

10:02:07 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,**

2 **18TH APRIL 2008, AT 10:30 A.M:**

3
4 CHAIRMAN: Good morning, Ms. Dillon.

10:34:52 5
6 MS. DILLON: Good morning, Sir. Mr. David McGrath, please.

7
8 **MR. DAVID McGRATH, HAVING BEEN SWORN, WAS QUESTIONED BY**

9 **MS. DILLON AS FOLLOWS:**

10:35:27 10
11 CHAIRMAN: Good morning, Mr. McGrath.

12 A. David McGrath.

13
14 Q. 1 MS. DILLON: Good morning, Mr. McGrath. I think in common with a number of
10:35:39 15 other employees of Allied Irish Bank, you were requested by the Tribunal to
16 provide a statement in connection with your knowledge of the involvement of
17 Allied Irish Bank with the Barkhill account and with Mr. O'Callaghan and Mr.
18 Gilmartin, is that correct?

19 A. That is correct, yes.

10:35:58 20 Q. 2 And I think that at 2962 on the 11th of November 1999 at 2963, Allied Irish
21 Bank was asked in the second paragraph to "furnish witness statements from all
22 personnel in the bank including its associated or subsidiary companies who:

23
24 A. Had any dealings with any person or company in connection with the
10:36:22 25 Quarryvale development. And/or the person or companies mentioned above or any
26 of them and/or;

27
28 B. Was involved within the bank in any form of reporting or decision making in
29 connection with the Quarryvale development or the implementation of the bank's
10:36:36 30 decisions or policies in relation thereto. The Sole Member has requested that

10:36:40 1 the statements should be detailed and comprehensive."

2

3 And I think I think that in the earlier part of the letter the people who had

4 been identified at 2962, were Barkhill Limited, Riga Limited, Mr. Owen

10:36:57 5 O'Callaghan and any other person or company, isn't that correct?

6 A. Yes.

7 Q. 3 And at -- what you were being asked to provide there, Mr. McGrath, was a

8 detailed and comprehensive statement in relation to your knowledge of

9 involvement of the Barkhill account effectively within the bank, isn't that

10:37:14 10 right?

11 A. Yes, which I did.

12 Q. 4 And in your statement to the Tribunal at 2965 on the 27th of March 2000.

13 A. Yes, that's my statement.

14 Q. 5 Yes. And your statement records as follows "My name is David McGrath, and I am

10:37:29 15 an employee of AIB Group. In April 1991, I assumed responsibility for the

16 management of AIB's corporate business in the retail indigenous manufacturing

17 and motor and property construction sectors. One of the relationships in my

18 portfolio business at that time being Barkhill Limited.

19

10:37:47 20 The Day-to-day interactions between Barkhill Limited and the bank were dealt

21 with from AIB's point of view by our property team which on my arrival to the

22 Corporate Banking Department the was led by Mr. Eddie Kay and subsequently led

23 by Mr. Michael O'Farrell on Mr. Kay's appointment as manager of AIB Bank Centre

24 in September 1992.

10:38:07 25

26 Occasionally during the period 1991 to 1993 mI attended meetings with the

27 shareholders of Barkhill both collectively and individually to discuss the

28 progress of their endeavours to have the site zoned for development with a view

29 to obtaining eventual planning permission. At these meetings, the project

10:38:24 30 manager Mr. Owen O'Callaghan, outlined in broad terms the work being done to

10:38:27 1 progress the matter. There was never reference to payments or any inducements
2 to anyone in respect of the Quarryvale or any other development at these
3 meetings.

10:38:36 5 As part of our ongoing account management process within the bank, I would have
6 discussed the Barkhill account on a regular basis with the property team to
7 ensure that all efforts were being made to expedite the obtainment of planning
8 permission which was the key to effecting clearance of our facilities to the
9 company.

10:38:52 10
11 Given the way in which we operated our business on a day-to-day basis, I would
12 not have been aware of details pertaining to made through the Barkhill, or
13 indeed any of our customers' bank accounts. Such individual transactions would
14 normally be monitored by the account team handling the relationship.

10:39:08 15
16 I trust this statement meets the needs of the Tribunal.
17 Dave McGrath, director, AIB Corporate Banking Limited."

18
19 Is that your statement?

10:39:17 20 A. That's my statement, yes.

21 Q. 6 Can I ask you, Mr. McGrath, first and foremost, to outline what you had done or
22 what your position had been within the bank prior to April 1991?

23 A. When do you want me to start?

24 Q. 7 At the beginning.

10:39:30 25 A. I joined the bank in the Munster Leinster bank in October 1967. I worked for
26 two years in Middleton branch. I worked for two years in Dungarvan branch. I
27 was awarded university scholarship to go to university under the bank's
28 scholarship scheme in 1971 and I spent four years as a full-time student in
29 UCD. I qualified in 1975.

10:40:02 30

10:40:02 1 I worked in the marketing Department of AIB from 1975 until 1980. In August
2 1980, I was appointed to Corporate Banking Agri Business. I worked there until
3 December 1986. I was appointed an executive of the bank at that time and I was
4 asked to take on responsibility for managing the retail branches in South
10:40:36 5 Dublin, a job that I did until the 1st or the 2nd of April 1991, when I was
6 appointed to the Corporate Banking position.

7 Q. 8 So when you, for the time prior to April 1991, when you were in charge of the
8 retail branches, would that in effect have made you the person in corporate
9 headquarters who had responsibility for overseeing the individual branches --

10:41:02 10 A. Yes.

11 Q. 9 -- within your area?

12 A. Yes.

13 Q. 10 And there would have been a number of managers like you, there would have been
14 the managers who were dealing with north Dublin and other parts of the country,
10:41:11 15 is that right?

16 A. No, I never dealt with north Dublin, I dealt with South Dublin.

17 Q. 11 No, I am aware of that. What I had asked you, Mr. McGrath, is would there have
18 been other managers like you who would have dealt with other parts of the
19 retail element?

10:41:24 20 A. Yes, at that time there were 16 regional manager in Ireland. Four of them were
21 Dublin. One dealt with Dublin north, one dealt with Dublin South, which was
22 me, one dealt with southwest and one dealt with Dublin central.

23 Q. 12 And when you assumed your responsibility in April 1991 for the management of
24 the corporate business in the retail indigenous manufacturing motor and
10:41:48 25 property construction sectors were you the only person in that position?

26 A. In that particular job, yes, I didn't job share. That was my job.

27 Q. 13 It was your job. And when you went in to that job how did you read yourself
28 into it?

29 A. Like you do in any job, you sit down with the management team and you discuss
10:42:08 30 the individual cases and you find out what the key issues are and you look and

- 10:42:12 1 see what the plans are, the business plans and you work with your colleagues
2 and your superiors, like any other job.
- 3 Q. 14 And would you have reviewed the paper files, Mr. McGrath, in relation to the
4 clients within these individual areas that you were now assuming responsibility
10:42:29 5 for?
- 6 A. I certainly did not because that portfolio had about 800 customers. There was
7 a portfolio lending book of probably two and a half to three billion Irish
8 Pounds and under no circumstances did I read the files.
- 9 Q. 15 Would you have relied therefore on what you were being told by the people who
10:42:53 10 were in charge of the individual accounts?
- 11 A. For the historic information.
- 12 Q. 16 Yes and for ongoing information.
- 13 A. Well in relation to the historic information certainly. In relation to ongoing
14 information. Some of the meetings I'd have attended. But mostly as I said in
10:43:11 15 my statement there, we delegated the day-to-day activities of the accounts to
16 the relationship teams.
- 17 Q. 17 And would you have relied for up-to-date briefings on the people in those
18 relationship teams in relation to the particular accounts, Mr. McGrath?
- 19 A. Certainly, where else would I get the information.
- 10:43:27 20 Q. 18 I beg your pardon.
- 21 A. Where else would I get the information other than from the teams that were
22 dealing with it.
- 23 Q. 19 Yes. And was it your practice, Mr. McGrath, then when you attended at meetings
24 on a one-to-one basis or otherwise with the individual clients to have kept
10:43:42 25 your own notes and records?
- 26 A. If I had a meeting with a client on a one-to-one basis, which was very seldom.
27 If I had a meeting with a client, if anything relevant to the bank's business
28 should be recorded, I would either do a note myself or I would talk to the
29 people involved and tell them please put such and such an item on the file.
- 10:44:03 30 Q. 20 Yes. In general, may the Tribunal take it then it wasn't your practice

10:44:06 1 yourself to keep notes?

2 A. I kept notes where they were relevant.

3 Q. 21 Right. And would those notes insofar as Barkhill account or your meetings with

4 Mr. Gilmartin or Mr. O'Callaghan be concerned, are all those notes and records

10:44:21 5 of anything that you considered relevant to be found on the Allied Irish Bank

6 file?

7 A. Yes.

8 Q. 22 Right. And therefore if there isn't a note or record of any meeting where we

9 know for example that a meeting took place, may the Tribunal take it then that

10:44:33 10 it was your view that nothing relevant occurred at that meeting?

11 A. If I was the person, the only person from the bank and if I didn't do a file

12 note. You can take it that there was nothing relevant to the bank's business

13 discussed at the meeting that was relevant to us in the Barkhill case, the

14 specific Barkhill case, relevant to us getting repaid.

10:44:52 15 Q. 23 So what you're saying is that if you did attend a meeting with any of the

16 parties involved in Barkhill and you didn't keep a note, it is because nothing

17 relevant to Barkhill being repaid occurred to the bank being repaid by Barkhill

18 occurred at the meeting?

19 A. That's assuming that I was the only AIB representative at the meeting.

10:45:14 20 Q. 24 Yes.

21 A. The way our business operated is I was the team, the executive. Most of the

22 cases, if I went to a meeting, I would be accompanied by the relevant senior

23 manager or manager or assistant manager dealing with the case. If that

24 happened those people would do a note of the issues and you've seen several

10:45:34 25 notes and you've seen my name being mentioned as an attendance. That's what

26 happened.

27

28 Now, there is one other thing that's important that hasn't come out because of

29 the scale of my responsibilities within the bank, I would have attended a

10:45:47 30 number of meetings where I would be noted as attending. And I might stay for

10:45:54 1 15 minutes or 20 minutes or half an hour. And that hasn't always. The fact
2 that I didn't stay for the full meeting has not been recorded in the file
3 notes. I noticed that in one or two of the meetings, because I had been
4 sitting in for a couple of days at the Tribunal. I notice the one or two times
10:46:11 5 that my partial attendance at a meeting has been noted in a file note. But I
6 can assure you that there were many meetings where I am down for attendance
7 that I would not have stayed for the full-time. Because of the extent of the
8 responsibilities that I had and if I might add that these times were very, very
9 difficult in the early '90s and Barkhill wasn't the only problematic credit
10:46:35 10 that I had responsibility for.

11
12 So, you know, the amount of time that I spent on the Barkhill case was very
13 small and the reason for that is we had very competent people dealing with it.
14 And they would have come both to me if they needed some encouragement or
10:46:53 15 assistance from me. That's how the bank managed its business. And it still
16 manages the business that way.

17 Q. 25 Yes. So from this, do you want the Tribunal to understand, Mr. McGrath, that
18 while you are recorded as being in attendance at a number of meetings, it is
19 your recollection that in fact your attendance was probably only on a partial
10:47:12 20 basis, which is not recorded on the face of the memo?

21 A. For some of the meetings.

22 Q. 26 And you will be in a position then to identify which of those meetings as we go
23 through the attendances it is your recollection you only attended on a partial
24 basis?

10:47:26 25 A. I'm afraid I won't be able to do that. For the simple reason that I would ask
26 you, the Tribunal, to understand where I am coming from. I had, as I have
27 already said, responsibility for some 6 or 700 cases. I would have attended a
28 lot of meetings. And I can't remember the actual details of which meetings I
29 stayed for a short time and which meetings I stayed for the whole time. And I
10:47:49 30 would ask the Tribunal to forebear with me on that, because I just couldn't

10:47:55 1 remember that level of detail, it's so long ago.

2 Q. 27 But notwithstanding the passage of time, Mr. McGrath, it is your clear
3 recollection that while you can't identify the specific meetings as which you
4 were only in partial attendance. You none the less believe that for a lot of
10:48:10 5 the meetings we will be looking at, at which you are recorded as being in
6 attendance, you in fact only attended on a piecemeal or partial basis?

7 A. Some of the meetings. I don't know whether I could say a lot but I know some
8 of the meetings.

9 Q. 28 But you are not in a position to identify which of those meetings?

10:48:28 10 A. I have already advised you of that fact.

11 Q. 29 Now, insofar as your knowledge or understanding of the Barkhill account is
12 concerned. When you took up your position in April of 1991, can you recollect
13 what briefing or information you were given about the Barkhill account and by
14 whom you were given it?

10:48:47 15 A. I can. I can remember setting down with the team, certainly Mr. Kay would have
16 been there and probably I expect Mr. Donagh but I can't recall and I asked for
17 the up-to-date position which I was told that heads of agreement had been
18 signed in, I think it was December 1990, whereby Owen O'Callaghan and Riga were
19 to inject a certain sum of money.

10:49:20 20
21 They were also going to provide a guarantee to AIB. And against that, we would
22 be bringing forward a proposal to lend more money to Barkhill. The purpose
23 being to complete the site assembly. It was also -- I was also advised that
24 AIB was to be offered a shareholding in the company which was in recognition of
10:49:47 25 the additional risk that we were taking. At the time the balance was
26 approximately 10 or 11 million and it was a non-earning debt.
27
28 So to go before the bank's board and ask them to approve a further facility, it
29 wasn't what was normally done in banking. So to compensate for that, the team
10:50:11 30 had negotiated a success fee. The manner in which the success fee was taken

10:50:17 1 was to take a partial shareholding to the company. But that partial
2 shareholding was going to be limited upside only by, to the amount of 2
3 million.

10:50:31 5 We were in early phases of banking at that time. If we were in that situation
6 today, the way that deal would have been structured would be that AIB would
7 have provided the additional 2 million by way of a mezzanine loan which would
8 have given a warrant that that would give a premium to reward the additional
9 risk. That's how banking has evolved since the early '90s.

10:50:56 10 Q. 30 Yes. But in in this particular case what you were told, Mr. McGrath, was that
11 the bank was going to become a shareholder in Barkhill, isn't that right?

12 A. The bank were going to be offered a shareholding which would be limited to 2
13 million. Now, there was also -- there was a second reason for that. And that
14 was that Mr. Gilmartin who was the original investor and if I might describe
10:51:24 15 him as, he was a visionary in the sense that he had this vision that he would
16 develop a very substantial shopping centre in the area of Barkhill, between the
17 Dublin and Galway Roads.

18
19 In 19 -- he was a visionary but he was before his time. If he came up with
10:51:44 20 that proposal in 1998 or instead of 1988, when the economy was in a different
21 situation, he would probably have pulled off the transaction himself. But he
22 was ten years before his time. The economy wasn't able to take the scale of
23 development that he had in mind. With the result that he ran out of money.
24 And the only way that the proposition could have been brought back on to stream
10:52:11 25 to enable the site to be fully assembled was to actually bring in an outside
26 investor, which Riga was. And for the bank to afford increased facilities.

27
28 The other issue was that because that was happening Mr. Gilmartin was quite
29 uncomfortable that his deal was being given to, as he called them, the Cork
10:52:36 30 men. But what, when the first time I met Mr. Gilmartin, Mr. Gilmartin failed

10:52:42 1 to appreciate that at that time his equity had evaporated, it was it was gone.
2 The business, the company was worthless. And the only way that he could get
3 value was that if the actual site was assembled, zoned, planned and developed.
4 And that was the only way he would get value. And that's what happened at the
10:53:06 5 end of the day.

6 Q. 31 Yes. If I could just take you back now, Mr. McGrath, to the question that I
7 asked you which is; do you agree that it was your understanding at the time
8 that Allied Irish Bank was to become a 20 per cent shareholder in Barkhill?

9 A. Yes.

10:53:21 10 Q. 32 And that from the time that that agreement was made, and indeed was implemented
11 in September 1991 going forward, Allied Irish Bank had a dual relationship with
12 its customers, insofar as on one hand it was a 20 per cent shareholder in the
13 development itself, albeit with a limited upside of 2 million. And on the
14 other hand it had a banker customer relationship. Would you agree with that?

10:53:44 15 A. Yes.

16 Q. 33 And that in the progress of the development that you have outlined and about
17 which the Tribunal has heard evidence, the first hurdle when you came on board
18 in April 1991, facing the progress of the development was the zoning question?

19 A. No, the first hurdle was to get the shareholders agreement signed.

10:54:06 20 Q. 34 But thereafter the problem was the zoning, isn't that right?

21 A. Zoning. Yes, absolutely.

22 Q. 35 After the zoning was obtained the next problem would be the planning, isn't
23 that right?

24 A. Absolutely.

10:54:15 25 Q. 36 But that the planning was really a secondary problem until such time as the
26 zoning was confirmed?

27 A. That's right.

28 Q. 37 The zoning was not in fact confirmed until December 1993. So may the Tribunal
29 take it that the focus of the bank and Mr. O'Callaghan and indeed Mr. Gilmartin
10:54:31 30 or anybody else involved in the Barkhill development from the time that the

- 10:54:44 1 tripartite relationship developed from September 1991, was the obtaining of
2 zoning?
- 3 A. Yes.
- 4 Q. 38 And that after the zoning was obtained the next focus of attention, apart from
10:54:48 5 financing the project, would have been the nature of the planning that could be
6 obtained or put on the site?
- 7 A. That's right.
- 8 Q. 39 Right. And the zoning, the type of zoning that would be achieved or that might
9 be achieved on Barkhill would determine, to a degree, the nature of a
10:55:05 10 development partner that would be ultimately taken on by Barkhill, isn't that
11 right?
- 12 A. Yes.
- 13 Q. 40 And the extent of the planning that would be permitted in the second phase
14 would also have an effect on the nature of the development partner that would
10:55:17 15 be taken on board, isn't that right?
- 16 A. I assume so, yes.
- 17 Q. 41 Yes. In other words, if the land was zoned only for industry, then there was
18 never going to be any question of putting a shopping centre on the land, isn't
19 that right?
- 10:55:29 20 A. That's correct, yes.
- 21 Q. 42 And therefore those investors who were interested in retail development for
22 example Dunnes Stores or Quinnsworth or Roches or Marks & Spencers would have
23 no interest in going into a place where the only zoning was for industrial,
24 isn't that right?
- 10:55:43 25 A. Well why would they in go in there?
- 26 Q. 43 Exactly. So that up to December of 1993, when the zoning was copperfastened,
27 may the Tribunal take it that the bank's focus would have been on securing the
28 zoning situation?
- 29 A. Yes.
- 10:55:56 30 Q. 44 All right. Now, would it also be fair to say that from the time that Riga was

10:56:04 1 appointed as project manager in the shareholders agreement in September 1991,
2 that the bank would have relied upon what the shareholders were telling the
3 bank about how the zoning was progressing?
4 A. No, that's not correct.

10:56:16 5 Q. 45 That's not correct. What steps did the bank take to inform itself?
6 A. We engaged the professional services of Mr. Frank Benson.
7 Q. 46 And did Mr. Benson work with Riga Limited?
8 A. No, not at that stage.
9 Q. 47 No. How did Mr. Benson operate?
10:56:31 10 A. He reported to me.
11 Q. 48 Right. And other than Mr. Benson reporting to you, was it Riga Limited, Mr.
12 Gilmartin and Mr. O'Callaghan and Mr. Deane who provided the information to the
13 bank about how the zoning was progressing?
14 A. Yes.

10:56:45 15 Q. 49 In May of 1991, Mr. McGrath, were you involved in the signing of the heads of
16 agreement on the 31st of May 1991?
17 A. I don't recall.
18 Q. 50 Yes. At the 5193, this is a record, a handwritten note of a record made by
19 William Fry's of a meeting on the 31st of May '91. And you will see in the
10:57:12 20 very first line if it could be increased, please.
21 A. I see the line down there, yes, I must have been at that meeting, yes.
22 Q. 51 Now, in fairness to yourself, Mr. McGrath, and I'm sure you will have seen it
23 in the documentation. There appears to have been two meetings on that day or
24 possibly more than two meetings on that day. And this is the day that the
10:57:31 25 shareholders agreement is signed.
26 A. Did that come in, was that in the AIB files?
27 Q. 52 No, William Fry's who were AIB's solicitors.
28 A. I didn't see that file. I've never seen that document.
29 Q. 53 Okay. Well there are only one or two shore short matters I want to draw to
10:57:47 30 your attention in relation to it. First of all, the meeting is recorded as

- 10:57:51 1 being at Bank Centre, do you see that?
- 2 A. I do, yes.
- 3 Q. 54 And there is a reference to Mr. Gerry Byrne and PT who apparently is a Ms.
4 Taylor who was a solicitor in William Fry's at the time who acted on behalf of
10:58:02 5 the bank.
- 6 A. Right. Could I just so to clarify who you know who Mr. Gerry Byrne was. He
7 was the bank's internal legal person.
- 8 Q. 55 Yes. And you will have been aware I think, Mr. McGrath, that on the 31st of
9 May of 1991, a third heads third heads of agreement was signed between the
10:58:20 10 bank, Mr. O'Callaghan and Mr. Gilmartin, isn't that right?
- 11 A. If you tell me it is, I don't know.
- 12 Q. 56 Well I suggest to you that you do know because when I take you through this
13 document you will see that what was discussed at this meeting, Mr. McGrath, at
14 which you were recorded as being present was the shareholding that was to be
10:58:40 15 taken by the bank and the other two shareholders and the terms and agreements
16 which were ultimately signed on that day.
- 17 A. What I am saying to you is I have no specific recall of the meeting but I
18 acknowledge that my name was there. I was at the meeting but I can't remember
19 the detail that you are referring to.
- 10:58:54 20 Q. 57 This document, if you'd look at page 5913, please. Records half way down the
21 page "O'Callaghan something into planning permission would get share in
22 company" beneath that "Gilmartin and wife 100 per cent shareholder in Barkhill"
23 beneath that "needs 4 million to finalise if site acquisition. Many or money
24 needs to be paid Tuesday".
- 10:59:22 25
26 And if we go beneath that again it says "Riga lands 1 million - loans 1 million
27 to Barkhill" and then beneath that "give AIB guarantee of 1 million" and
28 beneath that "AIB to provide 3 million".
29
- 10:59:37 30 Now, do you agree that that was the bones of the agreement that was ultimately

- 10:59:41 1 signed?
- 2 A. Yes, I have already mentioned that to you.
- 3 Q. 58 Yes. On the following page at 5914. It records "Riga's loan and certain
- 4 directors loans will be subordinated to all bank facilities" and that was
- 10:59:53 5 ultimately encompassed in the agreement, isn't that right?
- 6 A. Yes. That would be normal banking practice.
- 7 Q. 59 Yes. But it was encompassed in the agreement, Mr. McGrath, isn't that right?
- 8 A. I expect it was.
- 9 Q. 60 Yes. And next point is "accrued interest until after AIB something" and then
- 11:00:07 10 beneath that "Gilmartin/O'Callaghan" and then beneath that shareholding
- 11 "legally 100 per cent, beneficial two-thirds Gilmartin and then one-third Riga"
- 12 and then beneath that "now Gilmartin one-third, Riga 44 and two ninth's. AIB
- 13 22 and two ninth" and a little arrow beneath that about "a little company in
- 14 relation to Allied Irish Bank proposed shareholding" and then beneath that
- 11:00:33 15 "Gilmartin option to acquire AIB shares for 2 million".
- 16
- 17 And would you agree with me that that record of the meeting appears to record
- 18 the bones or the outline being given by somebody at the meeting of the terms
- 19 that were to be incorporated into an agreement that in fact was signed the same
- 11:00:53 20 day, the 31st of May 1991?
- 21 A. Well certainly that, as I understand it, I never recall a position where the
- 22 Gilmartin shareholding was less than Riga. I can't remember that.
- 23 Q. 61 Yes. If you look at 5186. If you look first of all at 5184, please. This is
- 24 a document dated called "heads of agreement" and if we move on to the next
- 11:01:24 25 page, 5185, 5186, and 5187, and 5188. And first of all, can I show you on 5188
- 26 that the document is dated the 31st of May 1991?
- 27 A. Uh-huh.
- 28 Q. 62 If we increase that, please. That it's signed by Mr. Gilmartin, Mr. Maguire on
- 29 behalf of Mrs. Gilmartin, Mr. Deane on behalf of Riga, Mr. Eddie Kay for Allied
- 11:01:51 30 Irish Bank.

11:01:52 1 A. Yes.

2 Q. 63 And that agreement was made on the 31st of May 1991, which is the same date as

3 your meeting with the solicitors for the bank, isn't that right?

4 A. It would appear to be.

11:02:04 5 Q. 64 Yes.

6 A. I can't understand why Mr. Kay would have signed it if I was at the meeting.

7 Q. 65 Yes.

8 A. And that would not be normal practice. If I were at a meeting I would sign on

9 behalf of the bank because of my seniority in the bank.

11:02:18 10 Q. 66 In relation to the point that you had said that you didn't believe that there

11 was ever a position that Mr. Gilmartin had a lesser shareholding in Barkhill

12 than Riga. Can I show you clause six of that agreement if --

13 A. I noticed as you were flashing through and I was obviously wrong in my recall.

14 Q. 67 Yes. You will note there that Mr. Gilmartin and Mrs. Gilmartin's share is 33

11:02:38 15 and one-third and the Riga share is 44 and four ninths with the bank's share

16 being 22 and two ninth's, isn't that right?

17 A. That is correct.

18 Q. 68 And that is precisely the shareholding that appears to have been outlined to

19 the solicitors at page 5914. Isn't that right?

11:02:58 20 A. Yes.

21 Q. 69 And therefore, it appears if the note taken by William Fry's of the 31st of May

22 1991 is correct, Mr. McGrath, you were certainly at a meeting with Mr. Byrne

23 who was from the legal department of the bank and Ms. Taylor who was from

24 William Fry's where there was a discussion in relation to the points of the

11:03:17 25 agreement that was signed up to by Allied Irish Bank and Mr. Gilmartin and a

26 Mr. Deane on the 31st of May 1991. And would you agree with that?

27 A. That's correct.

28 Q. 70 Yes. And in the course of the continuation please at 5195 of this handwritten

29 note from William Fry's. There is an entry at the bottom of the page that

11:03:46 30 records "Gilmartin could perhaps be made bankrupt in UK" do you see that note?

- 11:03:46 1 A. I do, yeah.
- 2 Q. 71 What do you know, Mr. McGrath, about Mr.-- the possibility of Mr. Gilmartin
3 being made bankrupt in the UK?
- 4 A. I know absolutely nothing of the detail of it.
- 11:03:55 5 Q. 72 Would you accept that there must have been some discussion between the three of
6 you at this meeting about a possible bankruptcy of Mr. Gilmartin in the United
7 Kingdom?
- 8 A. I have no recall of any discussion in relation to Mr. Gilmartin's financial
9 affairs in my presence at any time.
- 11:04:11 10 Q. 73 Yes. Do you accept, Mr. McGrath, that because the note which records you as
11 being in attendance at this meeting records the fact that Mr. Gilmartin could
12 perhaps be made bankrupt in the UK. That while you cannot recollect it now,
13 that you would accept that it must have been discussed at that meeting?
- 14 A. Well I can't take responsibility for a note that I didn't write. I have
11:04:34 15 already given that you brought to my attention that there was an agreement
16 signed on that date that I didn't sign. I have to ask myself the question, and
17 I don't know the answer to it. Was I there for the full meeting, I don't know.
- 18 Q. 74 Well it would appear --
- 19 A. If I was there for the full meeting and the document was produced, I would have
11:04:53 20 signed for AIB rather than Mr. Kay.
- 21 Q. 75 What I had said to you, Mr. McGrath, and you will recollect I had said, that
22 there were two attendances on this day and that you appear to be at one. The
23 records in relation to the one at which you attended are the three pages I have
24 just shown you. That would suggest that you were present when there was some
11:05:12 25 discussion in relation to Mr. Gilmartin's bankruptcy by somebody at that
26 meeting. Would you agree with that?
- 27 A. I would agree with it, assuming that I was there for the full meeting.
- 28 Q. 76 Yes. Because it would appear that Ms. Taylor kept a note of the a second
29 meeting at 5196. Which is headed -- 5196 "later had meeting with G Byrne, J
11:05:34 30 Coleman, S Maguire, Gilmartin, NOB and PT" and I think there is another name G

11:05:40 1 something that I cannot make out. And it's clear this attendance is also the
2 31st of May 1991, Mr. McGrath, and you are not recorded as being in attendance,
3 isn't that right?

4 A. No.

11:05:50 5 Q. 77 Right. And certainly Ms. Taylor there appears to be a clearly identifying that
6 there were at least two separate meeting on that day, isn't that right?

7 A. It would appear so.

8 Q. 78 Yes. And as a careful and accurate solicitor I would suggest to you that is
9 she is unlikely to have recorded comments in relation to Mr. Gilmartin's

11:06:08 10 bankruptcy at a meeting involving yourself, herself and Mr. Byrne, unless it
11 had happened at that meeting, would you agree with that?

12 A. I don't -- I couldn't comment on another person. I don't know.

13 Q. 79 Now, in that agreement that was signed on the 31st of May 1991, Mr. McGrath.
14 In general the agreement at 5184 provided that Allied Irish Bank would provide
11:06:38 15 an additional fast equity of 3 million pounds, isn't that right?

16 A. That's what the agreement says.

17 Q. 80 And at the second paragraph in paragraph two in relation to that provides as
18 follows "the additional facility of 3 million pounds shall be available to
19 Barkhill until the 31st of May '93. It may be used only for the purpose of
11:06:57 20 discharging sums due by Barkhill in respect of the purchase of those lands
21 known as the Bruton lands, the O'Rahilly lands and such lands at a cost not
22 exceeding 900,000 pounds as may be purchased from Dublin County Council and
23 costs directly related to the development of Barkhill's lands.

24
11:07:12 25 The facility may not be used for any other purpose unless Gilmartin's, Riga and
26 AIB shall unanimously so agree".

27

28 Can you explain to the Tribunal the purpose of that term?

29 A. Which term?

11:07:27 30 Q. 81 That term in relation to such further costs?

- 11:07:31 1 A. The last sentence.
- 2 Q. 82 No, in relation to the earlier part of it that the money was only to be used
3 for purchasing three parcels of land which are identified and then costs
4 directly related to the development of Barkhill's lands? What was the bank's
11:07:47 5 understanding of costs directly relation to the development of Barkhill's
6 lands?
7 A. Well I assume it would relate to stamp duty solicitor's fees etc.
- 8 Q. 83 And when you say etc. what do you mean, Mr. McGrath?
9 A. If you're acquiring a property you will have conveyancing costs, stamp duty,
11:08:04 10 solicitor's costs. So those are the costs associated with a site assembly.
- 11 Q. 84 And then in paragraph three "Riga agreed to provide a to Barkhill a loan in the
12 sum of in the amount of 1 million pounds for the same purpose and the same
13 period as the AIB loan" and you are familiar with that term, Mr. McGrath, isn't
14 that right?
- 11:08:28 15 A. Yes.
- 16 Q. 85 At paragraph six at 5186, you have the proposed new shareholding, isn't that
17 right?
18 A. That's right.
- 19 Q. 86 Right. And can you just tell the Tribunal how the bank's shares were to be
11:08:43 20 held?
21 A. I can't tell you in relation to 22.2 -- 22 and two ninth's because it never
22 happened. When we got the 20 per cent shareholding I had an issue in the sense
23 that it could pose a problem for us as lenders if we were shareholders in a
24 company in the event that the company became insolvent and we wished to realise
11:09:16 25 our security by way of appointing a receiver.
26
27 So we thought the best way would be that we would get one of the companies that
28 were not involved in Corporate Banking that had no credit relationship with
29 Barkhill or Mr. Gilmartin or Riga and that we would ask that company, which is
11:09:36 30 Allied Irish Bank AIB VC, venture capital, Allied Irish Bank venture capital,

11:09:44 1 we would ask that company to actually take the shareholding. This is a company
2 that was 100 per cent subsidiary of AIB. And we would ask one of its
3 executives Mr. Pitcher, to become the director. And that way we saw the
4 segregation of duties that the shareholding situation would be handled by
11:10:02 5 somebody totally different to the credit lending team. And it probably leads
6 in to address the issue that Mr. Gilmartin's counsel raised with Michael
7 O'Farrell yesterday about compliance.

8
9 In the early '90s the Central Bank wasn't as alert to compliance, nor were any
11:10:27 10 of the banks, and it was just from a convenience of how could we be in a
11 position to actually realise our security that we came up with that structure.
12 Because we had the fear that this plan may not succeed. We may have to revert
13 to realise our security to get our loan repaid. So does that give you some
14 insight into the thinking?

11:10:57 15 Q. 87 Insofar as you told the Tribunal what your understanding of the costs
16 associated with the land. Do I understand you to say to the Tribunal that the
17 only costs that were within the bank's contemplation when paragraph two was
18 drafted and signed up to, was costs associated with the acquisition of lands?

19 A. As I understood, that's what it was.

11:11:19 20 Q. 88 In fairness to yourself, Mr. McGrath, and you may not have considered this. At
21 5184, at the bottom of it it says "costs directly related to the development"
22 following page please "of Barkhill's lands". Would that change your view,
23 Mr. McGrath, if you considered that the only costs that could be spent were
24 costs related to the acquisition of lands and then to the development of
11:11:51 25 Barkhill's lands?

26 A. You will have to help me doing the arithmetic because what -- how much of --
27 how much site assembly costs were involved. How many sites were list in the
28 that?

29 Q. 89 Yes. At 5184.

11:12:08 30 A. Please.

11:12:08 1 Q. 90 There were the Bruton lands.
2 A. And is there a sum of money attached to that?
3 Q. 91 Yes but they in fact ultimately cost more because of the difficulty with
4 closing. The O'Rahilly lands and then the County Council lands not to accede
11:12:23 5 900,000 pounds.
6 A. Right.
7 Q. 92 Yes.
8 A. I don't know whether we had provided -- I assumed that the time of the thinking
9 that the sum that was identified was adequate to complete the purchase of those
11:12:39 10 sites.
11 Q. 93 So what was within the bank's contemplation was that the sum of 3 million plus
12 1 million, and particularly the sum of -- well in this case the sum of 3
13 million would be used for land acquisition and then the costs associated
14 primarily with the land acquisition such as stamp duty or solicitors fees or
11:12:59 15 development costs but the upside or the top line was 3 million pounds.
16 A. Is it three or four, there was a million from Riga as well?
17 Q. 94 Yes but this says "the additional facility of 3 million shall only be available
18 until that and it may be used only for the purpose of".
19 A. Yes.
11:13:12 20 Q. 95 So what's being discussed in the second part of paragraph two is the three
21 million pounds being led by Allied Irish Bank?
22 A. Yes, that was our intention.
23 Q. 96 And that three million pounds was not to kick in effectively until Riga's 1
24 million pounds had already been spent, isn't that right?
11:13:34 25 A. That is my understanding of it.
26 Q. 97 And on the 31st of May at 5180, on the same day, Mr. McGrath, there is a
27 document entitled "Barkhill Limited" it's addressed or headed "Corporate
28 Banking Ireland's group credit committee" and was this an application for
29 approval from the group Credit Committee in relation to the decision that we've
11:13:56 30 already seen implemented in the agreement of the 31st of May 1991?

- 11:14:01 1 A. Yes, that's an AIB what we call mark up which is a credit application.
- 2 Q. 98 Now, is this a document that would have been prepared or presented by you?
- 3 A. Not prepared by me. Definitely not. It would have been prepared by Mr. Kay or
- 4 his team.
- 11:14:17 5 Q. 99 Yes. And would is it have been presented by you?
- 6 A. I attended one group Credit Committee but I didn't think it was in May, it may
- 7 have been later, I don't know.
- 8 Q. 100 Well in fairness to yourself, Mr. McGrath, at 5247, if we look at the analysis
- 9 of large provision cases bad debts file in relation to Barkhill. We see that
- 11:14:41 10 under the approved details of facilities that the loan of 14 and a half -- 14.5
- 11 million of the 31st of May '91, was recommended by Mr. McGrath chief manager
- 12 isn't that right?
- 13 A. Yes.
- 14 Q. 101 Would that suggest to you --
- 11:14:54 15 A. So on that date. That confirms that is the one day that I went with Mr. Kay to
- 16 the group Credit Committee. I knew I was there one day, I didn't know what
- 17 date it was. So yes.
- 18 Q. 102 So the records --
- 19 A. Mr. Kay would have presented the case. I was there to help answer any
- 11:15:10 20 questions that might have arisen.
- 21 Q. 103 Yes. You are recorded on this document, which is the analysis of large
- 22 provision cases 1990, 1991 from the bad debts file of Allied Irish Bank, as
- 23 being the person who recommended the loan of 14 and a half million on the 31st
- 24 of May '91. And would it follow from that, Mr. McGrath, if this is it an
- 11:15:30 25 accurate records, that at the group credit committee meeting on the 31st of May
- 26 1991, you did in fact recommend to the group credit committee the granting of
- 27 the additional facilities by reason of the matters that are set out within the
- 28 document?
- 29 A. Certainly.
- 11:15:43 30 Q. 104 Right. And within that document then there are just a few short matters I want

11:15:48 1 to draw to your attention at 5181. Under the heading in the centre of the page
2 following the heading "location". There is a heading "zoning planning
3 designation":
4

11:15:59 5 "Following the successful County Council vote in connection with rezoning it is
6 proposed that a planning application will be made within the next three months
7 for circa 600,000 square feet of retail space and it is anticipated that full
8 planning and final zoning can be in place within 15 months" isn't that right?

9 A. Yes.

11:16:15 10 Q. 105 Now, that in fact did not transpire, isn't that the case?

11 A. That's right.

12 Q. 106 Right. "Designation has been reputedly proposed by government sources but this
13 remains to be seen". And what was your information about designation in
14 relation to Quarryvale, Mr. McGrath?

11:16:32 15 A. I have only what's down there. I know nothing else.

16 Q. 107 At the bottom of the page in the second last paragraph it says "against this
17 background, an agreement has now been reached subject to group credit committee
18 approval as follows. AIB to provide an additional 3 million. Next page.
19 O'Callaghan Riga to provide 1 million. Equity involved to be held as follows
11:16:58 20 that's 33 per cent, 45 per cent, 22 per cent. Tom Gilmartin to have first
21 option on AIB shares".
22

23 And it it goes on to talk about the positive matters in the heading summary and
24 recommendation the decisive zoning vote and the dominant role to be taken by
11:17:15 25 Owen O'Callaghan who is highly regarded as a retail property developer. The
26 significant cash guarantee commitment which O'Callaghan is prepared to make".
27

28 May the Tribunal take it, Mr. McGrath, that in view of the fact that you
29 recommended this to the group credit committee you would at a minimum have read
11:17:30 30 the contents of Mr. Kay's mark up before it was presented to the group credit

- 11:17:33 1 committee?
- 2 A. You can certainly take that.
- 3 Q. 108 Right. And it follows from that, that you would have been aware that there had
4 been some information in relation to designation have been reputedly remains
11:17:45 5 proposed by government sources but that this remains to be seen, isn't that
6 right?
- 7 A. Yes.
- 8 Q. 109 Right. It would also appear to be the position that the factors that were
9 influenced the team in making the recommendation to the group credit committee
11:18:06 10 was the decision of Dublin County Council on the 16th of May 1991, in relation
11 to the zoning of Quarryvale, isn't that right?
- 12 A. Yes.
- 13 Q. 110 And it follows from that, that you would have known of the fact that there had
14 been a change in the zoning on the Quarryvale lands in the recent past prior to
11:18:15 15 this mark up being prepared for the 31st of May '91, isn't that right?
- 16 A. That's correct, yes.
- 17 Q. 111 And the second decisive factor that's referred to in the bank was the dominant
18 role to be taken by Owen O'Callaghan who is highly regarded as a retail
19 property developer, isn't that right?
- 11:18:30 20 A. That's right, yes.
- 21 Q. 112 518. Would you have known Mr. O'Callaghan, Mr. McGrath?
- 22 A. I would have met Mr. O'Callaghan for the first time some time after the 1st of
23 April when I came in, 2nd of April when I came into the job. I never met Mr.
24 O'Callaghan before that.
- 11:18:44 25 Q. 113 A and would you have met Mr. Gilmartin?
- 26 A. No.
- 27 Q. 114 Did you meet Mr.-- when was the first time that you can recollect meeting with
28 Mr. Gilmartin?
- 29 A. Sometime after the 2nd of April.
- 11:18:54 30 Q. 115 After you came into your new position?

- 11:18:56 1 A. Yes, I never met either gentleman or Mr. Deane prior to I assuming this
2 responsibility.
- 3 Q. 116 Prior to April of 1991?
- 4 A. Yes, the 2nd of April 1991.
- 11:19:09 5 Q. 117 The third matter, it's at the bottom, page 5182 at the bottom half of the page
6 please. "Significant factor was the cash guarantee commitment which
7 O'Callaghan is prepared to make" and is that a reference to the fact that they
8 were putting up 1 million pounds?
- 9 A. No, guarantee is separate.
- 11:19:27 10 Q. 118 Yes.
- 11 A. They were putting up a million and giving us a guarantee of another million.
- 12 Q. 119 And then "the very positive professional comments which have been made about
13 the site and its location". Finally "the virtual abandonment of Green by their
14 project". And what was being referred to in the last part there, Mr. McGrath,
11:19:44 15 the "virtual abandonment by Green of their project"?
- 16 A. I am sorry but I don't know.
- 17 Q. 120 Would you have been informed by your team of any publications by Green
18 Properties and notices published publicly to the effect that because the zoning
19 on Quarryvale had been changed as a result of the decision of the Council in
11:20:03 20 May '91, that Blanchardstown were not going to proceed with their development.
21 Would you -- is it likely you would have been aware of that at the time?
- 22 A. Obviously, there was something. I don't know what the detail of it was. And I
23 can't recall what it was but -- I don't know.
- 24 Q. 121 Now, at page 5183. You will note "it was recommended by corporate and
11:20:26 25 commercial banking credit committee to group credit committee and it was
26 sanctioned to be reviewed in three months" isn't that right?
- 27 A. Yes.
- 28 Q. 122 And it would seem from the other documentation we've already seen at 5247 that
29 it was recommended to the committee by yourself, isn't that right?
- 11:20:42 30 A. Absolutely.

- 11:20:43 1 Q. 123 And it would follow from that, that you would have had to have familiarised
2 yourself with the detail of the matter before you would be in a position to
3 make such a recommendation, isn't that right, Mr. McGrath?
4 A. Absolutely.
- 11:20:55 5 Q. 124 Now, may the Tribunal take it then that going forward in all subsequent mark
6 ups in relation to Barkhill, that even if you weren't present at the group
7 credit committee meeting that you would have been recommending it, that it
8 wouldn't have gone forward without your recommendation?
9 A. No, you couldn't say that.
- 11:21:11 10 Q. 125 All right. Would it be the case then that if you were objecting to any
11 proposal in relation to Barkhill, that that would be recorded on the mark up?
12 A. If I was objecting to it, it wouldn't have gone forward.
- 13 Q. 126 That was exactly my point to you, Mr. McGrath. In other words, that the very
14 fact that it went forward, even though you are not recorded as being at the
11:21:29 15 meeting. That the Tribunal could take it that you had been in favour of it?
16 A. No.
- 17 Q. 127 No.
18 A. Because I may not have been as aware of it.
- 19 Q. 128 And in what circumstances would it have arisen, Mr. McGrath, that there would
11:21:40 20 have been a mark up in relation to Barkhill that was going forward for
21 furthering funding and you would have been unaware of it at a time when you
22 were in over all charge?
23 A. If I was on annual leave.
- 24 Q. 129 Right. And who was the person who would have been delegated to deal with the
11:21:49 25 matter when you were on annual leave?
26 A. Mr. Kay.
- 27 Q. 130 Mr. Kay.
28 A. And subsequently Mr. O'Farrell.
- 29 Q. 131 So that either yourself or Mr. O'Farrell would after July of 1992, have been
11:22:03 30 the people who were dealing with the mark ups until such time as you ceased

- 11:22:07 1 responsibility in relation to this area, is that right?
- 2 A. I think Mr. O'Farrell was appointed in September '92 but I, I beg to be
- 3 corrected on that.
- 4 Q. 132 Now, in any event, when did you cease involvement yourself Mr. McGrath with
- 11:22:24 5 this, with Barkhill?
- 6 A. We had a corporate reorganisation in March '95.
- 7 Q. 133 Right. And up to that time were you involved with this and thereafter did you
- 8 have any involvement with Barkhill?
- 9 A. No, I was actually banker to, to Grovenor.
- 11:22:44 10 Q. 134 Who subsequently became involved in the ...?
- 11 A. Subsequent to there, you will recall that there was a document produced
- 12 yesterday which showed that Grovenor had provided a guarantee in the sum of, I
- 13 think it was 6.5 million, in the finality of the billed solution and I was the
- 14 executive that provided that solution to Grovenor.
- 11:23:10 15 Q. 135 At this point in time, in May and June of 1991 and August of 1991, you had a
- 16 meeting that's recorded in a memorandum I think taken by yourself at 5711 of
- 17 the 16th of August '91. Which appears to follow on a discussion you had with
- 18 Mr. Benson, who was a planning consultant, isn't that right?
- 19 A. That's correct.
- 11:23:31 20 Q. 136 And the first sentence of that reads "Blanchardstown will proceed with costs of
- 21 the political implications". You see that?
- 22 A. Yes.
- 23 Q. 137 Would you just explain that, Mr. McGrath, to the Tribunal?
- 24 A. I don't know.
- 11:23:53 25 Q. 138 First of all you accept it's your note, isn't that right, if we look at the
- 26 bottom of the page you will see your initials D McG?
- 27 A. That's right, it is my note, yeah.
- 28 Q. 139 Yes. So now doing the best you can and looking at it there, Mr. McGrath, and
- 29 trying to help the Tribunal as much as you can, can you think what were the
- 11:24:09 30 political implications connected with Blanchardstown which you discussed with

11:24:13 1 Mr. Benson prior to the 16th of August 1991?

2 A. I don't know, I cannot recall, I'm sorry.

3

4 JUDGE FAHERTY: Mr. McGrath, if you refer that back to the mark up document

11:24:33 5 where there was a reference, I think it was Green were to abandoning their

6 project.

7

8 MS. DILLON: 5102.

9

11:24:42 10 JUDGE FAHERTY: Which I think was the 31st of May.

11 A. Yes, I recall that in the mark up.

12

13 JUDGE FAHERTY: Yes. And now we have three months later a reference in a note

14 of your own to Blanchardstown proceeding. Blanchardstown was effectively

11:24:54 15 Green, isn't that correct? Green Properties were --

16 A. Yes.

17

18 JUDGE FAHERTY: Maybe putting the two of them together it might assist your

19 recollection.

11:25:04 20

21 Q. 140 MS. DILLON: 571. 5711. Does that assist you?

22 A. Costs of Blanchardstown will proceed ... obviously at that stage in August '91

23 Green Property had decided to proceed with the Blanchardstown development. I

24 assume that's what that means.

11:25:23 25 Q. 141 Yes.

26 A. But I can't shed any further light on that, I'm sorry.

27 Q. 142 Well if we just look at the, what you have recorded there.

28 A. Yes.

29 Q. 143 The first part of the sentence reads "Blanchardstown will proceed" it should

11:25:39 30 probably read?

- 11:25:39 1 A. Yes its a typographical error, yes.
- 2 Q. 144 "With costs of the political implications."
- 3 A. I'm sorry. I can't explain it.
- 4 Q. 145 It would certainly suggest, Mr. McGrath, that following on your discussion with
- 11:25:53 5 Mr. Benson in August 1991, you had had some -- you had given some consideration
- 6 to in the first instance the political implications of Blanchardstown
- 7 proceeding and secondly the costs of those political implications, isn't that
- 8 right?
- 9 A. I don't know what the costs of the political implications will be. That's
- 11:26:15 10 what's throwing me. I don't know what "costs of political implications" what
- 11 was meant by that. I'm sorry.
- 12 Q. 146 Well we'll just try and analyse it as best we can and to help you, Mr. McGrath.
- 13 A. Yes.
- 14 Q. 147 The first thing that you had written in the note was that Blanchardstown would
- 11:26:29 15 proceed, isn't that right?
- 16 A. Yes yes. As it subsequently did.
- 17 Q. 148 Yes.
- 18 A. Yes.
- 19 Q. 149 And that meant that you were noting the fact that Blanchardstown was going to
- 11:26:36 20 go on. Isn't that right?
- 21 A. Yes. Yes. Yes.
- 22 Q. 150 And you were noting that in the context of Barkhill because the note is headed
- 23 Barkhill, isn't that right?
- 24 A. Yes, yes. It arises out of discussion that I had with Frank Benson in relation
- 11:26:47 25 to the overall planning and zoning areas.
- 26 Q. 151 Yes.
- 27 A. And just to clarify and to confirm again. We had engaged Frank Benson to give
- 28 us an appended -- an independent view of what was happening in the whole Dublin
- 29 development area so that we would have a view from somebody other than
- 30 Mr. O'Callaghan and Mr. Gilmartin.

- 11:27:14 1 Q. 152 And following on the independent discussion, the second thing you note in the
2 first sentence is "with costs of the political implications" and from that I
3 suggest to you that you must have had some discussion with Mr. Benson about the
4 political implications for Quarryvale of Blanchardstown proceeding. Would you
11:27:31 5 agree with that?
- 6 A. I expect that's what it is. I expect it.
- 7 Q. 153 And you had also tied in that the issue of costs which were connected in some
8 way that you can't now recollect with the political implications?
- 9 A. Well I can certainly say to you in relation to costs. The costs -- if it was a
11:27:47 10 thing that there was a delay to the project, obviously with interest running at
11 whatever it was at the time, the cost of the fund was probably 10 or 11 per
12 cent, probably more, that that would have an implication in the sense that it
13 would have increased costs to the project, the Barkhill project.
- 14 Q. 154 Yes.
- 11:28:03 15 A. That would certainly be part of the cost issue in a sense of the inflation
16 factor, the interest costs.
- 17 Q. 155 And certainly I would suggest to you, Mr. McGrath, and disagree with me if you
18 wish. That this would have been considered by you to be the most important
19 point or one of them because it's the first thing that you note following your
11:28:24 20 discussion with Mr. Benson, isn't that right?
- 21 A. Well anything that would setback the completion of the development would have
22 been seen as a negative factor in my mind. Because I -- again, I highlight the
23 fact that I had a portfolio of a very substantial nature and this wasn't the
24 only property exposure that the bank had that was struggling to meet its
11:28:47 25 interest. And anything that would actually make our portfolio, the exposure to
26 continue longer was a negative factor.
- 27
- 28 So I would have been acutely conscious of the fact that we wanted to get this
29 debt off our books as fast as we could.
- 11:29:08 30 Q. 156 Yes. And certainly it would appear following on your discussion with

11:29:11 1 Mr. Benson you were acutely conscious of the political implications whatever
2 they were, of Blanchardstown proceeding because you note them down as the first
3 item on the memorandum, isn't that right?
4 A. Yes, that is absolutely correct yes.

11:29:24 5 Q. 157 And in the last paragraph you note there that you had "engaged Benson on an
6 ongoing basis and he will supply the council and advise us as we require it".
7 A. Sorry, that's another typo. He would supply the information to us about the
8 council.
9 Q. 158 Yes.

11:29:38 10 A. And that was the hourly charge.
11 Q. 159 Yes. And it would appear that at that meeting with Mr. Benson you retained him
12 on that occasion, isn't that right?
13 A. Yes.
14 Q. 160 And immediately above --

11:29:48 15 A. You you will see that there is a letter on the file subsequent to that where he
16 confirms that as I recall.
17 Q. 161 This was your initial meeting with Mr. Benson, isn't that correct?
18 A. I can't confirm it was the initial meeting, it was a meeting I don't know
19 whether it was the first meeting or not that I had with him.

11:30:01 20 Q. 162 Well it is the first meeting of which you made a record, Mr. McGrath, isn't
21 that right?
22 A. It probably was the first meeting.
23 Q. 163 Yes. Under the heading "aspect" in the second last paragraph you received
24 certain advice from Mr. Benson as follows "Mr. Benson suggested that the
11:30:15 25 developer might give consideration to offering some land to the council as a
26 site for perhaps the National Stadium. He believes that this would be a very
27 very positive development and could sweeten receptiveness of the application".
28 A. Yes.
29 Q. 164 Now, would it be fair to say that from August of 1991, the bank were being
11:30:36 30 professionally advised by Mr. Benson that the introduction of the National

- 11:30:39 1 Stadium was something that could be offered to the council effectively to
2 promote the Quarryvale development?
- 3 A. That's what Mr. Benson was suggesting.
- 4 Q. 165 Yes. And what he was telling you was that it would make the receptiveness of
11:30:53 5 the application more sweeter and the application you are discussing is the
6 Barkhill application, isn't that right?
- 7 A. Yes, that's what I have recorded, yes.
- 8 Q. 166 And it would follow from that, that you knew at this stage in August of 1991
9 that there was going to be further votes in relation to Quarryvale, isn't that
11:31:07 10 right?
- 11 A. Yes.
- 12 Q. 167 And that it would be necessary to try and hold what the developer had obtained
13 in May of 1991. In other words the existing zoning, isn't that right?
- 14 A. Yes.
- 11:31:18 15 Q. 168 And that you would must have been advised by Mr. Benson and I think he did
16 outline it in December in a written report to the bank of the fact that there
17 would be difficulties in trying to hold the zoning due to the change in the
18 political composition of the council?
- 19 A. That's correct.
- 11:31:34 20 Q. 169 Right. But what you are being advised here in a start off position with
21 Mr. Benson was, that the National Stadium was something that could be proffered
22 to the council in order to sweeten the deal as it were, for Quarryvale, isn't
23 that right?
- 24 A. That was Mr. Benson's view, yes.
- 11:31:55 25 Q. 170 Yes. Now, whether or not the bank were going to take that advice is one thing.
26 But what this does establish, Mr. McGrath, is that the initial advice you got
27 and from August of '91, the bank were aware of the National Stadium as
28 something that could be offered up to the council, isn't that right? As
29 something that could enhance Quarryvale's chances in connection with the
11:32:08 30 zoning, isn't that right?

- 11:32:08 1 A. But the bank wasn't in a position to offer anything to the council.
- 2 Q. 171 The developer was.
- 3 A. Anybody would have been I would have assumed.
- 4 Q. 172 Yes. Yes, you you blue you see, is it not the position, Mr. McGrath, that the
- 11:32:23 5 bank was going to be a 20 per cent shareholder in Barkhill, isn't that right?
- 6 A. We were being offered shares in lieu of a fee. I didn't see our shareholding
- 7 as an equity participation. I saw it as a means of remunerating the additional
- 8 risk that AIB was taking in lending money to a bad debt.
- 9 Q. 173 The reality of the matter, Mr. McGrath, whether you are uncomfortable with it
- 11:32:51 10 or not?
- 11 A. Sorry I'm not uncomfortable at all.
- 12 Q. 174 Is the fact that Allied Irish Bank in September 1991, became a 20 per cent
- 13 shareholder in Barkhill Limited, isn't that correct?
- 14 A. That's correct.
- 11:33:02 15 Q. 175 And Barkhill Limited became the owner of Merrygrove, isn't that right?
- 16 A. Yes.
- 17 Q. 176 And Merrygrove owned the option on the Neilstown lands, isn't that right?
- 18 A. So I believe so, yes.
- 19 Q. 177 Yes. And the Neilstown lands were the lands that were going to be -- that were
- 11:33:14 20 promoted ultimately for the National Stadium isn't that right?
- 21 A. Which AIB had no lending relationship with and we were never asked to provide
- 22 facilities to a stadium and we had made it clear to Mr. O'Callaghan that we
- 23 wouldn't favour an application from him to fund a National Stadium.
- 24 Q. 178 But as a 20 per cent shareholder in Barkhill, which was the entire owner of
- 11:33:37 25 Merrygrove, you were a 20 per cent owner of Merrygrove, isn't that right?
- 26 A. AIB had a shareholding in Barkhill.
- 27 Q. 179 Yes.
- 28 A. Yes.
- 29 Q. 180 And Barkhill owned 100 per cent of Merrygrove, isn't that right?
- 11:33:51 30 A. Yes.

- 11:33:51 1 Q. 181 And therefore, Barkhill -- the bank through its 20 per cent shareholding, had a
2 20 per cent interest in Merrygrove, isn't that right?
- 3 A. Yeah, I am at pains to highlight the situation that I saw it as the time. I
4 had responsibility to get a debt cleared. I didn't see myself having a
11:34:10 5 proprietorial interest in Barkhill. AIB, had a debt that was now reaching 13
6 million and we didn't have a visible means of repayment. So my focus was get
7 the debt cleared. Not to extend further credit to a subsidiary of Barkhill.
8 We were not prepared to lend more money to Barkhill or a subsidiary of
9 Barkhill.
- 11:34:39 10 Q. 182 Yes. I wasn't asking you that, Mr. McGrath. In discussing the memorandum
11 that's on screen and in relation to the reference that's being made there by
12 the bank's advisor, Mr. Benson, to the national stadium. I was asking you
13 about the concept of the national stadium and really what I was trying to
14 discuss with you is whether or not you agree, that when the bank became a 20
11:34:59 15 per cent shareholder of Barkhill it also owned indirectly, 20 per cent of
16 Merrygrove?
- 17 A. That is correct.
- 18 Q. 183 Right. And that Merrygrove owned the lands or owned the option on the lands on
19 which the national stadium was promoted?
- 11:35:13 20 A. I have already agreed with you on that point.
- 21 Q. 184 All right. Now, in September of 1991, a shareholders agreement was entered
22 into, isn't that right, on the 13th of September?
- 23 A. That is the one that conferred the 20 per cent shareholding on us.
- 24 Q. 185 On Allied Irish Bank?
- 11:35:32 25 A. Yeah.
- 26 Q. 186 And the reorganization of the shareholding between Mr. Gilmartin and between
27 Mr. O'Callaghan, isn't that right?
- 28 A. That's correct.
- 29 Q. 187 Right. And can you tell the Tribunal your recollection of the events leading
11:35:46 30 up to the signing of the shareholders agreement, Mr. McGrath?

11:35:50 1 A. I can. Mr. Gilmartins with very uncomfortable at the development whereby his
2 proprietorial interest would be diluted down to a 40 per cent shareholding and
3 he was reluctant to complete the agreement. And I had a meeting with himself
4 and Mr. O'Callaghan and there isn't a file note of the meeting, before you ask
11:36:20 5 me the question. And it was one of the, the heavy meetings whereby there would
6 have been very significant forthright discussion taking place.
7
8 Mr. Gilmartin would have used strong language and I am not a shrinking violet
9 myself, I would have responded in using strong language. Mr. O'Callaghan never
11:36:50 10 issued a profanity in my company in the four years I worked with him. But he
11 was there -- sorry, when I worked with him, when I had a business relationship
12 with him in Barkhill. He was there at that meeting. Tom was reluctant to
13 agree to sign the agreement. And he was saying it's my company and it's my
14 money. And I can remember telling him very forthrightly that his money was
11:37:17 15 gone. I told him, it has disappeared down the Liffey. And I said we are now
16 talking about the bank's money and I can remember this distinctly. I said if
17 we can save the bank's money there may be some small change left for you. And
18 that was how the discussions took place.
19
11:37:38 20 I also outlined to him what the potential further options were. One of which I
21 mentioned to him is, that the bank would appoint the receiver and try to sell
22 the property to reduce the debt. But our judgement was that he would be much
23 better to actually work with Gilmartin and O'Callaghan to try to complete the
24 site assembly, to try to get zoning. To try to get planning and then to get a
11:38:12 25 development partner that would come in and develop the property so that
26 everyone get their investments and we'd get our loans repaid. And that was the
27 strategy. And there was certainly a straight forward meeting sometime between
28 May and September between Mr. O'Callaghan, Mr. Gilmartin and myself. Don't ask
29 me the date, I don't know the date. But I, I want the Tribunal to know that
11:38:38 30 that is exactly my clear recall of the meeting.

- 11:38:41 1 Q. 188 Right. Well before we get to more detail in relation to the meeting,
2 Mr. McGrath, we might just step it back a minute a little bit and ask you first
3 of all who set up the meeting and where it took place?
4 A. I have no idea.
- 11:38:53 5 Q. 189 Well --
6 A. It's quite possible that I may have asked Eddie Kay to ask Tom Gilmartin and
7 Owen O'Callaghan to come in to meet me. It's quite possible but I don't know.
- 8 Q. 190 There doesn't appear to be any correspondence on the bank's file inviting
9 either Mr. O'Callaghan or Mr. Gilmartin to a meeting such as you've described.
11:39:14 10 You have reviewed the bank's files, isn't that right, in preparation for your
11 evidence I assume?
12 A. I've looked at the bank's files, yeah.
- 13 Q. 191 Do you yourself having reviewed the bank's files, recall any documentation
14 inviting either Mr. O'Callaghan by way of a note of a telephone call or Mr.
11:39:29 15 Gilmartin by whether of a note or a telephone call or letter to any such
16 meeting?
17 A. No.
- 18 Q. 192 Right. And who was at the meeting?
19 A. My recall is that it was Tom Gilmartin, Owen O'Callaghan and myself.
- 11:39:41 20 Q. 193 Right. And did you as the bank's sole representative at that meeting keep a
21 note of what was being discussed at the meeting, Mr. McGrath?
22 A. No.
- 23 Q. 194 Can I ask you -- may the Tribunal take from that then that nothing of
24 significance insofar as the bank's debt was concerned transpired at that
11:39:58 25 meeting?
26 A. Other than that we were trying to get the shareholder's agreement signed.
- 27 Q. 195 So this is prior to -- this is after the 31st of May of 1991 and it's before
28 the 13th of September --
29 A. Yes.
- 11:40:10 30 Q. 196 -- 1991.

- 11:40:11 1 A. Yes. We had approved the facility but no drawings had been made on it because
2 the shareholders agreement hadn't been completed.
- 3 Q. 197 Yes. But just in relation to the meeting now, Mr. McGrath. The purpose of
4 this meeting was to persuade Mr. Gilmartin to sign up to the shareholders
11:40:30 5 agreement, is that right?
- 6 A. The purpose of the meeting is for me to, to communicate with Mr. Gilmartin the
7 implications and the necessity to get the shareholders agreement completed so
8 that we could unlock the monies that had been approved to complete the
9 development.
- 11:40:50 10 Q. 198 Right. And I think you have described to the Tribunal that there was a full
11 and frank exchange of views between yourself and Mr. Gilmartin and that
12 forthright language was used both by Mr. Gilmartin and by yourself.
- 13 A. Yes.
- 14 Q. 199 But what I am trying to establish from you, Mr. McGrath, is whether you
11:41:05 15 considered the meeting to be of such little significance that you in line with
16 your earlier evidence to the Tribunal this morning, that you can keep any
17 record of it?
- 18 A. I didn't keep any record because Mr. Gilmartin didn't agree to sign at that
19 meeting.
- 11:41:20 20 Q. 200 What did -- complaints, if any, did Mr. Gilmartin make at the meeting?
- 21 A. One thing that I can remember is that he said that the Cork men were robbers,
22 that they were robbing his company and that it was his money. And I countered
23 that by saying that his money was already gone.
- 24 Q. 201 Yes.
- 11:41:43 25 A. And we were talking about the bank's money.
- 26 Q. 202 How long did the meeting take, can you remember?
- 27 A. I have no idea.
- 28 Q. 203 Well did it take five minutes?
- 29 A. No, it took longer than that.
- 11:41:50 30 Q. 204 Would it have taken half an hour?

- 11:41:52 1 A. I don't know, maybe, maybe two hours, maybe an hour, I don't know.
- 2 Q. 205 And in the course of that meeting who did most of the talking?
- 3 A. I expect I outlined the position and Mr. Gilmartin would have responded.
- 4 Q. 206 Would it be fair to say that the exchange therefore insofar as it took place
- 11:42:13 5 was mainly between yourself and Mr. Gilmartin?
- 6 A. Yes.
- 7 Q. 207 And would it also be fair to say that Mr. Gilmartin was unhappy with the
- 8 proposed shareholders agreement?
- 9 A. Mr. Gilmartin was, as I recall it, Mr. Gilmartin was more comfortable that AIB
- 11:42:33 10 would have a shareholding because, as he saw it, that Mr. O'Callaghan didn't
- 11 have a greater share of the company and more influence in the company than he
- 12 would have had as a shareholder.
- 13 Q. 208 Yes.
- 14 A. Now, we were also insisting that in the shareholders agreements that Mr.
- 11:42:53 15 O'Callaghan would become project manager, because we had confidence in Mr.
- 16 O'Callaghan. Mr. O'Callaghan's ability to complete the development. We didn't
- 17 have that confidence in Mr. Gilmartin.
- 18 Q. 209 Yes. You had provided for that I think in clause 13 of the agreement that had
- 19 been signed up between the parties on the 31st of May '91, isn't that right?
- 11:43:18 20 A. That's right.
- 21 Q. 210 5187.
- 22 A. That's right, yes.
- 23 Q. 211 That wasn't something new, Mr McGrath, that was being introduced by you as the
- 24 first time because it was already in clause 13.
- 11:43:28 25 A. Yes.
- 26 Q. 212 That in the subsequent agreement that would be signed that Riga would be
- 27 appointed a project manager by Barkhill for the purpose of the development of
- 28 the land at Palmerstown, isn't that right?
- 29 A. That's right.
- 11:43:39 30 Q. 213 So that had been within everybody's agreement when it was signed on 31st of May

- 11:43:44 1 that Riga would become the project manager, isn't that right?
- 2 A. That's right.
- 3 Q. 214 So that when you had your meeting with Mr. Gilmartin and with Mr. O'Callaghan,
4 which took an hour possibly two hours, or whatever length of time it took. Did
11:43:56 5 Mr. Gilmartin complain about the lack of parity between his proposed
6 shareholding and Mr. O'Callaghan's proposed shareholding?
- 7 A. I don't recall that.
- 8 Q. 215 You know that Mr. Eddie Kay went to London on the 2nd of August of 1991. And
9 you will have seen Mr. Kay's detailed note of that attendance in the brief at
11:44:17 10 5663.
- 11 A. Yes.
- 12 Q. 216 Yes. And following on his meeting with Mr. Gilmartin and I think he was
13 attended by Mr. Donagh at that meeting. You weren't in attendance at that
14 meeting in London, isn't that right?
- 11:44:38 15 A. No.
- 16 Q. 217 And you when you met with Mr. Gilmartin and Mr. O'Callaghan, did you travel to
17 London for that meeting, Mr. McGrath?
- 18 A. Which meeting?
- 19 Q. 218 The meeting you have just described to the Tribunal?
- 11:44:46 20 A. No, that took place in my office in Bank Centre.
- 21 Q. 219 In Bank Centre. So it was a meeting in Dublin?
- 22 A. Yes.
- 23 Q. 220 And it takes sometime between the 31st of May and the 13th of September 1991?
- 24 A. Yes.
- 11:44:58 25 Q. 221 Do you recollect whether it would have taken place before or after this meeting
26 with Mr. Gilmartin in London recorded by Mr. Kay as having happened on the 2nd
27 of August '91?
- 28 A. I don't know but maybe if I could read it. Could you?
- 29 Q. 222 Increase it in size, yes please.
- 11:45:14 30 A. I don't know but let me see can I ...

11:45:27 1 Q. 223 Now it records as follows. "We met him in London at our request and emphasised
2 to him the seriousness of the current situation. We told him that we had a
3 deadline on our part to make progress by the 31st of July '91 and report back
4 to our people within that time frame. Clearly we have made little or no
11:45:41 5 headway in progressing the shareholders agreement. And the view internally in
6 the bank is that if he refuses to sign this agreement then we are in an
7 entirely new situation and the probability is that the bank would be forced to
8 take firm action and the matter would be taken out of our hands".
9

11:45:55 10 May the Tribunal take it, Mr. McGrath, that the view internally within the bank
11 is probably referring to a view held by yourself ?

12 A. Not necessarily myself.

13 Q. 224 Right. Next paragraph.
14 "We also emphasised no reliance on his currently financing proposals and at any
11:46:08 15 rate in the very unlikely event of these materialising, they would require the
16 agreement of all parties.
17

18 Tom Gilmartin said he fully recognised our position and regretted the bank had
19 been placed in the current situation. However, he indicated that he was not
11:46:19 20 prepared to sign a detailed shareholders agreement as per the draft heads of
21 terms which he said was signed by him under duress. He strongly feels that the
22 arrangement was totally inequitable to him and that if he cannot amend the
23 terms he will dig in his heels irrespective of the consequences. As he sees
24 it, there is circa five million plus of his money in the project whereas
11:46:37 25 O'Callaghan has contributed nothing net.
26

27 He strongly resents O'Callaghan and Deane having a larger share than him in the
28 project giving their negative cash input and he feels that they have jumped on
29 the bandwagon and profited from his misfortunes. We obviously disputed this
11:46:50 30 and said that essentially when the deal was done with O'Callaghan, the

11:46:52 1 Gilmartin equity was virtually gone at that stage. He completely refused to
2 accept this and stated that while he agreed there might be difficulty in
3 disposing of the site now for a value which would clear our debt and leave a
4 surplus equal to his equity, he had no doubts that the longer term value of the
11:47:07 5 site existed.

6
7 He confirmed that he would accept 50/50 shareholding with O'Callaghan and
8 suggested the following: 40 per cent O'Callaghan; 40 per cent Gilmartin; 20
9 per cent bank. He also strongly resents the move taken by O'Callaghan in
11:47:18 10 respect of the professional team and says that an architect has been appointed
11 against his wishes. He is prepared to consider joint arrangement between
12 Ambrose Kelly and Taggarts but believes Taggarts should be involved if they
13 stood by him since the beginning of the project, had not demanded substantial
14 --

11:47:33 15
16 CHAIRMAN: Sorry, Ms. Dillon. Slow down.

17
18 Q. 225 Sorry. "We then went through the draft shareholders agreement in detail. Tom
19 Gilmartin gave a categoric undertaking that indifference to wishes of the bank
11:47:43 20 he would sign this agreement by Friday the 9th of August, subject to have:

21
22 A. An equal percentage shareholding to O'Callaghan.

23
24 B. Agreement with O'Callaghan re his professional team and;

11:47:52 25
26 C. Approval of a the draft by his solicitors.

27
28 In this connection he has instructed Hickey Beauchamp to act for him".

29
11:47:59 30 The next paragraph deals with refinancing and then Green Properties and finally

11:48:03 1 "we said we would have to reflect on his views what reliance could we place on
2 his assurances, the repercussions of his non-co-operation and the reliance on
3 the heads of terms. He maintains that the heads of terms would not stand up
4 legally as they were signed under duress but he is at pains to point out he had
11:48:17 5 no dispute with the bank but felt he was being unfairly treated by O'Callaghan.
6 He is conscious of the implications of the total breakdown undertook to make
7 every effort to resolve the situation".
8
9 Now, you will see there recorded by Mr. Kay who was a senior manager in the
11:48:32 10 bank, a detailed note of Mr. Kay's attendance with Mr. Gilmartin in London on
11 the 2nd of August at which Mr. Kay records in detail what he says were Mr.
12 Gilmartin's complaints, isn't that right?
13 A. But he has one specific complaint there.
14 Q. 226 Uh-huh.
11:48:48 15 A. In relation to he was being treated unfairly. It also, that note shows that it
16 was Mr. Gilmartin who came up with the suggestion of the 40, 40, 20 split.
17 Q. 227 Yes. And that was subsequently implemented.
18 A. Yes.
19 Q. 228 According to Mr. Kay's evidence and indeed the documents so show in the
11:49:07 20 shareholders agreement in September 1991.
21 A. And that was the clear. That was the clear recollection that I had of the
22 shareholding. That's why I was thrown somewhat earlier by the heads of terms
23 shown a different percentage.
24 Q. 229 Yes. But to go back now to your meeting with Mr. O'Callaghan and Mr.
11:49:24 25 Gilmartin. Is it likely that you arranged your meeting following on receipt of
26 this memorandum from Mr. Kay when he returned from London?
27 A. In all probability it would seem that I would have contacted Mr. O'Callaghan or
28 asked one of my colleagues to contacts Mr. O'Callaghan and Tom and that if we
29 had a tripartite agreement -- meeting to put into effect what's outlined in
11:49:47 30 Mr. Kay's note.

- 11:49:48 1 Q. 230 And yes. And would the purpose of your meeting then to have been to impress
2 upon Mr. Gilmartin, the importance of him signing up to the shareholders
3 agreement and to outline to him the consequences of the failure for him so to
4 do?
- 11:50:02 5 A. As I've already stated, yes.
- 6 Q. 231 And in all likelihood the position would have been I suggest to you, Mr.
7 McGrath, that if he didn't sign up to the shareholders agreement, the bank
8 might have considered it had no option other than to put in a receiver?
- 9 A. Quite probably.
- 11:50:12 10 Q. 232 I don't know whether you propose to take a break, Sir.
11
12 CHAIRMAN: We'll break for ten minutes.
13
14 MS. DILLON: May it please you, Sir.
- 11:50:29 15
16 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**
17 **AND RESUMED AS FOLLOWS:**
18
19 CHAIRMAN: All right.
- 12:07:45 20
21 Q. 233 MS. DILLON: Good afternoon, Mr. McGrath.
22
23 Can I just ask you just in relation to that meeting that you had with Mr.
24 O'Callaghan and Mr. Gilmartin, whether you arising out of that meeting if it
12:07:55 25 happened after Mr. Kay's visit to London and before the signing of the
26 shareholders agreement on the 13th of September 1991. Would there not have
27 been a necessity for you to inform the team who was actually going to implement
28 the shareholders agreement of what had transpired at the meeting?
- 29 A. Probably verbally.
- 12:08:24 30 Q. 234 All right. Is it possible that that at that meeting you might have agreed or

12:08:25 1 there might have been an agreement between Mr. O'Callaghan and Mr. Gilmartin
2 for reorganisation of the shareholding to 40, 40, 20?
3 A. I don't recall.
4 Q. 235 Well certainly --

12:08:43 5
6 JUDGE FAHERTY: Sorry, Mr. McGrath. You always recalled, as I understand your
7 evidence from this morning, a 40, 40, 20.
8 A. Oh, sorry. That is what was incorporated in the final agreement in September.
9

12:08:57 10 JUDGE FAHERTY: Yes but at some point --
11 A. I don't recall in response to the specific question that the counsel asked me.
12 I don't recall whether the agreement was reached at the tripartite meeting that
13 I had with the two individuals, I don't recall whether that's when the decision
14 was taken that yes, Gilmartin would go down, would go up to 40, O'Callaghan
12:09:17 15 would go down to 40 and that we'd go up to 20. I don't know when that decision
16 was taken.
17
18 JUDGE FAHERTY: Yes.
19 A. But it's obviously very, very close to the time because the agreement was
12:09:28 20 executed in September.
21

22 Q. 236 MS. DILLON: The 13th of September.
23 A. Yes.
24 Q. 237 Of sorry -- the 13th of September of 1991, Mr. McGrath. Were you present at
12:09:40 25 the meeting of the 13th of September 1991?
26 A. I don't recall if -- I was present I'd probably have executed it on behalf of
27 the bank. If you have a copy of the documentation. If I signed it, I was
28 there. If I didn't sign it, I wasn't there.
29 Q. 238 5960.
12:10:02 30 A. That's Mr. Kay. I obviously wasn't there.

- 12:10:05 1 Q. 239 Yes.
- 2 A. Mr. Kay executed it on behalf of AIB.
- 3 Q. 240 And in the normal course of events had you been present at the conclusion of
- 4 the deal as it were, you are the person who would have signed on behalf of the
- 12:10:17 5 bank?
- 6 A. That would be normal banking practice that the most senior person would sign
- 7 the documentation.
- 8 Q. 241 It would appear that while the meeting may have commenced at an early stage,
- 9 certainly it did not conclude until quite late in the evening at 5884. This is
- 12:10:37 10 a record of the minutes of meeting of the board of Barkhill where Mr. Gilmartin
- 11 and Mr. Maguire are recorded as being present and you will note that the
- 12 meeting takes place at ten past 11?
- 13 A. I do indeed yes.
- 14 Q. 242 And Mr. Gilmartin told the Tribunal that particular document, Mr. McGrath, is
- 12:10:53 15 the document dealing with the shareholding and the issuing of new shares for
- 16 the purpose of giving effect to the 40, 40, 20 divide.
- 17 A. Yes.
- 18 Q. 243 Mr. Gilmartin told the Tribunal that when he initially attended at that meeting
- 19 there was a concern within the bank that he wasn't attended by a solicitor and
- 12:11:12 20 efforts were made to locate Mr. Seamus Maguire. Now, can you remember any of
- 21 that?
- 22 A. No but I'm aware that, that was ... I wasn't involved in that meeting but I am
- 23 aware that Mr. Gilmartin was at all times encouraged by us to get legal advice.
- 24 Q. 244 Yes. Now, Mr. Gilmartin also told the Tribunal that he believed that you
- 12:11:33 25 attended at the meeting at some stage with Mr. Neville O'Byrne, Mr. Kay and
- 26 that you arrived and that you told him that he ought to sign the agreement, the
- 27 shareholders agreement or else he would never collect a penny of his money. Is
- 28 that likely to have been something you would have said to Mr. Gilmartin if you
- 29 were at the meeting?
- 12:11:52 30 A. Yes.

- 12:11:52 1 Q. 245 And Mr. Gilmartin also told the Tribunal that he believed that he might have
2 handed you maps at that meeting. Do you have any recollection of that,
3 Mr. McGrath?
- 4 A. No, no.
- 12:12:02 5 Q. 246 Do you ever remember seeing. I am going to show you two maps, which are called
6 maps A and maps B, which detail the ownership of the Quarryvale lands (document
7 handed to witness). And can you indicate first of all whether you have ever
8 seen. The map you have in your hand is map A it's brief page 4758.
9
- 12:12:36 10 CHAIRMAN: That's the wrong reference page.
11
- 12 MS. DILLON: Sorry, Sir.
- 13 A. Sorry.
14
- 12:12:41 15 Q. 247 MS. DILLON: It's 4758 of the Quarryvale I brief.
16 A. Map A is marked up here.
17 Q. 248 Yes.
18 A. I have no recollection of ever seeing that.
19 Q. 249 Do you think it's likely it if Mr. Gilmartin handed it to you on the 13th of
12:12:54 20 September '91, that you'd erect recollect it, Mr. McGrath?
21 A. If Mr. Gilmartin said he handed it to me, I have no reason to disbelieve. I
22 have no recollection of seeing this map.
23 Q. 250 And if I can show you for completeness then the second map, Mr. McGrath, and
24 ask you whether the situation is the same in relation to this map, which is a
12:13:14 25 similar but not identical map (document handed to witness).
26 A. Nothing has changed, I am afraid I can't recall ever seeing that.
27 Q. 251 But if Mr. Gilmartin were -- if Mr. Gilmartin says that he handed you a copy of
28 the map at some stage at the meeting on the 13th of September, you wouldn't
29 dispute that that might have happened, is that right?
12:13:48 30 A. That's right but I don't know why he would do that.

- 12:13:51 1 Q. 252 He says that it was because he was asked to give any assistance that he could
2 and he had these maps and he handed over the maps. Sorry, he handed over one
3 of the maps?
- 4 A. Yeah but I don't know why he'd give it to me specifically. But he if he says
12:14:05 5 he did I have no reason to dispute that.
- 6 Q. 253 And if he did hand you over such a map, is it likely that you would have handed
7 it to one of the solicitors who were acting for the bank on that occasion?
- 8 A. I can assure you, I wouldn't have kept it myself.
- 9 Q. 254 And it is something that would have been of assistance to a solicitor, I
12:14:22 10 suggest to you, rather than something that would be of assistance to the bank.
11 Because it details ownerships of the various plots of land that go to make up
12 the Quarryvale site.
- 13 A. I am not qualified to say whether it was of assistance or not. I expect it
14 would have been but I don't know.
- 12:14:36 15 Q. 255 At that meeting in September 1991, did you make any arrangement or agreement
16 with Mr. Gilmartin that the fees that were then outstanding to Ove Arup would
17 be paid out of the bank out of the monies that the bank was going to advance?
- 18 A. I am aware that Mr. Gilmartin said that I agreed that creditors would be paid.
- 19 Q. 256 Yes.
- 12:14:58 20 A. What I would say to you is that we had arranged a facility to complete as we've
21 already discussed, site acquisition. I would not have had the authority to
22 approve payment to unsecured creditors of Barkhill. So I certainly do not
23 recall ever giving a commitment to Mr. Gilmartin to pay Ove Arup or Taggart or
24 any other of the outstanding creditors that related to Barkhill at the time.
- 12:15:29 25 Q. 257 Isn't it likely, Mr. McGrath, that you would have attended perhaps not late
26 into the night but at some stage the meeting of the 13th of September 1991,
27 leading to the signing of these all of these documents and the agreement that
28 was signed?
- 29 A. Well I certainly wasn't there when the agreement was signed because as I have
12:15:46 30 already said I would have signed it if I had been there. If there is a

12:15:49 1 memorandum of the meeting perhaps you can help me. I don't know.

2 Q. 258 Yes. It would appear that there are no memorandum was kept of that meeting,
3 Mr. McGrath, within the bank's files. There are documents that are signed on
4 that date and that are witnessed on the 13th of September '91, as we've seen
12:16:10 5 and a number of documents were signed. But there is no actual memorandum or
6 attendance at that meeting?

7 A. If you tell me I attended the meeting I have no basis to tell you whether I did
8 or not, I don't know.

9 Q. 259 Mr. Gilmartin has say that he recollects that you were at the meeting at some
12:16:26 10 stage but Mr. Gilmartin is not suggesting that you were there as I understand
11 it, for the entire of the meeting.

12 A. I can't comment. I have no recollection of the meeting. I have no
13 recollection of attending but obviously if Mr. Gilmartin said that he handed me
14 maps at the meeting, I could have been there but I don't remember.

12:16:45 15

16 JUDGE FAHERTY: Can I ask you, Mr. McGrath, just before we progress. Who in
17 the bank would have made the decision, you recall the heads of agreement that
18 was signed I think it was the 31st of May?

19 A. Yes.

12:16:56 20

21 JUDGE FAHERTY: Now, that was just the heads of agreement. But in that I
22 recall the shareholding proposed was Tom and Vera Gilmartin a third, 33 and
23 whatever; AIB 22 and two ninths I think.

24 A. Yes.

12:17:11 25

26 JUDGE FAHERTY: And Riga 44 --

27 A. The balance.

28

29 JUDGE FAHERTY: 44 and four ninths or something by that. And obviously by the
12:17:19 30 13th of September they received the actual shareholders agreement signed.

12:17:24 1 A. Yes.
2
3 JUDGE FAHERTY: With where it's a 40, 40, 20.
4 A. Yes.
12:17:28 5
6 JUDGE FAHERTY: And prior to that we had Mr. Kay's memorandum of his meeting
7 with Mr. Gilmartin in London where Mr. Gilmartin wanted 40 per cent. He wanted
8 parity with Riga effectively.
9 A. Yes.
12:17:42 10
11 JUDGE FAHERTY: And Mr. Kay recites that in his memorandum.
12 A. Yes.
13
14 JUDGE FAHERTY: Now, I just want to know. Prior to that again there had been
12:17:50 15 a meeting I think where you had attended with your solicitors Fry's, this is
16 back earlier.
17 A. Yes, we saw that.
18
19 JUDGE FAHERTY: Yes.
12:17:57 20 A. Yes.
21
22 JUDGE FAHERTY: And we saw proposed roughly the shareholding that was in the
23 31st of May.
24 A. The original heads of --
12:18:09 25
26 JUDGE FAHERTY: Yes that was in the heads of agreement of the 31st of May.
27 And I am just asking you, who in the bank would have made the decision then to
28 give Mr. or to consent to reorganisational of what was proposed originally
29 because obviously there was a change at some point and it would appear to be at
12:18:29 30 some point after the 2nd because we know by the 2nd Mr. Gilmartin was giving

12:18:35 1 out about the non-parity if you like to Mr. Kay, isn't that correct?

2 A. Yes.

3 JUDGE FAHERTY: So at some point between the 2nd of August as I understand it
4 and the 13th of September, a decision had to be taken within the bank to, and I
12:18:50 5 am just wondering can you assist us as to by -- who did that and whether in
6 fact there was discussions with either your solicitors or among the bank to
7 accede to that request?

8 A. I can only speculate that it was probably a discussion that took place between
9 Mr. Kay and myself. Because I highlight to you again the position that we saw
12:19:18 10 this shareholding; as a means of remunerating us for the additional risk.
11

12 JUDGE FAHERTY: No, no, no.

13 A. But in all probability.
14

12:19:28 15 JUDGE FAHERTY: Yeah, yeah, yeah.

16 A. I took that decision having consulted Mr. Kay, in all probability.
17

18 JUDGE FAHERTY: Yes. But I can understand your evidence regarding the bank
19 taking a shareholding.

12:19:40 20 A. Yes.
21

22 JUDGE FAHERTY: The bank's shareholding.

23 A. Was diluted slightly.
24

12:19:45 25 JUDGE FAHERTY: Yes. As was. But I'm just wondering is there a note of that
26 decision within the bank that was made or to your knowledge?

27 A. No, the way the decision process would have happened is the next time we
28 submitted a case to the group credit committee we would advise the group credit
29 committee of the revised shareholding.
12:20:10 30

12:20:12 1 JUDGE FAHERTY: I see.
2
3 Q. 260 MS. DILLON: There is a note at 5862, Mr. McGrath. Taken again I think by
4 Ms. Patricia Tailor of Fry's 5862. Which deals with an attendance on Eddie
12:20:34 5 Kay, Liam Murray, T Gilmartin, John Deane, Neville O'Byrne and Patricia Tailor.
6 That document doesn't record first of all, what time this discussion is taking
7 place and second of all, it doesn't record that you are present, isn't that
8 right?
9 A. That's correct.
12:20:51 10 Q. 261 Right. Now, in the course of that document at the very conclusion of the note
11 that was taken at 5868. There is a note recording professional fees O/S
12 outstanding and there is a list of fees, isn't that right?
13 A. I see that, yes.
14 Q. 262 And then beneath that there is the words "other fees as well" and it appears to
12:21:15 15 record a schedule of professional fees that were outstanding as of the 13th of
16 September 1991, isn't that right?
17 A. Well I don't know whether they were professional or not but there is a list of
18 numbers there but I don't know, I wasn't at the meeting.
19 Q. 263 Right. And on the 28th of August '91 at 5742, there is a note on a draft of
12:21:44 20 the share subscription agreement and this is taken from the files of Allied
21 Irish Bank. And it's dated the 29th of August '91 and it says:
22
23 "Copies of these documents handed to John Deane, Tom Gilmartin at meeting in
24 Airport Hotel which was also attended by E Kay, J Donagh and Owen O'Callaghan.
12:22:03 25 All parties happy with general content and it was agreed formal signing to take
26 place on Wednesday next. Spoke to Seamus Maguire. Seamus Maguire had
27 confirmed he had power of attorney and was available to sign next Wednesday."
28
29 Now, that document and I think Mr. Kay gave evidence about it, suggests that a
12:22:25 30 meeting took place in the Airport Hotel on the 29th of August 1991, which was a

- 12:22:29 1 meeting that would have happened prior to the closing of the shareholders
2 agreement, isn't that right?
- 3 A. Yes.
- 4 Q. 264 Right. You are not recorded as being present at that meeting and other than
12:22:38 5 the document that's presently on screen, Mr. McGrath, there doesn't appear to
6 be a record or a note of that meeting?
- 7 A. Yes.
- 8 Q. 265 Other than the document you are looking at.
- 9 A. Yes.
- 12:22:48 10 Q. 266 This does not appear to be a record in any way of your own meeting which took
11 place between yourself and Mr. O'Callaghan and Mr. Gilmartin, isn't that right?
- 12 A. That's correct.
- 13 Q. 267 Right. Were you, can you remember, at any meeting in the Airport Hotel?
- 14 A. Never.
- 12:23:02 15 Q. 268 Right. The conclusion of the 13th of September 1991, if I can summarise it,
16 Mr. McGrath, and disagree with me if you will. That the share subscription
17 agreement was signed. There was an agreement that Riga would loan 1 million
18 pounds to Barkhill. Would give a guarantee for a further 1 million. The bank
19 would lend 3 million pounds and that the shareholding would be reorganised 40
12:23:30 20 per cent to Mr. O'Callaghan's interest; 40 per cent to Mr. Gilmartin's
21 interest; and 20 per cent to Allied Irish Bank's interest. Would you agree
22 with that?
- 23 A. Yes, the three million I think was it two plus a million were interest roll up,
24 I can't remember the detail of it. But certainly in broad principle that is
12:23:50 25 correct.
- 26 Q. 269 The agreement also cost copperfastened the position that had been stated on the
27 31st of May '91 by providing that Riga would become the project manager.
- 28 A. Yes.
- 29 Q. 270 Of the Palmerstown site effectively, isn't that right?
- 12:24:03 30 A. Yes.

- 12:24:03 1 Q. 271 And insofar as that was concerned, Mr. O'Callaghan was the person who was
2 involved from the Riga side, isn't that right?
- 3 A. Yes, yes.
- 4 Q. 272 So that by Riga becoming the project manager, it effectively put Mr.
12:24:17 5 O'Callaghan in the driving seat insofar the zoning was concerned, isn't that
6 right?
- 7 A. Insofar as the bringing forward of the entire project.
- 8 Q. 273 Yes. Which you have already agreed the initial problem was the zoning.
- 9 A. Plus the site assembly.
- 12:24:32 10 Q. 274 Yes. But the zoning was the first problem that had to be overcome in terms of
11 enhancing the development of the land, isn't that right?
- 12 A. Yes, yes.
- 13 Q. 275 After the meeting of September of 1991, Mr. Gilmartin has told the Tribunal
14 that he met with some members of Allied Irish Bank and Mr, yourself I think he
12:24:57 15 says Mr. Dunlop, Mr. Lawlor were there and in the periphery on the following
16 day.
- 17 A. That's correct.
- 18 Q. 276 And you will have seen this in the evidence?
- 19 A. Mr. Dunlop. I never met Mr. Dunlop ever never in the context of Barkhill.
- 12:25:11 20 Q. 277 Did you ever meet Mr. Dunlop at all?
- 21 A. I met Mr. Dunlop in 1997 or '8, I'm not sure which. At a social function.
- 22 Q. 278 Yes. Would you have become aware of Mr. Dunlop's involvement in Barkhill at
23 any stage?
- 24 A. From my involvement with the case and reviewing the case I was aware that Mr.
12:25:32 25 Dunlop was providing advisory services to Mr. O'Callaghan.
- 26 Q. 279 Mr. Kay in his evidence to the Tribunal said that he was aware that Mr.
27 Gilmartin was unhappy with the shareholders agreement with the share
28 subscription agreement and he recollected that he might have had a meeting with
29 Mr. Gilmartin on the day following the signing of the share subscription
12:25:56 30 agreement and that would have been the following day a was a Saturday, the 14th

12:26:00 1 of September. Can you remember at all, Mr. McGrath, whether or not there was
2 any subsequent meeting post the signing ever the share subscription agreement?
3 A. Between a meeting between whom?
4 Q. 280 A meeting at the Horse Show House in Ballsbridge with Mr. O'Callaghan and
12:26:19 5 others?
6 A. I don't know.
7 Q. 281 You don't know.
8 A. I wasn't there.
9 Q. 282 Insofar as Mr. Dunlop is concerned. At 13315, can I just show you a copy -- a
12:26:35 10 document prepared by Mr. John Ahern, who was Mr. Dunlop's bank manager, which
11 was prepared in October 1998. For the purposes of progressing a loan
12 application and in the third paragraph it records:
13
14 "Frank Dunlop is well got in political and commercial business circles and in
12:26:53 15 an AIB context, apart from the branch, would be well known to Michael O'Farrell
16 and Dave McGrath Corporate Banking executives".
17
18 Now, is Mr. Ahern wrong in his record there?
19 A. Can I could I restate what I said to you. I never met Mr. Dunlop until at a
12:27:16 20 social function sometime in 1997 or '98, I can't remember which, I never met
21 Mr. Dunlop in the context of Barkhill. Mr. Dunlop was not known to me. I knew
22 of his employment. I knew of the fact that he provided advisory services to
23 certain people. I knew at one stage he was the Fianna Fail press secretary or
24 government press secretary, I'm not sure which one.
12:27:46 25
26 I never met Mr. Dunlop! I am, I have no reason, I can't shed any lights on why
27 Mr. Ahern would say that Mr. Dunlop was well known to me. I can't comment
28 about Michael O'Farrell but certainly Mr. Dunlop was not known to me. And if
29 I, if I walk in the there Mr. Dunlop would not be able to identify me I expect,
12:28:12 30 I've never met him.

- 12:28:13 1 Q. 283 Now, just dealing with Mr. Dunlop's involvement in Barkhill. You would have
2 become aware first of all that Mr. Dunlop was being paid money, is that right,
3 by Mr. O'Callaghan in connection with his work for Barkhill, is that right?
- 4 A. I'd repeat what I outlined in my statement to the Tribunal back in 2000. The
12:28:41 5 details of what payments were made to whom was not something that I got
6 involved in. That was dealt with at the property team level by Eddie Kay and
7 Michael O'Farrell subsequently. So I would never have gone through payments of
8 who was being paid for what. That was not part of the remit that I had in my
9 responsibility as managing this case.
- 12:28:57 10 Q. 284 At 6403, please. You will have seen this letter, I think, Mr. McGrath.
- 11 A. Yes.
- 12 Q. 285 And it's a letter of the 3rd of December '91, from Mr. O'Callaghan to Mr. Eddie
13 Kay and Mr. Kay has given his evidence in relation to it. It outlines a number
14 of matters, isn't that right? And it deals in particular matter that had been
12:29:18 15 the subject focus of some evidence which were the two sums of 10,000 pounds,
16 one on the 23rd of September '91, described as "expenses". The second on the
17 11th of October '91, described as "expenses" and the notation on them "I will
18 explain on Friday" isn't that right?
- 19 A. I've seen this, yes. I have seen that letter on the bank's file.
- 12:29:37 20 Q. 286 And did you yourself ever have any involvement in it at all?
- 21 A. Not at that time.
- 22 Q. 287 Did you have involvement in it at any time?
- 23 A. Since being called to this Tribunal I reviewed the file and I saw that letter.
- 24 Q. 288 All right. You will see within the body of the letter there is reference also
12:29:52 25 to Frank Dunlop and a fee, isn't that right, and that an invoice is available?
- 26 A. That's right.
- 27 Q. 289 And the fees that are -- payments which these are described as payments made by
28 Riga on behalf of Barkhill, isn't that right?
- 29 A. So the letter says.
- 12:30:07 30 Q. 290 And then the following page at 6404, outlines payments to be made by Barkhill,

- 12:30:12 1 isn't that right?
- 2 A. That's right, yes.
- 3 Q. 291 Now, this page at 6404 is not a page that was found within the bank's files,
4 Mr. McGrath. I should tell you it was found by between Mr. O'Callaghan's
12:30:24 5 files. What I just want to draw to your attention is there, do you see the
6 entry "F Gunne"?
- 7 A. Yes.
- 8 Q. 292 Would you have known Fintan Gunne?
- 9 A. I knew him very well. He was a very good friend of mine.
- 12:30:36 10 Q. 293 Do you see that there is an amount put in in handwriting of 13,300 pounds?
11 A. Yes.
- 12 Q. 294 Initial D/and what looks like the start of the words McGrath?
- 13 A. That's what that lookings like, yes.
- 14 Q. 295 Looking at it now do you think there is any probability you might have
12:30:51 15 discussed with Mr. O'Callaghan the payment of 13,300 pounds to Mr. Gunne in the
16 context of this correspondence?
- 17 A. I have no no recollection of having a discussion with Mr. O'Callaghan in
18 relation to an amount payable to Fintan Gunne.
- 19 Q. 296 If the reference to "D McGrath" is a reference to you, Mr. McGrath, and if this
12:31:14 20 letter was discussed between yourself and Mr. O'Callaghan for whatever purpose,
21 it would follow that the earlier part of the letter would have come to your
22 attention at 6403 dealing with the two items of 10,000 pounds, isn't that
23 right?
- 24 A. Not necessarily.
- 12:31:28 25 Q. 297 I see. You'd only have read the second page, is that right?
- 26 A. No, no, I have no recollection. I have seen that letter on the bank's file.
- 27 Q. 298 Uh-huh.
- 28 A. I haven't seen F Gunne and 13,300 and D/M/what looks like CG. I have never
29 seen that.
- 12:31:47 30 Q. 299 Yes. That is in the brief, Mr. McGrath, and it's a document that was provided

12:31:51 1 to the Tribunal from Mr. O'Callaghan's discovery. And it's dealing with his
2 copy of this letter.

3 A. Right. I did not read the brief provided to the bank by the Tribunal of other
4 items discovered. I read AIB's file.

12:32:08 5 Q. 300 And in January of 1991, Mr. McGrath, at 6557?
6 A. In January 1991, I wasn't involved.
7 Q. 301 In January 1992, Mr. McGrath?
8 A. Oh, sorry.
9 Q. 302 If we just bring up the top of the page.

12:32:23 10
11 MR. NESBITT: Just before we move from the letter. That was not meant to be in
12 the bank's discovery. It is actually the bank's original documents that are
13 given to the Tribunal and came back from the Tribunal. So however, it didn't
14 get to the Tribunal is not because it wasn't in the bank's documentation. And
12:32:37 15 we are looking to see if we can find it in copies sent to us from the Tribunal.
16
17 CHAIRMAN: All right.
18
19 MS. DILLON: This particular copy I think for absolute clarity was never
12:32:46 20 within the bank's discovery because this is the copy on which the notations
21 have been made by Mr. O'Callaghan. And whatever copy might have been in the
22 bank's discovery --
23
24 CHAIRMAN: Doesn't have these.

12:32:56 25
26 MS. DILLON: It wouldn't have been this particular copy in any event.
27 Q. 303 On the 14th of January, following an earlier meeting of the 7th of January,
28 Mr. McGrath, there was a meeting about Barkhill at 6557. And you will notes
29 that at that meeting is Mr. O'Callaghan, Mr. Deane, Mr. Kay, Mr. Donagh and
12:33:20 30 yourself, isn't that right?

- 12:33:21 1 A. Yes.
- 2 Q. 304 And you will see that AIB agreed to transfer 62,907 due to Riga from Barkhill
3 into the Riga account on the 15th of January 1992, invoices available, isn't
4 that right?
- 12:33:35 5 A. Yes.
- 6 Q. 305 And from the bank's statement in relation to that transfer at 13461. You will
7 see that the items that are in fact covered and it's the transaction on the
8 24th of January '92, deals first of all with F Dunlop and then there is the two
9 items by sundry, isn't that right?
- 12:34:03 10 A. Yes, I see that.
- 11 Q. 306 Yes. And they are the items that total the sum of 62,907 pounds that was
12 approved at 6557, by Allied Irish Bank, isn't that right?
- 13 A. What do you mean by approved?
- 14 Q. 307 Well it says "Allied Irish Bank agreed to transfer the 62,907 due to Riga from
12:34:27 15 Barkhill into Riga account on the 15th of January '92". Do you see that note?
- 16 A. Yes.
- 17 Q. 308 Right. That's a meeting at which you were present, Mr. McGrath.
- 18 A. My name is on the attendance.
- 19 Q. 309 Yes.
- 12:34:38 20 A. And I have no recollection of that situation of being there for that
21 discussion. I'm not saying I wasn't there but I have already advised the
22 Tribunal that quite a number of the meetings I would have attended for a short
23 period and I'm not sure whether that is one of the cases or not. But I have no
24 recollection of a discussion of a transfer of 62,907 pounds from -- to Riga
12:35:08 25 from Barkhill. I have no recollection of that. I have no recollection of
26 being at a meeting and that being discussed.
- 27 Q. 310 The document records invoices available, isn't that right?
- 28 A. Yes.
- 29 Q. 311 Right. And the transfer that takes place on foot of that agreement by Allied
12:35:26 30 Irish Bank is recorded in the meeting at which you were apparently in

12:35:29 1 attendance is at 13461. And do you agree with me, Mr. Mcgrath, that contained
2 within that sum of 62,907 pounds, which Allied Irish Bank's agreed to transfer
3 to Riga were the two sums of 10,000 pounds each made up of a sundry item?

4 A. Yes.

12:35:50 5 Q. 312 And can I suggest to you, Mr. McGrath, that if you were present at the meeting
6 as you are apparently recorded on the 14th of January 1992. That you must have
7 been aware of the composition of the sum of 62,907 pounds which the bank agreed
8 to pay to Riga, isn't that logical?

9 A. No, no it's not. I have already advised you that I attended some meetings for
10 a short period and my attendance would have been noted as being attending the
11 meeting in totality.

12
13 Now, in some other meetings my partial attendance has been noted. But again, I
14 repeat to you; Barkhill was one of 700 cases that I had under my control. I
12:36:12 15 did not attend every meeting for all the time. So I have, I repeat, I have no
16 recollection of a discussion in relation to 62,000. I have no recollection of
17 seeing two sundry payments of 10,000. And it's 16 years ago or however long
18 ago long ago, it's 17 years ago, I have no recollection of the meeting.

19 Q. 313 In August of 1992, Mr. McGrath, there was a mark up for Riga at 7883. And is
12:37:18 20 this a mark up in which you would have an involvement?

21 A. As I mentioned to you earlier, I didn't write mark ups. I may have reviewed
22 it. Is my name, did I sign the mark up at the end, could you run you through
23 it to the end please?

24 Q. 314 7886.

12:37:43 25 A. And the next page, the last page which shows where the signatures are.

26 Q. 315 7884. 7884. If we go to the bottom.

27 A. Do you see down on the bottom left hand corner EWK, so Mr. Kay obviously wrote
28 the mark up. Whether I reviewed it, I don't know. In all probability, I did.
29 But I can't confirm it because I just don't know.

12:38:11 30 Q. 316 I just want to draw to your attention 7886, Mr. McGrath. Under the heading

12:38:16 1 Barkhill Limited. Do you agree with the contents of this paragraph it records
2 "in July 1991 Riga at our instigation, acquired 40 per cent equity stake in
3 Barkhill effectively for 2.5 million. Cash 1.5 million; guarantee 1 million in
4 addition they waived an inter-company debt 1.35 million due to Barkhill. This
12:38:45 5 company owns 176 acres site at Palmerstown which has been the subject of
6 considerable publicity. And on which there is currently gross AIB exposure of
7 14.5 million see appendix one. The zoning of the Palmerstown site was altered
8 from industrial/residential to retail by way of a vote of Dublin County Council
9 in mid 1991, but in the subsequent Local Elections, 5 of the councillors who
12:39:00 10 had supported the rezoning lost their seats.

11
12 As a result, opposition to the retention of retail zoning mounted and was
13 assisted by the vocal objections of Green Property plc who stated that their
14 long plans rivalled developments at Blanchardstown will not proceed unless its
12:39:14 15 Barkhill site is dezoned. The matter will be decided ad part of the
16 consideration of the draft Dublin Development Plan, which will be voted on next
17 October.

18
19 Due to the exceptional abilities and commitment of Owen O'Callaghan who has
12:39:25 20 worked tirelessly to secure the support of politicians, local interest groups,
21 and council officials, it is possible that retail zoning will be retained
22 following the October vote. Should this be the position our professional
23 advice is that the value of the site will be greatly enhanced and the prospects
24 of full recovery of the Barkhill debt much improved. If the zoning is reversed
12:39:44 25 it will be a setback and we will have to reassess the situation".

26
27 Now, can I suggest to you can I ask you, Mr. McGrath, first of all whether it's
28 likely that you would have considered or read the contents of this document?
29 A. I'd say it's 100 per cent -- 90 per cent certain that I would have read that
12:40:04 30 document, yes.

- 12:40:05 1 Q. 317 And you would have been aware of a number of matters arising from the paragraph
2 I've just read to you the first of which was the political situation that
3 existed in relation to retaining the retail vote, isn't that right?
- 4 A. The entire paragraph I would confirm that is how I would have viewed the
12:40:22 5 situation.
- 6 Q. 318 Yes. And would you agree with the assessment that's made there by Mr. Kay that
7 Mr. O'Callaghan had worked tirelessly to secure the support of politicians,
8 local interest groups and Council officials?
- 9 A. Yes.
- 12:40:36 10 Q. 319 And it would follow from that, I think that the bank would have been aware of
11 the political element to the entire of the Quarryvale rezoning, isn't that
12 right?
- 13 A. Well the rezoning was going to be taken by the local politicians.
- 14 Q. 320 Yes.
- 12:40:50 15 A. So we were certainly aware of that, yes.
- 16 Q. 321 And you were aware of more than that. I mean, you were aware from this
17 document of the fact that councillors had lost their seats in the 1991
18 elections as a result of their support for Quarryvale and that the question of
19 retaining the retail vote on the vote of the councillors was by no means
12:41:09 20 certain, isn't that right?
- 21 A. I am not aware. I am not aware that they, that the councillors lost their
22 seats as a result of the Quarryvale decision and I don't think how you could
23 put that interpretation on my knowledge.
- 24 Q. 322 Because you are told in the document where it says "in the subsequent local
12:41:27 25 elections five the of the councillors who had supported the rezoning lost their
26 seats" that's in the document I have just read to you.
- 27 A. The document doesn't say that's the only reason why they lost their seats. And
28 I couldn't possibly make that assumption.
- 29 Q. 323 So you are saying you didn't do know that there was a view abroad that
12:41:46 30 councillors who had supported the Quarryvale rezoning and who had lost their

- 12:41:50 1 seat, that there was a connection between the two, is that the position
2 Mr. McGrath?
- 3 A. No, no. What I am saying is that five of the councillors lost their seats.
4 Full stop.
- 12:41:58 5 Q. 324 No. What the document says is five of the councillors who had supported the
6 rezoning lost their seats. Isn't that what the document says?
- 7 A. Yes but it's not saying that they lost their seats because of the support of
8 Quarryvale and that's the point I'm making.
- 9 Q. 325 Well I suggest to you that you are wrong and I am suggesting to you that the
10 only interpretation is that there is a connection between their support for
11 Quarryvale and the loss of their seat and it can be clearly is the only
12 interpretation that can be taken from the following sentence "The zoning of the
13 Palmerstown site was altered from industrial/retail residential to retail by
14 vote of Dublin County Council in mid '91. But in the subsequent Local Election
15 five of the councillors who had supported the rezoning lost their seat".
16
17 I am suggesting to you if there was any other reason being put forward for them
18 having lost their seat other than supporting Quarryvale, this document would
19 record it, isn't that right?
- 12:42:35 20 A. It's not right, no. I disagree with you on that point.
- 21 Q. 326 And did Mr. Benson in later advices that he had given you, ever advise you that
22 in fact the loss some of the councillors might have lost their seat as a result
23 of their support for Quarryvale?
- 24 A. Is there documentary evidence to say that Mr. Benson said that to us.
- 12:43:09 25 Q. 327 I am asking you now from your recollection whether you ever received advice
26 from Mr. Benson with who you dealing with and were paying 80 pounds an hour at
27 this time, to the effect that councillors had lost their seat as a result of
28 their support for Quarryvale?
- 29 A. At this point I can't recall. Maybe if you have documentation to tell me that
12:43:27 30 Mr. Benson gave us that advice, you could refresh my memory. But as I'm

12:43:31 1 sitting here, I don't recall that.

2 Q. 328 Yes.

3 A. But if you can refresh my memory, maybe I can.

4 Q. 329 Now, in September of 1992, Mr. McGrath, did you have a discussion with

12:43:43 5 Mr. O'Farrell in relation to an advance of 100,000 pounds being sought by Mr.

6 O'Callaghan?

7 A. 100,000 ...

8 Q. 330 I will show you the document to assist you please.

9 A. Please.

12:43:58 10 Q. 331 At 8067. At the very bottom of this document which is dated the 25th of the

11 9th '92. It records "discussed with D Chambers and D McGrath".

12 A. Yes, I recall that. And I recall from reading the file I recall the fact that

13 we gave a decision to allow 100,000 to be paid and that we were to bring it

14 back to credit committee at some stage in the future.

12:44:25 15 Q. 332 Yes. The recommendation was agreed at that stage, isn't that right? The

16 recommendation sought by Mr. O'Farrell?

17 A. Yeah, Mr. Chambers and I would have had the discretion to make such a decision.

18 Q. 333 Yes. You agreed with Mr. O'Farrell's recommendation, isn't that right?

19 A. We agreed with Mr. O'Farrell that we would allow 100,000 to be paid.

12:44:47 20 Q. 334 Right. And if we look at Mr. O'Farrell's recommendation. He says "fees circa

21 100,000 pounds identified above require settlement. We have been stalling to

22 date and need to recognise that genuine fees had been incurred by Owen

23 O'Callaghan. Refusal to fund same at this particular time with a decision on

24 zoning so close could be high risk.

12:45:06 25

26 The fees relating to the stadium are new dimension about which never formally

27 consulted, nevertheless the strategy in relation to same in the context of the

28 overall zonings issue does appear to be sound. Accordingly it is recommended

29 we allow further drawdown on the Barkhill loans up to 100,000 for this purpose.

12:45:23 30 We will keep draw downs to the minimum possible and seek Riga's input towards

- 12:45:29 1 same".
- 2
- 3 Can I ask you first of all, arising from that, was it your understanding that
- 4 on a consideration of this documentation and the documentation with it, that
- 12:45:36 5 the, there was a connection between the fees that were sought and the upcoming
- 6 zoning vote?
- 7 A. I don't know how I could read that into it. Let me read this again.
- 8 Mr. O'Farrell would obviously have done some work, would have written this note
- 9 and would have said look we need to approve 100,000 pounds to keep the
- 12:46:24 10 programme going ahead. He is making the inference that there's a vote shortly
- 11 and that this money should have been paid and we obviously supported him.
- 12 Q. 335 Yes. I had asked you did you take from this documentation when you considered
- 13 it, that there was a connection between the upcoming zoning vote and the fees
- 14 that were being sought?
- 12:46:49 15 A. I don't see that connection because I don't know to whom the monies were being
- 16 paid.
- 17 Q. 336 Well you do in fact know who the monies are being paid. Because if you go to
- 18 the line immediately above recommendation, Mr. McGrath please "other fees due
- 19 Owen O'Callaghan has identified those which have to be paid as listed above"
- 12:47:09 20 and in the document attached on the previous page at 8066. Under the last
- 21 heading "the following need to be paid now/before zoning, Deloitte & Touche, F
- 22 Dunlop 30,000, A Byrne 4,000, Ambrose Kelly 19, planning application 10,000 and
- 23 miscellaneous 29, total 100,000".
- 24 A. And you tell me that was attached to the document that Donal and I signed off
- 12:47:35 25 on?
- 26 Q. 337 Well the document is dated the -- if you go to the top of that page please at
- 27 8066.
- 28 A. Position paper, yes.
- 29 Q. 338 It's dated the 22nd of September, isn't that right?
- 12:47:49 30 A. Yes.

- 12:47:50 1 Q. 339 Right. And if you go to the next page of the document and at 8067 at the top
2 of the page please. It has page 2 being the second page, isn't that right?
- 3 A. Yes.
- 4 Q. 340 The bottom of that page, please, if we just have the full page on screen?
- 12:48:03 5 A. Okay. In those circumstances I was made aware of it, yes.
- 6 Q. 341 So you knew that the 100,000 pounds, what the 100,000 pounds fees were being
7 sought for, isn't that right Mr. McGrath?
- 8 A. Obviously it was brought to my attention.
- 9 Q. 342 Yes. And the fees were those that had to be paid were a miscellaneous fee of
12:48:19 10 29,000 pounds and then other fees including fees to Mr. Dunlop of 30,000
11 pounds, isn't that right?
- 12 A. That's what the document says, yes.
- 13 Q. 343 And what Mr. O'Farrell advised you in his recommendation was refusal to fund
14 them at this particular time with a decision on zoning so close could be high
12:48:37 15 risk. And I am suggesting to you, Mr. McGrath, that that makes a very clear
16 and unequivocal connection between the fees of 100,000 pounds that were being
17 sought and the upcoming zoning vote. And do you agree with that?
- 18 A. At the timing, yes.
- 19 Q. 344 But also how could it be high risk if they weren't paid?
- 12:48:54 20 A. You would have to ask Mr. O'Farrell.
- 21 Q. 345 Well I am asking you because you authorised the money, Mr. McGrath?
- 22 A. No no. I certainly authorised the money but I cannot form a view as to why
23 Mr. O'Farrell would say such a matter was high risk.
- 24 Q. 346 Well why didn't you query that and refuse to pay the money until you got an
12:49:12 25 answer?
- 26 A. I may have queried it but I obviously signed off on it.
- 27 Q. 347 Yes.
- 28 A. But I cannot say it was high risk, I don't know.
- 29 Q. 348 Well you must have accepted what Mr. Farrell was telling you in the memorandum?
- 12:49:24 30 A. Obviously.

12:49:25 1 Q. 349 Isn't that right?

2 A. Obviously because we approved it.

3 Q. 350 Therefore you must have accepted it if you didn't fund the 100,000 pounds with

4 the decision on zoning so close, that could be high risk for the Barkhill

12:49:34 5 project, isn't that right?

6 A. Yes, yes.

7 Q. 351 So how could the refusal to pay the 100,000 pounds be high risk insofar as the

8 zoning was concerned, Mr. McGrath?

9 A. I don't know.

12:49:42 10

11 CHAIRMAN: Mr. McGrath, would you have known then what Mr. Dunlop's role was

12 in the process?

13 A. No, Judge.

14

12:49:54 15 CHAIRMAN: I mean, obviously, you could see that his name was there and he was

16 to get 30,000. So you'd have known that he was involved and working for Mr.

17 O'Callaghan?

18 A. I knew that he was working with Mr. O'Callaghan in actually organising and

19 understanding of the Barkhill zoning requirements with local councillors but

12:50:21 20 what role specific role I wouldn't have a clue.

21

22 CHAIRMAN: Would you have known that he, that he was lobbying. I am not

23 suggesting that he was, that it was improper activity -- but would you have

24 known that he was a lobbyist.

12:50:37 25 A. Yes.

26

27 CHAIRMAN: And engaged in dealing or in meeting councillors.

28 A. Yes.

29

12:50:42 30 CHAIRMAN: And that this was part of the process leading to zoning.

12:50:46 1 A. Yes, yes, yes. And indeed, I recall seeing the word "lobbying" in our credit
2 papers at some stage other or other. But yes, we were aware that Mr.
3 O'Callaghan was using Mr. Dunlop in lobbying, yes.
4

12:51:01 5 CHAIRMAN: And would that have been a consideration do you think in your
6 sanctioning these fees as an important part of the process with just to go back
7 to that section it says "refusal to fund same at this particular time of the
8 decision on zoning so close could be high risk". Might there have been a
9 concern in your mind and in the mind of Mr. Chambers that if Mr. Dunlop's
10 legitimate lobbying of councillors, if that was to stop or cease or slow down
11 because of fees being due to him, that that might be of concern and create
12 difficulties for the process?

13 A. Certainly. Certainly, Judge, when you put it that way I would confirm yes,
14 that that is the interpretation that was probably presented to us and we would
15 have seen that as very high risk because, and I repeat what I said earlier.
16 That the attainment of a satisfactory zoning was critical for us to get our
17 facility repaid.
18

19 CHAIRMAN: All right.

12:52:17 20
21 Q. 352 MS. DILLON: And following on your -- in fact prior to. Sorry -- following on
22 your approval of the 100,000 pounds at 8331, Mr. McGrath. You are present at a
23 meeting in Bank Centre with Mr. O'Farrell and Mr. O'Callaghan, isn't that
24 correct?

12:52:35 25 A. Yes.

26 Q. 353 And I suggest to you that you were there for the entirety of this meeting?

27 A. Quite possible, yes.

28 Q. 354 Yes. And it records "Owen O'Callaghan brought us up-to-date in relation to the
29 lobbying situation. They are still confident the vote is set for two of the
12:52:49 30 days 3rd, 4th, 5th of December. This will ensure that it is heard on two days

12:52:53 1 which are back-to-back".

2 Now, you would agree I think that the lobbying concerned only the councillors,

3 isn't that right?

4 A. Oh, I would have thought so, yes.

12:53:08 5 Q. 355 Yes. The next deals with the security and the next point deals with derelict

6 sites and then "he" that's Mr. O'Callaghan "produces a further invoice in

7 relation to fees. He indicated that there would be further invoices which he

8 said would total 40,000 including the one provided today. This will bring the

9 matter up to zoning. I indicated that I was clearly under the impression that

10 only 10,000 pounds would be required in addition to what had already been paid.

11 This is the basis I brought the forward the matter for consideration when the

12 last invoices had been provided. He indicated he had stated at the time that

13 further fees, the 40,000 pounds would be required. He indicated a further

14 invoice of 15,000 pounds would require settlement shortly".

12:53:21 15

16 Now the "I" there I suggest refers to Mr. O'Farrell, isn't that right, and Mr.

17 O'Callaghan and doesn't refer to you, isn't that right?

18 A. That is correct but I was at that meeting.

19 Q. 356 Yes. And the invoice that was produced at that meeting at 7989. Was the

12:53:55 20 invoice for 11,490 pounds for ongoing costs re Quarryvale from Mr. Dunlop. And

21 while the copy that's on screen is Mr. Dunlop's copy, I'd suggest to you it's

22 likely that the copy that the bank had was with the headed notepaper of Mr.

23 Dunlop, isn't that right?

24 A. I don't know.

12:54:14 25 Q. 357 Well I'll find it for you.

26 A. Well it's Riga is here so it's obviously Riga that raised the invoice that we

27 were being asked to pay.

28 Q. 358 Yes. But in any event, it's an invoice for Mr. Dunlop that is produced to you

29 at the meeting?

12:54:30 30 A. I don't know. I have no reason to believe it is or it isn't.

- 12:54:33 1 Q. 359 Well if I produce to you the record from the bank's files in relation to this
2 showing Frank Dunlop & Associates at the top, will you accept that that is
3 likely to be the invoice that was produced to you at that meeting?
4 A. Yes, if you can show that to me.
- 12:54:48 5 Q. 360 And I think that Mr. O'Farrell has already in fact agreed that the invoice that
6 was produced was an invoice from Frank Dunlop.
7 A. I am not aware of that.
- 8 Q. 361 All right. If you look at the next paragraph at 8331. It says "we" and I
9 suggest to you that that is a reference to yourself and to Mr. O'Farrell. "We
10 indicated that there was no way the bank was going to continue to allow
11 drawdown on the loan account in respect of further fees".
12
13 And do you agree there that that must have been a reference to a view expressed
14 by yourself and by Mr. O'Farrell on behalf of the bank?
- 12:55:09 15 A. Given that I was at the meeting I would even be prepared to suggest that it was
16 I said it.
- 17 Q. 362 I am suggesting to you, Mr. McGrath, and I don't know why you are so reluctant
18 to indicate to the Tribunal that you'd have made some contribution to the
19 meeting is that this suggests, because at this stage O'Farrell who keeps a
12:55:41 20 detailed note is recording "we" as opposed to "I" and the two representatives
21 of the bank who are present at the meeting is yourself and Mr. O'Farrell.
22 A. I'm sorry please don't misintercept me. I have said that I would have said
23 that and I am accepting responsibility for saying that.
24
- 12:55:57 25 JUDGE FAHERTY: I
26
- 27 Q. 363 MS. DILLON: I beg your pardon, Mr. McGrath, I misunderstood you.
28 The next paragraph says "between land purchases and fees together with interest
29 roll up, we were already way over where we had anticipated at this stage and
12:56:07 30 these circumstances could not allow further drawn down". Would you have said

- 12:56:11 1 that?
- 2 A. Yes.
- 3 Q. 364 He indicated that he and is that Mr. O'Callaghan?
- 4 A. Obviously.
- 12:56:16 5 Q. 365 "And ourselves have little choice but to continue on the existing route and
6 this will require further cash to pay further fees."
7 Now, what was your understanding of what Mr. O'Callaghan was telling you there?
- 8 A. He was saying that it was going to cost more money to complete the development.
- 9 Q. 366 Well is he saying when he is talking about the existing route. Is the route
10 that he is talking about the route to the lobbying exercise and to the upcoming
11 vote in Dublin County Council?
- 12 A. I don't -- I couldn't draw that inference from that.
- 13 Q. 367 If you look at the next sentence, Mr. McGrath, it might assist you because the
14 document goes on to record "there are a lot of other fees outstanding which
12:56:55 15 following zoning will also become a major issue. He indicated he has not given
16 these any thought at this stage his main priority is to get zoning".
17
18 Would that assist you in deciding whether or not the existing route and the
19 requirement for further cash to pay further fees is connected solely with the
12:57:12 20 upcoming zoning vote?
- 21 A. It may be, yeah, but I'm not categorically sure of it but expect it is but I
22 couldn't -- I am on oath here and I can't swear that that is what was meant. I
23 didn't write the note.
- 24 Q. 368 You were at the meeting, Mr. McGrath, and the meeting concludes by saying "We
12:57:31 25 left them clearly in the knowledge that paying further fees would not be on by
26 the bank. However, we agreed to revert to him in relation to fees issues,
27 specifically in relation to the invoice provided to us dated the 9th of
28 September 92" which was its invoice I had shown you earlier.
- 29 A. Yes.
- 12:57:45 30 Q. 369 Right. And I think we can show you a copy just to satisfy yourself from the

- 12:57:52 1 Allied Irish Bank documents from the Allied Irish Bank file which is (document
2 handed to witness) the bank copy of the invoice at 7989 which has Mr. Dunlop's
3 headed notepaper on it and which is the original copy of the invoice of the 9th
4 of September '92.
- 12:58:08 5 A. I can see that, yes.
- 6 Q. 370 And would you agree that, that is the invoice that was handed over at the
7 meeting by Mr. O'Callaghan. It was a Frank Dunlop invoice and it would have
8 been clear from looking at the document it was an invoice from Mr. Dunlop?
9 A. Absolutely, that's very clear but that came from Mr. Dunlop.
- 12:58:25 10 Q. 371 And I think that is the invoice that was referred to dated 9th of September '92
11 that's referred to at the bottom of 8331?
12 A. Well in those circumstances, can I go back now and confirm that yes, that is
13 the document because you have told me and you have shown it to me.
- 14 Q. 372 Yes. So that when Mr. O'Callaghan produced a further invoice in relation to
12:58:42 15 fees. You accept that now that that was an invoice from Mr. Dunlop in the sum
16 of 11490 pounds which was entitled to ongoing costs re Quarryvale?
17 A. Yes.
- 18 Q. 373 When you you saw that invoice, Mr. McGrath, what did you think?
19 A. I don't know.
- 12:58:59 20 Q. 374 Well if you look at the invoice at 7989, just at the composition of it.
21 A. "Ongoing costs re Quarryvale".
- 22 Q. 375 Yes. There is no breakdown given as to what those costs are, isn't that right?
23 A. That's right and there is no VAT charged either.
- 24 Q. 376 Yes?
12:59:16 25 A. So would be it be usual for a man his in his position not to charge VAT, I
26 don't know.
- 27 Q. 377 It didn't strike you in any way as strange or unusual that it was described in
28 that way?
29 A. No.
- 12:59:27 30 Q. 378 All right. Would it be fair to say, Mr. McGrath, that at this meeting of the

12:59:32 1 22nd of October 1992 that the general thrust of the discussion about costs
2 related to costs that were connected with the upcoming zoning or lobbying that
3 was leading to the decision in December 1992?

4 A. Sorry, would you repeat the question please.

12:59:48 5 Q. 379 Would it be fair to say that the discussion about costs or fees or expenses
6 that took place at the meeting of the 22nd of October 1992 related to costs.
7 that were coming up prior to the zoning in December 1992?

8 A. I can't confirm that it would have been entirely.

9 Q. 380 I said "primarily". I didn't say "entirely". Primarily related to costs that
10 were going to become due in connection with the zoning or the lobbying?

11 A. I don't know but it's quite possible but I don't know and I don't recall the
12 specific meeting.

13

14 CHAIRMAN: It's one o'clock. Just one o'clock. So we'll rise until two

13:00:34 15 o'clock.

16

17 MS. DILLON: May it please you.

18

19 MR. KEATING: Sorry, Chairman, to detain you for just one moment.

13:00:41 20

21 I would be grateful on behalf of Mr. O'Callaghan if we could have sight of the
22 invoice which was handed in to the witness. I am sure it will be added to the
23 brief but if we could just have sight of it.

24

13:00:51 25 CHAIRMAN: Certainly.

26

27 MS. DILLON: Yes.

28

29

13:01:12 30

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 PM:

13:01:15 1
2
3 CHAIRMAN: Good afternoon, Mr. McGrath.
4 A. Good afternoon, Judge.
14:03:08 5
6 MS. DILLON: Good afternoon, Mr. McGrath.
7 Q. 381 I think that before lunch we had been considering the document and you had been
8 giving evidence about your recollection of the memorandum of the 22nd of
9 October 1992 at 8331. And I assume that you would have known on the 5th of
14:03:26 10 November of 1992, that a General Election I think was called, isn't that right?
11 A. I don't know, I'd have to, you'd have confirm that.
12 Q. 382 At 3738.
13 A. Yes.
14 Q. 383 At the time, Mr. McGrath, in 1992; 3738, you will see there in the first column
14:03:47 15 under Dail Elections that on the 5th of November 1992 a General Election was
16 called and that polling date was the 25th of November 1992.
17 A. I see that, yes.
18 Q. 384 Yes. And would you accept that it's likely that you would have known at the
19 time that a General Election was called in November of 1992, and you would have
14:04:05 20 been aware of that?
21 A. Certainly if it was after the 5th of November, yes.
22 Q. 385 Yes.
23 A. Could I. Can I ask you -- can I come back, Chairman.
24
14:04:14 25 JUDGE KEYS: Yes.
26 A. I have been giving some thought to that meeting. If you could go back to the
27 previous ...
28
29 Q. 386 MS. DILLON: 8331.
14:04:21 30 A. Yes.

14:04:22 1 Q. 387 I don't know is this the meeting or not, Mr. McGrath?

2 A. It's the one that this invoice was produced that you showed me, you physically

3 delivered me an invoice with Frank Dunlop on top.

4 Q. 388 Yes.

14:04:32 5 A. Can I just clarify --

6 Q. 389 Yes.

7 A. -- your understanding and what I wished to say. You put up the, an invoice

8 without a heading earlier.

9 Q. 390 Yes and that --

14:04:44 10 A. I said to you I didn't recognise.

11 Q. 391 7989.

12 A. And then you physically gave your colleague a copy of an original of Frank

13 Dunlop of which this is a copy of and you brought it over to me and you said

14 that came from AIB's file. And what I want to say to you is, I have no

14:05:02 15 recollection of seeing that. But what I want to convey to the Tribunal, is

16 that if you tell me it's on the file, I accept that it is. But I have no

17 recollection of actually seeing that invoice on the file or ever seeing it at

18 the said meeting. And, Judge, I wish to clarify that point.

19

14:05:24 20 CHAIRMAN: That's all right.

21 A. Because it was causing me some concern that I may have by given the wrong

22 impression to the Tribunal and thank you very much for allowing me to clarify

23 that.

24

14:05:33 25 CHAIRMAN: All right.

26

27 Q. 392 MS. DILLON: It would appear in ease of yourself, Mr. McGrath, at 8331 at the

28 very last sentence. "We agreed to revert to him in relation to the fees issue

29 and specifically in relation to the invoice provided to us dated the 9th of

14:05:48 30 September 1992".

14:05:50 1 And you will have seen from the document I put on screen at 7989. That the
2 invoice, the copy invoice from Mr. Dunlop was dated the 9th of September 1992.
3 And I think you can confirm from the copy of the original that's in front of
4 you, Mr. McGrath, that that copy invoice is also dated the 9th of September
14:06:12 5 1992.

6 A. Yes. And the point I was trying to make is that I have no recollection of ever
7 seeing either an original or an invoice without a heading. I have no
8 recollection of seeing that.

9 Q. 393 Yes. The document that is presently on screen at 7989 was never provided to
14:06:31 10 the Tribunal from Allied Irish Bank.

11 A. Yes.

12 Q. 394 Mr. McGrath.

13 A. And I have no recollection of seeing it.

14 Q. 395 The document that you have in hand hard copy in front of you had a that is
14:06:41 15 headed "Frank Dunlop & Associates" was obtained from the Tribunal from the
16 Allied Irish Bank files.

17 A. And you if you tell me that is so I accept it. But I have no recollection of
18 ever seeing that document.

19 Q. 396 Now, on the 1st of December 1992, Mr. McGrath, at a meeting in Bank Centre
14:07:03 20 between Mr. O'Callaghan and Mr. O'Farrell at which you are not recorded as
21 being present; 8648. And just dealing with this issue of a connection between
22 costs and zoning that I had been dealing with before lunch. I just want to
23 draw to your attention the contents of the first paragraph only in which Mr.
24 O'Callaghan informs the bank that:

14:07:28 25

26 "The date for the Quarryvale vote has been set for the 17th and 18th of
27 December. He is confident a decision will be made one way or other on that
28 date. It is very tight. In response to my query, he confirmed that the
29 officials are thinking in terms of a compromise at this stage which would
14:07:43 30 involve the Jim Mansfield Clondalkin Centre and a smaller centre for Quarryvale

14:07:46 1 of approximately 250,000 square feet. The position will obviously be clear in
2 about two weeks. His lobbying continues and he indicated he had injected
3 85,000 pounds into the situation from O'Callaghan Properties."
4

14:07:59 5 Now, first of all can I ask you, did you know of any proposal to reduce the
6 square footage for retail at Quarryvale from the original understanding of
7 500,000 square feet to 250,000 square feet?

8 A. Let me repeat what I said to you earlier this morning; the detail of the
9 discussions that took place in this case, I had very little knowledge of. That
14:08:24 10 was handled by Mr. Kay originally and now that we're gone into December '92, by
11 Mr. O'Farrell and his team. I wouldn't have been aware of the detail nor was I
12 aware of that meeting, nor was I aware of what was discussed, nor was I aware
13 of 85,000 being injected into the situation from O'Callaghan Properties as is
14 outlined there. I don't know.

14:08:47 15 Q. 397 Right.

16 A. I wasn't there.

17 Q. 398 But would you agree that the documents record on its face, that the 58,000
18 pounds injected to the situation had to be in connection with the upcoming vote
19 in Dublin County Council or the lobbying that was referred to?

14:09:03 20 A. I wasn't at the meeting, so I think you should actually address that question
21 to either Mr. O'Callaghan or Mr. O'Farrell.

22 Q. 399 Yes. Now, can I ask you, Mr. McGrath, did you go to London to meet with Mr.
23 Gilmartin in December 1992?

24 A. Yes.

14:09:21 25 Q. 400 And did -- can you just outline to the Tribunal the circumstances that led you
26 to go to Luton to meet or to London to meet with Mr. Gilmartin?

27 A. As I recall it, Mr. Gilmartin rang Ms. Basquille, who was the assistant manager
28 working with Mr. O'Farrell at the time. And indicated that he had major
29 concerns about the upcoming vote and that he was proposing to go to the press
14:09:56 30 and to make certain allegations. There is a file note on the bank's file, I

- 14:10:01 1 don't know whether you have access to it or not, that Ms. Basquille did
2 outlining exactly what he said. And maybe if you could produce that file note
3 it would be helpful.
- 4 Q. 401 Yes. At the moment, arising from whatever Ms. Basquille told you from her
14:10:16 5 conversation with Mr. Gilmartin, what did you decide to do, Mr. McGrath?
6 A. I decided that, and to remind the Tribunal of what was my strategy. My
7 strategy at all times was to get this site zoned. So I didn't want to have a
8 shareholder of Barkhill going to the press and indicating that the vote was
9 inappropriate. That would possibly delay the procedures. So I asked Mr. Kay
14:10:53 10 to know would he invite Mr. Gilmartin to a meeting in London and that I would
11 accompany Mr. Kay, to talk to Mr. Gilmartin and similar to the discussion that
12 I had with Mr. Gilmartin prior to September '91, remind Mr. Gilmartin that the
13 best way that all stake holders could get value out of Barkhill was to have the
14 site zoned.
- 14:11:22 15 Q. 402 Yes.
16 A. Mr. Kay rang Mr. Gilmartin and we flew to London to meet him.
- 17 Q. 403 Yes. Were you here for Mr. Eddie Kay's evidence in relation to that meeting?
18 A. No.
- 19 Q. 404 And what Mr. Kay told the Tribunal. Just first of all dealing with the
14:11:37 20 arranging of the meeting. He said that on day 884, at question 653. Sorry.
21 Now, can I clarify first of all, it takes a little longer for the transcript to
22 come up, Mr. McGrath. By this time I think you agree Mr. Kay was no longer
23 involved in dealing with Barkhill, isn't that right?
24 A. Mr. Kay was at that time bank manager of our branch in Bank Centre.
- 14:12:21 25 Q. 405 Yes. And what Mr. Kay told the Tribunal was that you asked him to go to London
26 with you.
27 A. I have already confirmed that to you.
- 28 Q. 406 Yes. And is that you had a concern about complaints that had been made, isn't
29 that right?
14:12:33 30 A. The allegations as I outlined to you made by Mr. Gilmartin in his conversation

14:12:38 1 with Ms. Basquille.

2 Q. 407 Yes. And Mr. Kay said that he, I think at day 844 at question 657.

3 A. 65 ...

4 Q. 408 Question 657. And the answer to that is "Oh, yes I'm sure that's correct now.

14:13:02 5 Now, I'm not certain that I think that probably the bank only became aware of

6 this possibility or likelihood perhaps the previous day, I don't know. But I

7 know I was asked at sort of 11th hour would I go. So I don't really know when

8 the bank became aware of this potential major problem.

9 Q: It was Mr. McGrath who made the arrangements for the 17th of December and

14:13:22 10 Mr. McGrath who asked you to go, is that right?

11 A: Certainly it was Mr. McGrath who asked me to go. Well, sorry I think it

12 was Mr. McGrath. It was either Mr. McGrath or somebody else on the team.

13 Almost certainly Mr. McGrath."

14 A. That's probably correct. It was probably me. But I can't recall whether it

14:13:41 15 was Mr. O'Farrell or Mr. McGrath -- or Mr. O'Farrell or myself that asked

16 Eddie. But I know that Tom Gilmartin would have responded to a request from

17 Mr. Kay. He may not necessarily have responded to a request from me to meet

18 him.

19 Q. 409 Right. In any event, would you agree that Mr. Kay was brought along because of

14:14:04 20 Mr. Kay's previous relationship with Mr. Gilmartin?

21 A. Yes.

22 Q. 410 And that Mr. Kay was no longer involved in day-to-day management of the

23 Barkhill account and hadn't been since the previous June, July, August is that

24 correct?

14:14:21 25 A. June, July, August or September. Sometime there midsummer, yes.

26 Q. 411 And that in effect when Mr. Kay says he was asked at the 11th hour to go to

27 London, would you disagree with that?

28 A. I don't know how you define the 11th hour.

29 Q. 412 Well at a very late stage.

14:14:35 30 A. I don't even know what date we went to London.

- 14:14:38 1 Q. 413 Yes.
- 2 A. But if, if you could help me I'd find it very helpful if you could tell me the
- 3 date that Mary Basquille got a phone call from Tom Gilmartin and.
- 4 Q. 414 Well perhaps --
- 14:14:49 5 A. And if you could tell me the date we went to London, it would be helpful but I
- 6 can't --
- 7 Q. 415 Mr. Gilmartin says that you went to London on the date of the Quarryvale vote,
- 8 which was the 17th of December 1992.
- 9 A. Right.
- 14:15:00 10 Q. 416 There is no note, as you know, Mr. McGrath, in the bank's files of any meeting
- 11 with Mr. Gilmartin at, in September -- in December 1992. And Mr. Kay has
- 12 confirmed to the Tribunal he didn't make a note.
- 13 A. I can further confirm it, I didn't do a file note either.
- 14 Q. 417 All right. And in the absence of that, what Mr. Gilmartin has told the
- 14:15:21 15 Tribunal is that it was on the day of the actual vote, namely the 17th of
- 16 December 1992, that Mr. Kay and yourself came to see him in London. Would you
- 17 agree --
- 18 A. In Heathrow Airport.
- 19 Q. 418 And do you agree first of all insofar as the date is concerned, that Mr.
- 14:15:39 20 Gilmartin is correct when he says the meeting took place on the 17th of
- 21 December 1992?
- 22 A. It was on a date after Mary Basquille got a phone call, the date of which I
- 23 don't know that date is.
- 24 Q. 419 Yes. You say that you have seen such a note in the Allied Irish Bank file.
- 14:15:54 25 A. Yes.
- 26 Q. 420 And you believe such a note to be dated, is that correct?
- 27 A. I expect it is.
- 28 Q. 421 Yes. Now, perhaps your solicitor if possible would be able to date the note
- 29 because we are unable to locate any such note but I am not saying that such a
- 14:16:06 30 note does not exist do you understand --

14:16:08 1 CHAIRMAN: I think Mr. McGrath isn't referring to a note of the meeting.

2

3 MS. DILLON: No, no he is referring a previous note from mass Basquille of her
4 telephone conversation with Mr. Gilmartin. But I am unable at the moment to

14:16:22 5 locate such a note. I am not saying such a note isn't in the files. I am just
6 saying that on a date basis, we are unable to locate such a note but that there
7 may be such a note is all, is the furthest I can put it. I don't have a copy
8 of it.

9

14:16:37 10 Q. 422 Would you have --

11

12 MR. NESBITT: Mr. Chairman, we just don't have it at the moment. There is such
13 a note we just don't have it at the moment.

14

14:16:45 15 MS. DILLON: Well if Mr. Nesbitt tells the Tribunal there is such a note and a
16 date on it I am happy to accept that. We just can't locate such a document at
17 the moment.

18

19 CHAIRMAN: All right.

14:16:54 20

21 Q. 423 MS. DILLON: In any event, leaving aside what Ms. Basquille told you, can you
22 tell the Tribunal what Mr. Gilmartin said to you when you went to London to
23 meet with him?

24 A. I don't have any recall of the specific conversations that took place between

14:17:09 25 Mr. Gilmartin and myself. I can recall Mr. Kay and I arrived in London. I

26 don't recall what time we were supposed to meet Mr. Gilmartin. But I can

27 recall the fact that Mr. Gilmartin wasn't there on time. And I have no

28 difficulty in acknowledging, I was getting agitated at wasting two hours

29 hanging around Heathrow waiting for Mr. Gilmartin and not knowing whether he

14:17:33 30 was going to turn up. I suggested to Mr. Kay that we would go to the Aer

14:17:37 1 Lingus desk and see if we could get an earlier flight home. And we were just
2 approaching the Aer Lingus desk when Mr. Gilmartin approached us and we never
3 left the concourse of Aer Lingus -- of Heathrow. We walked around to the
4 concourse and we spoke to him about the meeting in Dublin, whenever it was --
14:18:03 5 whether it was taking place that day or not I'm not sure.

6 Q. 424 Well assume for the moment that Mr. Gilmartin is correct, Mr. McGrath, and the
7 meeting was taking place that day.

8 A. Yes.

9 Q. 425 What concerns had Mr. Gilmartin about the meeting that was taking place?

14:18:19 10 A. I am trying to recall from my memory the content of the telephone conversation
11 that he had with Ms. Basquille and seeing as it is 16 years ago and I'm not as
12 young as I used to be, my -- the precise detail of what the conversation was,
13 I'm not sure. I think it was that he was expressing dissatisfaction with the
14 250,000 zoning and that he felt that it was devaluing, likely to devalue the
14:18:58 15 value of the site.

16
17 Now, I stand to be corrected because I didn't take the phone call from, that
18 Ms. Basquille got and I don't have the file note in front of me and you appear
19 not to be able to put it in front of me either. So my recall is subject to
14:19:14 20 question but as I --

21 Q. 426 All right.

22 A. -- but as I understand, that was the issue.

23 Q. 427 What I am you about now, Mr. McGrath, is not what Ms. Basquille wrote down when
24 she spoke to Mr. Gilmartin. What I am asking you is, why when you, a very
14:19:28 25 senior person, who is now a director of Allied Irish Bank, went to see Mr.--

26 A. No, I am not a director of Allied Irish Bank.

27 Q. 428 I misunderstood. I seen the word "director" written beneath your name in your
28 statement, Mr. McGrath. My apologies.

29 A. I think I was director of corporate banking.

14:19:48 30 Q. 429 In any event, I think you have outlined to the Tribunal today the seniority of

14:19:53 1 your position within Allied Irish Bank. And I will suggest to you first of
2 all, it would be an unusual step for you to take to go and see Mr. Gilmartin in
3 London on the 17th of December 1992. And do you agree with that?
4 A. No.

14:20:08 5 Q. 430 No. And how many trips such as that have you made, Mr. McGrath?
6 A. That's the only one I've made.

7 Q. 431 All right. Now, and being the only trip of that sort that you made, can I, can
8 I ask you from your memory of that trip and leaving aside what Ms. Basquille
9 may or may not have noted in her telephone conversation. What were you going
10 to London to talk to Mr. Gilmartin about?
11 A. The object of my visit to London was to try to get Mr. Gilmartin to understand
12 the importance to all the stakeholders in Barkhill what having the site zoned.
13 Full stop.

14 Q. 432 All right. I put to you what Mr. Kay told the Tribunal it might assist your
15 recollection. Day 844, question 643.
16
17 Now, if you go back to question 641 question to Mr. Kay is:
18
19 "Q: Would you explain to the Tribunal first of all who asked you to go to see
14:21:10 20 Mr. Gilmartin?
21 A: I think it was Mr. McGrath.
22 Q: That's Mr. David McGrath?
23 A: Dave McGrath, yes.
24 Q: Yes.
14:21:20 25 A: And he explained to me that because I was well out of touch with the whole
26 matter at this stage but he explained to me at this stage that the vote in
27 relation to the zoning of Quarryvale was about to come up and that the bank had
28 been in touch with Mr. Gilmartin about this.
29
14:21:34 30 I think principally it was Ms. Basquille had, Mary Basquille, who had spoken to

14:21:38 1 him and she took over the role of talking to him quite frequently as to the
2 role that I had formerly taking. My understanding was that Ms. Basquille had
3 been talking to Mr. Gilmartin about the upcoming vote and he told her that he
4 had been made aware some how or other that it was probable that Mr. O'Callaghan
14:21:55 5 would agree to a scaling back of the size ever the Quarryvale project."

6
7 Do you agree that you would have explained that to Mr. Kay?

8 A. Yes

9 Q. 433 "I believe as a result of soundings that Mr. O'Callaghan had made in the
14:22:06 10 Council, it became apparent to get the thing through the more it was scaled
11 back the better. Anyway, Mr. Gilmartin was of the opinion that Mr. O'Callaghan
12 was prepared to scale the whole project back quite dramatically and he felt
13 that this was a deliberate ploy by Mr. O'Callaghan to diminish the size of the
14 project and thereby diminish his equity in it, with a view to longer term
14:22:27 15 probably getting the zoning increased and enhancing the value of the project
16 having first got Mr. Gilmartin out of the frame".

17
18 And do you agree with that?

19 A. I don't see how I could. It's a supposition and I don't know.

14:22:39 20 Q. 434 Right. Next sentence "That was the gist of what I was told". Did you tell
21 that to Mr. Kay?

22 A. I have no recall of that last paragraph telling Mr. Kay that last paragraph, I
23 have absolutely no recall of that.

24 Q. 435 Right. "And as a result of that, Mr. Gilmartin told Ms. Basquille that he was
14:22:58 25 going to the press and he was going to pour out all of his complaints and
26 grievances about how he had been treated to the press and he would wreck the
27 whole project and bring it down".
28 Did you tell that to Mr. Kay?

29 A. If I had the benefits of Ms. Basquille's file note I would be in a better
14:23:15 30 position to answer that question. I'm not sure. I don't know.

14:23:19 1 Q. 436 Well, leaving aside Ms. Basquille's file note. What you are being asked about
2 here now, Mr. McGrath, is what you told Mr. Kay when you went to him at what he
3 describes as the 11th hour, to ask him to go to London to talk to Mr.
4 Gilmartin. And what Mr. Kay has told the Tribunal was of concern to the bank
14:23:41 5 at that stage was that Mr. Gilmartin had a series of complaints that he was
6 going to go to the press with them and he was going to bring the whole project,
7 namely the Quarryvale project down.
8
9 Now, were you aware of a concern within Allied Irish Bank of the fact that Mr.
14:23:54 10 Gilmartin was threatening in December 1992, to go to the newspapers with
11 complaints and to bring the whole project down?
12 A. Mr. Gilmartin said it would appear that he said that to Mary Basquille.
13 Q. 437 And if he said that to Ms. Basquille, is that what you would have repeated to
14 Mr. Kay?
14:24:15 15 A. Yes.
16 Q. 438 And is that why you were going to London?
17 A. To talk to Tom so that he wouldn't go to the press.
18 Q. 439 So what you didn't want and what the bank didn't want, was adverse publicity
19 about Quarryvale or about the Quarryvale development coming up before the vote
14:24:32 20 that was due to take place, is that right?
21 A. Yes.
22 Q. 440 All right. And I think Mr. Kay in his next answer at question 644 says "it was
23 against that background that Mr. McGrath decided that a last ditch effort
24 should be made to go to London or Luton, I think it was London to meet with Mr.
14:24:51 25 Gilmartin and try and assuage his concerns and try to get him to change his
26 mind and because of the fact that I was on pretty good terms with him I was
27 asked to go.
28
29 Notwithstanding that I had no function in the Corporate Banking at that stage.
14:25:01 30 So I agreed to go. And Mr. McGrath and I travelled to London on some date in

14:25:06 1 December, I can't remember what it was but I think it was either the day before
2 the vote or the day of the vote, perhaps you could ...
3 Q: Mr. Gilmartin says it was the day of the vote.
4 A: It could well have been."

14:25:18 5
6 And then he goes on to talk about travelling to London and "when he got there,
7 there was no sign of Mr. Gilmartin although I had requested him or at least not
8 I, somebody had requested him to attend possibly I had I don't know. Anyway
9 there was know sign of him and we waited and waited for quite a while probably
10 a couple of hours and we were on the point of deciding to try and get an early
11 flight back to Dublin when he appeared." And then he goes on to say he knows
12 that's contrary to what was said.
13
14 So when you went to London and when you finally met up with Mr. Gilmartin,
14:25:48 15 Mr. McGrath, what complaints did Mr. Gilmartin make to you?
16 A. I don't recall.
17 Q. 441 What note or record did you make of this meeting?
18 A. None.
19 Q. 442 Isn't that extraordinary, Mr. McGrath?
14:26:01 20 A. No.
21 Q. 443 And you have made notes in relation to much less important meetings. I mean,
22 if Mr. Kay is correct in what his recollection of what you told him. The main
23 concern in relation to the bank was a threat that if Mr. Gilmartin went to the
24 press he'd bring the whole project down around your ears. Around his own ears,
14:26:21 25 around the bank's ears and around Mr. O'Callaghan's ears. And you were going
26 to London to try and head off this threat, isn't that right?
27 A. Yes.
28 Q. 444 And you brought Mr. Kay with you because of Mr. Kay's relationship with Mr.
29 Gilmartin as a person who was the most likely person to try and keep Mr.
14:26:34 30 Gilmartin on the straight and narrow, isn't that right?

- 14:26:37 1 A. Not necessarily.
- 2 Q. 445 You brought him because he had previously had a good relationship with Mr.
- 3 Gilmartin, isn't that right?
- 4 A. Yes.
- 14:26:45 5 Q. 446 And he was its person who was going to be most likely to persuade Mr.
- 6 Gilmartin, isn't that right?
- 7 A. No.
- 8 Q. 447 No. Why did you bring him then?
- 9 A. I perceived that I would be the one that would do the talking and I expect I
- 14:26:57 10 probably did do the talking. But I have no recollection of what specifically
- 11 we spoke about and that's why I don't want to mislead the Tribunal. But I know
- 12 that Tom didn't go to the press. So maybe the visit was successful.
- 13 Q. 448 Yes. So what allegations did Mr. Gilmartin make at that meeting?
- 14 A. I don't recall any specific allegations. If I did, I would tell you.
- 14:27:23 15 Q. 449 Did Mr. Gilmartin make complaints at that meeting?
- 16 A. I can't recall.
- 17 Q. 450 You were going to London to talk to Mr. Gilmartin arising out of complaints
- 18 that Mr. Gilmartin had, isn't that right?
- 19 A. Arising out of a conversation that he had with Ms. Basquille.
- 14:27:39 20 Q. 451 Yes. In which if your -- if Mr. Kay is accurate in his recollection of what
- 21 you said to him is as follows. "Mr. Gilmartin told Ms. Basquille that he was
- 22 going to the press and he was going to pour out all his complaints and
- 23 grievances about how he had been treated to the press and he would wreck the
- 24 whole project and bring it down". Isn't that right?
- 14:28:10 25 A. And I don't know what specific complaints and grievances Mr. Gilmartin had.
- 26 Q. 452 A and when you went to London, Mr. McGrath, and after you had spoken to Mr.
- 27 Gilmartin for at least an hour or two, if Mr. Kay is correct, did you make any
- 28 record of anything that Mr. Gilmartin said, good, bad or indifferent?
- 29 A. No.
- 14:28:19 30 Q. 453 Right. And therefore if Mr. Gilmartin says he was complaining about payments

14:28:24 1 being made out of his company or he was complaining about Mr. Dunlop or he was
2 complaining about Mr. Gilmartin (sic) or he is complaining about the bank. Can
3 you assist the Tribunal as to whether in fact he made any such comments or
4 complaints?

14:28:37 5 A. If I could assist the Tribunal I would. I have no recollection of the specific
6 items that were discussed at the meeting. I have no record of the meeting.

7 Q. 454 Was it because that there was nothing that was discussed that you considered
8 relevant, as you outlined it this morning to the Tribunal, Mr. McGrath?

9 A. That's right.

14:29:02 10 Q. 455 And therefore, the entire meeting you had with Mr. Gilmartin was irrelevant, is
11 that right?

12 A. No.

13 Q. 456 Right.

14 A. I have already told you that I achieved the objective that I set out to do.

14:29:14 15 Mr. Gilmartin did not go to the press on the day.

16 Q. 457 Yes. And what was it that you said to him, Mr. McGrath, that persuaded him not
17 to go to the press?

18 A. I am sorry, if I am sounding impatient. But I have already told you I can't
19 recall. How many times do I have to tell you?

14:29:31 20
21 JUDGE KEYS: Mr. Kay. Sorry, Mr. McGrath. Could I just ask you. Did you not
22 on flight over with Mr. Kay talk to him about his relationship with Mr.
23 Gilmartin and what was this all about? Or what were these complaints about and
24 was there any validity in what he was complaining about considering he was
14:29:54 25 threatening to pull down the whole project?

26 A. Judge, we may have had a conversation. I have no recollection of what we spoke
27 about on the plane.

28
29 JUDGE KEYS: Why do you put it so vague? I would have thought that if I was
14:30:07 30 faced, I was in charge of a debt of millions, which could go down the tubes. I

14:30:12 1 am getting on a plane, going to London to find out how it can be salvaged, that
2 all you can say is I may have discussed what the complaints were about.
3 Surely, on the balance of probability you must have discussed it.
4 A. I am sorry if I appear to be stupid but --

14:30:33 5
6 JUDGE KEYS: No. Not at all. Not at all and I'm --
7 A. This is 16 years ago.
8
9 JUDGE KEYS: Yes.

14:30:38 10 A. I have no recollection of the specific conversations that took place between
11 Mr. Kay and myself or Mr. Kay, Mr. Gilmartin and myself. I have no
12 recollection. And I believe the Tribunal wouldn't want me to speculate. And
13 I'm not going to speculate because I can't stand over it.
14

14:30:57 15 JUDGE KEYS: Well put it like this. I'll ask you to speculate. What do you
16 think you might have been talking about?
17 A. We might have been talking about Man United and their forthcoming match. I
18 don't know.
19

14:31:07 20 JUDGE KEYS: And what about the 15 million or the 12 million which could go
21 down the tubes for the bank. Did you not talk about that?
22 A. No I doubt it. I don't know.
23

24 JUDGE KEYS: Are you serious with that response?

14:31:18 25 A. I am on oath here.
26

27 JUDGE KEYS: That's why I'm asking you. Are you serious on oath?
28 A. I am seriously serious. That's why I would say to you if I went back again I
29 would certainly do a file note so that I could help you but you I didn't have a
14:31:33 30 file note. I can't invent a file note 16 years later.

14:31:36 1 JUDGE KEYS: If ever there was a file note this was the time to have a file
2 note. Because at stake here was somebody who was threatening to go to the
3 press, make allegations which could be completely false or maybe true, I don't
4 know, this is what this inquiry is all about, is to get to the bottom of all of
14:31:53 5 this. There is no file note kept. And that raises further questions. Why
6 not?

7 A. I've already told you, Judge, that in my practice has always been I record notes
8 that are relevant to the bank getting recovery of this money.

14:32:13 10 JUDGE KEYS: Absolutely. And surely what was happening here was very relevant
11 as to whether in fact you'd ever get back your money because there was a threat
12 being made that Mr. Gilmartin was going to go to the press and pull the whole
13 thing down, which could have led to a devalue of the property and the bank
14 never recovering its money.

14:32:33 15 A. You are correct, yes.

16
17 JUDGE KEYS: So therefore, it qualified under your definition as what is
18 relevant to it being recorded and it wasn't recorded. And I am just asking, in
19 those circumstances, why not? Because that's against your, as I understand
14:32:48 20 your system of work.

21 A. Oh, no. My system of work is the recovery of our debt. The meeting that I had
22 with Mr. Gilmartin -- the fact that nothing happened out of that meeting didn't
23 either adversely effect or positively effect the repayment of our loan. And I
24 didn't make a record of it. I apologise to you, Judge.

14:33:15 25
26 JUDGE KEYS: No --

27 A. I apologise to everyone for not being able to add any further.

28

29 JUDGE KEYS: No need to apologise for anything --

14:33:22 30 A. I --

14:33:23 1 JUDGE KEYS: There is no need to apologise for anything. I am just probing
2 your evidence. Because at the end of the day we have to sit down and consider
3 it and decide many issues on this. I am concerned that if two high ranking
4 officials from a bank go over to try and save a project and I am told that on
14:33:41 5 the way over, and this is your evidence now. You might have been talking about
6 Manchester United.

7
8 I would have thought that the first thing you'd have been talking about is how
9 are we going to deal with Mr. Gilmartin when we arrive there. Is there any
14:33:55 10 truth in these allegations with Ms. Basquille has related to me, of which there
11 is a note I understand which may be forthcoming at a later stage. I would have
12 thought these are all topics that should have been discussed and a very natural
13 thing to discuss in the circumstances.

14
14:34:10 15 And then when you got there you would try and explain it to him and try and
16 persuade him this is not in your interest or anybody's interest to do this.

17 A. We may very well have had that discussion.

18
19 JUDGE KEYS: Do you think it's probably that you did?

14:34:22 20 A. It's quite probable that we did, yes. It's quite probable. But that is
21 speculation but it's quite probable.

22
23 CHAIRMAN: Mr. McGrath, how unusual would it be that two people from the bank,
24 two senior people from the bank would go, get on a plane and go to London or
14:34:43 25 wherever and which would be in effect, in effect an entire day's operation.
26 And not have a note, not produce a note as to what had been, what had
27 transpired for the file. Mr. O'Farrell indicated that his practice would have
28 been to keep a note, both to assist people in reading the file subsequently and
29 I think he made some reference to being "hit by a bus". So that somebody
14:35:19 30 coming after him would be able to understand what had happened at a meeting

14:35:26 1 which was in effect, a meeting that took a day to deal with. How unusual would
2 it be that there wouldn't be a note?

3 A. It would be quite unusual, Mr. Chairman. But as I mentioned at the outset, my
4 style was very much an overview situation and I very rarely do file notes.

14:35:52 5

6 CHAIRMAN: And can you recall if Mr. Gilmartin was agitated or angry in the
7 course of that meeting in London?

8 A. I met Mr. Gilmartin on many occasions when he was agitated and angry and would
9 have used strong language and would have used strong language against Mr.
10 O'Callaghan and Mr. Deane. But I don't recall he using strong language that
11 day. He may have, I don't recall it.
12

13 CHAIRMAN: Sorry.
14

14:36:25 15 JUDGE KEYS: Mr. McGrath, I don't mean to be in any way disrespectful to you,
16 by the manner of which I ask these questions, it's just probing --

17 A. I accept that, Judge.
18

19 JUDGE KEYS: Probing your evidence to try to assist me personally and my two
14:36:39 20 colleagues at later stage, to go through this evidence and adjudicate on the
21 issue.

22 A. Thank you very much, Judge.
23

24 Q. 458 MS. DILLON: Allied Irish Bank had out lent 14.5 million pounds on the back of
14:36:51 25 this project, isn't that right?

26 A. Yes but and accrued interest.

27 Q. 459 Yes. Well leaving aside the accrued interest for the moment. You had 14.5
28 million pounds lent on foot of the project by December 1992.

29 A. I don't know whether the full 14.5 million was drawn by that time or not, I
14:37:15 30 don't know.

- 14:37:15 1 Q. 460 Well let's just say in excess of 10 million pounds?
- 2 A. Oh, far in excess of ten.
- 3 Q. 461 The project was due for rezoning before Dublin County Council on the 17th of
- 4 December 1992, and you knew it was due for zoning on the 17th of December 1992,
- 14:37:30 5 isn't that right?
- 6 A. Yes.
- 7 Q. 462 You told Mr. Kay, if Mr. Kay's evidence is correct that Mr. Gilmartin told
- 8 Ms. Basquille that he was going to go to the newspapers and he was going to
- 9 pour out all his complaints and grievances about how he had been treated to the
- 14:37:49 10 press and he would wreck the project and bring it down. Now, is Mr. Kay
- 11 correct when he says that's what you told him?
- 12 A. I don't know but I expect it is, I don't know.
- 13 Q. 463 Now, assuming for the moment that Mr. Kay is correct. The first concern that
- 14 you appear to have identified to Mr. Kay was a concern that Mr. Gilmartin was
- 14:38:14 15 going to go to the newspapers?
- 16 A. Yes.
- 17 Q. 464 Right. And therefore, what you didn't want was publicity, is that right?
- 18 A. Yes.
- 19 Q. 465 All right. Now, I would suggest to you that insofar as a scrap between two
- 14:38:18 20 competing developers is concerned, it's hardly a matter of high interest among
- 21 newspapers if there was a dispute between a developer based in England and a
- 22 developer based in Ireland, is that right? What was the news worthy element of
- 23 the potential harm that you foresaw, Mr. McGrath?
- 24 A. That was a project in Dublin. It was up for voting.
- 14:38:45 25 Q. 466 What was the news worthy element of it? What was -- what was it about the
- 26 possibility that Mr. Gilmartin would go to the newspapers that caused you
- 27 concern?
- 28 A. My concern was that if there was adverse publicity in the newspaper that the
- 29 vote could be deferred for whatever reason arising out of that adverse
- 14:39:07 30 publicity and our repayment could be extended.

- 14:39:12 1 Q. 467 What could Mr. Gilmartin say to the newspapers that was of concern to you in
2 December 1992, Mr. McGrath?
- 3 A. I didn't know. And as I mentioned to the Chairman, several meetings that I had
4 had with Mr. Gilmartin, he could become even incoherent on occasions. So I
14:39:34 5 didn't know what Mr. Gilmartin could say, would say or was likely to say.
- 6 Q. 468 So you went to London to find out first of all what Mr. Gilmartin would say and
7 then to try and persuade him not to say it, is that right?
- 8 A. No, that is not what I went to London for.
- 9 Q. 469 All right.
- 14:39:50 10 A. I went to London to try to encourage Mr. Gilmartin to appreciate the importance
11 of why the vote was so critical to the project.
- 12 Q. 470 In the course of your discussions with Mr. Gilmartin in December of 1992, did
13 Mr. Gilmartin make any complaint about payments that had been routed to a
14 company called Shefran of which he had become aware in June of 1992?
- 14:40:14 15 A. I don't recall.
- 16 Q. 471 Did Mr. Gilmartin make any complaint about money being taken out of his
17 company?
- 18 A. I don't recall.
- 19 Q. 472 Did Mr. Gilmartin make any complaints about payments being made to Mr. Frank
14:40:24 20 Dunlop?
- 21 A. I don't recall.
- 22 Q. 473 Did Mr. Gilmartin make any complaints about payments to politicians?
- 23 A. I don't recall.
- 24 Q. 474 Did Mr. Gilmartin make any complaints about money being taken from his company
14:40:37 25 by Mr. O'Callaghan?
- 26 A. I don't recall.
- 27 Q. 475 Did Mr. Gilmartin make any complaints about Allied Irish Bank being in
28 collusion or conspiracy with Mr. Gilmartin to deprive him of his interest in
29 his company, Barkhill?
- 14:40:51 30 A. I don't recall him making that allegation, no.

- 14:40:54 1 Q. 476 Did Mr.-- do you recall Mr. Gilmartin making an allegation that Allied Irish
2 Bank had gone behind his back in dealing with Mr. O'Callaghan?
- 3 A. This sounds very monotonous. I don't recall that specific detail because I
4 don't recall what was discussed at the meeting.
- 14:41:12 5 Q. 477 Okay. So the position then is, Mr. McGrath, as I understand it. You are a
6 person in a very senior position in Allied Irish Bank and you have ultimate
7 responsibility over a large number of projects including Barkhill, is that
8 right?
- 9 A. Not ultimate responsibility, no.
- 14:41:28 10 Q. 478 Well you have senior responsibility, Mr. McGrath, isn't that right?
- 11 A. Yes.
- 12 Q. 479 And you are senior to Mr. O'Farrell?
- 13 A. I was at the time, yes.
- 14 Q. 480 And Mr. O'Farrell is the line manager in charge of a number of projects one of
14:41:42 15 which is Barkhill, isn't that right?
- 16 A. As my statement said, yes.
- 17 Q. 481 You didn't ask Mr. O'Farrell to go with you to London Mr. McGrath, is that
18 right?
- 19 A. No, I didn't, no.
- 14:41:52 20 Q. 482 Why not?
- 21 A. Because he didn't know Tom Gilmartin as well as Eddie Kay did.
- 22 Q. 483 And what about Ms. Basquille who had taken the note from Mr. Gilmartin? Did
23 you ask her to go to London?
- 24 A. I don't recall asking her to go to London, no.
- 14:42:07 25 Q. 484 And if she had gone or certainly if Mr. O'Farrell had gone, and it seems to
26 have been Mr. O'Farrell's practice to always take a comprehensive note and
27 would you agree with that?
- 28 A. Would I agree with what?
- 29 Q. 485 That Mr. O'Farrell's practice appears to have been from the documentation in
14:42:24 30 the Allied Irish Bank files, to always keep a comprehensive note?

- 14:42:27 1 A. Yes, Mr. O'Farrell was meticulous in keeping file notes.
- 2 Q. 486 Yes. Now, in -- were you ever aware of the fact that in 1989, Mr. Gilmartin
3 had made complaints including complaints to the police?
- 4 A. To what sorry?
- 14:42:46 5 Q. 487 That Mr. Gilmartin had made complaints, including complaints that were dealt
6 with to some degree or became part of the subject matter of a Garda inquiry.
7 Were you ever aware of that?
- 8 A. Is your question was I aware in 1989 that he made a complaint?
- 9 Q. 488 No were you aware in 1992 that he had made complaints of interference in his
10 project in 1989?
- 11 A. No.
- 12 Q. 489 And that included in those complaints were complaints of demands for payments
13 being made of him by politicians. Were you aware of that?
- 14 A. No. I have no recollection of that. No knowledge of that.
- 14:43:19 15 Q. 490 All right. And can I just show you a note that was taken in 1995, after a
16 Barkhill board meeting at 3755. At or after a Barkhill board meeting at 3755.
17 And just to see does this list of the recorded complaints of Mr. Gilmartin in
18 any way jog your recollection about what Mr. Gilmartin might have discussed
19 with you on the 17th of December 1992.
- 14:43:48 20 A. Sorry, could I just have clarification what is this now?
- 21 Q. 491 This is a note that was taken -- this is a note that was taken by somebody who
22 was at a meeting of the Barkhill board which does not form part of the minutes
23 of that meeting and which has been provided to the Tribunal by Mr. Deane and it
24 follows on a meeting of the 24th of May '95 are or at the meeting?
- 14:44:11 25 A. I wasn't involved in the case in May '95.
- 26 Q. 492 No. But the reason as I've already said, Mr. McGrath, I'm going to show you
27 this list of the recorded complaints of Mr. Gilmartin to see when we go through
28 these does it jog your memory about any of the matters that Mr. Gilmartin might
29 have discussed with you on the 17th of December 1992, in the absence, in the
14:44:30 30 presence I should say of your total failure of recollection as to what you

14:44:34 1 might have discussed with Mr. Gilmartin. Do you understand?

2 A. You have made a very long statement in the form of a question so what is it

3 you're asking me to state?

4 Q. 493 I am not asking you to state anything.

14:44:50 5 A. Sorry what clarity are you looking for?

6 Q. 494 I will take you through this list of complaints --

7

8 JUDGE FAHERTY: Ms. Dillon is going to go through this document with you.

9 A. Yes.

14:44:58 10

11 JUDGE FAHERTY: Which is subsequent in time to your meeting with Mr.

12 Gilmartin. But this is a time in 1995, when it's recorded that Mr. Gilmartin

13 was making certain complaints. And what Ms. Dillon I think is going to go

14 through the document with you, to see if it might be some aid memoire or indeed

14:45:17 15 some job to what might have been discussed between yourself and Mr. Gilmartin

16 in December 1992 as I understand.

17 A. It thank you, Judge, I am clear now.

18

19 JUDGE FAHERTY: Yes.

14:45:27 20

21 Q. 495 MS. DILLON: At 3755. 3755, Mr. McGrath, the documents records "after Barry

22 Pitcher left the meeting the following matters were discussed.

23

24 A. Tom Gilmartin's personal position. Tom Gilmartin gave a detailed statement

14:45:40 25 of his dissatisfaction with matters in general incorporating the following lack

26 of information. No communication. The whole saga was very unfair to his

27 family. He complained at the treatment he had received from O'Callaghan

28 Properties. He was subject of dirty tricks campaign. O'Callaghan Properties

29 had walked away with 2 million pounds of his money. His credibility had been

14:46:01 30 totally undermined. His telephone calls were not answered. The bank had lost

14:46:04 1 faith in him because his credibility was undermined. He had given certain
2 personal information regarding his financial standing only to the bank and as
3 this information subsequently appeared in the papers, it must have been leaked
4 by the bank. That if he had been left handle matters himself, he could have
14:46:20 5 done the entire deal himself without anybody's assistance. John Deane had made
6 certain the he did not speak to people the night of the zoning meeting."
7

8 Now just in relation to the last matter, the night of the zoning meeting would
9 have been the zoning meeting in December 1992, and you and Mr. Kay are with Mr.
14:46:35 10 Gilmartin in London at some stage of that day, isn't that right?

11 A. So --

12 Q. 496 And then --

13 A. So you tell me.

14 Q. 497 So that appears to be the evidence before the Tribunal --

14:46:46 15 A. Yes.

16 Q. 498 -- Mr. McGrath. If you have a better recollection you might like to give that
17 evidence to the Tribunal.
18

19 Now, next item is "Blackmailing. Generally he was subjected to political
14:46:57 20 maneuverings, blackmailing and a campaign of dirty tricks such that he had no
21 now lost everything". And then Mr. O'Farrell proceeds to give a response by
22 the bank and Mr. Deane gives another response.
23

24 Now, what I want to ask you specifically about, Mr. McGrath, is looking at the
14:47:14 25 list of complaints that was being made by Mr. Gilmartin in May of 1995. And
26 having looked at them now, do they resonate with you in any way as being like
27 or similar to the matters Mr. Gilmartin discussed with you when you met with
28 him on the 17th of December 1992?

29 A. I have no specific recall of the detail in relation to discussion at the said
14:47:45 30 meeting. I can, if it helps you, confirm that Mr. Gilmartin would have made

14:47:46 1 over some other meetings or maybe even at that meeting. But I can recall him.
2 But I don't know when the date, but I can recall and I will go through some of
3 these. Lack of information. Yes I heard him making that allegation. Was it
4 on the meeting of the 18th of December? I don't know.

14:48:04 5
6 No communication. Yes I've heard him making that allegation.
7 Unfairness to his family. I can't recall that.
8 Complaints about the treatment he received from O'Callaghan Properties. Yes.
9 Dirty tricks campaign. No, I don't recall that.

14:48:20 10 O'Callaghan walking with 2 million, I don't recall that.
11 His credibility had been undermined. Yes, I can him saying that.
12 I have no recollection of a comment about telephone calls.

13 The situation about the bank losing faith with him because of his credibility
14 was undermined. The bank didn't loose faith in Mr. Gilmartin. The bank lost
14:48:43 15 faith in the project under his control because he didn't have the financial
16 wherewithal to complete it and I covered that in my comments to you earlier
17 this morning.

18
19 He had given certain personal information regarding financial standing only to
14:48:57 20 the bank. I have no recollection of him making that comment.

21
22 That if he had been left handle matters. If he had been left handle matters he
23 could have done job met better. He certainly would have alleged that from time
24 to time and I would certainly not have agreed with him and I would have told
14:49:15 25 him so.

26
27 John Deane had made certain that he could not talk to people the night of the
28 zoning. I don't know. And I don't know anything about the last one the
29 political maneuverings, blackmail, campaign. I don't recall him making that
14:49:28 30 comment.

- 14:49:30 1 Q. 499 Yes.
- 2 A. So he certainly would have listed some of those to me at some stage. But I
- 3 don't know whether it was on the meeting that we are discussing or not.
- 4 Q. 500 And you cannot think what it was that Mr. Gilmartin was going to go to the
- 14:49:44 5 newspapers with that was so important that it brought you to London on the 17th
- 6 of December '92 to see Mr. Gilmartin?
- 7 A. No, I can't, I'm sorry.
- 8 Q. 501 And can I just show you of the I don't know whether this is the document to
- 9 which you are referring in connection with Ms. Basquille. At 9391 there is a
- 14:50:02 10 memorandum or note taken by Ms. Basquille which is dated the 26th of March '93
- 11 and therefore is unlikely to be the note to which you are referring. But in
- 12 the second paragraph I don't know whether this is what you are referring to.
- 13 If it could be increased please.
- 14
- 14:50:18 15 "Tom then launched into past grievances about blackmail and corrupt practices
- 16 in relation to putting in place with the shareholders agreement. Referred to
- 17 the fact that Barkhill was and still should be his deal and expressed
- 18 dissatisfaction at the fact that he is not being consulted into any decision
- 19 taken by the company". Does that?
- 14:50:36 20 A. That is not the document that stimulated my meeting of December '92.
- 21 Q. 502 Yes.
- 22 A. And I don't recall ever seeing that document. It may be on the bank's files
- 23 but I don't recall.
- 24 Q. 503 This is a document from the bank's file and it is already in the brief that's
- 14:50:53 25 circulated and simply as it is a record of complaints by Ms. Basquille I am
- 26 drawing it to your attention in view of the fact that subject to, we don't
- 27 appear at the moment to be able to find the document to which you had referred.
- 28 Did Mr. Gilmartin ever make allegations to you to Allied Irish Bank and Mr.
- 29 O'Callaghan were engaged in the bribery and corruption?
- 14:51:15 30 A. Absolutely not.

- 14:51:16 1 Q. 504 If such an allegation had been made by Mr. Gilmartin is it the sort of
2 allegation that would have brought you to London to meet with Mr. Gilmartin?
3 A. Is the tenet of your question specifically did he make that allegation on the
4 eve of I going to London please I don't understand the question.
- 14:51:40 5 Q. 505 Well we don't seem to know, Mr. McGrath, precisely what it was that caused you
6 to set up the meeting in London and go and see Mr. Gilmartin. And I am trying
7 to assist you as best I can with other documents and evidence of other people.
8 And in that particular case that was something that was said to the Tribunal by
9 Mr. Sheeran, that Mr. Gilmartin complained of bribery and corruption being
10 committed by Allied Irish Bank and Mr. O'Callaghan.
11
12 And I am asking you that if it had been said to you in December 1992, that
13 Allied Irish Bank and/or Mr. O'Callaghan was engaged in bribery and corruption,
14 is that the sort of matter that would have sent you to London to meet with Mr.
14:52:03 15 Gilmartin?
16 A. I can certainly answer that for you. If that allegation had been made by Mr.
17 O'Callaghan by Mr. Gilmartin, I wouldn't have gone to London, I'd have gone to
18 Mr. Neville O'Byrne in Fry's and sought his legal opinion. Because that is a
19 most serious allegation that would have been made against AIB. And if that
14:52:32 20 allegation was ever made in my presence I would have escalated that to the
21 highest level in the bank because that is the most serious allegation that I
22 have ever heard. And it certainly was not made in relation to AIB while I had
23 control for that, of that account. I can assure you of that.
24
- 14:53:00 25 CHAIRMAN: Mr. McGrath, if that type of allegation had been made to you,
26 either directly or indirectly from Mr. Gilmartin, do you think you would, it
27 would stand out in your memory?
28 A. Is it certainly would, Your Honour. And I would have escalated that within the
29 bank. That is not something I would deal with myself.
14:53:29 30

- 14:53:30 1 Q. 506 MS. DILLON: And the Tribunal has been told, as you know, Mr. McGrath, since
2 that Mr. Dunlop, who was retained by Barkhill Limited in relation to the
3 rezoning of Quarryvale paid thousands of pounds in bribes to councillors to
4 secure the rezoning of lands including the rezoning of Quarryvale if Mr.
14:53:48 5 Dunlop's evidence is correct, isn't that right?
- 6 A. Could you ask the question again because you said "as I know" what are you
7 saying I know?
- 8 Q. 507 The Tribunal has been told, Mr. McGrath, that by Mr. Dunlop, that he engaged in
9 systematic bribery of councillors. Do you agree that that evidence has been
14:54:10 10 given to the Tribunal or are you unaware of the fact that Mr. Dunlop has given
11 that evidence to the Tribunal?
- 12 A. I am not aware of what evidence Mr. Gilmartin or Mr. Dunlop has given to the
13 Tribunal.
- 14 Q. 508 Right. You are aware to this moment in time Mr. McGrath that Mr. Dunlop has
14:54:25 15 told the Tribunal that he was engaged in systematic bribery of councillors?
- 16 A. He may have said that, I don't know. I didn't read all the transcripts.
- 17 Q. 509 Just to be clear about it. It is an important point. Are you telling the
18 Tribunal that to this moment in time, Mr. McGrath, you sit in the witness box
19 unaware of the fact that Mr. Dunlop since April 2000, told this Tribunal he was
14:54:48 20 engaged in bribing councillors to secure rezonings?
- 21 A. I do not know what Mr. Dunlop has said to this Tribunal. I know what I read in
22 the papers but I don't know, I wasn't in here, I didn't read his transcripts.
23 And I think it would be totally inappropriate for me to say something that I
24 don't know.
- 14:55:08 25 Q. 510 So you are saying you don't know that Mr. Dunlop told the Tribunal that he made
26 payments to councillors for the purpose of securing rezonings, is that right
27 Mr. McGrath?
- 28 A. If you tell me, that I have no reason to disbelieve it.
- 29 Q. 511 No, no I am not telling you that. I am asking you of your own knowledge, are
14:55:24 30 you telling the Tribunal that it is your position as you sit there on the

14:55:27 1 witness box that up until this moment in time you did not know that Mr. Dunlop
2 had told this Tribunal that he was engaged in systematically bribing
3 councillors for the purpose of achieving rezonings?

4 A. I know what I read in the papers. I don't know what Mr. Dunlop said to the
14:55:45 5 Tribunal. I didn't hear it. I didn't read the transcript. So I can't answer
6 your question that you are putting to me!

7
8 JUDGE FAHERTY: The Allied Irish Bank, Mr. McGrath, would have received a
9 brief of documents. Now, while it's not the oral evidence of anybody.
14:56:01 10 Certainly, maybe I'm wrong on this but Mr. Dunlop's statements, and there were
11 a number of them, would have been circulated to a great number of witnesses to
12 this Tribunal, including AIB, as I understand it.

13 A. Judge.

14
14:56:16 15 JUDGE FAHERTY: Did you ever -- were you ever advised that Mr. Dunlop's
16 statements contained such matters as he went on to give evidence of?

17 A. I don't know what specific documents were served on AIB. In preparation for
18 coming to this Tribunal --

19
14:56:34 20 JUDGE FAHERTY: I am not saying categorically but I'm assuming --

21
22 MS. DILLON: Everything. Everything that AIB received everything.

23
24 JUDGE FAHERTY: Would have received every statement.

14:56:44 25 A. If we did get them. I certainly haven't read them. In coming to this Tribunal
26 I read the AIB file from the 1st of April 2000 -- 1991 to the middle of March
27 1999 -- 1995. Because that was the four year period that I was involved with.
28 That's the only material that I have looked at in preparation for coming here.
29 I haven't read any submissions from any other witnesses or I read no discovered
14:57:30 30 documents that were given to the bank.

14:57:30 1 CHAIRMAN: Well can we take it, Mr. McGrath, that you'd know in general that
2 the newspaper and media reports are to the effect that Mr. Dunlop has accepted
3 that he bribed councillors?

4 A. Yes, Judge, when you put the question to me like that. Did I read it in the
14:57:40 5 paper, yes. But does that confirm that I am aware of what he said? I am aware
6 of what was, of what I read in the paper.

7
8 CHAIRMAN: All right.

9 A. And I'm being -- I am trying to be as -- answer the questions that are put to
14:57:56 10 me. But I find some of the questions quite confusing in relation to the manner
11 in which they are put to me and I am slightly confused. So I apologise if I am
12 being slow with them.

13
14 Q. 512 MS. DILLON: If at any stage you don't and understand the question,
14:58:10 15 Mr. McGrath, simply say you don't understand the question and I will rephrase
16 it. There is no difficulty with that. I wouldn't like you to misunderstand
17 anything. And if I have in any way put the question in too complicated a
18 fashion, if you just indicate that and it's not a problem at any stage to
19 simplify it.

14:58:26 20
21 Now, in December of 1992 and on the 17th of December 1992, in particular, would
22 it be fair to say that Allied Irish Bank would have regarded the rezoning as
23 key date?

24 A. Yes.

14:58:38 25 Q. 513 Yes. And do you know why it was that you went to see Mr. Gilmartin on the same
26 day that the rezoning was on?

27 A. I've already told you that Mary Basquille got a phone call from Tom Gilmartin
28 either two days or one day before that. And I decided that I should try to
29 talk to Tom to ensure that he didn't go to the press before the zoning.

14:59:07 30 Q. 514 There had already been publications in the newspapers about Mr. Gilmartin

- 14:59:11 1 immediately prior to the zoning, isn't that right, Mr. McGrath?
- 2 A. I don't know.
- 3 Q. 515 I suggest that you probably would have seen this at the time or somebody would
- 4 have drawn it to your attention at 8757. This is an article in the Sunday
- 14:59:27 5 Business Post of the 13th of December 1992, which would have been four days
- 6 before the rezoning and four days before you went to London to meet with Mr.
- 7 Gilmartin entitled "Gilmartin declared bankrupt in England".
- 8 A. I have no recollection of seeing that.
- 9 Q. 516 Can I suggest to you in view of the upcoming zoning vote if you yourself hadn't
- 14:59:46 10 read it in the newspapers, it's likely somebody on the team or involved would
- 11 have drawn it to your attention?
- 12 A. I am not so sure of that.
- 13 Q. 517 All right. Can I just draw to your attention two matters in relation to it.
- 14 In the second paragraph it states "Gilmartin retains no interest in the lands
- 15:00:04 15 at Quarryvale which is now owned by developer Owen O'Callaghan and AIB".
- 16 A. That's not correct.
- 17 Q. 518 Right. But is the fact that it's there, you are referred and by you I mean
- 18 Allied Irish Bank to be the owner of the Quarryvale lands. Do you think it's
- 19 likely that somebody would have drawn it to Allied Irish Bank's attention that
- 15:00:23 20 there was an inaccuracy in the Sunday Business Post in relation to its
- 21 ownership of Barkhill?
- 22 A. Sorry the question is who would have ...
- 23 Q. 519 Do you think looking back on it now and in view of the inaccuracy that's
- 24 contained in relation to the ownership of Barkhill, that it's likely that
- 15:00:42 25 someone might have drawn it to Allied Irish Bank's attention that in an article
- 26 on the Sunday Business Post on the 13th of December 1992, it alleged that
- 27 Barkhill was owned by Owen O'Callaghan and Allied Irish Bank?
- 28 A. I expect that the team i.e. Michael O'Farrell and Mary Basquille would have
- 29 spotted that article.
- 15:01:02 30 Q. 520 Yes.

- 15:01:03 1 A. I have no recollection.
- 2 Q. 521 And do you know whether in fact Allied Irish Bank took any steps to correct
3 that position that's stated there?
- 4 A. No, I don't know.
- 15:01:12 5 Q. 522 And again, on the second column in the fourth paragraph it states" Gilmartin's
6 involvement in the land ended almost two years ago according to O'Callaghan".
7
8 Now, if Mr. O'Callaghan said that to the Sunday Business Post was it correct?
- 9 A. We've already established it's not correct. I don't know whether Mr.
15:01:33 10 O'Callaghan made a statement to the Sunday Business Post and only Mr.
11 O'Callaghan can answer that.
- 12 Q. 523 If that information in relation to Allied Irish Bank and Owen O'Callaghan being
13 the only people with an interest or owning Barkhill was given to the Sunday
14 Business Post by Mr. O'Callaghan it's not correct, isn't that right?
- 15:01:55 15 A. That information that's there is not correct, yes.
- 16 Q. 524 Can you think of any reason why anybody would have had an interest in an
17 article being published about Mr. Gilmartin's bankruptcy four days prior to the
18 zoning motion being held heard in Dublin County Council?
- 19 A. No.
- 15:02:13 20 Q. 525 Were you aware that on the 18th of December 1992 at 8900, that Shefran provided
21 an invoice to Riga in the sum of 25,000 pounds?
- 22 A. No.
- 23 Q. 526 Right. Did you know or were you ever made aware at that stage in 1992 of who
24 Shefran was?
- 15:02:38 25 A. No.
- 26 Q. 527 Would you have seen documents in relation to Shefran appearing on the file from
27 time to time?
- 28 A. I've already told you that I didn't read the files.
- 29 Q. 528 Would you have been aware of an invoice from Frank Dunlop & Associates at 8966
15:02:55 30 of the 21st of December 1992, in the sum of 64,897.87 pounds?

- 15:03:02 1 A. No.
- 2 Q. 529 Is that a matter that might have been discussed at meetings at which you were
3 in attendance?
- 4 A. I have no recollection of that.
- 15:03:09 5 Q. 530 Yes. If I show you of the 20th of January '93 at 9125, a record of a meeting
6 of the 20th of January '93, present are recorded as being Owen O'Callaghan,
7 John Deane, Dave McGrath, Michael O'Farrell and Mary Basquille. Sorry, 9125
8 please. And you will see there the attendances I have just outlined, isn't
9 that right?
- 15:03:35 10 A. Yes.
- 11 Q. 531 And there are two matters really, three matters I want to draw to your
12 attention but just dealing with that issue of 64,000 pounds at 9127. Under the
13 heading "outstanding fees" being the third paragraph. "Owen O'Callaghan
14 advised that payment of 64,000 pounds was still due to Frank Dunlop in relation
15 to zoning costs". Do you see that?
- 15:04:00 16 A. I do, yes.
- 17 Q. 532 And "requested payment of this invoice from Barkhill's loan facility. He was
18 clearly disappointed when told that this would not be possible in view of the
19 fact that the facility drawn to the maximum amount permitted and you
20 highlighted that Riga would be covering all fees in relation to the Green take
21 over and Stadium proposal. Which has indirect benefits for Barkhill and has
22 also paid security costs in relation to Bruton House".
23
24 Is it likely that you were present, Mr. McGrath, when that discussion of Mr.
25 Dunlop's invoice for 64,000 pounds in relation to zoning costs was discussed at
26 the meeting?
- 15:04:34 27 A. I have no recall and as I mentioned to you earlier, some of these meetings I
28 would have attended for a short period. I have no recall whether I was there
29 for the full period of the meeting or not. When you flashed the thing I
30 noticed two paragraphs up.
- 15:04:52

- 15:04:53 1 Q. 533 I am going to come back to that, yes.
- 2 A. But I have no rock recollection of whether I was there for the full meeting or
3 not.
- 4 Q. 534 If you go back to the top of that page where it says "Dave McGrath responded
15:05:07 5 that while we would be recommending to our board a further roll up of interest
6 charges for the coming year, there would be no funding available from AIB for
7 further fee outlay. In this regard it was also highlighted that the last
8 increase in facility was sanctioned from 9 million to 14.5 million had
9 incorporated .9 million to acquire the County Council land which remains
10 outstanding, despite the fact that this portion of the facility and more
11 besides had been utilised for increased fee/land payments beyond the level
12 anticipated."
13
14 Now, that comment is attributed there to you, isn't that right?
- 15:05:41 15 A. Yes.
- 16 Q. 535 And that would suggest that certainly as of the date of this document, the 20th
17 of January 1993, you were sufficiently au fait with the detail of the Barkhill
18 account to be able to make the point that the money that had been lent to
19 acquire the County Council land had been spent. The County Council land had
15:05:58 20 not been acquired but there had been an increase in fee payments, isn't that
21 right?
- 22 A. Yes, if you read the last sentence in that paragraph you will see that I
23 mentioned that "we should be seeking a development partner for the project".
- 24 Q. 536 Well in what you outlined before that, Mr. McGrath, in fairness to yourself is
15:06:15 25 six lines from the bottom "David Mcgrath outlined than an AIB -- the priority
26 is to obtain planning permission as soon as possible at the lowest cost. He
27 indicated the view that the development was too large for Riga to handle alone
28 and serious consideration should be given to disposing of part of the site" as
29 you've said, isn't that right?
- 15:06:34 30 A. Yes.

- 15:06:34 1 Q. 537 But dealing with the earlier part of that statement. That document earlier
2 part your comments are directed to an overrun on fees by Barkhill, isn't that
3 right?
- 4 A. Yes.
- 15:06:43 5 Q. 538 And I would suggest to you that it's likely that when one takes that in
6 conjunction with the later paragraph headed "outstanding fees". You must have
7 considered the fact that there was an outstanding fee invoice from Mr. Frank
8 Dunlop of 64,000 pounds which the bank were refusing to pay, isn't that right?
- 9 A. It's all probable but I have no recollection of that meeting.
- 15:07:03 10 Q. 539 You have no recollection of that meeting.
- 11 A. No.
- 12 Q. 540 And can I show you the third matter relation to that document that I wanted to
13 drawer draw to your attention on the previous page at 9126. And this might be
14 assist you in relation to the event of the 17th of December '92, under the
15 heading Tom Gilmartin "Dave McGrath highlighted that a commitment had been
16 given to Tom Gilmartin last December that a joint meeting of the Barkhill
17 shareholders would take place during January and inquired whether
18 O'Callaghan/Deane had formulated any strategy to bring him on side.
19
- 15:07:33 20 It was agreed that this was an important issue but John Deane highlighted
21 previous difficulties in getting Tom to attend meetings. It was suggested that
22 Tom would be lined up for a meeting on the 9th of February '93, by which time
23 an outlined Development Plan would be prepared for discussion between all
24 shareholders".
- 15:07:49 25
- 26 Now, that refers to you telling the meeting on the 20th of January '93, of
27 having given a commitment to Mr. Gilmartin for a joint meeting between the
28 Barkhill shareholders, isn't that right ?
- 29 A. Absolutely.
- 15:08:01 30 Q. 541 And that would have been the shareholders being Mr. O'Callaghan, Mr. Gilmartin

- 15:08:05 1 and Allied Irish Bank, isn't that right?
- 2 A. Yes.
- 3 Q. 542 And you also wanted to know whether Mr. Deane and Mr. O'Callaghan had any
4 strategy to bring Mr. Gilmartin on side, isn't that right?
- 15:08:16 5 A. Yes.
- 6 Q. 543 In what way did you regard Mr. Gilmartin as being off side?
- 7 A. He wasn't attending the meetings.
- 8 Q. 544 It was only his attendance that was of concern to you, is that right?
- 9 A. No. And as I outlined to you for the last significant time, the threat to go
15:08:34 10 to the press, which I felt was not in keeping with the interests of all the
11 stakeholders in the company.
- 12 Q. 545 You would have known from the article that was published in the Sunday Business
13 Post that there was publicity about the fact that Allied Irish Bank was an
14 owner of the Barkhill lands, isn't that right?
- 15:08:52 15 A. I have already said to you I don't know whether I saw that article or not.
- 16 Q. 546 And simply then dealing continuing with the in January of 1993. There is an
17 Interim Report at 9114. Which goes to group credit committee about Barkhill.
18 And what was sought there was the noting of the position, isn't that right?
- 19 A. Yes.
- 15:09:16 20 Q. 547 And can I show you 9116. Under the heading "identified causes of loss". And
21 under the heading "controllable 50 per cent weakness in credit assessment take
22 out for original loan not committed and then non-controllable 50 per cent
23 economic/political developments. Decision of Green Property to oppose town
24 centre zoning. Delays in final consideration of the Draft Development Plan
15:09:43 25 which had resulted in higher lobbying/interest costs. Next change in economic
26 continues."
27
- 28 Now, can I ask you there, first of all under the what is meant by the words
29 "non-controllable"?
- 15:09:58 30 A. That's a standard template that the bank uses when it's reporting bad debts and

- 15:10:06 1 as part of our risk management we try to identify the cause of the loan going
2 bad. So there are two causes identifiable causes of the loss, controllable
3 causes and uncontrollable causes. And I, along with, probably Michael
4 O'Farrell, if I could see who wrote that.
- 15:10:28 5 Q. 548 Mr. Chambers appears.
6 A. No, no that's who signed the recommendation. But whoever drafted the mark up.
7 Q. 549 If you go down the page it appears to be MB?
8 A. Mary Basquille would be MB.
9 Q. 550 Yes.
- 15:10:41 10 A. So Mary and probably Michael O'Farrell and myself would have had to make an
11 assessment of how did this loss come about and as the document says, there was
12 50 per cent within our own control i.e. we misinterpreted the ability to get
13 the loan repaid when it was originally sanctioned. I can't comment on that
14 because I wasn't involved. And then the non-controllable costs are what events
15:11:15 15 outside the control of the bank could have materially adversely effected the
16 repayment of the loan. And there are three items outlined there.
17 Q. 551 Well I think with respect to you, Mr. McGrath, there are first of all two and
18 they are described as economic/political developments, isn't that right?
19 A. Yeah, I was looking lumping those two together and I was saying that there are
15:11:37 20 three causes.
21 Q. 552 No I would suggest to you that if you look at the document carefully that you
22 will see that the three items beneath economic/political divide themselves into
23 either economic or political matters?
24 A. That's correct. That's what I was saying there were three. The decision of
15:11:53 25 Green. The deferment of the draughtsman and the change in the economic
26 circumstances.
27 Q. 553 Right. And the change in the economic conditions would be an economic issue,
28 isn't that right?
29 A. Absolutely, yes.
- 15:12:10 30 Q. 554 And if we look then at the "delays in final consideration of the Draft

15:12:11 1 Development Plan which have resulted in higher lobbying/interests costs." Are
2 you there telling your superiors within the bank or the people who will be
3 reading this document that the delays in getting the matter to zoning resulted
4 in higher lobbying costs?

15:12:23 5 A. No, no. I am saying there that the delay in getting the Draft Plan completed
6 was the delay in the actual zoning. The delay in the zoning gave rise to
7 higher lobbying costs, it would appear and higher interest charges.

8 Q. 555 Would you just explain to the Tribunal how it was that a delay in finalising
9 the Draft Development Plan resulted in higher lobbying costs?

15:12:51 10 A. Because it would appear that Mr. O'Callaghan was spending more time than he
11 would have anticipated in trying to bring the councillors on side.

12 Q. 556 What's a cost?

13 A. What is a cost?

14 Q. 557 Yeah.

15:13:07 15 A. It's an expenditure I would have thought.

16 Q. 558 So you are talking here in simple terms, Mr. McGrath, about money spent, isn't
17 that right?

18 A. It could be money spent or it could be interest accrued.

15:13:20 19 Q. 559 Yes. Well I think that you have dealt with the interest costs separately to
20 the lobbying costs, isn't that right, because you have lobbying/interests
21 costs, isn't that right?

22 A. That's what it says there.

23 Q. 560 So that in fact what this document is saying is that the delays in the final
24 consideration of the Draft Development Plan caused higher lobbying costs as
15:13:36 25 well as higher interest costs, isn't that right?

26 A. Yes.

27 Q. 561 And would you have been relying at that stage upon information in relation to
28 the lobbying costs from Mr. Gilmartin?

29 A. From Mr. Gilmartin?

15:13:51 30 Q. 562 Yes.

- 15:13:52 1 A. No, the project manager was Mr. O'Callaghan.
- 2 Q. 563 And in the second part of that document at 9117. In the fifth paragraph down
3 commencing "Green Property plc reactivated its campaign to have the Barkhill
4 rezoning rescinded during 1991 and continued delays in finalisation of the
15:14:16 5 Draft Development Plan have resulted in more extensive lobbying being necessary
6 and professional fees/interest roll up being substantially higher than
7 anticipated."
8
9 Can I suggest to you that there is there a connection made between more
15:14:28 10 extensive lobbying and higher costs?
11 A. Lobbying and professional fees I would have related rather than lobbying higher
12 costs, yes.
13 Q. 564 And then under the heading "recent developments" it records that "during
14 December '92, the Council agreed to amend the zoning of the Quarryvale site for
15:14:50 15 major town centre activities to a mix of town district centre facilities with
16 retail use capped at 250,000 square feet and industrial related uses". Isn't
17 that right?
18 A. That's what's stated yes.
19 Q. 565 And that's recording there, the decision of the Council.
15:15:04 20 A. In December, yes.
21 Q. 566 In December. Which had been taken on the 17th of December, isn't that right?
22 A. Yes, we have established that, yes.
23 Q. 567 Now, following on from that, did you write to Mr. Gilmartin seeking his
24 attendance at subsequent meetings? 9164.
15:15:21 25 A. I recall writing to him and asking him to attend.
26 Q. 568 And did Mr. Gilmartin come to those meetings in February, to your recollection,
27 Mr. McGrath?
28 A. I don't know, he may have, he may not have. As I keep repeating to you. The
29 detail of this case was being handled by Mr. O'Farrell and Ms. Basquille.
15:15:46 30 Q. 569 Well I think following on your letter, Mr. McGrath, at 9237 "while it was

15:15:51 1 expected that Mr. Gilmartin would attend at the meeting on the 9th of December,
2 he did not attend and then when he was contacted he indicated lack of funds was
3 the factor and you spoke to him and advised him that you would fund his
4 travelling costs and arrange a return flight ticket to be collected and while
15:16:07 5 he agreed to that he subsequently phoned and said he wasn't coming." Isn't
6 that right?

7 A. I don't know.

8 Q. 570 Well that's what's recorded on the document in front of you, isn't that right?

9 A. Yes.

15:16:23 10 Q. 571 Now, on -- I think subsequent to that you yourself wrote I think to Mr.
11 Gilmartin on the following day on the 10th of February '93 at 9239. Expressing
12 your extreme disappointment at Mr. Gilmartin's last minute decision not to
13 attend the meeting and you say the following "you will recall that we agreed at
14 our meeting before Christmas that such a meeting would be appropriate in the
15:16:46 15 light of the recent zoning decision. You will have seen from the agenda
16 already sent to you, that the purpose of the meeting was for Allied Irish Bank
17 to be fully updated on all aspects of the present position and to consider the
18 company's proposals/plans for moving forward.

15:17:07 20 It was against this background and as you are a significant shareholder in the
21 company that we were surprised and disappointed at your non-attendance. We
22 found the meeting to be helpful and constructive and allowed Owen O'Callaghan
23 as the project manager, to bring us fully up-to-date. He indicated that he
24 would be formulating brief minutes of the meeting outcomes and will be sending
15:17:18 25 same to you. He also advised he would be speaking to the company's secretary
26 to arrange a board meeting of the directors of the company and we trust and
27 hope that you will see your way to attending same".
28 Isn't that right?

29 A. Yes, I confirm that's my signature, yes.

15:17:31 30 Q. 572 Yes. And I think that at the meeting of the 9th of February 1993, at 9232

15:17:37 1 which Mr. Gilmartin didn't attend despite your offer to him of providing him
2 with the air a fare to come over. There was a note kept of the minutes of that
3 meeting by Ms. Basquille, isn't that right?

4 A. Yes.

15:17:53 5 Q. 573 And in the second page of that at 9233, in the second last paragraph. There is
6 a note that "O'Callaghan and Deane were then requested to provide further
7 details in relation to the proposed development programme in terms of timing
8 costs and appraisal" isn't that right?

9 A. That's what the note says, yes.

15:18:14 10 Q. 574 And then finally in the last paragraph "the subject of Tom Gilmartin was raised
11 and it was suggested that Owen O'Callaghan should officially inform Tom of the
12 various matters discussed at the meeting and also arrange a formal board
13 meeting to review matters" isn't that right?

14 A. That's what the note says but I don't recall that meeting but that's what the
15 note says.

15:18:31 15
16 Q. 575 Well following on that meeting, Mr. McGrath. Mr. Deane sent in two letters to
17 Allied Irish Bank at 9240. The first of which deals with Riga. And the second
18 of which deals with Barkhill and at 9241 at the bottom of the page, I want to
19 draw to your attention the following.

15:18:55 20
21 "In addition to the foregoing, Riga Limited has incurred additional expense in
22 the sum of 400,000 pounds approximately in order to secure the Quarryvale
23 zoning. This has been spent in two ways as follows.

24
15:19:07 25 A. 150,000 pounds has been paid on various expenses directly related to the
26 Quarryvale project and for which invoices have not been produced to the bank
27 nor has the bank been requested to make any payment out of the Barkhill
28 account.

29
15:19:19 30 B. 250,000 pounds has been spent in connection with the Stadium project for

- 15:19:23 1 the old Neilstown site".
- 2
- 3 Did you see this letter, Mr. McGrath?
- 4 A. I have no recollection of seeing that letter. It's not addressed to me.
- 15:19:31 5 Q. 576 No it's not addressed to you. Nor indeed is the second letter it's also
- 6 addressed to Mr. O'Farrell which is headed up about Barkhill. Did you ever see
- 7 that letter?
- 8 A. I am at pains to explain to you that I wasn't involved in the day-to-day
- 9 transactions of this case. I didn't read correspondence pertaining to
- 15:19:51 10 Barkhill, whether I saw the letter or not I don't know. It would be unusual
- 11 for me to read correspondence in relation to one of 700 cases that I was
- 12 dealing with.
- 13 Q. 577 Well, can I suggest to you, Mr. McGrath, that if you had seen it there was
- 14 something about it that might have alerted you to a possible problem in
- 15:20:17 15 relation to it. And one was the use of the quotation marks around the worse
- 16 "expenses" under paragraph A? "150,000 pounds had been paid on various
- 17 "expenses"" isn't that right? It's an unusual way of describing expenses,
- 18 isn't it?
- 19 A. I don't know.
- 15:20:38 20 Q. 578 Right. And the bank are told something else about the 150,000 pounds "invoices
- 21 have note been produced to the bank and the bank hasn't been requested to make
- 22 any payment" isn't that right, in relation to the 150,000 pounds?
- 23 A. That's what the writer of the letter says, yes.
- 24 Q. 579 And this is a letter to the bank. So the bank are being told this, isn't that
- 15:20:56 25 right?
- 26 A. Is it Mr. Deane wrote this letter, is it?
- 27 Q. 580 Mr. Deane wrote that letter to Mr. O'Farrell; 9240.
- 28 A. Yeah.
- 29 Q. 581 So the bank know that 400,000 pounds has been spent by Riga, isn't that right?
- 15:21:08 30 A. Mr. O'Farrell has been made aware of it obviously on receipt of this letter.

- 15:21:12 1 Q. 582 Were you made aware of the fact that Riga had spent 400,000 pounds in order to
2 secure the Quarryvale zoning?
3 A. No.
4 Q. 583 Can I show you at 9604, Mr. McGrath, this is another mark up I think, isn't it,
15:21:30 5 of the 25th of May 1993?
6 A. It says second of three related applications yes.
7 Q. 584 And if I can show you part of that document at 9610.
8 Under the heading "client Riga Limited AIB division, AIB Ireland marketing
9 activity, property investor, chief McGrath, Dave, senior" first possibly I
15:21:56 10 don't know "Tom Kelleher".
11 A. Yes.
12 Q. 585 You are familiar with that document?
13 A. That's what we call the profitability statement.
14 Q. 586 And would it be fair to say that you again would have seen the document in
15:22:13 15 question which was sanctioned on the 25th of May, having been recommended by
16 corporate and commercial banking?
17 A. Not necessarily.
18 Q. 587 And who is the person who in May of 1993, would have seen this document and
19 considered this document?
15:22:30 20 A. Can I go back to the first page?
21 Q. 588 Yes of course. 9604.
22 A. Group credit committee. So it would have gone to the group credit committee.
23 Q. 589 But it would have gone through you, isn't that right, Mr. McGrath?
24 A. It would have gone through the team that I had responsibility for.
15:22:46 25 Q. 590 And to you and from you on to the group credit committee, isn't that right?
26 A. I may not have seen it. I keep telling you the detail --
27 Q. 591 It's much more likely, Mr. McGrath, that you did see it?
28 A. It's quite possible but I can't confirm to you, yes I saw it. It's quite
29 possible but I cannot categorically say I saw that document.
15:23:07 30 Q. 592 Yes. Other than you being on holidays, I had understood you to tell the

- 15:23:10 1 Tribunal these would not have gone to the group credit committee if they hadn't
2 passed through you and you had agreed with them going on?
- 3 A. It was unlikely.
- 4 Q. 593 May we take it then and may the Tribunal take it, Mr. McGrath, that this
15:23:22 5 document is unlikely to have gone forward to the group credit committee unless
6 you saw it and approved it?
- 7 A. Possibly. I can't categorically say yes.
- 8 Q. 594 In any event.
- 9 A. I apologise for that.
- 15:23:38 10 Q. 595 In any event, within the document at 9608. Under the heading "Barkhill Limited
11 see separate application" the last sentence in that paragraph reads "since the
12 commencement of Riga's involvement, Owen O'Callaghan has spent enormous time
13 and energy in dealing with Barkhill. Riga has provided funds of 400,000 pounds
14 to assist in obtaining zoning. No fees are payable to Riga in respect of its
15:24:07 15 project management role". Do you know where that figure of 400,000 came from?
- 16 A. No.
- 17 Q. 596 And can I show you also in are a further part of that document under the
18 heading "position cashflow" at 9616. "Cashflow projections for general
19 operations are attached, see appendix two. This assumes that core borrowings
15:24:36 20 will continue at existing levels following the introduction of 400,000 pounds
21 from sale of assets in Owen O'Callaghan's development company which effectively
22 funds the money expended by Riga last year in obtaining zoning in Quarryvale".
23 You see that?
- 24 A. I do.
- 15:24:50 25 Q. 597 Now, can I suggest to you, Mr. McGrath, that if you saw this document and I
26 suggest to you that it's likely that you did, you would have become wear of the
27 fact that Mr. O'Callaghan was maintaining that he had spent or Mr. Deane was
28 maintaining that 400,000 pounds has been spent by Riga in obtaining the zoning
29 on Quarryvale, isn't that right?
- 15:25:10 30 A. That's what the document says.

- 15:25:12 1 Q. 598 Yes. And I suggest to you that the foundation stone of that document lies in
2 Mr. Deane's correspondence with the bank at 9240.
- 3 A. Is that the letter you showed me earlier.
- 4 Q. 599 Yes. And that it is from this letter at 9241, that the information is
15:25:30 5 extracted that Riga had incurred additional expense in the sum of 400,000
6 pounds in order to secure the Quarryvale zoning and then identified how it had
7 been paid 150,000 pounds on various "expenses" and 250,000 pounds in connection
8 with the Stadium" do you agree with that?
- 9 A. I don't know. I wasn't involved in the detail of this case and I wish you
15:25:59 10 could understand that. I don't know how -- whoever wrote the mark up, how they
11 said there was 400,000 spent. I don't know how they, they came up with that.
12 I just. I don't know. I wasn't the person that wrote it.
- 13 Q. 600 But you were the person who approved it, Mr. McGrath.
- 14 A. No, no.
- 15:26:19 15 Q. 601 In all likelihood?
- 16 A. Sorry. I didn't approve it. The group credit committee approved it. I don't
17 know whether I saw that mark up.
- 18 Q. 602 I am suggesting to you that it's likely that you would have seen it, the
19 document as prepared by Mr. O'Farrell before it went forward to the group
15:26:34 20 credit committee. I am suggesting that to you. I am suggesting that that is
21 reasonable and is likely in the circumstances?
- 22 A. It is a possibly, yes. It is a possibility.
- 23 Q. 603 Why are you so reluctant, Mr. McGrath, to have anything to do with this
24 correspondence and this detail can you explain?
- 15:26:49 25 A. I am not reluctant in any shape or form. If I was certain that I was at a
26 meeting, I would do that. I have already been very clear to the Tribunal this
27 morning in telling you the extent of my involvement in this case. The extent
28 of my responsibilities in Corporate Banking at the time. I did not have
29 day-to-day ongoing activity in this case. I had many other cases, some of
15:27:15 30 which were subject of High Court and Supreme Court actions around this time

15:27:21 1 that fully occupied me. I was not day-to-day involved in Quarryvale or
2 Barkhill or Riga! And I am at pains to point that out to you. If I could
3 confirm that I had written it or that I had seen it, I would do it. I don't
4 have that information and I don't know how many times I have to say it to you!

15:27:43 5
6 CHAIRMAN: If, Mr. McGrath, if you had seen it or if you can put yourself back
7 today into your frame of mind then and you were seeing a document of this
8 nature with a reference to 400,000 pounds in rezoning expenditure. Is it
9 likely that you would have queried it or sought some further information about
10 it or would you have just take ten at face value?

11 A. It is --

12

13 CHAIRMAN: It is a lot of money.

14 A. It is a lot of money, Chairman. But in answer to your question. Where we were
15 coming from in this particular case. Mr. O'Callaghan was highly regarded by
16 the bank and I certainly would have trusted his judgement in relation to the
17 information he would have given the bank. I would have had no reason to
18 distrust what he had said to us. So would I have asked if this had been
19 brought to my attention. Would I have asked why do you have "expenses". I
15:28:23 20 doubt very much that I'd have asked him that question. I doubt very much. But
21 as I say, I didn't ask him. I have no recollection of ever seeing that letter.
22 So I don't know whether you find that helpful or not, Chairman. But it is the
23 way that I see it.

24

15:29:12 25 Q. 604 MS. DILLON: And in the same correspondence, Mr. McGrath, on the following page
26 in giving the background to the expenditure of 250,000 pounds in relation to
27 the Stadium project. Can you tell the Tribunal what you knew about the Stadium
28 project?

29 A. I referred to it already this morning. I knew very little about the Stadium
15:29:38 30 project. I had indicated to the team that we were not increasing our exposure

15:29:43 1 to the Stadium. We would not lend money to the Stadium. We had one
2 development project with Riga/Barkhill and that was the extent of the exposure
3 that we were going to consider until the Barkhill debt got sorted.

4 Q. 605 And in this, in this letter which the bank received I think in February of 1993
15:30:06 5 at page 9242 in the third paragraph.

6
7 The following is recorded "the introduction to the financiers was made by the
8 Taoiseach, Albert Reynolds to Owen when the financiers were in Dublin to meet
9 the Taoiseach who was then Minister for Finance. In order to establish
15:30:19 10 credibility for the Stadium project it was necessary for the project to be seen
11 as a viable workable project which would have the support of the government,
12 the FAI and other supporting organisations who may use the project.

13
14 Considerable work was done in this regard, consultants employed to ensure that
15:30:33 15 the project was presented".

16
17 Were you aware of the fact that there was such high level political contact in
18 connection with the Stadium?

19 A. No, I have already told you, I wasn't involved in the day-to-day detail of the
15:30:46 20 account.

21 Q. 606 Yes. And in view of the fact that this information is provided to the bank by
22 Mr. Deane following on the meeting of February to which I have referred. Do
23 you know whether the information contained within that document was circulated
24 to the other shareholder in Barkhill?

15:31:09 25 A. I don't know.

26 Q. 607 You don't know. Or whether in fact there was direct correspondence between Mr.
27 Gilmartin and Mr. O'Callaghan on the topic?

28 A. I don't know.

29 Q. 608 The meeting to which you had been present I think which was the meeting of the
15:31:22 30 9th of February at 9230?

- 15:31:26 1 A. The meeting that Mr. Gilmartin didn't attend.
- 2 Q. 609 That's correct?
- 3 A. Yes.
- 4 Q. 610 The meeting that you had offered to give him the flight to Dublin for?
- 15:31:32 5 A. Yes.
- 6 Q. 611 And that he had cancelled effectively at the last moment. That these minutes
- 7 were prepared, isn't that right?
- 8 A. I don't know.
- 9 Q. 612 And you will have seen those in the Allied Irish Bank files following on that
- 15:31:43 10 meeting.
- 11 A. How many times do I have to say? I didn't read the files.
- 12 Q. 613 Yes.
- 13 A. My involvement was at a supervisory, high level situation. So I didn't read
- 14 the files. I don't know whether they are still there or whether they're there
- 15:32:05 15 or what the hell is. I don't know!
- 16 Q. 614 Now, insofar as the contact with Mr. Albert Reynolds is concerned, Mr. McGrath,
- 17 at 9298 on the 3rd and 10th of March, you will have seen in the file, you
- 18 probably have read this document because it concerns yourself. It's headed re
- 19 Riga Barkhill, 9298 please.
- 15:32:29 20
- 21 "Two meetings were held on the above dates with Owen O'Callaghan and John
- 22 Deane. The first was attended by Michael O'Farrell from the bank, while the
- 23 second was also attended by Dave McGrath. The meetings were proceeded by two
- 24 phone conversations I had with Owen O'Callaghan on the 24th and 26th of
- 15:32:42 25 February last and also two or three phone conversations I had with John Deane
- 26 on the 4th of March and 9th of March. All the meetings and conversations
- 27 covered the same ground. Accordingly, this note summarises these
- 28 communications."
- 29
- 15:32:55 30 So you understand that, Mr. McGrath?

- 15:32:58 1 A. Yes, it says that I attended one meeting.
- 2 Q. 615 Yes.
- 3 A. Of two.
- 4 Q. 616 Yes and then Mr. O'Farrell goes on to say in his note that "all of the meetings
15:33:06 5 and conversations covered the same ground. Therefore the ground that was
6 covered at the meeting with which you were in attendance is the same as the
7 grounds could have been covered in the other matters and therefore you were
8 present for the matters outlined in the document." Isn't that right?
- 9 A. I don't know. I have no recollection.
- 15:33:21 10 Q. 617 You have no recollection. In any event, at 9299. The bank had indicated to
11 Mr. O'Callaghan that they would like a meeting with the county manager and Mr.
12 O'Callaghan had reflected and felt apprehensive about this. He said "he had
13 been careful in cultivating his relationship with John Fitzgerald and he did
14 not want John Fitzgerald to feel threatened by meeting us that is the bank or
15:33:43 15 that it might be people other than Owen O'Callaghan he was really dealing
16 with." Do you have any recollection of that discussion about meeting
17 Mr. Fitzgerald?
- 18 A. No.
- 19 Q. 618 Right. And at the bottom of that paragraph at that page you will see "arising
15:33:57 20 from the foregoing Owen O'Callaghan has been in touch with the Taoiseach in the
21 context of moving forward quickly to ensure that maximum jobs are made
22 available in the Clondalkin area for the development." Do you have any
23 recollection of that discussion?
- 24 A. No.
- 15:34:12 25 Q. 619 Right. And then in relation to Mr. Gilmartin at 9300. Under the heading "Tom
26 Gilmartin: Mr. Deane had completed minutes of the meeting of the 9th of
27 February '93. It was agreed that Owen O'Callaghan would send them to Tom
28 Gilmartin together with an update report along the lines of John Deane's letter
29 of the 10th of February 1993".
15:34:34 30 Which is the letter to which I had referred you, isn't that right, Mr. McGrath?

15:34:38 1 This would also be sent to Barry Pitcher. Do you know whether in fact that
2 happened?

3 A. I have no idea.

4 Q. 620 Right. In addition I think it says but I'm not sure "John Deane whether
15:34:50 5 arrange for Seamus Maguire to call a formal board meeting of the company with a
6 tentative date of the 24th of March next agreed".
7
8 And that was to set up another meeting for the 23rd of March in effect you
9 wrote to him at 9364, Mr. McGrath. In which you referred the proposed meeting
15:35:08 10 on the 24th of March, isn't that right?

11 A. Yes, that's my signature.

12 Q. 621 Yes. And that would suggest that you were certainly present for that portion
13 of the meeting dealing with Mr. Gilmartin, isn't that right?

14 A. Not necessarily.

15:35:22 15 Q. 622 Very good. "You ask him to attend and you expect that after that meeting the
16 company may wish to have discussions with the bank at which stage you look
17 forward to meeting with him again."

18 A. Yes.

19 Q. 623 Now, if the position is that Mr. Gilmartin did not attend at the next meeting
15:35:36 20 which took place on the 24th of March of 1993, isn't that right?

21 A. I don't know.

22 Q. 624 You will have seen in the brief or indeed in the bank's files at 9367, that the
23 meeting took place "Mr. Pitcher and Mr. O'Callaghan are present" and you
24 yourself are present, isn't that right, for part of the meeting. You were
15:36:01 25 invited to join the meeting during the course of it and to participate in it,
26 isn't that right?

27 A. Yes.

28 Q. 625 Yes. And I think following on that, on the same day and indeed. Sorry. I beg
29 your pardon -- on the following day the 25th of March '93 at 9385 you wrote to
15:36:19 30 Mr. Gilmartin. Is that your signature?

- 15:36:26 1 A. Yes.
- 2 Q. 626 And why was it, Mr. McGrath, that you were the person that was writing to Mr.
3 Gilmartin to seek his attendance at these meetings?
- 4 A. I was the senior person on the team. I don't know whether Michael O'Farrell
15:36:42 5 had met Mr. Gilmartin at this stage, because of his infrequent visits to
6 Dublin. I had met Mr. Gilmartin on a number of occasions. And if you recall
7 from the previous meeting, whatever, back in January or some time, that I, it
8 would appear that I must have given Tom a commitment that there would be a
9 meeting. And from what you've just been outlining for the last number of
15:37:13 10 slides, he hasn't managed to show for a meeting yet since it would appear. And
11 that's, I am surmising from what you've shown since my meeting with him in
12 December.
- 13 Q. 627 Yes. You had written to him from the time prior to the first meeting on the
14 9th of February, isn't that right?
- 15:37:30 15 A. Trying to encourage him to come along.
- 16 Q. 628 Yes. Know each occasion up to this point in time he had not attended, isn't
17 that right?
- 18 A. That would appear to be the case.
- 19 Q. 629 On one occasion at least you had offered to pay his air fare, isn't that right?
- 15:37:42 20 A. That's correct.
- 21 Q. 630 At 9385 on this date, on the 25th of March, you say that another meeting.
22 "That you are disappointed at his decision not to attend yesterday's board
23 meeting of Barkhill. And you understand that another board meeting has now
24 been scheduled for the 28th of April. If you are interested in being advised
15:37:59 25 of developments within the company I trust you will make special effort to
26 attend."
- 27 A. Yes.
- 28 Q. 631 Were you concerned about the silence from Mr. Gilmartin, Mr. McGrath about the
29 fact that he wasn't coming following on your meeting in December 1992?
- 15:38:22 30 A. Well obviously the fact that I wrote to him on at least two occasions. I was

15:38:26 1 anxious that we would have harmony within the board. And I was anxious that he
2 would come along and be advised of the up-to-date position.

3 Q. 632 Now, the meeting of the 28th of April '93 at 9508. Was a meeting at which Mr.
4 Gilmartin did attend for part of the meeting and Mr. Pitcher and Mr.
15:38:49 5 O'Callaghan, Mr. Deane, Mr. O'Farrell. Now, you are not recorded as having
6 attended that meeting, Mr. McGrath. And there is no suggestion that in fact
7 you attended that meeting.
8

9 It is a meeting at which Mr. Gilmartin says that there was some discussion
15:39:05 10 about the possible designation of Blanchardstown which isn't recorded in the
11 minutes. Can you ever recollect there being any discussion in relation to the
12 possible designation of Blanchardstown or being told about having a discussion
13 about the possible designation of Blanchardstown?

14 A. Given that I wasn't at the meeting, I think it's highly unlikely that I'd be
15:39:30 15 able to recall what was discussed at it.

16 Q. 633 I didn't ask you what was discussed at the meeting, Mr. McGrath.

17 A. Sorry, I apologise. I misinterpreted your question. Will you repeat it
18 please?

19 Q. 634 Yes. What I asked you was whether you were made aware of there being any
15:39:44 20 discussions involving the designation of Blanchardstown at that meeting or at
21 any stage?

22 A. I have no such awareness.

23 Q. 635 Were you ever aware of there being any consideration being given to the
24 possible tax designation of Blanchardstown.

15:40:01 25 A. No. If I could just add. At this stage Michael O'Farrell has become very much
26 playing into managing the account and my involvement would have been getting
27 less and less because I've already referred to it. There was another
28 problematic case on our books that was taking a lot of my time. So my
29 involvement with the Barkhill case after the zoning decision in 1992 was very
15:40:34 30 peripheral.

15:40:37 1 Q. 636 But nonetheless you have sufficient contact with Mr. Gilmartin to be the person
2 who was corresponding in early 1993 with Mr. Gilmartin trying to get him to
3 attend at the meetings, isn't that right?

4 A. Yes. And I would be prepared to speculate now that he has turned up to a
15:40:55 5 meeting that Michael O'Farrell was at. I doubt very much that I have written
6 to Mr. Gilmartin subsequent to that date. I doubt it.

7 Q. 637 Were you ever aware of any discussion within Allied Irish Bank about any
8 proposal to tax designate Blanchardstown or the tax designate the three western
9 towns?

15:41:17 10 A. I can't recall specific discussions.

11 Q. 638 Yes. If I show you and it is some time later. A file note of Mr. O'Farrell's
12 at 10805. Which is the 2nd of March '94, Mr. McGrath, and I want to draw to
13 your attention the third paragraph where Mr. O'Farrell is recorded in his
14 telephone call with Mr. O'Callaghan "I raised the matter of designation with
15:41:43 15 him. He indicated that he is aware that Blanchardstown has been seeking
16 designation. He has indicated in political circles that he is not seeking
17 designation for Quarryvale on the basis that same is not forthcoming for
18 Blanchardstown either.
19

15:42:02 20 He believed he is well ahead of Blanchardstown in terms of anchor interest and
21 the introductions of designation to both sides would level the playing pitch
22 and he would lose his advantage. He is happy that designation for
23 Blanchardstown is on the agenda. A further factor in this regard would be the
24 financial pressure that the various councils are under designation would of
15:42:14 25 course reduce revenues available to the councils over the next ten years
26 because of rates remission".
27

28 JUDGE FAHERTY: Ms. Dillon just before you continue. You read out I think
29 there is a slight error. He is happy that designation is "on the" agenda.
15:42:29 30 "Not on the agenda".

15:42:31 1 MS. DILLON: Oh, sorry I thought I said.
2
3 JUDGE FAHERTY: I'll just read the transcript.
4
15:42:37 5 MS. DILLON: I repeat that, Mr. McGrath,"he is happy that designation for
6 Blanchardstown is not on the agenda" is what the document says. Isn't that
7 right?
8 A. Yes.
9 Q. 639 Were you aware of any discussion within the bank or indeed with Mr. O'Callaghan
10 about the tax designation of Blanchardstown?
11 A. No.
12 Q. 640 Now, you yourself would in January of 1994 at 10651, have met with Mr.
13 O'Callaghan and Mr. Deane, isn't that right? And this is I think an extract
14 from your electronic diary?
15:43:08 15 A. Yes that's my electronic diary yes.
16 Q. 641 And would you have updated yourself on the file or by talking to Mr. McGrath
17 about the situation in relation to Barkhill -- Mr. O'Farrell before meeting him
18 or before meeting with Mr. Deane and Mr. O'Callaghan?
19 A. I probably would have. There is a possibility that the team may have done a
15:43:32 20 briefing note for me but I don't know. I can't -- what's there is rather
21 sparse. Maybe you have some other material that you can help me jog my memory.
22 Q. 642 If I show you the material that immediately in time predates your meeting with
23 Mr. Deane and Mr. O'Callaghan. If I show you the document at 10533,
24 Mr. McGrath, which is Mr. O'Farrell's file note of the 14th of December '93.
15:43:58 25
26 In which you confirms first of all that the Draft Development Plan for Dublin
27 has been made. He opens with ongoing discussions are taking place with Marks &
28 Spencers, Quinnsnorth and Pennies. The people involved in Pennies are Don
29 Tidey and Arthur Ryan. And he went on to indicate that he is meeting Albert
15:44:15 30 Reynolds and Bertie Ahern later today in connection with the Sports Stadium.

15:44:20 1 And then it records "I expressed surprise at this. He indicated no real option
2 but to continue his discussions in relation to the stadium as there is a normal
3 political interest in same. He will not be moving anything forward unless
4 there is significant State subsidies. He mentioned five million per annum".

15:44:37 5 And I think in January at 10610, Mr. O'Callaghan again telephones Mr. O'Farrell
6 to update him which I think is prior to your meeting of the 11th.
7

8 And he updates Mr. O'Farrell with a new Dublin County Council a new Planning
9 Officer is in place discussion has been taking place with the old Council and
10 they met in the new Planning Officer mid December. The meeting went well with
11 the result that the request for additional information was received in the week
12 before Christmas.
13

14 And then it sets out the information that they would expect and that the layout
15 submitted is okay. On the 3rd of February '94, a representative from
16 Quinnsworth, Marks & Spencer's and Penny's are meeting with Owen O'Callaghan
17 together to discuss the Barkhill development. Quinnsworth had been seeking the
18 meeting as they were afraid Marks & Spencer's would not go ahead with
19 Quarryvale in view of their Grafton Street commitments. Another concern of
15:45:32 20 Penny's was that Marks & Spencers would not like a Penny's type store to
21 operate alongside it. O'Callaghan has discussed these issues with Marks &
22 Spencers who have confirmed their continued interest in Quarryvale and
23 confirmed that they have no objection to Penny's. No commitments will be
24 received from the anchors until plans are issued.

15:45:48 25

26 He has no concerns with about An Bord Pleanala. He indicated that they have
27 got their figures together now on Quarryvale and are sending off same to
28 British land. Ronson is still very interested and are keeping touch with him,
29 however, the priority is to get the plans issued. As regards the Stadium; he
15:46:03 30 had a meeting with Albert Reynolds recently. He was very keen. They had been

15:46:06 1 seeking five million per annum subvention and he is meeting Bertie Ahern on
2 this issue in the next two weeks. If such subvention comings through, he
3 believes the product is viable although it will all hinge on his discussions
4 with Bertie Ahern. He feels that he no choice but to keep the project alive in
15:46:18 5 view of his previous commitments in relation to same and to retain his
6 credibility with the politicians and in the local area etc."

7
8 Now, would you have familiarised yourself with that material prior to your
9 meeting with Mr. Deane and Mr. O'Callaghan at 10651?

15:46:40 10 A. Very unlikely.

11 Q. 643 Why would you have been meeting with Mr. Deane and Mr. O'Callaghan then in
12 January of 1994?

13 A. I don't know.

14 Q. 644 Did you review before you came to give your evidence the file of papers that
15 concerned yourself, Mr. McGrath?

16 A. I looked at the files up to the end of 1993. And as I mentioned to you
17 earlier, my involvement thereafter was very, very peripheral because of my
18 involvement in another case. I didn't read the file of January '94 but maybe
19 you have a file note there that you can show me that would --

15:47:19 20 Q. 645 Yes there is a file note.

21 A. -- jog my memory.

22 Q. 646 It was taken by Mr. O'Farrell I think at 10647.

23 A. Yes.

24 Q. 647 Did you often get briefing notes, Mr. McGrath, in advance of meetings such as
15:47:39 25 this?

26 A. Rarely. I certainly don't recall getting briefing note before this meeting.

27 Q. 648 The meeting present Owen O'Callaghan and John Deane from the company. Dave
28 McGrath and Michael O'Farrell from the bank and it's a Riga Barkhill
29 connection, isn't that right?

15:47:54 30 A. Yes that's what the file note says, yes.

- 15:47:56 1 Q. 649 It says "the discussions were wide ranging and covered the following areas".
2 And the first of which is Carlow, isn't that right?
- 3 A. Yes.
- 4 Q. 650 And if we could have the first page on screen in its entirety, Mr. Kavanagh.
15:48:07 5 And I think the entire of that page deals with Carlow and then on the following
6 page the first item is Cumberland House; the second is AQD which I think is
7 Arthur's Quay development, is that right?
- 8 A. Yes that's Limerick I understand.
- 9 Q. 651 The next is Harry Dobson.
- 15:48:23 10 A. Yes.
- 11 Q. 652 The next is Prize Bond House.
- 12 A. Yeah.
- 13 Q. 653 The next is Athlone.
- 14 A. Yes.
- 15:48:29 15 Q. 654 The next on the following page is Crumlin and then fixed rate response and the
16 bank fixed rate financing bank response view and then at the bottom of this
17 page Quarryvale/Barkhill, isn't that right?
- 18 A. Yes.
- 19 Q. 655 And that records "Owen O'Callaghan brought us up-to-date on Quarryvale. The
15:48:46 20 planners are going with their proposals and they have received several queries
21 back which will not be a problem to deal with. He met the planners today and
22 all information will be returned within two weeks. Permission will grant at
23 the end of be February and by the end of March all objections will have been
24 received. At that stage it will go to An Bord Pleanala and it will be the end
15:49:01 25 of July before permission issues" isn't that right?
- 26 A. Yes.
- 27 Q. 656 And on the following page then at 10650. Most of that page I think deals with
28 possible anchors, isn't that right, if you have a quick look at it there,
29 Mr. McGrath. And it records Mr. O'Callaghan's communications with various
15:49:22 30 property companies.

15:49:23 1 A. Yes. I have no recollection of this meeting but as usual, Mr. O'Farrell has
2 done a comprehensive note it would appear.

3 Q. 657 Yes. And can I say, would you accept that it's likely in view of the nature of
4 the meeting, this particular meeting, that the discussions were wide ranging
15:49:43 5 that you are likely to have been present for all of this meeting?

6 A. I couldn't say that.

7 Q. 658 Right. The second last item notes "he has not been in touch with T Gilmartin
8 and we agreed that this element could not be ignored".
9

15:50:01 10 Now, what was the bank's view of Mr. Gilmartin can you assist the Tribunal,
11 Mr. McGrath, in February in January of 1994?

12 A. Mr. Gilmartin was still had 40 per cent shareholding.

13 Q. 659 Yes.

14 A. And we were anxious that he would be fully aware of all the activities that
15:50:23 15 were taking place.

16 Q. 660 Yes. And did you have a practice based on that concern, Mr. McGrath, did you
17 have a practice within the bank of copying the correspondence that the bank
18 received, whether from Mr. Benson or from Mr. O'Callaghan or from Mr. Deane to
19 Mr. McGrath -- to Mr. Gilmartin?

15:50:44 20 A. I don't know what the team did on a day-to-day basis with regard to
21 documentation. I wasn't working on the case on a daily basis. I am at pains
22 to share that knowledge with you and you don't seem to be accepting it.

23 Q. 661 Yes. It's my job --

24 A. I don't know. My job was to actually give Michael O'Farrell the scope to sort
15:51:05 25 out the problem. Right. If he needed help he would come to me. And that's
26 the role I had. And I have already mentioned to the Tribunal this afternoon
27 that sent from the period 1993, my role was reducing all the time because the
28 position zoning had been got, achieved. We were now in a much stronger
29 position vis-a-vis the value of our security. And it was a matter of time
15:51:35 30 before we'd be in a position to realise our security and our debt cleared. The

- 15:51:40 1 pressure on me as the executive managing the account was reduced considerably
2 after that vote in December.
- 3 Q. 662 And --
- 4 A. December '92.
- 15:51:51 5 Q. 663 And by I think we have seen that by January of 1994, you continued to have
6 meetings, isn't that right, with Mr. Deane and with Mr. O'Callaghan, isn't that
7 the position, Mr. McGrath?
- 8 A. I would have attended occasional meetings.
- 9 Q. 664 Yes. And on the 14th of April you attend another meeting for the purpose of
10 being updated on Barkhill at 10894, isn't that right?
- 11 A. Well I don't know.
- 12 Q. 665 10894. You will see --
- 13 A. Yes.
- 14 Q. 666 There present John Deane, Dave McGrath, Mary Basquille.
- 15:52:25 15 A. Yes.
- 16 Q. 667 And that was a meeting discussing financing and it appears to be a meeting at
17 which you probably state to the end stayed to the end at 10895, Mr. McGrath,
18 you will see that the very last entry refers to "D McGrath advised that he had
19 recently met with Argos who were looking for location for an Irish flagship
20 store and suggested Quarryvale could be raised with them following the recent
21 issue of planning permission". Isn't that right?
- 22 A. Yes.
- 23 Q. 668 And on the 21st of April, Mr. McGrath, and again correct me if I am wrong. It
24 would appear that document was prepared for Barkhill to go to the group credit
25 committee at 10917. For them to note the present position following the recent
26 issue of planning permission, isn't that right?
- 15:52:58 27 A. Yes.
- 28 Q. 669 And I think that you will see at 10918. That you have recommended that and I
29 think that's your signature on the document, isn't that right?
- 15:53:21 30 A. It is, yes. My signature and that of Michael O'Farrell.

- 15:53:25 1 Q. 670 Yes. And would you accept from that, that at a minimum you were by April of
2 1994, still involved to the extent that you were signing documentation within
3 the bank, making recommendations to the group credit committee in relation to
4 Barkhill and its ongoing financing, isn't that right?
- 15:53:41 5 A. Yes.
- 6 Q. 671 And that within that document at 10919 under the heading "summary" it says
7 "essentially progress is on target as anticipated at the last formal review.
8 We expect to be in a position to bring forward comprehensive review by 30/8/94
9 in the meantime the case will continue to receive close attention?
- 15:54:07 10 A. Yes.
- 11 Q. 672 Now what does "receiving close attention mean" Mr. McGrath?
- 12 A. Mr. O'Farrell and his team would be keeping a very close eye on the case and
13 trying to ensure that progress was being made in achieving planning permission
14 and lining up anchors and that it could be reached, reach finality.
- 15:54:31 15 Q. 673 Yes. And in May of 1994 I think at -- on the 19th of May at 1109. At a
16 meeting of Barkhill Limited and present were Mr. Deane, Mr. O'Callaghan,
17 Mr. Maguire, Mr. O'Farrell, Ms. Basquille, Mr. Forman, Mr. Pitcher. You attend
18 for part of the meeting also and you are so recorded and recorded in the
19 minutes of the meeting isn't that right?
- 15:54:56 20 A. Yes.
- 21 Q. 674 Right. So would it be fair to say that you had a continuing interest
22 throughout 1994, Mr. McGrath, to the minimum extent that you are involved in
23 preparing the credit applications for Barkhill that go forward to the Credit
24 Group Credit Committee and you certainly have attended a number of meetings.
15:55:16 25 Isn't that right?
- 26 A. I was involved. I was not involved in the preparation of a credit paper. I
27 never prepared a credit paper. I would have reviewed a credit paper from time
28 to time. But the preparation of the credit paper was the responsibility of
29 Mr. O'Farrell and Ms. Basquille at that point in time.
- 15:55:37 30 Q. 675 Yes. But you would have considered that, isn't that right? You would have had

15:55:40 1 to read it, at a minimum, if you were doing your job properly Mr. McGrath isn't
2 that right?

3 A. Yes. And I can assure you that the bank appreciated I did my job properly.

4 Q. 676 Yes of course. And in doing that you would have read all of the markups and
15:55:52 5 all of the detail in all of the markups at the time that you read them, isn't
6 that right?

7 A. No no no. You are making an assumptions I would not have read all mark ups.
8 There is an art in banking called delegation.

9 Q. 677 Yes. And can you identify within all of the mark ups of Barkhill that we have
15:56:10 10 looked at, the ones where you delegated the function Mr. McGrath?

11 A. Can I identify which specific cases.

12 Q. 678 No no just the Barkhill?

13 A. Sorry the specific Barkhill mark ups, I can't.

14 Q. 679 Right?

15:56:22 15 A. The last one that you flashed up on the screen, I can confirm I would have read
16 it because I signed it.

17 Q. 680 Yes. And in the others where they refer to you being the manager, do you
18 accept that it's likely you would also have read those, Mr. McGrath?

19 A. We've already discussed that and I have already told you the position. I may
15:56:40 20 have but I can't confirm that I did.

21 Q. 681 Yes. Is it that you are reluctant to confirm reading the one that refers to
22 400,000 pounds having been paid to obtain zoning, is that your difficulty
23 Mr. McGrath?

24 A. Absolutely not. I have no -- I have difficulty with no specific question that
15:56:58 25 you are putting to me in any shape. I am trying to be helpful. I am trying to
26 be truthful. And I don't want to mislead the Tribunal.

27 Q. 682 Yes. And I think just in relation to your continued meetings. It would appear
28 that in July 1994 that Mr -- at 11212, that Mr. O'Callaghan telephoned you.
29 And on this occasion Mr. McGrath, please don't take this the wrongs way. There
15:57:20 30 is a telephone attendance, isn't that right?

- 15:57:22 1 A. Yes.
- 2 Q. 683 By you on the telephone call?
- 3 A. Yes. So it must have been significant.
- 4 Q. 684 Yes.
- 15:57:27 5 A. So allow me read it.
- 6 Q. 685 Yes.
- 7 A. Yes, I can confirm that that is likely to have been the subject matter of a
- 8 conversation that I would have with Owen O'Callaghan. I have no recollection
- 9 of the specific conversation but given that the file note and that I went to
- 15:58:33 10 the trouble of doing a file note, I believe it would accurately reflect what
- 11 happened on that telephone conversation.
- 12 Q. 686 And what is it about this note that prompted you to take the step, Mr. McGrath,
- 13 of doing a file note on it, what was significant?
- 14 A. To me the file -- the issue is that the fact that he had indicated satisfactory
- 15:58:58 15 funding package in place and I advised him that this was an equity issue. In
- 16 other words, I was telling Mr. O'Callaghan he needed a development partner and
- 17 that he couldn't expect the bank to provide borrowings to complete the
- 18 construction of Quarryvale.
- 19 Q. 687 Yes. Isn't one of the first matters, Mr. O'Callaghan tells you when he rings
- 15:59:19 20 that Dunnes have signed with Green Properties for a store at Blanchardstown?
- 21 A. That's an issue, yes, that's an important issue as well.
- 22 Q. 688 And that was an important issue as well. Because as you have seen in the notes
- 23 of the meetings that you were at. One of the that the matters that was being
- 24 pursued by Mr. O'Callaghan at this time was to try and persuade Dunnes to come
- 15:59:37 25 into Quarryvale, isn't that right?
- 26 A. Yes, and that's mention there had in the second paragraph.
- 27 Q. 689 Yes. And in the third paragraph "Owen O'Callaghan highlighted that -- the fact
- 28 that this was a positive rare than a negative development for Quarryvale as it
- 29 would force the ante in completing the deal. He felt that all local
- 15:59:53 30 representatives and politicians would now support Quarryvale to ensure that it

15:59:56 1 started as a matter of priority. I indicated to Owen O'Callaghan that he
2 highlighted the need to get a satisfactory funding package in place. I
3 repeated our assertion that this was an issue that would not be funded by
4 borrowings. It was an equity issue. And while AIB would play its part, our
16:00:10 5 involvement is largely around our present exposure whereby we had funded the
6 site to this stage. Owen O'Callaghan fully accepted this view and acknowledged
7 that John Deane and he were working on the matter as a matter of priority.
8 Indeed, in this regard he was going to London next week to discuss the matter
9 with Ronson's people and he asked that we meet on Wednesday the 13th" and such
16:00:29 10 a meeting took place isn't that right?

11 A. I don't know.

12 Q. 690 Well you do because it's in your diary Mr. McGrath at 11252?

13 A. On the--

14 Q. 691 On the 13th of July?

16:00:38 15 A. The fact that it's in my diary doesn't confirm the meeting took place.

16 Q. 692 Yes. You will have seen in your consideration of the documentation provided to
17 you by the Tribunal, and which was extracted from Allied Irish Bank's files, at
18 11253. That on the 13th of July 1994 you had a meeting with Mr. O'Callaghan
19 and Mr. Deane accompanied by Mr. Tom Kelleher, isn't that right?

16:00:59 20 A. Yes.

21 Q. 693 And there is a detailed three page note in that regard, isn't that right,
22 Mr. McGrath, isn't that right?

23 A. Yes, I see the note there but I don't know what's in it.

24 Q. 694 Yes.

16:01:10 25 A. Unless I read it, yes.

26 Q. 695 I think in fairness to yourself, Mr. McGrath, I would probably like you to
27 consider that note. It's quite a detailed note. So perhaps subject to
28 anything the Chairman wishes to say. If you were able to return on Tuesday
29 very briefly. On Wednesday, I beg your pardon. Mr. McGrath, we should be able
16:01:26 30 to conclude your evidence and we might be able to have located the Basquille

16:01:31 1 note, which I think is probably a matter that Mr. McGrath will have to come
2 back to deal with in any event.

3
4 And I might ask if Mr. -- if the -- yes. I wonder if Mr. Kiernan, if he
16:01:45 5 wouldn't mind, would locate his copy of the note to which Mr. McGrath referred
6 and fax it in. And then it might assist us in locating the note.

7
8 And whatever is within that note, which I haven't put to Mr. McGrath, I could
9 then deal very briefly with on Wednesday morning. If that's agreeable to
16:02:05 10 Mr. McGrath and to Mr. Kiernan.

11
12 CHAIRMAN: I presume, Mr. McGrath, you can return on Wednesday. It won't be
13 for long, I hope

14 A. Certainly, if you require my attendance, Chairman, I'll be here.

16:02:13 15
16 CHAIRMAN: All right. And how long will we be with Mr. McGrath?

17
18 MS. DILLON: Very short period. It's really just to deal with whatever issues
19 arises. Mr. McGrath, in fairness to him, has placed reliance on the note. We
16:02:22 20 don't seem to be able to locate the note. If we had a copy of it -- at least
21 if we are provided with a copy of it Mr. McGrath can have the benefit of it.
22 He is seeking to rely on it. I am not in a position to give him a copy of the
23 note.

16:02:38 24
25 CHAIRMAN: There may be some cross-examination by other parties.

26
27 MS. DILLON: Other than that I am effectively finished with Mr. McGrath.

28
29 CHAIRMAN: Well do you want to sit at ten o'clock?

16:02:46 30

16:02:46 1 MS. DILLON: That's grand.
2
3 CHAIRMAN: Or Wednesday. If you are back at ten o'clock on Wednesday we
4 should finish you fairly, within half an hour or so.

16:02:54 5
6 MS. DILLON: And if Mr. Kiernan can furnish us with his copy of the note in
7 the meantime.
8

9 MR. NESBITT: Perhaps, Mr. Chairman, just to confirm. It's Mr. Donagh who
16:03:03 10 is -- going to take the next witness. Is that right?
11

12 MS. DILLON: Mr. Donagh is on Wednesday.
13

14 MR. NESBITT: Followed by Mr. Pitcher.

16:03:13 15
16 CHAIRMAN: Mr. Donagh.
17

18 MS. DILLON: Yes. After Mr. Donagh on Wednesday.
19

16:03:17 20 CHAIRMAN: All right. And then we'll deal with Mr. McGrath at ten o'clock.
21 We will finish Mr. McGrath.
22

23 MS. DILLON: Mr. McGrath's evidence is effectively concluded, subject to the
24 production of the document and any matter that arises in relation to that.

16:03:32 25
26 CHAIRMAN: All right. Thank you.
27

28 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**
29 **WEDNESDAY, 23RD APRIL 2008, AT 10:00 A.M.:**

16:04:27 30