii) of the Amended Terms of Reference namely to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above

Other than the members of the Oireachtas and the Local Authorities referred to above the Tribunal at this time is unable to pronounce further on this term of reference.

Paragraph A. 3. (iv) of the Amended Terms of Reference namely to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority;

The outcome of all applications, resolutions and votes are detailed above under paragraph A. 2 (c) (i) to (iii) inclusive and A 3 (a) to (g) inclusive.

LOT 6.

PARAGRAPH A.1.

IDENTIFICATION AND OWNERSHIP

9 acres (approx.) at Portmarnock.

Identification as of the 8th of June 1989

The lands comprised in Lot 6 were formerly part of the lands comprised in Folio 175 of the Register County of Dublin. The lands are situate in the Townlands of St. Helens, Barony of Coolock and County of Dublin. Of all of the Lands, this is the only folio of which part only was acquired by Bovale in the Composite Indenture. The map attached to the Composite Indenture showed Folio 175 with the portion thereof acquired by Bovale Developments Limited on foot of the Composite Indenture edged in red.

Beneficial Ownership as of the 8th of June 1989

The Grafton Construction Company Limited, having its registered office at 26 Lower Baggot Street, in the City of Dublin, had been registered as full owner of Folio 175 on the 1st of July 1970 and remained the registered owner at 8th of June 1989.

Part 3 of Folio 175 shows that the lands were subject to:

A lease dated the 27th of February 1970 granted by The Grafton Construction Company Limited of the one part to John Grant and Ann Grant of the other part. The lease was for a term of two hundred and fifty years from the 1st of June 1969 at a rent of £22.50,

Rights relating to the passage and running of soil, gas, electricity and oil in favour of Sorohan Contractors Limited, the registered owner of the lands comprised in Folio 8245F of the Register County of Dublin (and its successor in title, assigns, transferees, lessees, licensees and invitees).

Full right and liberty for O'Shea and Shanahan Limited, the registered owner of lands comprised in Folio 11774F of the Register County of Dublin its successors and assigns, transferees, lessees, licensees and invitees, and all other persons lawfully entitled at all times and for all purposes in connection with the development and use of the property comprised in Folio 11774F and with or without vehicles to pass and repass over the roads and footpaths presently existing or at any future time to be constructed on the property between points Z-Y on Plan 175 thereof together with the covenants and conditions specified in Instrument No. R4704/99 and such other rights of entry and such other necessary rights in connection with the said services.

The conditions specified in Instrument No. R1833-80 made between The Grafton Construction Company Limited of the one part and O'Shea and Shanahan Limited of the other part relating to the use and enjoyment of the property comprised in Folio 175. The property also became subject to the conditions specified in Instrument No. 92DN04474 and made between The Grafton Construction Company Limited of the one part and Bovale Developments Limited of the other part relating to the use and enjoyment of the property. The Grafton Construction Company Limited was the registered owner of Folio 175 subject to the rights set out above.

A-144 Changes in beneficial ownership since 8th June 1989 and prior to their development

Portion of the property approximately 9.76 acres comprised in Folio 175 was assured by the Composite Indenture to Bovale Developments Limited and Bovale Developments Limited became registered owner of the lands on the 26th of February 1992. The Land Certificate was issued to Alfred Thornton, Solicitor, Bank of Ireland, 2 College Green in the City of Dublin, on the 4th of May 1992. The portion of Folio 175 acquired by Bovale Developments Limited became registered in Folio 83876F of the Register County of

Dublin. There is no caution or inhibition registered on Folio 83876F in the Register County of Dublin. It appears from Folio 83876F that when this portion of Folio 175 was transferred by the Composite Indenture to Bovale Developments Limited, and became registered as Folio 83876F, the rights affecting Folio 175 referred to above did not affect the portion of the land conveyed to Bovale Developments Limited. Bovale Developments Limited held folio 83876F subject to a collateral charge for present and future advances created in favour of The Governor and Company of the Bank of Ireland. It is noted on the folios that this charge was also registered on Folios 3212, 577, 6262F, 18462, 6952, 7462, 19360 and 4327 of the Register County of Dublin. The said charge was registered on the 26th of February 1992. Bovale Developments Limited developed the entire of the lands comprised in Lot 6 in a housing development known as Dál Riada.

PARAGRAPH A.2. PLANNING HISTORY

The lands are those comprised in Folio 83876FF - Co. Dublin - in the area stated to be 3.94 hectares (9.76 acres).

Paragraph A.2 (a) of the Terms of Reference namely the planning status of these lands in the Development Plan of the Dublin Local Authorities current at the 8th of June 1989

In the 1972 County Development Plan the lands were zoned "P" (to provide for further development of agriculture). In the 1983 County Development Plan the lands were zoned "B" (to protect and provide for the development of agriculture) and "G" (to protect and improve high amenity areas). On the 8th of June 1989, the lands were zoned "B" (to protect and provide for the development of agriculture) and "G" (to protect and improve high amenity areas).

In the proposed 1990 Draft County Development Plan, the proposed zoning was shown as "B & G" (to preserve a "Green Belt" between development areas.). In the 1991 Draft County Development Plan, the proposed zoning was shown as "B & G" (to preserve "Green Belt" between development areas.). In the 1993 proposed amendment by Councillors to 1991 Draft Plan, the proposed zoning was shown as "A" (to provide and improve Residential Amenity) - (3.41 hectares, 8.45 acres) and "B & G" - (0.53 hectares, 1.31 acres). In the 1993 Dublin County Development Plan, the lands were zoned "A" (to protect and improve residential amenity) - (3.41 hectares, 8.45 acres) and "B & G" - (0.53 hectares, 1.31 acres). In the 1999 Fingal Development Plan, the lands are zoned "A" (residential) (3.41 hectares) and the remainder (0.53 hectares) is zoned "F" (to preserve and provide for open space and recreational amenities).

Paragraph A.2 (b) of the Terms of Reference. The position with regard to the servicing of lands for development as at the 8th of June 1989

Foul sewer

In 1989, Portmarnock was drained by agreement to the Dublin Corporation Sewerage System. However, this land lay outside the Drainage Agreement Area. But for this fact the land could have drained by gravity to the Portmarnock system, which drained into the Dublin Corporation system via pumping stations at Wendell Avenue, Portmarnock Bridge, Mayne Bridge and Baldoyle Village. The Baldoyle pumping station had been maintained by Dublin Corporation up to June 1987 and at that time there were frequent foul water overflows from this pumping station. Electrical improvements carried out by Dublin County Council in late 1987 and early 1988 resulted in the reduction of the frequency of these overflows. However a period of time had to be allowed to establish this fact. Also, the Portmarnock Bridge Pumping Station together with the gravity sewer, which drained into it, were substandard and difficult to maintain. In effect, therefore, in June 1989, Environmental Services would not have considered this land to have a viable drainage outlet.

Surface water

The surface water system to which the subject lands could drain had a limited capacity.

Water supply

Water supply was available from a boosted water supply serving Limetree Avenue and school.

Paragraph A.2(c)(i) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 Planning status of the lands by way of proposals put forward by Dublin Local Authority Officials pursuant to the review of the Development Plan or otherwise

There were no such proposals put forward by any Dublin Local Authority official to change the 8th June 1989 planning status of these lands.

Paragraph A.2(c)(ii) of the Terms of Reference. Changes made or proposed to be made to the 8th June 1989 planning status of the lands by way of motions by elected members of Dublin Local Authorities proposing re-zoning

The 1991 Draft Development Plan, which had been approved for public display by the elected members, was put on public display for 3 months from September 1991 to December 1991. On the 27th of November 1991, Alan S. Tomkins, Architectural and Planning Consultant, of 308 Clontarf Road, Dublin 3, submitted a letter to Dublin County Council Planning Department – representation no. 000770 - in the following terms: -

“Dear Sir

Re: Draft Development Plan 1991 - 4 hectares of lands at Lime Tree Avenue, Portmarnock – “Bovale Developments Limited”

On behalf of my clients Messrs. Bovale Developments Limited, I wish your Council to review and change the zoning on the above lands to residential use.

I enclose a plan showing the location of the lands on Ordnance Survey Sheet and a further map showing its relationship to existing residential development to the south and church and school on the eastern boundary.

Since the lands referred to are not a viable proposition for agricultural use due to the close proximity of the high density housing and school, we would urge your Council to reconsider the zoning for residential development for affordable houses for first time purchasers.

This market is not being satisfactorily catered for this locality.

Yours faithfully
Alan S. Tomkins MIAS
Corporate Building Surveyor.”

The lands in question formed part of the *Green Belt*, which was intended (in accordance with the 1990 Draft Development Plan) to be retained as a *Green Belt Area* between developments in the Portmarnock area and the Malahide area. The above representation on behalf of Bovale Limited (representation no. 000770) was one of 9 representations seeking re-zoning of a total of 86 hectares (206 acres approx.) of the “*Green Belt*” (“B & G”) to Residential “A.” The lands in question were situate in the townlands of Robswalls, St. Helens, Beechwood and Grange. This representation and other representations relating to the “*Green Belt*” in the Portmarnock/Malahide area (minute refs. C/328/93 and C/329/93) were considered at special meetings of Dublin County Council held on the 28th and 29th April 1993 to continue the review of the Draft Development Plan. The representations are listed hereunder: -

GREEN BELT PORTMARNOCK/MALAHIDE

- (A) Representation No. 000494 - L. Foley - lands at Paddy's Hill;
- (B) Representation No. 000505 - T. McSwiggan - Monks Meadow;
- (C) Representation No. 000666 - “Comeragh Properties”, Robswalls;
- (D) Representation No. 000770 - “Bovale Developments Limited”, Limetree Avenue;
- (E) Representation No. 000004 - McDowell, St. Helen's;
- (F) Representation No. 000230 - M. Burke, Blackwood Lane;
- (G) Representation No. 000199 - B. Howard, Grange;
- (H) Representation No. 000568 - Portmarnock G.A.A., Blackwood Lane;
- (I) Representation No. 002177 - “St. Lawrence O'Toole Trust” - St. Helen's School, Portmarnock;
- Other Representation Nos. 000359, 000490, 000681 and 000770 (Item 15(3)).

A copy of the minutes of special meeting of the Council held on the 29th OF April 1993 (Item 15(3)) show that reports by the Manager in the following terms were considered: -

"SYNOPSIS OF REPRESENTATIONS:

These eight representations seek re-zoning of a total of 86 hectares of the Green Belt "B & G" to residential "A." Amongst the reasons cited are, the difficulty of carrying out agricultural activity between large housing areas and that the re-zoning of land for residential would eliminate undesirable ribbon development.

- (A) Representation No. 000494 requests the rezoning of 10 hectares immediately north of the developed residential area of Portmarnock to low density residential.
- (B) Representation No. 000505 seeks rezoning of 1 hectare at Carrickhill to low density residential.
- (C) Representation No. 000666 seeks a rezoning of 18 hectares to residential at a density of 12 houses per hectare. The proposal is divided into two locations, 13 hectares adjacent to Seapark Malahide and the remaining 5 hectares adjacent to Portmarnock. The representation states a willingness to cede his interest in the remaining 40 hectares to Dublin County Council.
- (D) Representation No. 000770 requests the rezoning of 4 hectares at Limetree Avenue to Residential.
- (E) Representation No. 000004 seeks a rezoning of 46 hectares at St. Helen's, for low-density residential development.
- (F) Representation No. 000230 requests a rezoning of a 0.5 hectare site on Blackwood Lane to low density residential.
- (G) Representation No. 000199 seeks a rezoning of 2 hectares at Grange, to low density residential.
- (H) Representation No. 000568 seeks the rezoning of 4 hectares at Blackwood Lane to low density residential.
- (I) Representation No. 002177 seeks rezoning of the grounds of St. Helen's School to "A" (residential).

SITE HISTORY

(I) PLANNING APPLICATIONS

Representation No. 000494 - Lands at Paddy's Hill - Reg. Ref. YA.506 - outline permission refused for residential development and An Bord Pleanála upheld this decision.

Representation No. 000505 - Lands at Monks Meadow - Reg. Ref. WA. 224, WA. 225 - permission refused for 4 houses on a 1 hectare site.

Representation No. 000666 - Lands at Robswalls - Reg. Ref. WA. 157 - permission refused for 180 houses on 12 hectares and this decision was upheld on appeal.

Reg. Ref. 90A/1090 - permission refused for 250 houses on 50 hectares including football clubhouse, car parking and 30 hectares of parkland and this decision was upheld on appeal.

Reg. Ref. YA.506 - outline permission for residential development refused and this decision was upheld on appeal.

Representation No. 000004 - Lands at St. Helens - Reg. Ref. 90A/1030 - application for permission to develop access road and erect 6 houses with septic tank, withdrawn.

Representation No. 000199 - Lands at Grange - Reg. Ref. 87A/702 - outline permission refused for 5 houses.

Reg. Ref. 89A/428 - outline permission refused for 6 houses.

Representation No. 000568 - Reg. Ref. 90A/1038 application for 10 detached dwellings withdrawn.

DEVELOPMENT PLAN

Representation Nos. 000004, 000230, 000494, 000505, 000666, 000770 and 002177 are zoned Green Belt "B & G" in the 1983 Development Plan and the 1991 Draft Review. Representation Nos. 000199 and 000568 are zoned "B" in the 1983 Development Plan and "B & G" Green Belt in the 1991 Draft Review.

PLANNING OFFICER'S REPORT:

The lands of the representations form part of the open Green Belt countryside between the designated development areas of Portmarnock/Malahide. The Council's policy in relation to development in rural and Green Belt areas is set out in paragraphs 2.3.6, 2.8.10 and 3.2.6 of the Draft Written Statement.

Paragraph 2.8.10 states that "it is the policy of the Council to retain the individual physical character of towns and development areas by the designation of Green Belt areas." This policy is to protect the special amenity value of these areas and provide a visual break between urban areas. It is also Council policy that

"drainage facilities will not be provided for lands so designated." It is of particular importance that the separation between Malahide and Portmarnock be maintained.

In addition, the lands are affected by the 35 NNI contour as shown on Map 1A. In this regard, it is Council policy to restrict development in the area encompassed by the line. Development as proposed in the representations would be contrary to the development policies of the Council and the adopted settlement strategy and infrastructural investment programme. It is recommended that no change be made to the Draft Plan."

The following supplementary report by the Manager, which had been circulated, was also considered at the meetings: -

"PROPOSALS FOR ADDITIONAL ZONING OF LANDS IN THE SWORDS/MALAHIDE AREA

Since the first Development Plan was made in 1972, it has been a consistent policy of the Council to safeguard the physical and visual separation between the towns and to provide the necessary infrastructure to accommodate development of zoned lands.

The motions that are now on the agenda of the Council include proposals that would have a considerable impact on this physical and visual separation. The relevant proposals have been plotted on a map, which will be displayed to the Council. The table appended to this report indicates the extent to which Green Belt areas would be reduced in size if all the re-zoning proposals on the current agenda were so implemented. It is a matter for the Council to decide whether the impact of the proposals is such as to impinge on the physical and visual separation between the towns to an unacceptable extent.

In the case of Malahide, there is the further consideration that the existing foul drainage treatment works and its planned expansion is estimated to cater for a population equivalent of 20,000 persons. The Sanitary Services Engineer has advised that existing committed developments will absorb all of this capacity so that there is no significant capacity available to service additional lands unless some other arrangement for foul drainage in the Malahide area is made.

In the case of Swords, the report of the Eastern Regional Development Organisation made in 1985 envisaged that by the year 2011, Swords would have a population approximating to 100,000 plus an industrial allocation of 280 H. and it proposed that such a population should be planned for.

This proposal did not find favour and neither the 1983 Development Plan nor the 1991 Draft Development Plan were prepared on the basis of an expansion of Swords beyond the planned capacity of the existing infrastructure.

The Sanitary Services Engineer has reported that with suitable investment in upgrading and expansion, the Swords foul drainage treatment works could be expanded to cater for a 65,000 person population equivalent.

Proposed re-zoning of lands around Swords would in total give rise to the following additional population equivalent when fully developed: -

	Hectares	Ares	Population	Population Equivalent
Residential	261	644	25,000	25,000
Industrial	51	126		<u>10,000</u> <u>35,000</u>

Added to the existing proposed population equivalent demand of 43,000, the total population equivalent would be 78,000. It is not clear whether this can be catered for by any reasonable upgrading of the treatment works having regard to the need to maintain the quality of the receiving waters.

Further studies would be needed to establish whether the existing foul drainage treatment works could be expanded and upgraded to cater for such a population equivalent because of the limited dilution capacity of the Broadmeadow Estuary and alternative drainage arrangements may have to be considered.

One possible alternative would be the construction of a new treatment works and sea outfall at Donabate and the connection thereto of the Swords system. If such a treatment works and outfall were constructed, Malahide might also be connected to it.

A second alternative would be the construction of a pipeline connecting Swords to an expanded North Dublin Drainage System.

Either of these two alternatives would require very large capital expenditures and it is unlikely that funding for such expenditure would be forthcoming on the basis of ad hoc decisions made arising from the representations of individual landowners.

If Swords is to be expanded beyond the size suggested in the Draft Plan the following decisions would have to be made: -

- "1. A decision on the envisaged size or population equivalent to which it would grow.
2. A decision dependent on the first decision as to what form of drainage infrastructure should be provided. This would need the benefit of a consultants report on the possible options.
3. In the light of the decisions on 1. and 2., a decision as to how and where projected development should be directed.
4. The adoption of an order of priorities for the development of land in phase with the provision of infrastructure.

In the light of the above it is recommended that the Council should not change the zoning of any substantial areas of land between Swords, Malahide and Portmarnock in the context of the present review but that a study should be set in train for the purpose of presenting a report or reports addressing the issues listed above with a view to adopting a coherent plan for the area within a year of the setting up of a new Fingal County Council."

APPENDIX GREEN BELTS RE-ZONING PROPOSALS - REVISED FIGURES

	Area Approx. Ha.	Proposed re-zoning Ha.	Loss %
<i>Malahide</i>		5	
<i>Swords</i>	200	3	27
<i>Portmarnock Malahide</i>	144	5	
		9	41
<i>Portmarnock Baldoyle</i>	210	7	
		5	36

The following motions which were moved at the meeting held on the 28th April 1993 were considered at the meeting on the 29th April 1993:-

Motion proposed by Councillor Wright, seconded by Councillor Kennedy.
15(3)(C)(i) – Representation Number 000666 on behalf of Comeragh Properties

"In order to facilitate the permanent realisation of the Green Belt between Malahide and Portmarnock and with a view to providing the necessary amenity lands for both passive and active recreation, Dublin County Council resolve that the lands at Robswall, Malahide, outlined in red on the attached map (approximately 147 acres) and which have been signed for identification purposes by the proposers, be zoned for residential where marked yellow not more than 250 dwellings and to retain "T&G" recreational open space where marked green."

Motion proposed by Councillor Kennedy, seconded by Councillor Wright.

15(3)(C)(iii) – Representation Number 000666 on behalf of Comeragh Properties – Representation Number 000004 on behalf of McDowells (lands at St. Helens Stud)

"In order to facilitate the permanent realisation of the Green Belt between Malahide and Portmarnock and with a view to providing the necessary amenity lands for both passive and active recreation, Dublin County Council hereby resolves that the lands at Robswall, Malahide and Wheatfield Stud, Saint Helen's, Malahide outlined in red on the attached map, (approx. 264.50 acres) and which have been signed for identification purposes by the proposers, be zoned for residential where marked yellow as follows:

- (a) at Robswall, Malahide (36 acres) - not more than 250 dwellings;*
- (b) at Wheatfield Stud (50.50 acres) - not more than 49 dwellings and to retain "B&G" recreational open space where marked green (178 acres). Included in this motion that lands fronting both the Church Road and Blackwood Lane will be ceded for the purpose of road widening (approx. 6 acres) to the Council."*

Motion proposed by Councillor Wright, seconded by Councillor Owen.

15(3)(E)(ii) – Representation Number 000004 on behalf of McDowells

"In order to facilitate the permanent realisation of the Green Belt between Malahide and Portmarnock and with a view to providing the necessary amenity lands for both passive and active recreation, Dublin County Council hereby resolves that the lands at Wheatfield Stud, Saint Helen's, Malahide, outlined in red on the attached map (approx. 117.5 acres) and which have been signed for identification purposes by the proposers, be zoned for low density residential development (not more than 49 dwellings) marked 'A' (50.5 acres) and to retain 'B & G' recreational open space marked green (67 acres). Included in this motion that lands fronting both the Church Road and Blackwood Lane will be ceded for the purpose of Road widening (approx. 6 acres) to the Council."

Mr. F. Coffey, Senior Engineer, Environmental Services, advised the members of the position in relation to drainage facilities.

The Manager advised the members that the final sentence should be deleted from motions 15(3)(C)(iii) and 15(3)(E)(ii). It was proposed by Councillor Kennedy, seconded by Councillor Wright: -

"That motions 15(3)(C)(iii) and 15(3)(E)(ii) be amended by deletion of the following words:

"Included in this motion that lands fronting both the Church Road and Blackwood Lane will be ceded for the purpose of road widening (approx. 6 acres) to the Council."

This amendment was put and PASSED unanimously.

The following motion proposed by Councillor Wright, seconded by Councillor Kennedy was put: -

15(3)(C)(i) – Representation Number 000666 on behalf of Comeragh Properties

"In order to facilitate the permanent realisation of the Green Belt between Malahide and Portmarnock and with a view to providing the necessary amenity lands for both passive and active recreation, Dublin County Council resolve that the lands at Robswall, Malahide, outlined in red on the attached map (approximately 147 acres) and which have been signed for identification purposes by the proposers, be zoned for residential where

marked yellow not more than 250 dwellings and to retain "B&G" recreational open space where marked green."

On a division the voting resulted as follows: -

FOR: Thirty-eight (38)

AGAINST: Twenty-four (24)

ABSTENTIONS: One (1)

For: Councillors S. Ardagh, M. Billane, P. Brady, S. Brock, L. Butler, B. Cass, B. Coffey M.J. Cosgrave, L. Creaven, A. Devitt, J.H. Dockrell, M. Elliott, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, M. Keating, M. Kennedy, J. Larkin, L. Lohan, D. Lydon, S. Lyons, C. McGrath, P. Madigan, D. Marren, T. Matthews, T. Morrissey, C. O Connor, J. O'Halloran, A. Ormonde, C. Quinn, N. Ryan, S. Terry, C. Tyndall, G.V. Wright. (38)

Against: Councillors C. Boland, M. Doohan, K. Farrell, N. Gibbons, E. Gilmore, L. Gordon, D. Healy, C. Keane, T. Kelleher, S. Laing, J. Maher, B. Malone, M. Muldoon, M. Mullarney, D. O'Callaghan, G. O'Connell, M. O'Donovan, N. Owen, P. Rabbitte, S. Ryan, T. Sargent, F. Smyth, D. Tipping, P. Upton. (24)

Abstentions: Councillor T. Ridge. (1)

The Chairman then declared the motion PASSED.

The following motion proposed by Councillor Kennedy, seconded by Councillor Wright as amended was put: -

15(3)(C)(iii) – Representation Number 000666 on behalf of Comeragh Properties – Representation Number 000004 on behalf of McDowells

"In order to facilitate the permanent realisation of the Green Belt between Malahide and Portmarnock and with a view to providing the necessary amenity lands for both passive and active recreation, Dublin County Council hereby resolves that the lands at Robswall, Malahide, and Wheatfield Stud, Saint Helen's, Malahide outlined in red on the attached map, (approx. 264.50 acres) and which have been signed for identification purposes by the proposers, be zoned for residential where marked yellow as follows:

- (a) at Robswall, Malahide (36 acres) - not more than 250 dwellings;
- (b) at Wheatfield Stud (50.50 acres) - not more than 49 dwellings and to retain "B&G" recreational open space where marked green (178 acres)."

On a division the voting resulted as follows: -

FOR: Thirty-three (33)

AGAINST: Twenty-eight (28)

ABSTENTIONS: One (1)

For: Councillors S. Ardagh, M. Billane, P. Brady, S. Brock, L. Butler, B. Coffey, M.J. Cosgrave, L. Creaven, A. Devitt, J.H. Dockrell, M. Elliott, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, M. Keating, M. Kennedy, J. Larkin, D. Lydon, S. Lyons, C. McGrath, P. Madigan, D. Marren, T. Matthews, T. Morrissey, C. O Connor, J. O'Halloran, A. Ormonde, N. Ryan, G.V. Wright. (33)

Against: Councillors C. Boland, B. Cass, M. Doohan, K. Farrell, N. Gibbons, E. Gilmore, L. Gordon, D. Healy, C. Keane, T. Kelleher, S. Laing, L. Lohan, J. Maher, B. Malone, M. Muldoon, M. Mullarney, D. O'Callaghan, G. O'Connell, M. O'Donovan, N. Owen, C. Quinn, P. Rabbitte, S. Ryan, T. Sargent, F. Smyth, S. Terry, D. Tipping, C. Tyndall. (28)

Abstentions: Councillor T. Ridge. (1)

The Chairman then declared the motion PASSED.

The following motion proposed by Councillor Wright, seconded by Councillor Owen as amended was put:-

15(3)(E)(ii) – Representation Number 000004 on behalf of McDowells

"In order to facilitate the permanent realisation of the Green Belt between Malahide and Portmarnock and with a view to providing the necessary amenity lands for both passive and active recreation, Dublin County Council hereby resolves that the lands at Wheatfield Stud, Saint Helen's, Malahide, outlined in red on the attached map (approx. 117.5 acres) and which have been signed for identification purposes by the proposers, be zoned for low density residential development (not more than 49 dwellings) marked "A" (50.5 acres) and to retain "B&G" recreational open space marked green (67 acres)."

On a division the voting resulted as follows: -

FOR: Thirty-three (33)
AGAINST: Twenty-six (26)
ABSTENTIONS: Nil (0)

For: Councillors S. Ardagh, M. Billane, P. Brady, S. Brock, L. Butler, B. Coffey, M.J. Cosgrave, L. Creaven, A. Devitt, M. Elliott, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, M. Keating, M. Kennedy, J. Larkin, D. Lydon, C. McGrath, P. Madigan, D. Marren, T. Matthews, T. Morrissey, C. O Connor, J. O'Halloran, A. Ormonde, N. Owen, T. Ridge, N. Ryan, G.V. Wright. (33)

Against: Councillors C. Boland, B. Cass, M. Doohan, K. Farrell, N. Gibbons, E. Gilmore, L. Gordon, D. Healy, C. Keane, T. Kelleher, S. Laing, L. Lohan, J. Maher, B. Malone, M. Muldoon, M. Mullarney, D. O'Callaghan, M. O'Donovan, C. Quinn, P. Rabbitte, S. Ryan, T. Sargent, F. Smyth, S. Terry, D. Tipping, C. Tyndall. (26)

The Chairman then declared the motion PASSED.

Motion in the names of Councillors Kennedy, Owen and Wright. It was proposed by Councillor Kennedy, seconded by Councillor Owen: -

15(3)(B)(i) – Representation Number 000505 on behalf of T. McSwiggan
"Dublin County Council hereby resolves to rezone approximately 3 acres of land at Carrickhill, Portmarnock shown outlined in red on attached map from its present zone "B" Agricultural to zone "A" low density residential (S2) max 2 houses."

Following discussion to which Councillors Kennedy and Owen contributed, the Manager replied to queries raised by the members. The motion was put and on a division the voting resulted as follows: -

FOR: Forty-three (43)
AGAINST: Six (6)
ABSTENTIONS: One (1)

For: Councillors S. Ardagh, M. Billane, C. Boland, P. Brady, S. Brock, L. Butler, B. Cass, B. Coffey, M.J. Cosgrave, L. Creaven, A. Devitt, M. Elliott, Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, C. Keane, M. Kennedy, S. Laing, J. Larkin, L. Lohan, D. Lydon, C. McGrath, J. Maher, B. Malone, D. Marren, T. Matthews, T. Morrissey, M. Muldoon, C. O Connor, J. O'Halloran, A. Ormonde, N. Owen, C. Quinn, P. Rabbitte, T. Ridge, N. Ryan, S. Ryan, S. Terry, G.V. Wright. (43)

Against: Councillors L. Gordon, D. Healy, M. Mullarney, D. O'Callaghan, T. Sargent, D. Tipping. (6)

Abstentions: Councillor F. Smyth. (1)

The Chairman then declared the motion PASSED.

Motion in the names of Councillors Kennedy, Owen and Wright. It was proposed by Councillor Kennedy, seconded by Councillor Wright: -

15(3)(D)(i) – Representation Number 000770 on behalf of Bovale Developments Limited

"Dublin County Council hereby resolves that the lands at Limetree Ave., Portmarnock outlined in red on the attached map comprising about 8.25 acres and which has been signed for identification purposes by the proposers of this motion be zoned for Residential "A" in the draft review of the County Dublin Development Plan, noting that the Portmarnock 2000 Planning Report prepared for the Portmarnock Community Association identified the above lands for infill residential development."

Following discussion to which Councillors Kennedy, Owen, Malone, Healy, Wright, Mullarney and S. Ryan contributed, the Manager replied to queries raised by the members. The motion was put and on a division the voting resulted as follows: -

FOR: Thirty-two (32)
AGAINST: Fifteen (15)
ABSTENTIONS: One (1)

For: Councillors S. Ardagh, C. Boland, P. Brady, S. Brock, L. Butler, B. Coffey, M.J. Cosgrave, L. Creaven, A. Devitt, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, C. Keane, M. Keating, M. Kennedy, J. Larkin, L. Lohan, D. Lydon, S. Lyons, C. McGrath, T. Matthews, T. Morrissey, J. O'Halloran, A. Ormonde, N. Owen, N. Ryan, S. Terry, G.V. Wright. (32)

Against: Councillors F. Buckley, M. Doohan, K. Farrell, L. Gordon, D. Healy, S. Laing, B. Malone, D. Marren, S. Misteil, M. Mullarney, M. O'Donovan, C. Quinn, S. Ryan, T. Sargent, F. Smyth. (15)

Abstentions: Councillor T. Ridge (1)

The Chairman then declared the motion PASSED.

The map accompanying the motion passed on the 29th April 1993 (15(3)(D)(i)) showed an area smaller than that shown on the map accompanying representation ref. 000770 and Folio 83876FF which measured approx. 8.45 acres (3.41 hectares). At this meeting, the following representation was NOTED: - 15(3)(F) - Representation No. 000230 - M. Burke, Blackhood Lane (No Councillor proposed that this site be re-zoned and as a result there was no vote and no change in the zoning.)

At this meeting it was proposed by Councillor Wright, seconded by Councillor Owen in relation to 15(3)(G)(i) - (Representation Number 000199 on behalf of B. Howard) that:-

"Dublin County Council hereby resolves that lands at Grange, Malahide, outlined in red on the attached map, comprising 6 acres, and which have been signed for identification purposes by the proposers, be zoned for Low Density Housing S2 (2 houses per hectare)."

From the minutes following discussion to which Councillors Wright, Owen and Healy contributed, the motion was put and on a division the voting resulted as follows: -

FOR: Twenty-eight (28)
AGAINST: Thirteen (13)
ABSTENTIONS: Nil (0)

For: Councillors C. Boland, P. Brady, S. Brock, L. Butler, B. Coffey, A. Devitt, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, C. Keane, M. Kennedy, S. Laing, J. Larkin, D. Lydon, M. McGennis, C. McGrath, J. Maher, D. Marren, T. Matthews, A. Ormonde, N. Owen, T. Ridge, N. Ryan, G.V. Wright. (28)

Against: Councillors F. Buckley, M. Doohan, L. Gordon, D. Healy, T. Kelleher, S. Misteil, M. Muldoon, M. Mullarney, M. O'Donovan, C. Quinn, S. Ryan, F. Smyth, S. Terry. (13)

The Chairman then declared the motion PASSED.

At this meeting a motion in the names of Councillors Kennedy, Wright, Owen, Malone and S. Ryan, proposed by Councillor Kennedy, seconded by Councillor Wright that 15(3)(H)(i) - Representation Number 000568 on behalf of Portmarnock G.A.A. Club as follows:-

"Dublin County Council hereby resolves that the lands outlined in red on the attached map drawing No. 8812/50, which are the subject of a re-zoning submission to Dublin County Council reference 000568 be re-zoned from agriculture use to residential use of 1 house per 0.405 hectares. (1 house per acre) (zoning objective "A")."

Following contributions from Councillors Kennedy, Devitt, Malone, Healy, S. Ryan, Owen and Sargent, the Manager replied to queries raised by the members.

Amendment in the names of Councillors Kennedy, Wright, Malone, S. Ryan and Owen. It was proposed by Councillor Kennedy, seconded by Councillor Wright: -

"That motion no. 15(3)(H)(i) be amended by deletion of the words:

"1 house per 0.405 hectares (1 house per acre)" and substitution of the words "1 house per 0.384 hectares (10 houses in total) on the site outlined in red on the attached map signed by the proposer and dated the 29th April, 1993."

The amendment was put and was PASSED unanimously.

The substantive motion as follows was put: -

"Dublin County Council hereby resolves that the lands outlined in red on the attached map drawing no. 8812/50, which are the subject of a re-zoning submission to Dublin County Council, reference 000568, be re-zoned from agriculture use to residential use of 1 house per 0.384 hectares (10 houses in total) on the site outlined in red on the attached map signed by the proposer and dated the 29th April 1993."

On a division the voting resulted as follows: -

FOR: Thirty-three (33)

AGAINST: Seven (7)

ABSTENTIONS: Seven (7)

For: Councillors C. Boland, P. Brady, S. Brock, F. Buckley, L. Butler, B. Coffey, M.J. Cosgrave, L. Creaven, A. Devitt, M. Farrell, T. Fox, C. Gallagher, S. Gilbride, R. Greene, T. Hand, F. Hanrahan, M. Kennedy, S. Laing, J. Larkin, D. Lydon, M. McGennis, C. McGrath, J. Maher, B. Malone, T. Matthews, T. Morrissey, J. O'Halloran, A. Ormonde, N. Owen, T. Ridge, N. Ryan, S. Ryan, G.V. Wright. (33)

Against: Councillors B. Cass, C. Keane, M. Muldoon, D. O'Callaghan, C. Quinn, F. Smyth, S. Terry. (7)

Abstentions: Councillors K. Farrell, L. Gordon, D. Healy, D. Marren, S. Misteil, M. Mullarney, T. Sargent. (7)

The Chairman then declared the motion PASSED.

The proposed amendment to the 1991 Draft Development Plan in respect of Lot 6 was put on public display as change number 14 on Map number 7 for the period from the 1st July 1993 to the 4th August 1993. At a special meeting of Dublin County Council held on 24th September 1993, to consider amendments to Map 7 (Malahide/Portmarnock) a report of the Manager (previously circulated) was READ. at a meeting of the Council held on the 28th September 1993 to consider representations received during the second display the following report of the Manager, which had been circulated, was considered:

*"There are 2947 representations referring to this amendment virtually all objecting.
Recommendation: Delete Amendment."*

The following motion was proposed by Councillor B. Malone, seconded by Councillor S. Ryan;

"Dublin County Council hereby resolves that the lands referred to as 14 on Map Number 7 of the Dublin County Council Draft Development Plan Review 1993 Amendments be zoned "B&G" - to preserve Green Belt."

The motion was defeated by 17 votes for to 39 votes against.

For: Councillors C. Breathnach, F. Buckley, M. Doohan, N. Gibbons, L. Gordon, J. Higgins, T. Kelleher, B. Malone, M. Muldoon, M. Mullarney, D. O'Callaghan, G. O'Connell, M. O'Donovan, S. Ryan, T. Sargent, F. Smyth, D. Tipping.

Against: Councillors S. Barrett, C. Boland, P. Brady, S. Brock, L. Butler, B. Cass, B. Coffey, R. Conroy, M. J. Cosgrave, L. Creaven, A. Devitt, M. Elliott, M. Farrell, T. Tox, C. Gallagher, S. Gilbride, R. Greene, F. Hanrahan, C. Keane, M. Kennedy, S. Laing, J. Larkin, L. Lohan, D. Lydon, S. Lyons, M. McGennis, C. McGrath, J. Maher, T. Morrissey, C. O'Connor, J. O'Halloran, A. Ormonde, N. Owen, C. Quinn, P. Rabbitte, T. Ridge, N. Ryan, C. Tyndall, G.V. Wright. [App. 6.7]

This decision meant that change 14 Map 7 was confirmed and the land was zoned "A" (Residential) in the 1993 Development Plan.

Paragraph A.2(c)(iii) of the Terms of Reference. Changes made or proposed to be made to the 8th of June 1989 planning status of the lands by way of applications for planning permission (including any involving a material contravention of the Development Plan)

Material contraventions

No planning permission was granted which materially contravened the zoning of these lands.

Planning applications

Planning application register Ref. F94A/0056

An application was submitted to Dublin County Council on the 3rd of February, 1994 by Alan S. Tomkin for Bovale Developments Limited seeking permission for 72 detached four bedroom houses, road, sewers and ancillary services, at Lime Tree Avenue, Portmarnock. On the 31st of March, 1994 Fingal County Council decided to refuse permission for following four reasons:-

"In the absence of a revised agreement between Dublin Corporation and Fingal County Council, there is no capacity in the Foul Drainage system to serve the proposed development.

The proposed development is premature due to existing deficiencies in the foul and surface water sewage system and the period within which they may be made good.

The public open space provided on zoned development land represents only 40% of the development plan requirements and, in addition, does not represent open space of functional or aesthetic value being located on the site boundary with the width of only five meters for more than half its length. The proposed development would, therefore, be contrary to the proper planning and development of the area and would be seriously injurious to the visual amenities of this sensitive and prominent area adjoining the green belt between the towns of Portmarnock and Malahide.

Approximately 70% of the public open space provided for this housing development is located in an area zoned in the 1993 County Development Plan "to protect and enhance the open nature of lands between urban areas." The proposed development would therefore, contravene materially that objective and so be contrary to the proper planning and development of the area.

Note: that the Applicant is advised to consult with the Planning Authority prior to the submission of any further application for planning permission on the site."

On the 13th of April, 1994, an appeal was submitted by Mr. Tomkins to An Bord Pleanála against the decision of Fingal County Council to refuse permission for the 72 houses. On the 21st of July 1994, An Bord Pleanála refused permission for the following reason:-

"it is considered that the proposed development would be premature by reference to the existing deficiency in the provision of foul sewage facilities and the period in which the constraint involved may reasonably be expected to cease."

Planning application register Ref. F94A/0289

On the 26th of April 1994, Mr. Alan Tomkins submitted an application for planning permission for 70 detached four bedroom houses, road, sewage and ancillary works at Lime Tree Avenue, Portmarnock on behalf of Bovale Developments Limited. On the 23rd of June 1994, Sean Carey, the Deputy Manager to whom the appropriate powers have been delegated, decided to grant permission for the proposed development subject to 20 conditions.

Planning application register Ref. F94A/0592

This was an application for permission by Bovale Developments Limited for substitution of house type for 19 detached houses and optional parking for 3 houses. Permission was granted on the 7th of December 1994, subject to 21 conditions.

Planning application register Ref. F94A/0676

This was an application for permission by Bovale Developments Limited for substitution of house type at site 4. Permission was granted on the 10th of January 1995, subject to 21 conditions.

Planning application register Ref. F94A/0722

This was a substitution of house type by Bovale Developments Limited on sites 13, 40, 42, 44, 46 and 47 and resiting of house on site 48. Permission was granted on the 24th of January 1995, subject to 19 conditions.

Planning application register Ref. F94A/0745

This was an application by Bovale Developments Limited for substitution of house type at site 10. Permission was granted on the 24th of January 1995, subject to 19 conditions.

Planning application register Ref. F94A/0799

This was an application by Bovale Developments Limited for substitution of house type at site 17, 39, 50. Permission was granted on the 28th of February 1995, subject to 19 conditions.

Planning application register Ref. F94B/0443

This was an application by Bovale Developments Limited for detached garage at site 38. Permission was granted on the 21st of March 1995, subject to 4 conditions.

Planning application register Ref. F95A/0101

This was an application by Bovale Development Limited for garage on sites 38 & 59 and substitution of house types on sites 26 & 48. Permission was granted on the 10th of May 1995, subject to 23 conditions.

Planning application register Ref. F95A/0142

This was an application by Bovale Developments Limited for substitution of house type at site 32. Permission was granted on the 8th of June 1995, subject to 21 conditions.

Planning application register Ref. F95A/0194

This was an application by Bovale Developments Limited for substitution of house type at sites 25 & 40. Permission was granted on the 27th of June 1995, subject to 7 conditions.

Planning application register Ref. F95A/0289

This was an application by Bovale Developments Limited for substitution of house type at site 22. Permission was granted on the 26th July 1995, subject to 8 conditions.

Planning application register Ref. F95A/0413

This was an application by Bovale Developments Limited for substitution of house type at sites 27 and 33. Permission was granted on the 20th of September 1995, subject to 7 conditions.

companies) who had a material interest in the said lands or who had a material involvement in the matters aforesaid;

The identity of the Beneficial Owners of the property as of 8th June 1989 together with changes in the Beneficial Ownership between then and the development of the lands has been established at paragraph A.1. above. The Beneficial Ownership as of the 8th June 1989 as defined in the Tribunals interpretation of its terms of reference on the 21st October 1998 rested with Mr. Joseph Murphy Senior.

Paragraph A. 3. (ii) of the Amended Terms of Reference namely to ascertain the identity of any members of the Oireachtas, past or present, and/or members of the relevant local authorities who were involved directly or indirectly in any of the foregoing matters whether by the making of representations to a planning authority or to any person in the authority in a position to make relevant decisions or by the proposing of or by voting in favour or against or by abstaining from any such resolutions or by absenting themselves when such votes were taken or by attempting to influence in any manner whatsoever the outcome of any such applications, or who received payments from any of the persons or companies referred to at (i) above

Other than the members of the Oireachtas and the Local Authorities referred to above the Tribunal at this time is unable to pronounce further on this term of reference.

Paragraph A. 3. (iv) of the Amended Terms of Reference namely to ascertain and report on the outcome of all such applications, resolutions and votes in relation to such applications in the relevant local authority;

The outcome of all applications, resolutions and votes are detailed above under paragraph A. 2 (c) (i) to (iii) inclusive and A 3 (a) to (g) inclusive.

Planning application register Ref. F95A/0463

This was an application by Bovale Developments Limited for substitution of house type at site 25. Permission was granted on the 11th of October 1995, subject to 7 conditions.

Planning application register Ref. F95A/0521

This was an application by Bovale Developments Limited for substitution of house type at sites 29 & 30. Permission was granted on the 24th of October 1995, subject to 8 conditions. In each of the fifteen applications listed above, the application was submitted by A.S. Tomkins on behalf of Bovale Developments Limited

Paragraph A.3. Resolutions, applications or requests. Paragraph A.3.(a) – (g) of the Terms of Reference. Whether the lands in Lot 6 were the subject of any of the resolutions applications or requests referred to in paragraph A.3(a) – (g) of the terms of reference

A.3.(a) whether the lands were subject to re-zoning resolutions. The Tribunal has dealt with this matter at Paragraph 2(c)(ii) above.

A.3.(b) whether the lands were the subject of resolutions for material contravention of the relevant Development Plan

The Tribunal has dealt with this matter at paragraph A.2.(c)(iii) above.

A.3.(c) whether the lands were the subject of an application for special tax designation status

This site was not the subject of any special tax designation status pursuant to the Finance Acts.

A.3.(d) whether the lands were the subject matter of applications for planning permission

The Tribunal has dealt with this matter at paragraph A.2.(c)(iii) above.

A.3.(e) Whether the lands were the subject of changes made or requested to be made with regard to the servicing of the lands for development

Foul sewer

(i) **Portmarnock Bridge Pumping Station** Planning permission (Reg. Ref. 89A/0413) was granted on the 27th September 1989 and confirmed by An Bord Pleanála on the 22nd April, 1990 for the improvement of Portmarnock Hotel and a clubhouse for the Golf course. This allowed for the collection of substantial levies to improve Portmarnock Bridge Pumping Station and its associated upstream gravity sewer.

(ii) **Portmarnock Drainage Agreement Area** A letter dated the 8th May 1994 was sent to Dublin Corporation requesting an extension of the Drainage Agreement area to cover the subject site.

Surface water

In making a report on foot of planning application (Reg. Ref. F94A/0056), the Water and Drainage Division accepted the principle of on-site storage of surface water subject to the applicant submitting a sound engineering proposal to overcome the limited capacity within the receiving surface water system.

A.3. (f) Whether the lands were the subject of applications for building byelaw approval in respect of buildings constructed on the lands

There were no applications for building byelaw approval in respect of buildings constructed on the lands.

A.3.(g) Whether the lands were the subject of applications for fire safety certificates

There were no applications for fire safety certificates.

Paragraph A.3.(i). of the Amended Terms of Reference namely to ascertain the identity of any persons or companies (and if companies, the identity of the beneficial owners of such