

09:56:11 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,**

2 **30TH APRIL 2004 AT 10.00 A.M:**

3  
4 CHAIRMAN: Good morning.

10:05:58 5  
6 MR. GALLAGHER: Good morning, sir. Mr. Raymond Mould please.

7  
8 **MR. HAROLD RAYMOND MOULD, HAVING BEEN SWORN, WAS**

9 **QUESTIONED AS FOLLOWS BY MR. GALLAGHER:**

10:06:31 10  
11 CHAIRMAN: Sit down, good morning, Mr. Mould.

12 Q 1 MR. GALLAGHER: Good morning Mr. Mould. Thank you for coming. I will  
13 endeavour to get you through your evidence as quickly as possible because I  
14 know the Tribunal have potential difficulty in connection with security  
10:06:55 15 arrangements that are being put in place, etc --

16 A I would be very happy to help you.

17 Q 2 Again, thank you for coming, Mr. Mould. You furnished a statement to the  
18 Tribunal on the 22nd March last and I think you were here on the 24th March  
19 when your former colleague, Mr. Ted Dudley gave evidence, you heard his  
10:07:22 20 evidence on that occasion?

21 A I did.

22 Q 3 In broad terms, did you agree with with what he said? I'm going going to hold  
23 you to every --

24 A Well insofar as the parts that I was involved in, yes.

10:07:35 25 Q 4 Well perhaps I might start then perhaps by reading your statement and I want to  
26 then ask you some questions in connection with it. I should, before I start to  
27 read it, tell you that because there were some unauthorised disclosures of  
28 material that had been circulated by the Tribunal, the Tribunal directed that  
29 all witnesses should be asked in the first instance whether they had caused or  
10:08:02 30 permitted any material that was furnished to them by the Tribunal to be

10:08:08 1 circulated to people or given to people, provided to people other than their  
2 legal advisers?  
3 A Definitely not.  
4 Q 5 Thank you. The statement of Raymond Mould, dated 21st March 2004, may I have  
10:08:24 5 page 4357 please. You see it on screen, Mr. Mould.  
6  
7 "Arlington Securities Limited was formed in 1976. I was managing director and  
8 the major shareholder. It became Arlington Securities PLC as a public company  
9 in 1986 and in 1989 it was taken over by BAE PLC. I was then chief executive.  
10:08:50 10 Lord Keith was chairman. I left BAE Arlington in March 1993. In 1994 I became  
11 chairman of Pillar. Pillar was then floated in July on the London Stock  
12 Exchange. I am still chairman.  
13  
14 Ted Dadley was chairman of Arlington Retail Developments Limited in 1987 and it  
10:09:09 15 was he who first brought to me the possibility of retail development in Dublin  
16 at Bachelors Walk. I do not hold any documentation relating to Bachelors Walk.  
17 I understand that any documentation would have been retained by Arlington  
18 Securities, PLC.  
19  
10:09:23 20 Necessarily, therefore, all this statement is based upon is my memory of the  
21 events without the benefit of any notes or correspondence and I can only help  
22 insofar as I can still remember. You are very aware that the events started  
23 some 17 years ago and much retail activity by Arlington has taken place during  
24 the intervening period. I also do not have any diaries for the period in  
10:09:45 25 question.  
26  
27 Ted Dadley introduced me to Tom Gilmartin in 1987, he was the introducer of  
28 Bachelors Walk and was going to act as the coordinator and did so on the site  
29 assembly. Between 1987 and 1990, we acquired approximately six properties.  
10:10:03 30

10:10:03 1 I met Padraig Flynn, the then Minister for the Environment at the instigation  
2 of Gilmartin (1988) who promised wholehearted support to the project. I  
3 subsequently went to Dublin with Lord Keith (1988/89) and at the introduction  
4 of Tony Ryan, Lord Keith and I met Charles Haughey there, who begin promised  
10:10:26 5 wholehearted support to the project.  
6

7 The project needed planning consent for retail purposes and I was aware that  
8 whatever help politically that was forthcoming, it was essential to go through  
9 the normal planning procedures with Dublin Corporation. I personally never  
10:10:42 10 spoke with them, I understand Ted Dadley did on several occasions.  
11

12 It is my understanding that as Mr. Gilmartin had a 20 percent interest in the  
13 project, that he would do all that was proper and necessary to forward the aim  
14 of retail development of Bachelors Walk. Subsequently, Arlington opened an  
10:11:04 15 office in St. Stephen's Green because the scheme was very large and complicated  
16 and I wanted Arlington to be seen as fully committed.  
17

18 The office was run by Barry Boland who was on employee of Arlington. One major  
19 task of Gilmartin was to negotiate with CIE. Fitzwilton Roy Robinson were the  
10:11:21 20 architects. Ted Dadley was overseer of the whole development and Gilmartin  
21 assisted.  
22

23 Gilmartin was paid as part of his written agreement a retainer. I cannot  
24 recall the precise amount, for about three years.  
10:11:38 25

26 Liam Lawlor appeared in the office once, never at an Arlington board meeting.  
27 That was the only time I met him.  
28

29 His role was to help us through the corridors of power with planning, the CIE  
10:11:49 30 road realignment, a scheme with a capital value of circa 100 million pounds. I

10:11:55 1 was told we needed political public relations. He was paid via Gilmartin 3,500  
2 pounds per month for 10 months. That is what Gilmartin said and I have no  
3 evidence to the contrary. A cheque from Arlington Securities for 33,000 made  
4 payable to blank was produced by Susan Gilvarry and Mr. Gallagher to Mr. Dadley  
10:12:16 5 and myself. I know nothing about the cheque.

6  
7 To the best of my knowledge and belief, these are the only payments made to  
8 Lawlor or his associated companies. They were payments for services rendered  
9 and were in no way political donations.

10:12:29 10  
11 I have nothing further to add save that the scheme collapsed and Arlington lost  
12 a great deal of money on the re-sale of the sites they had acquired."

13  
14 That is the statement you furnished and you confirm its accuracy to your  
10:12:45 15 knowledge and belief?

16 A I do.

17 Q 6 I just want to ask you a few questions if I may, please. Can you remember when  
18 you first met Mr. Gilmartin and in what circumstances?

19 A Well I think it was in our office of the introduction of Ted Dadley and that  
10:13:09 20 would have been I suspect in 1987.

21 Q 7 I see. Did he at that time tell you about his vision for shopping development  
22 in the centre of Dublin?

23 A He did.

24 Q 8 Bachelors Walk.

10:13:19 25 A He did.

26 Q 9 And you became interested in that and Mr. Dadley became involved at your  
27 behest.

28 A Correct.

29 Q 10 I think that decisions were to be made by the main board and your colleagues on  
10:13:35 30 that board made decisions from time to time in relation to funding, etc.?

10:13:41 1 A That's right.

2 Q 11 Was there anybody in particular on the board who had special responsibility for  
3 the Arlington project, for the Bachelors Walk project?  
4 A On the main board? Yes. It would be myself.

10:13:53 5 Q 12 Yes.  
6 A Our primary business of Arlington was business park developments.  
7 Q 13 Right.  
8 A So the retail was a large but small part of the overall activity.  
9 Q 14 I see. And what role did Mr. Price play?  
10:14:09 10 A Mr. Price is the, was the finance director and is still the finance director of  
11 Pillar actually.  
12 Q 15 I see. Did you discuss the project in Dublin with Mr. Price and with your  
13 other colleagues on a regular basis?  
14 A I would think it would come up at every board meeting of Arlington and would  
10:14:31 15 have been discussed probably more often. At informal meetings.  
16 Q 16 Mr. Dadley was your, as it were, your person who was managing this project for  
17 you?  
18 A Correct.  
19 Q 17 And he had the assistance of Mr. Gilmartin, obviously, and the assistance at a  
10:14:53 20 later stage of Mr. Barry Boland?  
21 A Indeed.  
22 Q 18 And the Tribunal's understanding of the evidence that has been given so far, is  
23 that Mr. Gilmartin had an agreement with you whereby he was to receive 20  
24 percent share of profits and his expenses in broad terms were to be paid?  
10:15:12 25 A Correct, and a retainer.  
26 Q 19 And a retainer. You travelled to Dublin on a number of occasions?  
27 A I did.  
28 Q 20 Can you tell the Tribunal about the number of times you travelled to Dublin?  
29 Approximately, I know you came with Lord Keith on one occasion you mentioned in  
10:15:31 30 your statement?

10:15:32 1 A Certainly, there was that occasion and as we promoted a series of steeple chase  
2 races called the Arlington series qualifiers and one of which we ran one year  
3 at Naas and the other one was at Punchestown, I think and I certainly came over  
4 for one of these occasions and we had as guests architects, lawyers,  
10:15:58 5 accountants and so on. And I probably came another couple of times as well. I  
6 honestly can't remember.

7 Q 21 Apart from those social occasions, you came on at least one occasion to meet  
8 the then Taoiseach, Mr. Charles J Haughey?

9 A I did.

10:16:16 10 Q 22 And what was the background to that meeting, who set it up and what was the  
11 purpose?

12 A It was set up by Tony Ryan because he, as you know, ran GPA, and Lord Keith was  
13 a director of GPA and a shareholder and Lord Keith requested or asked Tony if  
14 he could arrange for us to meet the Taoiseach.

10:16:33 15 Q 23 So you came to Dublin with Lord Keith and you met the then Taoiseach?

16 A I did.

17 Q 24 Was the reason for your coming to --

18 A Was to establish whether we did in fact have the political will of the  
19 government to see the project through.

10:16:52 20 Q 25 And what did Mr. Haughey tell you?

21 A That he and his colleagues in the government supported the project. It wasn't  
22 a very long meeting, I have to say.

23 Q 26 I see. But --

24 A We spent about 10 minutes having our photographs taken first and it was about a  
10:17:11 25 three-minute meeting actually.

26 Q 27 I see. And did you leave the meeting believing that you had the support of the  
27 government and Mr. Haughey personally?

28 A Yes.

29 Q 28 You said that you met Mr. Pdraig Flynn at the instigation of Mr. Gilmartin,  
10:17:30 30 can you say when that was relative to the meeting with Mr. Haughey? Was it

- 10:17:34 1 before or after?
- 2 A It would have been before.
- 3 Q 29 And can you say where that meeting took place and what transpired?
- 4 A I can say that it took place in, I think, Mr. Flynn's office and again, we
- 10:17:49 5 outlined what our ambitions were for the site. Again, he confirmed that it had
- 6 his support as the Environment Minister.
- 7 Q 30 You did not, I think, meet any officials of Dublin Corporation in connection
- 8 with the matter?
- 9 A No, I did not.
- 10:18:11 10 Q 31 Did you meet any other government minister in or about that time in connection
- 11 with the project?
- 12 A No.
- 13 Q 32 Were there any other meetings held that you attended in or about that time in
- 14 Dublin? For example, did you attend a meeting in September which was chaired
- 10:18:33 15 by Mr. Seamus Brennan, attended by Minister Flynn and others, the other
- 16 officials in connection with the proposed partnership with CIE?
- 17 A I don't think so.
- 18 Q 33 I see. You have told us in the Tribunal that you met Mr. Liam Lawlor once.
- 19 Would you describe to the Tribunal how and in what circumstances you first met
- 10:19:05 20 Mr. Lawlor and what --
- 21 A We were in a meeting, certainly not a board meeting of Arlington, discussing
- 22 the project in Dublin, Bachelors Walk. And that was in Arlington's offices at
- 23 Brewers Green in Buckingham Gate and the receptionist rang through to say
- 24 Mr. Liam Lawlor was in reception and would like to see us.
- 10:19:24 25 Q 34 Can you say who was at that meeting, the to the best of your recollection?
- 26 A Certainly Mr. Dadley, certainly Mr. Price and I think Mr. Gilmartin. There may
- 27 have been others but I can't recall.
- 28 Q 35 Had you ever met Mr. Lawlor before this?
- 29 A I don't think so.
- 10:19:45 30 Q 36 What happened when the receptionist telephoned through?

10:19:50 1 A Well we decided that we'd ask him in to join the meeting.

2 Q 37 Mr. Gilmartin has told the Tribunal that you asked those present had anybody  
3 invited Mr. Lawlor to the meeting, do you recall that?

4 A I don't, but it would be a logical thing to ask.

10:20:11 5 Q 38 In any event, Mr. Lawlor was invited to the meeting?

6 A Yes.

7 Q 39 And what happened when he came to the meeting?

8 A What happened?

9 Q 40 What was said, who introduced who, what was said by him and what was said by  
10 you and what was said by anybody else at the meeting?

11 A As I said in my principal statement, we are now going back 16 or 17 years. One  
12 couldn't possibly remember what was said but the gist of the meeting was that  
13 as a TD, Mr. Lawlor could be helpful to us in seeing the way through the  
14 corridors of power in Dublin.

10:20:58 15 Q 41 What else was said, apart from the fact that he could, as a TD, help you in  
16 that manner? What was said by him or by anybody else at that meeting?

17 A To be frank, I honestly can't remember. Again, the net result of that meeting  
18 and those discussions which I imagine we talked about CIE as well, and all the  
19 other attendant problems that one has with a project of this magnitude, that it  
10:21:23 20 would be helpful to have Mr. Lawlor on board. I think our view was we had  
21 nothing to lose by doing so.

22 Q 42 Mr. Gilmartin has given evidence to the Tribunal on day 456, he said he was at  
23 the meeting, perhaps we can have page 86 of 456. At page 86, question 494, you  
24 see this is Mr. Gilmartin being questioned:

10:22:25 25

26 "So you had a meeting with Arlington, would you tell the Tribunal what  
27 happened?

28

29 Mr. Gilmartin: Well we were sitting at the meeting and we had started. We  
10:22:36 30 were probably about a quarter of an hour an the phone rings and Mr. Mould picks

10:22:37 1 up the phone and he held in the phone in his and and he says there's a  
2 gentleman downstairs who says he was invited to this meeting and he said it's a  
3 Mr. Lawlor, do any of you know him? and I said yes, I know Mr. Lawlor, I met  
4 him the other day and he says did you invite him to the meeting? I said no, I  
10:22:56 5 didn't invite him to the meeting but I did tell him that the meeting was taking  
6 place so he says "What is this all about? And I said I don't know, my meeting  
7 with Mr. Lawlor had nothing to do with the Bachelors Walk, it was to do with  
8 the site in the west of Dublin so anyway he said, that's you Mr. Mould -- he  
9 best invite him in. So he walks into the meeting and he pulls up a chair, sits  
10:23:19 10 in at the table and he said that he had been invited by me. I was sitting  
11 there. He was like -- sorry, he was lying right straight in front of my face  
12 and I was never so embarrassed in my life. I had just told the meeting that I  
13 had not invited Mr. Lawlor but he contradicted me. So here I was in a  
14 situation where there was two Paddys in the room going to start an argument so  
10:23:50 15 I decided to bite my tongue. So anyway he proceeded to say that he was  
16 appointed by the government and that he was a member of the parliament, that  
17 Bachelors Walk was in his patch, as he put it and that here was the, and that  
18 here, that he was appointed by the government to take care of it and having him  
19 on board would the make the difference between getting off the ground or not ."

10:24:14 20

21 Now, can you recall Mr. Lawlor coming in and saying that he had been invited to  
22 the meeting?

23 A I can't.

24 Q 43 Can you remember him saying that he was represented the government?

10:24:27 25 A I cannot remember that particular point, I assumed that was the intimation that  
26 we got from the conversation.

27 Q 44 And did he tell you that he was Teachta Dail or a member of parliament?

28 A Yes.

29 Q 45 And what reason did he give for wanting to meet you and attend your meeting?

10:24:53 30 A I think to procure some consultancy fees.

10:24:56 1 Q 46 Yeah.

2 A For providing assistance to us.

3 Q 47 Did he ask you for a political donation?

4 A No.

10:25:02 5 Q 48 Did you ever pay him a political donation?

6 A No.

7 Q 49 When he was looking for some consultancy fees, did he give you any reason why

8 he should be paid consultancy fees?

9 A The reason was why as I said earlier, he was going to help us through the

10:25:22 10 corridors of power in achieving a result with this particular development.

11 Q 50 And did you believe he could have done in that regard by helping you to the

12 corridors of power, you had Your Lord Keith who was able to arrange a meeting

13 with the Taoiseach directly?

14 A Indeed.

10:25:41 15 Q 51 What additional benefit could Mr. Lawlor achieve for the project or indeed for

16 Arlington?

17 A Well in the sense that he would, he is on the ground, he knows the ins and outs

18 of government in Dublin whereas Lord Keith is a figure head.

19 Q 52 Yes.

10:26:03 20 A And certainly he is not involved in the day to day activities of the

21 development of this magnitude.

22 Q 53 Can you recall anything else said by Mr. Lawlor on that occasion?

23 A I can't.

24 Q 54 Did he identify the size of the consultancy fee or the nature of the

10:26:28 25 consultancy fees or the amount of the consultancy fees he was looking for?

26 A I can't remember whether that was discussed at that meeting or outside that

27 meeting. But it was then settled that he would be paid sums through Tom

28 Gilmartin.

29 Q 55 All right.

10:26:45 30 A And Tom Gilmartin I think has given evidence that it was 3,500 pounds a month

- 10:26:51 1 for 10 months and I wouldn't dispute that.
- 2 Q 56 When you say outside that meeting, what do you mean?
- 3 A I don't think the question of the fees were discussed in the boardroom at
- 4 Arlington's offices. I think it was --
- 10:27:03 5 Q 57 But consultancy fees, you say, were raised by Mr. Lawlor at that meeting when
- 6 he came?
- 7 A I'm pretty certain it was but not the quantum.
- 8 Q 58 Mr. Gilmartin says that he was told by Mr. Dadley that Mr. Lawlor had sought
- 9 100,000 pounds initially and that he had also sought a 20 percent stake in the
- 10:27:26 10 project on behalf of the government.
- 11 A Well I heard that being said but I was not party to that discussion.
- 12 Q 59 I see. Can you tell the Tribunal about the decision-making process that led to
- 13 Mr. Lawlor being paid 3,500 per month through Mr. Gilmartin? In other words,
- 14 who decided it and for what reason was it decided to pay him the money?
- 10:27:58 15 A Well I would think that the negotiations would -- and I can't swear to this --
- 16 the negotiations would have taken place with Ted Dadley and Mr. Lawlor, but the
- 17 ultimate decision to the quantum would be made by me.
- 18 Q 60 And was this money being paid because of your, what you had been told by
- 19 Mr. Lawlor that he could assist you and assist Arlington in the Dublin project?
- 10:28:29 20 A Correct. As I said earlier, the general feel was we had nothing to lose by
- 21 having somebody who was a member of parliament in Dublin being on our side.
- 22 Q 61 Had you ever come across a situation like that before, where --
- 23 A In the UK, yes, certainly.
- 24 Q 62 And what kind of arrangements would you have made in such circumstances? Would
- 10:28:52 25 you have a written agreement?
- 26 A Exchange of letter, in my experience. I think of two MPs who we had on a
- 27 consultancy retainer.
- 28 Q 63 And you would have effectively had a written agreement by exchange of letter?
- 29 A Correct.
- 10:29:13 30 Q 64 Now, do you remember the putting in place of the -- well, first of all, did you

10:29:31 1 have any recollection of a discussion concerning Mr. Gilmartin's share of the  
2 project which was to be 20 percent? He has said that he was told by Mr. Lawlor  
3 that you had said that Mr. Gilmartin would have to give half his share to  
4 Mr. Lawlor?

10:29:54 5 A I have absolutely no recollection of that whatsoever.

6 Q 65 I see. You are aware that monies were paid and Mr. Gilmartin has confirmed  
7 and, indeed Mr. Lawlor has confirmed that monies were paid over approximately a  
8 10-month period in sums of 3,500 pounds per month approximately. You are aware  
9 of that?

10:30:21 10 A I am indeed.

11 Q 66 And you are aware that a settlement was arrived at with Mr. Gilmartin at a time  
12 when Arlington had decided to pull out of the Dublin project and to  
13 disassociate -- or disengage from Dublin.

14 A Yes.

10:30:47 15 Q 67 Mr. Gilmartin was paid, if I may have 2696 please. This is an agreement of the  
16 19th February 1990. 2697.  
17  
18 Mr. Gilmartin agreed with Arlington Securities through his company, Brava  
19 Limited and IPU, Publications and Exhibitions Limited, a settlement whereby he  
20 received 1 million 250,000 pounds.

10:31:24 21 A I see that.

22 Q 68 That was an agreement, if we look at 2694 of the 19th February 1990.

23 A Yes.

24 Q 69 Do you know anything about any payments -- sorry I put it in context,  
25 Mr. Gilmartin has said that after making approximately 10 payments, he decided  
26 he would not make any following payment following what he says something  
27 happened in the bank when an approach was made to his bank directly by  
28 Mr. Lawlor and yet a number of payments appear to have been made in the  
29 succeeding months amounting to 3,500 pounds per month. Do you know anything of  
10:32:39 30 any direct payments made to or on behalf of Mr. Lawlor by or on behalf of

10:32:46 1 Arlington?

2 A Well only the cheque.

3 Q 70 Apart from the cheque now.

4 A Apart from the cheque, no.

10:32:52 5 Q 71 In between the period of the end of the 10-month period that we have talked  
6 about --

7 A No.

8 Q 72 There appears to have been a number of other payments of 3,500 pounds a month,  
9 do you know anything about those?

10:33:06 10 A No.

11 Q 73 Now we have the reference to the cheque, may I have 2302 and 2303 please. If  
12 they could be put side by side. You see the two documents in front of you, the  
13 photocopies of cheques, of a cheque rather, one cheque. It's just that perhaps  
14 it's necessary to look at both to see the entire, it's a cheque drawn on in  
10:34:05 15 favour of the 1989 for and an behalf of Arlington Securities PLC, it's drawn in  
16 favour of Economic Reports Limited in the sum of 33,000 pounds.  
17 That appears to have been cashed on the 24th April of 1989. First of all, do  
18 you recognise the cheque as an Arlington Securities PLC cheque?

19 A I do.

10:34:37 20 Q 74 The Bank of Scotland?

21 A Signed by the then company secretary, Robin Richards an the chief financial  
22 officer, Ian Ferguson.

23 Q 75 You can identify both those signatures?

24 A I can yes.

10:34:52 25 Q 76 Can you say why that cheque was written to Economic Reports?

26 A I can only imagine if it was signed by those two gentlemen, it was against a  
27 proper invoice.

28 Q 77 Economic Reports Limited is a company with which Mr. Lawlor was associated.

29 A I now know that, yes.

10:35:11 30 Q 78 Do you know what benefit was conferred by Mr. Lawlor or services provided by

10:35:17 1 him?

2 A I do not.

3 Q 79 Mr. Lawlor has told the Tribunal and he put it to Mr. Dadley that, that was a

4 cheque that was authorised by Mr. Dadley and that any money he received from

10:35:36 5 Arlington directly or through Mr. Gilmartin was a political donation.

6 A I would say that was complete nonsense. Certainly the fees that were paid

7 through Gilmartin were paid for consultancy services.

8 Q 80 And if this --

9 A I can't say about this cheque but I repeat if that was signed by those two

10:36:03 10 gentlemen, it would have been against an invoice.

11 Q 81 Yes. And can you say if Arlington was in the habit of making political

12 donations at that time?

13 A No, definitely not.

14 Q 82 Did you ever make political contribution --

10:36:17 15 A No.

16 Q 83 Or donation to any Irish politician or any political party?

17 A No.

18 Q 84 Do you know anything about Economic Reports Limited?

19 A No.

10:36:26 20 Q 85 Thank you, Mr. Mould.

21 A Thank you.

22 Q 86 There may be some questions.

23

24 CHAIRMAN: Mr. Maguire?

10:36:44 25

26 **THE WITNESS WAS QUESTIONED BY MR. SREENAN AS FOLLOWS:**

27

28 MR. SREENAN: I do, chairman. Can I ask you Mr. Mould to look at a document

29 that I asked Mr. Dadley about. 264-

10:36:55 30

- 10:36:55 1 MR. GALLAGHER: Sorry, Mr. Mould, Mr. Paul Sreenan is for Mr. Owen O'Callaghan.  
2 Mr. O' Callaghan had no involvement with the Arlington project as far as I am  
3 aware of it.
- 4 Q 87 MR. SREENAN: Mr. O'Callaghan had no involvement with Bachelors Walk, he had an  
10:37:14 5 involvement with the development out at Quarryvale. That's what I want to ask  
6 you about.  
7 A Right.
- 8 Q 88 If I can could ask you to look at document 2640 perhaps. That's on the headed  
9 paper of Arlington Retail Developments Limited and I see that there's a H R  
10:37:29 10 Mould listed as a director of that company at the bottom of the page, I take it  
11 that that's you?  
12 A Yes.
- 13 Q 89 Apart from Arlington Retail Developments Limited, there were obviously a number  
14 of other companies bearing the number Arlington but all part of the same group,  
10:37:43 15 is that correct?  
16 A Correct.
- 17 Q 90 And all subsidiaries of Arlington Securities Limited?  
18 A Yes.
- 19 Q 91 And I think you were chairman of another Arlington company, apart from being a  
10:37:52 20 director of this Arlington company, is that so?  
21 A May well have been, yes.
- 22 Q 92 This letter is dated the 16th January 1990, and it deals with the Quarryvale  
23 property which is described as Westpark. As far as you are aware, did  
24 Arlington have any interest in the Quarryvale or Westpark development?  
10:38:11 25 A Well I imagine we must have done, otherwise this letter wouldn't have been  
26 written. I have no person knowledge of it.
- 27 Q 93 It refers to various conversations and meetings between Mr. Dadley and  
28 Mr. Gilmartin in relation to what's described as the above but appears to be  
29 Quarryvale. Did you have any knowledge of such meetings or conversations?  
10:38:32 30 A No.

- 10:38:33 1 Q 94 He says in the second paragraph, "I have seen your suggested proposals for a  
2 retail and business park development." Were you shown the suggested proposals  
3 or told about them?
- 4 A No.
- 10:38:46 5 Q 95 He goes on to say "As discussed with you, our thoughts" -- in the plural, were  
6 you any part of those thoughts of Arlington retail which was to make an offer  
7 of an initial payment there and then of 10 million pounds and a subsequent  
8 payment of 10 million pounds when full planning permission for the development  
9 has been obtained. That was for a 50 percent interest.
- 10:39:10 10 A Not that I can recall.
- 11 Q 96 And then goes on about having the respective lawyers formalise a legal  
12 agreement. You knew nothing about that?
- 13 A I did not.
- 14 Q 97 At that point in time, the 16th January 1990, the Bachelors Walk development  
10:39:26 15 had effectively terminated as an interest in Arlington, it wasn't proceeding  
16 with that.
- 17 A So sorry what was the date of this?
- 18 Q 98 16th January 1990. It was February 1990 when the payment was made to  
19 Mr. Gilmartin to buy out his interest in the Bachelors Walk development?
- 10:39:43 20 A Right.
- 21 Q 99 So I take it --
- 22 A I honestly can't remember dates.
- 23 Q 100 It would seem that perhaps by January of 1990, Arlington had essentially  
24 changed their minds about going ahead with the Bachelors Walk development and  
10:39:57 25 it was reversing out of that proposal?
- 26 A Correct.
- 27 Q 101 I'll take it that an offer of 10 million pounds for the subsequent payment of  
28 10 million pounds for a 50 percent interest in another Irish development would  
29 have been a significant investment?
- 10:40:12 30 A Certainly would.

- 10:40:13 1 Q 102 And it's the sort of thing you would expect to be consulted about?
- 2 A It would have had come to the board in due course, it's not unusual though for
- 3 directors to put a project under offer and then bring it to the board for
- 4 approval.
- 10:40:28 5 Q 103 I think when Mr. Gilmartin first came to Mr. Dadley in relation to the
- 6 Bachelors Walk development, that was brought to the board for approval?
- 7 A Yes.
- 8 Q 104 And the payment of 3,500 pounds per month consultancy to Mr. Lawlor was brought
- 9 to the board for approval?
- 10:40:44 10 A No, it was not.
- 11 Q 105 It was not.
- 12 A No. Executive directors are empowered by the board to make certain payments
- 13 not ordinary course of business and below a certain level and I can't recall
- 14 what the level is but it was -- so we didn't have to have board approval.
- 10:41:00 15 Q 106 And just to clarify something for the benefit of the Tribunal while I'm on
- 16 that, it's not directly relevant to my client perhaps but in Mr. Dadley's
- 17 statement which happens to be document 4354.
- 18
- 19 It does say at the end of the first page that the "Retainer of 3,500 pounds per
- 10:41:24 20 month which ultimately lasted ten months only, that retainer was approved by
- 21 the Arlington board on the proviso that it was paid to Mr. Gilmartin and that
- 22 Mr. Gilmartin dealt with Mr. Lawlor accordingly".
- 23
- 24 It's just down the end of that first page, it doesn't appear very clearly on
- 10:41:41 25 the screen.
- 26 Q 107 Your recollection is different to that?
- 27 A My recollection is I would have approved that and Mr. Dadley has used the
- 28 expression "The board."
- 29 Q 108 But certainly Ted Dadley never came to you with a proposal in relation to the
- 10:42:00 30 Quarryvale development?

10:42:01 1 A No.

2 Q 109 And it was never brought to the board of Arlington?

3 A No.

4 Q 110 Thank you.

10:42:13 5

6 CHAIRMAN: Mr. Barniville?

7

8 **THE WITNESS WAS QUESTIONED BY MR. BARNIVILLE AS FOLLOWS:**

9

10:42:15 10 MR. BARNIVILLE: I have one or two questions. Mr. Mould, I appear for

11 Mr. Gilmartin and I have a couple of questions for you.

12

13 Q 111 I think you were present when your former colleague, Mr. Dadley, gave evidence

14 to the Tribunal?

10:42:24 15 A I was.

16 Q 112 And that's on the 25th March, I think, isn't that right?

17 A Correct.

18 Q 113 And I think you heard Mr. Dadley describe Mr. Gilmartin and his dealings with

19 Arlington as being honourable and straightforward, would you agree with that?

10:42:41 20 A Correct.

21 Q 114 I think Mr. Dadley also described Mr. Gilmartin as a trustworthy person, would

22 you agree with that?

23 A Yes.

24 Q 115 And that at all times he acted in a straightforward and proper way in his

10:42:51 25 dealings with Arlington?

26 A Yes.

27 Q 116 And have you ever had cause to doubt or resile from that view of

28 Mr. Gilmartin's character?

29 A I have not.

10:42:58 30 Q 117 Does that remain your view today?

10:43:00 1 A Correct.

2 Q 118 And I think it's fair to say that Mr. Dadley perhaps had a more hands on or  
3 direct or perhaps a more continuous involvement with Mr. Gilmartin, would that  
4 be right?

10:43:11 5 A That's correct.

6 Q 119 And I think Mr. Dadley's recollection of events may perhaps, not to be unfair  
7 to you, Mr. Mould, be a little better than yours in relation to some of these  
8 matters.

9 A Well he was much closely involved in the project.

10:43:24 10 Q 120 In the event of any area of uncertainty or difficulty of recollection, you have  
11 no difficulty in referring to Mr. Dadley's recollection?

12 A None at all.

13 Q 121 And your, you have given some brief evidence I think in relation to the meeting  
14 in your, in the Arlington offices in Brewers Green. You may be aware that  
10:43:45 15 meeting occurred in May 1988. Do I take it your recollect is, not to be unfair  
16 to you, it's not particularly good in relation to some of the details?

17 A Correct.

18 Q 122 The meeting took place 16 years ago, perhaps it's understandable why that might  
19 be so. But perhaps you can just confirm one or two things. Mr. Lawlor did  
10:44:04 20 attend at the meeting. You didn't invite him I think, isn't that right?

21 A I didn't invite him, I had never met him before.

22 Q 123 You were aware Mr. Gilmartin didn't invite him also?

23 A Yes.

24 Q 124 Your understanding that Mr. Lawlor was someone who could be helpful to  
10:44:19 25 Arlington in its plans and who could see Arlington through the corridors of  
26 power as it were, that was not, I think, an understanding that was conveyed to  
27 you by Mr. Gilmartin, is that right?

28 A That is right.

29 Q 125 Who conveyed that understanding to you?

10:44:36 30 A Mr. Lawlor.

- 10:44:37 1 Q 126 Do you recall Mr. Gilmartin's reaction to Mr. Lawlor turning up at the meeting  
2 in those circumstances?  
3 A I seem to recall that he was quite annoyed.
- 4 Q 127 And Mr. Gilmartin has given evidence and I think Mr. Dadley has confirmed this  
10:44:54 5 that Mr. Gilmartin described Mr. Lawlor as a hustler, do you have any  
6 recollection of that?  
7 A I don't remember that expression, no.
- 8 Q 128 Do you recall Mr. Gilmartin and Mr. Dadley leaving the meeting after a short  
9 time and going to I think a nearby hotel for a cup of tea or a cup of coffee?  
10:45:08 10 A No, I didn't.
- 11 Q 129 And that you I think and Mr. Price may have had a subsequent discussion with  
12 Mr. Lawlor at that meetings, do you have any recollection of that?  
13 A I don't.
- 14 Q 130 And just to tell you, it was subsequently reported to Mr. Gilmartin, I think by  
10:45:22 15 Mr. Dadley that at that subsequent meeting and after Mr. Dadley and  
16 Mr. Gilmartin had left to go to the hotel, that Mr. Lawlor had asked for a  
17 percentage stake in the project and had asked for a large sum of money, do you  
18 have a recollection of that?  
19 A I have a vague recollection of it, yes. Certainly anything of that nature --  
10:45:46 20 100,000 pounds and was the figure mentioned and the 20 percent stake would have  
21 had to be discussed with me. As you have heard evidence, he didn't get it, he  
22 got 3,500 a month, rather different.
- 23 Q 131 That not something you would ever have countenanced, I take it?  
24 A No.
- 10:46:03 25 Q 132 Do you have any recollection of Mr. Gilmartin discussing the difficulties which  
26 he was having here in progressing with the development and the difficulties he  
27 may have been having with officials in local government and anybody else?  
28 A No, I don't really.
- 29 Q 133 Would they have been matters --  
10:46:18 30 A I am sure we knew we were having difficulties, I don't remember anything of any

10:46:22 1 detail whatsoever.

2 Q 134 Would they have been matters that would have been primarily dealt with by

3 Mr. Dadley?

4 A Yes.

10:46:29 5 Q 135 Very good. Thanks very much.

6 A Thank you.

7

8 CHAIRMAN: Mr. Lawlor, do you want to ask any questions?

9

10:46:35 10 **THE WITNESS WAS QUESTIONED BY MR. LAWLOR AS FOLLOWS:**

11

12 Q 136 May I have page 2859 please. Mr. Mould, this is the Assistant Commissioner of

13 the Irish Police Force, Mr. Hugh Sreenan and and a colleague of his, Detective

14 Burns, visited you three or four months after this so-called meeting in May

10:47:09 15 1988 and if I just take you through this. This is a minute which the senior

16 police officers took following a discussion with yourself and Mr. Dadley. Do

17 you have that do you remember that meeting?

18 A When you arrived?

19 Q 137 No the meeting on the screen in front of you, the 7th November 1989?

10:47:30 20 A No.

21 Q 138 You don't remember it?

22 A No.

23 Q 139 I see. You can't remember a meeting 18 months after the meeting. You can

24 remember lots about the meeting in May '88 and being interviewed by senior

10:47:41 25 police officers some 12 or 14 months later you can't remember at all, is that

26 what you are telling the Tribunal?

27 A I'm saying I remember the meeting in May 1988 because that's the meeting ah

28 arrived at. I do not remember being interviewed by these two gentlemen of the

29 police.

10:47:59 30 Q 140 I see. We just recall what they noted and it might help jog where you are your

10:48:04 1 memory.  
2  
3 "We outlined the nature of the our inquiry insofar as the they were concerned  
4 and that we were making inquiries into the activities of a Irish politician who  
10:48:16 5 had been mentioned in the context of their Dublin enterprise. We did not name  
6 the politician. Both Mr. Dadley and Mr. Mould said that they assumed we were  
7 inquiring about Mr. Liam Lawlor and we agreed. They stated that Mr. Lawlor had  
8 indeed visited their head office in connection with the Bachelors Walk project  
9 and that he had suggested that put a bowling alley in the basement. They did  
10:48:40 10 not take him seriously. He was treated courteously. There was no offer by  
11 Mr. Lawlor to act as a consultant and no fee, money or any benefit was given  
12 and nor was suggested by either side."

13  
14 Can you confirm that's the comments you made to the police or you don't have  
10:48:54 15 any recollection?

16 A If I can't remember the meeting, I can't remember having said that.

17 Q 141 If we could have page 260 please. Just down there, 12.7 Mr. Mould, I would  
18 also point out that the interview by Gardai of Edward A Dadley. --

19  
10:49:16 20 CHAIRMAN: Sorry Mr. Lawlor it's important you point out to Mr. Mould the  
21 documents you are referring to.

22  
23 MR. LAWLOR: This is a continuing note of the interview of the offices of the  
24 Irish police, Mr. Mould

10:49:27 25 A Right.

26 Q 142 And they are recording "I would also point out that the interview by Gardai of  
27 Edward A Dadley, chairman of Arlington Retail Developments and Raymond Mould  
28 deputy chairman and chief executive of Arlington Securities concerning  
29 Mr. Lawlor's presence at the Arlington offices in London differs substantially  
10:49:45 30 from Mr. Gilmartin's account". Do you recall that?

10:49:54 1 A No, I don't.

2 Q 143 How much money did Arlington lose in the Dublin project?

3 A I don't know, a substantial amount.

4 Q 144 Could you hazard a guess, was it millions or hundreds of thousands?

10:50:01 5 A It was millions.

6 Q 145 And do you feel responsible for that?

7 A Ultimately, I am responsible, yes.

8 Q 146 Yes. Why then did you feel it necessary to pay Mr. Gilmartin 1.3 million

9 pounds for a project that was going to lose the company millions?

10:50:17 10 A Very good question to which I don't know the answer.

11 Q 147 You are the one responsible for signing the cheque, why don't you know the

12 answer?

13 A Was I responsible for signing the cheque?

14 Q 148 You said that you know I doubt that executives had approval of 1.3 million?

10:50:29 15 A I wouldn't necessarily have signed the cheque but wouldn't have been paid

16 without any --

17 Q 149 Put it another way, you were responsible for the paying of 1.3 million pounds

18 to a 20 percent partner in a project whose 80 percent was losing millions? Is

19 that right?

10:50:46 20 A So the document that I have seen says. I do not recall that document. I don't

21 recall any agreement to pay that sum of money.

22 Q 150 To Mr. Gilmartin?

23 A No.

24 Q 151 You don't remember going to the board to get approval?

10:50:58 25 A No.

26 Q 152 Do you think you fit the whole office of director of public company when you

27 can't remember these vast payments that you are responsible for?

28 A That's 14 years ago.

29 Q 153 Yeah but you can remember May '88 when I was supposed to have attended at a

10:51:16 30 meeting but you can't remember making approval to your board for 1.3 million

10:51:21 1 pounds to Mr. Gilmartin for a project that was losing millions of pounds?

2 A No, I cannot.

3 Q 154 Are you aware of Mr. Gilmartin has claimed that your company offered him 3  
4 million pounds as a settlement?

10:51:32 5 A No, I'm not aware of that.

6 Q 155 Are you aware that Mr. Gilmartin in his evidence has stated that I looked for 5  
7 million pounds at the meeting in May, supposed meeting in May 1988, you  
8 remember that?

9 A No, I do not.

10:51:48 10

11 CHAIRMAN: Sorry, Mr. Lawlor, when was -- I am not aware that that  
12 allegation --

13

14 MR. LAWLOR: It's there in the transcript somewhere among the many lies that  
10:51:56 15 Mr. Gilmartin has told you chairman.

16

17 MR. GILMARTIN: That was never said.

18

19 CHAIRMAN: Yeah, I think you are correct.

10:52:04 20

21 MR. LAWLOR: I know I'm correct. Could I have page 2394 please.

22

23 Q 156 This is the agreement that's been on the screen earlier, Mr. Mould, you are  
24 saying you have no recollection of the concluding exiting of Mr. Gilmartin from  
10:52:22 25 the Arlington Bachelors Walk project for the payment of 1 and a quarter million  
26 pounds, is that your evidence to the Tribunal?

27 A It is.

28 Q 157 In your own statement, if I could have 1312 please. Now, this is Dublin  
29 Corporation, Mr. Dadley, writing. In your statement quote on the bottom of  
10:53:04 30 page one:

10:53:04 1  
2 "This project needed planning consent for retail purposes and I don't know what  
3 I was aware, well maybe you put it up there first before we go to the letter,  
4 4357 please. It's rather blurred on the copy we have.

10:53:19 5  
6 It might be better there. Just read the last paragraph there. Maybe if you  
7 could read it yourself, Mr. Mould?

8 A Yeah, I see that.

9 Q 158 Yeah. "The project needed planning consent for retail purposes and I was aware  
10 that whatever help politically that was forthcoming it was essential to go  
11 through the normal planning procedures with Dublin Corporation."  
12 Could I ask you there, did you ever go through the normal procedures?

13 A Did we what, I'm sorry.

14 Q 159 Did you ever go through the normal planning procedures with Dublin Corporation  
10:53:52 15 which you have put in your statement recently produced?

16 A Did I personally?

17 Q 160 No, well the company?

18 A I am sure we did, of course we did.

19 Q 161 Could I put it to you that you did not?

10:54:03 20 A If you like, but --

21 Q 162 You don't know, do you?

22 A I don't know is the answer, yes.

23 Q 163 Well you can't --

24 A I'm sure we would, we were a highly responsible development company.

10:54:13 25 Q 164 And if you were there and you didn't own the site, you had no legal right to go  
26 before any planning authority which you never did, is that right?

27 A We didn't own any property, of course we owned the property.

28 Q 165 You didn't own the totality of the property which you have a legal  
29 requirement --

10:54:30 30 A We never managed to complete the site assembly.

10:54:34 1 Q 166 Therefore you never had a legal right to go before a planning authority. You  
2 surely couldn't apply for planning permission over other people?  
3 A I never said we didn't apply for planning permission.  
4 Q 167 I'm just putting it to you, I'm quoting your statement to you. I'm asking you  
10:54:49 5 did you go through the proper planning procedures, you said you didn't did and  
6 I'm putting to you you never did?  
7 A That involved discussions with planning officers at the City Corporation which  
8 we do all day every day of our lives. It was going through the proper  
9 procedures, Mr. Lawlor.  
10:55:06 10 Q 168 But that you never did.  
11 A I personally never did, no.  
12 Q 169 No, your company never did?  
13 A So you tell me.  
14 Q 170 I'm telling you why, too, do you understand why?  
10:55:17 15 A I am not prepared to enter into an argument or discussion --  
16 Q 171 I'm not asking you to enter into an argument, I am asking a straightforward  
17 question. Do you know why Arlington Securities PLC did not go through the  
18 proper planning procedures with the then Dublin Corporation.  
19  
10:55:34 20 MR. GALLAGHER: The position is there was never a planning application.  
21  
22 CHAIRMAN: I think perhaps Mr. Mould might go asked to explain what he means by  
23 that sentence that Mr. Lawlor has referred to. Insofar as it suggests that you  
24 were of the view that it was essential to go through the normal planning  
10:55:53 25 procedures with the corporation. Are you aware as to what procedures, if any,  
26 were followed on behalf of your company?  
27 A Well I was aware that Ted Dadley and his team, including Fitzroy Robbins the  
28 architects, who had meetings with officers at Dublin City Corporation did  
29 discuss a potential of a planning application for Bachelors Walk. As  
10:56:20 30 Mr. Lawlor rightly points out, we could not submit a planning application

10:56:25 1 because we had not completed the site assembly. But I would regard our  
2 discussions with planning officers, etc, as proper procedures in planning.  
3  
4 Q 172 Of course, yeah, nobody is disputing that. I'm just making the point, you see  
10:56:40 5 the Terms of Reference of this Tribunal, Mr. Mould is to look into how one  
6 might have abused or misused the planning codes in this country and as your  
7 company was never ever, I think you were within 40 percent of a planning  
8 application, I think you assembled 40 percent of the site and until you  
9 completed the assembly, you didn't have a legal right to lodge before a  
10:57:02 10 planning authority, you understand that?  
11 A Yes.  
12 Q 173 So therefore you were never before the planning authority other than in  
13 preliminary discussions, isn't that correct?  
14 A Correct.  
10:57:13 15 Q 174 OK. Well and you went on to say I personally never spoke with them, I  
16 understand Ted Dadley did on several occasions." Isn't is that right?  
17 A That's right.  
18 Q 175 So you never had any dealings with the Dublin Corporation?  
19 A Well you just pulled out a letter that refers to a meeting that I, Mr. Dadley  
10:57:33 20 says I was present at.  
21 Q 176 So therefore your statement is wrong?  
22 A It would appear so. That meeting took place in July, 1987, according to the  
23 letter. That was 17 years ago.  
24 Q 177 Well you know we are all suffering from the same length of years, Mr. Mould,  
10:57:49 25 and others expect --  
26 A You are rather more closely involved in this than I am.  
27 Q 178 Well you volunteered to come and help the Tribunal and it just, you have read  
28 your brief or you have tried to establish the facts so that you could be of  
29 assistance. Just before proceeding, chairman, could I have day 466, page 41.  
10:58:06 30

10:58:06 1 Down at the final part of that last paragraph, it's really clarification I'm  
2 looking for from yourself, Mr. Chairman. Mr. Gallagher is suggesting when  
3 Mr. Dadley is being questioned, I don't want to get into controversy here, he  
4 is suggesting that Mr. Dadley and is Mr. Mould here under the same criteria set  
10:58:53 5 out here by Mr. Gallagher that Mr. Mould is only here to answer about a meeting  
6 in May and not the rest of the module or is he here to answer the broader  
7 questions associated with the module?

8  
9 It deals primarily with an alleged meeting in Arlington, the year is wrong and  
10 I presume it was May 1988 Mr. Gallagher intended. I'm not sure that the  
11 witness knows or has he had prior warning. I mean the whole basis of my  
12 questioning Mr. Mould is on the basis of the module that you decided that you  
13 wished to investigate.

14  
10:59:26 15 The point is Mr. Gallagher also already interrupted once and I want to get to  
16 get it clear from you, if Mr. Mould is here to deal with the module as we have  
17 all been requested to do so, is that correct?

18  
19 CHAIRMAN: He has to deal with the module insofar as he has any evidence to  
10:59:46 20 offer.

21  
22 MR. LAWLOR: That's fine, OK. Mr. Mould, the meeting that we speak about that  
23 I was supposed to have turned up in May 1988, Mr. Gilmartin and Mr. Dadley's  
24 evidence is that they departed from the meeting. Now did I ever have any  
11:00:02 25 discussions with you regarding financial matters?

26 A No.

27 Q 179 And yet the evidence from Mr. Gilmartin is that I left late?

28 A Yeah.

29 Q 180 I left later, I went along and I was able to supposedly inform Mr. Dadley and

11:00:23 30 Mr. Gilmartin that I had come to some agreement with you which I never recall

11:00:25 1 having any such discussions with you, any discussions I had regarding finances  
2 was with Mr. Dadley, but the evidence given to Tribunal by both Mr. Dadley and  
3 by Mr. Gilmartin is that that's not the case, it was you I had discussions with  
4 and you have just said you never recall any such discussions, is that your  
11:00:44 5 evidence?  
6 A It is correct.  
7 Q 181 So therefore could we take it then if I didn't discuss that matter with you on  
8 that day, there was no discussion about money that day, would that be your  
9 evidence to the Tribunal?  
11:00:55 10 A It is. I said if there was any discussion about money, it would have been with  
11 Mr. Dadley.  
12 Q 182 Right. So therefore Mr. Dadley and Mr. Gilmartin's sworn evidence to date  
13 differs substantially from your own.  
14 A Correct.  
11:01:08 15 Q 183 I just want to go back to this point about this agreement with Mr. Gilmartin,  
16 because it's a matter of some mystery as to why there was any responsibility on  
17 Arlington to make a settlement for a failing project with a 20 percent partner.  
18 Have you any understanding of I didn't or your company has paid out this 1.3  
19 million pounds to a third party when you were facing millions of pounds of loss  
11:01:42 20 on the project?  
21 A No, I have not.  
22 Q 184 And do you credit Mr. Dadley with securing the agreement with Mr. Gilmartin?  
23 A I have no recollection of this arrangement whatsoever. I have said that once  
24 and I say it again.  
11:01:59 25 Q 185 Could I have page 1529 please. Now this is a minute from Mr. Kirwan who you  
26 will recall was your solicitor here in Dublin and I just want to quote you a  
27 paragraph, 1529, isn't it, this is a a memo of the 30th January '88.  
28  
29 "Mr. Gilmartin is saying that if he had his way, they would have made much more  
11:02:42 30 progress by now in the acquisition programme. They say that the October stock

11:02:47 1 exchange crash was not affecting them but their actions contradict this.  
2 Gilmartin would prefer that they were open with him because he says he can  
3 arrange alternative funding if Arlington don't want to proceed." Do you have a  
4 recollection of this matter?

11:03:05 5 A No, I don't have a recollection of this at all.

6 Q 186 And your recollection of why the project failed was what, exactly?  
7 A Sorry?

8 Q 187 Your recollection of why the Bachelors Walk project did not proceed?  
9 A We certainly found that the prices of the adjoining properties which we needed  
11:03:24 10 to assemble had gone up considerably, not in value but in asking price. I  
11 think we felt that we had lost the support of the corporation and the  
12 government. One of the major problems, the bus station, CIE.

13 Q 188 But could you not have proceeded with your project without having any  
14 involvement of a bus station?

11:03:51 15 A I can't recall that, whether we could or we couldn't so we didn't so I imagine  
16 we couldn't.

17 Q 189 I put it another way, it became a very major Arlington priority to get try the  
18 Irish Government through the bus company to be a part of the project which was  
19 going to provide substantial finance for part of the project. The intention  
11:04:12 20 also was that all the shoppers coming into the city would arrive on the top of  
21 your centre and filter down through the centre and therefore hopefully be  
22 trapped for shopping deny the other parts of the city shopping. You didn't  
23 need a bus station in your all retail centres, did you?

24 A I think we did, I don't recall, it was an awful long time ago.

11:04:35 25 Q 190 Well what the Tribunal is trying to establish is why the project didn't  
26 proceed, Mr. Mould. It's important for the following reason?

27 A It didn't proceed because we couldn't assemble the site and because of the bus  
28 station implications it was no longer viable.

29 Q 191 Mr. Gilmartin's evidence of road blocks blackmail, skulduggery and corruption,  
11:04:57 30 do you adisagree any of those reasons other than commercial factors are the

11:05:01 1 reason?

2 A I'm giving my evidence on my recollection, that is my recollection is the  
3 scheme became unviable because of the inability to complete the cited assembly  
4 and because of the problems and the cost of the bus station.

11:05:13 5 Q 192 Just on the meeting in May 1988, in late 1987, Mr. Dadley and yourself had met  
6 with the senior minister responsible for development, Mr. Flynn, isn't that  
7 correct?

8 A Yes.

9 Q 193 So did you think it somewhat outrageous and unbelievable that if I did attend  
11:05:40 10 a meeting in May 1988, that I could convince you and Mr. Dadley that I was  
11 representing the Irish Government, and some eight or nine months earlier you  
12 had met the most senior minister responsible and could easily establish that I  
13 had no role on behalf of the Irish Government in the project, would that be a  
14 reasonable conclusion to come to?

11:06:00 15 A Well, Mr. Flynn was not going to be helping us on a day to day basis. We  
16 understood your role as it were was that you were.

17 Q 194 I wasn't an elected member of the authority that you were dealing with, I had  
18 no connection with the city centre issues whatsoever and never purported to  
19 have?

11:06:20 20 A You know the powers that be.

21 Q 195 But sure you had already met them, your chairman through Tony Ryan had met the  
22 Prime Minister. Mr. Dadley had met the --

23 A Neither he, certainly not the Taoiseach, and certainly not Mr. Flynn were going  
24 to be involved on a day to day basis.

11:06:35 25 Q 196 But no political involvement is needed on a day to day basis to build a  
26 shopping centre, you have supposed to have built them all over the UK and  
27 retail business parks?

28 A We have.

29 Q 197 And the Aspect Park in Bristol and Citywest is modeled on it here in this  
11:06:53 30 country. You didn't need any political involvement to develop any of those

11:06:57 1 projects, I trust?

2 A Well we thought we did.

3 Q 198 I see. Now I know, I'm just going back through it but you have no recollection  
4 of this 33,000 pounds cheque payment whatsoever?

11:07:12 5 A No.

6 Q 199 And Mr. Dadley has none?

7 A I don't remember what he said in his evidence.

8 Q 200 Well it has been suggested that you were, you know, a twin act here, any time  
9 anybody met you you were together. When Mr. Hanratty met you in London, you  
11:07:28 10 were together, your statements were compiled together; and his evidence is he  
11 has no recollection of it whatsoever. Is it your recollect that you have no  
12 record of approving or having anything to do with the 33,000 pounds?

13 A If I did, I did do not recall it.

14 Q 201 Are you aware that I met any other executives of the Arlington company at any  
11:07:48 15 time?

16 A Say that again? Are you aware, have I ever met to your knowledge, any other  
17 Arlington executives? Did you have any knowledge of me meeting these other  
18 names that are referring to in the documents, Mr. McPartland, Mr.--

19 A No, none.

11:08:04 20 Q 202 Neither have I.

21 A You certainly met Humphrey Price.

22 Q 203 Well I disagree with you there. I met you in Mr. Dadley's office and we went  
23 and went out to lunch and that's the first and only time I met you, and that  
24 was by way of arrangement with Mr. Dadley. But your memory is so suspect on  
11:08:25 25 major issues for you to be definitive on this sort of issue rather bucks line  
26 in what you said with previous evidence with Mr. Gilmartin. It smacks of  
27 Mr. Dadley doctoring his statement here the morning he came to comply with what  
28 Mr. Gilmartin's evidence has been, rather than truth and fact I would put to  
29 you, and it's the same from your own point of view. You can remember these  
11:08:47 30 items because you have read about them and now you are recollecting them

11:08:51 1 because words are been put to you various transcripts or documents that you  
2 have seen. You can recollect those, you can't recollect paying 1.3 million  
3 pounds. You can't recollect Mr. Gilmartin suggesting that I look for 5 million  
4 pounds, but yet you can recollect the minutiea that I met Humphrey Price, is  
11:09:09 5 that correct?  
6 A Yes.  
7 Q 204 It's remarkable. Could I have 4361 please? Now, this is a letter from the  
8 Tribunal to Mr. Cooper and I just want to go down to the second last paragraph  
9 there if I could please.  
11:09:36 10  
11 I will read it for you "I note from the two statements now furnished by you on  
12 behalf of Mr. Dadley and Mr. Mould that they are silent as to the details which  
13 lead to the first meeting at the Arlington offices in London, attended by  
14 Mr. Lawlor and that the circumstances in which Mr. Lawlor came to be paid  
11:09:59 15 thereafter are not elaborated upon in any detail ."  
16  
17 So, what bolt of lightening has struck yourself and Mr. Dadley now you have  
18 vivid recollections of these matters?  
19 A Am I supposeed to answer that?  
11:10:26 20 Q 205 You are supposed to answer what you are being asked. Your statement was silent  
21 on the matter?  
22 A And being hit by a bolt of lightening, Mr. Lawlor.  
23 Q 206 What have you been hit with because you seem to be able to selectively remember  
24 what might be minutiea but you can't remember the --  
11:10:43 25 A Mr. Chairman, Do I have to listen to this?  
26  
27 CHAIRMAN: Just a second, Mr. Lawlor. Mr. Lawlor is asking you what happened  
28 to alter your, or not to alter but to assist your memory between the earlier  
29 statements when you didn't make reference to the matters which Mr. Lawlor  
11:11:05 30 referred to and later statements where there was a reference to it. He

11:11:12 1 suggested that you might have been hit by a bolt of lightening which brought  
2 some knowledge; but in your own words, can you explain --

3 A No, I can't, I suspect probably because having read other people's statements  
4 probably jogged my memory.

11:11:26 5

6 CHAIRMAN: Oh, so you read it and say that your memory was jogged by other  
7 peoples --

8 A I will say that, yes.

9

11:11:33 10 MR. LAWLOR: Am I unable to jog it with the 1.3 million pound payments made to  
11 Mr. Gilmartin, am I? I can't get that far, no?

12 A No, you can't.

13 Q 207 Can I have 967 please? Can I just read this letter to you Mr. Mould from the  
14 Tribunal Senior Counsel, Mr. Gallagher.

11:12:03 15 "Dear Mr. Mould, I note from the Racing Post that today is your birthday,  
16 please accept my congratulations and best wishes. I hope you will have many  
17 more years of racing pleasure. I note that you are a very busy man of whom it  
18 could be fairly said, 'Whereareyounow'. But the Tribunal would greatly  
19 appreciate if you would please deal with our letter of the 19th November 2003  
11:12:27 20 at your earliest convenience and if I can be of assistance or if you wish me to  
21 travel to meet you in the UK, please telephone, alternatively you can contact  
22 me on my mobile." Do you recall getting that letter?

23 A I do.

24 Q 208 And were you reluctant to cooperate with the Tribunal to get such a stomach  
11:12:48 25 churning letter from Counsel for a Tribunal set up by the Irish Government?

26 A Sorry?

27 Q 209 The question is were you surprised at the content of the letter?

28 A It was rather amusing actually.

29 Q 210 I do too, I think it's quite incredibly amusing and you do recall getting it  
11:13:08 30 and from that amusing letter you decided to be of assistance?

- 11:13:12 1 A Yes.
- 2 Q 211 Does your statement comply with what you told Mr. Hanratty in London back in  
3 when you were interviewed by counsel for the Tribunal. Do you believe there's  
4 any differences in what you told the counsel for the Tribunal and what your  
11:13:30 5 statement is now saying?
- 6 A I don't know.
- 7 Q 212 Just in conclusion, Mr. Mould, you are telling this Tribunal that for  
8 commercial reasons, increasing property values and the fact that the Irish  
9 Government couldn't support financially to the bus company the building of a  
11:13:52 10 station within the intended complex that the project didn't proceed. Is that  
11 right?
- 12 A That is correct.
- 13 Q 213 Now, was it the intention when you came to bring this project to Dublin that  
14 you were bringing in funds from London, was that the intention?
- 11:14:07 15 A In part, yes equity and financing with bank loans.
- 16 Q 214 Would you have agree that Mr. Humphrey Price based on the documentation you  
17 have been provided with effectively went around the Irish banking system with a  
18 begging bowl trying assemble four and £5 million for £100 million project to  
19 try piece it together. Are you aware that's in the documentation in the brief?
- 11:14:34 20 A I am not aware of that.
- 21 Q 215 I went to AIB, Bank of Nova Scotia, he got a loan for three or four million  
22 pounds. Mr. Gilmartin's evidence for his two projects had 500 million pounds  
23 at his disposal, had Arlington Securities ever got one 100 million pounds plus  
24 available for the Dublin project certainly not.
- 11:14:56 25 Q 216 So Mr. Gilmartin's evidence was wrong?
- 26 A Mr. Gilmartin, if he said we had 500 million.
- 27 Q 217 No, 100 million?
- 28 A That would not be correct.
- 29 Q 218 Thank you, Mr. Mould.
- 11:15:07 30 A Thank you.

11:15:07 1  
2 CHAIRMAN: Just before you finish, Mr. Lawlor, in your own interests, it's a  
3 matter for yourself, you have said you made the case that the 3,500 a month was  
4 a political donation. This witness, Mr. Mould, has said it wasn't so do you  
11:15:24 5 want to challenge him on that?  
6  
7 MR. LAWLOR: Well you see it's a useless exercise, the many didn't remember  
8 anything about it, he wasn't a party to the negotiations.  
9  
11:15:33 10 CHAIRMAN: No but he said -- it's a matter for yourself, Mr. Lawlor, because  
11 you are not legally represented, it would be in the ordinary way appropriate if  
12 you wanted to challenge him on his evidence that this money was not political  
13 donation money, then it would be normal for you to put that to him but that's a  
14 matter for yourself.  
11:15:54 15  
16 MR. LAWLOR: I appreciate that and I thank you chairman for that.  
17 Q 219 Can I put it to you Mr. Mould that you wanted the monies paid through  
18 Mr. Gilmartin, isn't that correct?  
19 A Paid through Mr. Gilmartin, yes.  
11:16:05 20 Q 220 Is that correct?  
21 A That is correct.  
22 Q 221 And how did you deal with those payments in Arlington's accounts, to your  
23 recollection?  
24 A How did we pay them.  
11:16:21 25 Q 222 How do you deal with them, how did Price Coopers?  
26 A I couldn't possibly recollect.  
27 Q 223 So if I say --  
28 A We never made any political donations to anybody.  
29 Q 224 Well you see --  
11:16:27 30 A Is that clear?

11:16:29 1 Q 225 Well I tell you is it clear or can you tell me what I'm supposed to have done  
2 by way of consultancy for Arlington, can you be specific and give the Tribunal  
3 any little information on that?  
4 A I was not involved, as you well aware, in the day to day activities of this  
11:16:45 5 project.  
6 Q 226 Well I'm putting it to you that any penny I got from Arlington, I got by way of  
7 political contribution and the 33,000 pounds was when you were deciding to  
8 withdraw from the project and it was a telephone call from Mr. Dadley to say  
9 that he was making that contribution. He can't remember it, you can't remember  
11:17:03 10 it. So I'm just putting it on record to you as I did to Mr. Dadley that the  
11 monies I got, political contributions and I did absolutely no consultancy work  
12 for Arlington.  
13 A That's a statement, not a question.  
14 Q 227 Well I'm putting it to you as a question. I did no --  
11:17:26 15 A That's your position and I'm saying that your position is incorrect.  
16  
17 CHAIRMAN: That's fine. That's -- thank you, Mr. Lawlor. Is is there anything  
18 else?  
19  
11:17:35 20 MR. GALLAGHER: Yes, I want to just --  
21  
22 CHAIRMAN: Sorry, Mr. Cooper, do you wish to ask your client anything?  
23  
24 MR. COOPER: No, I don't.  
11:17:46 25  
26 **THE WITNESS WAS QUESTIONED BY MR. GALLAGHER AS FOLLOWS:**  
27  
28 Q 228 Mr. Mould, apropos the letter that I personally wrote to you and the  
29 correspondence that preceded that, you in fact are well known race horse owner  
11:18:00 30 in England and I think and you have supported and sponsored many big raises in

- 11:18:06 1 the UK or your companies have, isn't that correct?
- 2 A Correct.
- 3 Q 229 You were written to on the 19th November 2003, may I have page 963 please. You  
4 were written to by Ms. Gilvarry.
- 11:18:23 5 A Yes.
- 6 Q 230 Do you remember receiving this letter, this was a letter which recited in  
7 summary what the Tribunal understood would be Mr. Gilmartin's evidence to the  
8 Tribunal and went on to summarise what it believed Mr. Lawlor's evidence to the  
9 Tribunal would be. If I can have 964, 965 and 966.
- 11:18:46 10  
11 I am not going to ask you in detail about this letter, I just want to ask you a  
12 general question. You see that 964 continues with what is summary of what it  
13 understood Mr. Gilmartin will say, I think including the payments that are  
14 detailed at the bottom of the page.
- 11:19:02 15 A Yes.
- 16 Q 231 And you will see that on 965, the Tribunal outlined what it understood the  
17 evidence of Mr. Lawlor would be in connection with the various payments and  
18 circumstances in which he met Mr. Gilmartin, etc. Do you remember receiving  
19 that letter from Ms. Gilvarry?
- 11:19:24 20 A I do.
- 21 Q 232 And I think you were away, as I understand it or you were not available to deal  
22 with that letter and you didn't in fact respond to that letter?
- 23 A No, I didn't.
- 24 Q 233 And it was in those circumstances that the letter on page 967, which I wrote to  
11:19:48 25 you personally was written, isn't that correct?
- 26 A That's the one, yeah.
- 27 Q 234 And there was a reference to whereareyounow, which is a horse, a very good  
28 horse that's owned by you and subsequently ran in Cheltenham?
- 29 A That's right.
- 11:20:06 30 Q 235 And as a result of that letter, you telephoned the Tribunal. Nothing more,

11:20:11 1 nothing more than that, isn't that correct? Or --  
2 A I think that's the time when we brought Mr. Cooper in to advise and his advice  
3 was cooperate.  
4 Q 236 You received that letter and subsequently a meeting was set up and I met you  
11:20:34 5 for the first time in the company of Ms. Gilvarry, we had never met before,  
6 never spoken to each other before.

7 A Yes.

8 Q 237 Thank you very much.  
9

11:20:44 10 CHAIRMAN: Thank you, Mr. Mould, for attending. We'll rise for I think there's  
11 another witness? We will rise for about ten minutes.  
12

13 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:**  
14

11:40:00 15 MR. QUINN: Mr. Kieran O'Malley please.  
16

17 CHAIRMAN: We decided, there's some pressure on the Tribunal to wrap up hearing  
18 today as soon as possible given the fact that the authorities need this  
19 facility as well as make other arrangements for the weekend so we have decided  
11:40:29 20 to sit from now until half past one and we won't sit beyond half one, and if  
21 this witness is not finished at that stage, we have to resume his evidence next  
22 week.  
23  
24  
25  
26  
27  
28  
29  
30

11:41:00 1 **MR. KIERAN O'MALLEY HAVING BEEN SWORN WAS**

2 **QUESTIONED AS FOLLOWS BY MR. QUINN.**

3

4 Q 238 Good morning, Mr. O'Malley.

11:41:06 5 A Good morning.

6 Q 239 Mr. O'Malley, you have provided a statement to the Tribunal, dated 12th January  
7 2004 and in a moment I'm going to read that statement and then I'm going to ask

8 you some questions arising from the statement. But before I read the statement

9 to you, you would, Mr. O'Malley, have received, like a number of other

11:41:25 10 witnesses in this module, a brief of papers from the Tribunal in the last

11 couple of months, do you recall receiving those papers?

12 A Yes.

13 Q 240 Did you disclose the contents of those papers to any third party?

14 A No.

11:41:37 15 Q 241 Thank you. Now your statement is to be found at page 1008 of the brief and

16 I'll read that statement to you and ask you if it accords with your evidence to

17 the Tribunal on these matters. And it's in the form of a letter to

18 Ms. Gilvarry, the solicitor to the Tribunal.

19

11:41:53 20 You say "This the chronological narrative you requested from me. We opened our

21 file in December 1988. We didn't have formal written instructions from Tom

22 Gilmartin. Matters simply developed over time. I'm almost certain I never got

23 a letter from Tom Gilmartin and only one or two faxes. It would have been

24 phone calls and meeting. Written material would have been circulated to us by

11:42:15 25 other advisers. Though it was never explained I understood my role to provide

26 Irish administrative technical planning advice to compliment that of other

27 advisers, many of whom were based in Britain and northern Ireland.

28

29 Nothing much appears to have occurred in January, February, March and April of

11:42:31 30 1989. A meeting took place in Buswells Hotel, Dublin 2 on the 25th May 1989.

11:42:36 1 The principal topic was planning on which I advised. I have no contemporaneous  
2 note but files include seven pages of minutes of that meeting ahead of Barkhill  
3 Limited, Westpark. I don't know who proposed them. I received a letter from  
4 Nathaniel Litchfield and Partners enclosing a draft retail report and draft  
11:42:53 5 preliminary traffic by Ove Arup and partners planning consultants in May 1989.  
6 I recall one trip to Belfast to the offices of Taggarts, Tom Gilmartin's  
7 architects to discuss the emergent developments scheme for his lands. My diary  
8 seems to confirm this occurred on the 6th June 1989, a file note of the 26th  
9 June 1989 confirms Tom Gilmartin phoned and left a message with my secretary  
11:43:16 10 saying he would be in Dublin on Wednesday, Thursday, 28/29. Hoping I'll fax  
11 him a draft circular tomorrow, that is 27th to be insert in his presentation  
12 brochure and he would like to talk to me tomorrow, the 27th.  
13  
14 On the 11th July 1989 I wrote to him advising him his retail planners Nathan  
11:43:35 15 Litchfield and partners, London could benefit from competent Irish planning and  
16 retail advice. This letter enclosed two pages of commonries on their reports  
17 of the 5/5/89 and 2/6/89. I made a fee proposal to Tom Gilmartin in October  
18 for negotiating an agreement for him to acquire lands outside the boundaries of  
19 his evolving scheme from the governors at St. Patrick hospital and in early  
11:43:57 20 November I wrote to Michael Gilmartin, Irish Intercontinental Bank Limited  
21 advising him of the zoning of the lands reputedly in the following ownerships.  
22 Bruton, Dublin Corporation, Grove Developments, O' Dwyer, O'Rahilly and Gaelic  
23 investments.  
24  
11:44:12 25 On the 7th of November 1989 I wrote to Tom Gilmartin about the possibilities  
26 under the Urban Renewal Act 1989. It was a similar approach for him was used  
27 in the case of Customs House Docks Development Authority. By this time the  
28 possibility of this scheme expanding to include part of the lands of  
29 St. Edmondsbury Hospital, Lucan. Lands of the governors at St. Patrick's  
11:44:29 30 Hospital was being considered by him. Arising from this, I was liaising with

11:44:29 1 the governors whom I already advised and in discussions with Bernard McHugh,  
2 planning consultant, advising Hermitage Golf Club which desired to get lands  
3 from St. Edmondsbury on both sides of the golf course, at that time 10 acres on  
4 one side, 35 acres on the other.

11:44:45 5  
6 On the 16th November 1989, I faxed Tom Gilmartin an extract from the engineers  
7 journal about the planning scheme and mechanics of the customs house docks  
8 development authority. In November McHugh and partners, planning consultants  
9 wrote me with offers to bypass St Edmondsbury lands to attach to Hermitage Golf  
11:45:01 10 Club and in early December I wrote to Richard Foreman of O'Connell Wilson,  
11 development and letting consultancy, London advising him whom to contact in  
12 relation to his question about the number of carparking spaces available in  
13 Dublin city centre.  
14

11:45:14 15 While my records do not include exact dates, in or about November/December 1989  
16 I negotiated a price of 12.25 million for sale of the part of the lands of  
17 governors of St. Patrick Hospital to Tom Gilmartin and a draft contract in this  
18 amount was prepared. This was not affected.  
19

11:45:30 20 Instead of the outright conditional sale being considered in late 1989 and  
21 early 1990 I renegotiated an option agreement between Tom Gilmartin and the  
22 governors which afforded him on the payment of the option monies to acquire the  
23 lands for the same overall consideration at any time up and including the 31st  
24 December 1991. The option agreement was drafted by the governors solicitors, A  
11:45:52 25 & L Goodbody's there was a draft of it on file undated except for the year  
26 1990.  
27

28 In March 1990 they had prepared a three page memorandum on the the following  
29 headings, Dublin/western/new towns, Mr. Gilmartin's plans, employment prognosis  
11:46:05 30 and planning. While I have no file reference this would have been for use of

11:46:08 1 Tom Gilmartin and his other advisers. From the copy letter of the 12th April  
2 1990 from Cameron Communications to Conor Wilson, it's evident the preparation  
3 of a Westpark brochure had just commenced. On the 14th May 1990, I received a  
4 first draft of the Westpark brochure from Cameron Communications and an  
11:46:28 5 invitation to comment.

6  
7 In May 1990 I advised Tom Gilmartin that he may not be able to file an outline  
8 application of his scheme because of the planning and development regulations  
9 and Statutory Instrument 25 of 1990. I faxed him an A4 table of planning  
11:46:40 10 (issues and remedies requested and Cameron faxed me a copy of the draft  
11 brochure requesting the comment/approval) I replied the same day, 31st May. On  
12 the 14th June 1990, Cameron fax me the first draft of the audio visual  
13 presentation inviting my comments. I replied the next day.

14  
11:46:59 15 A presentation of the Westpark scheme took place in the Berkeley Court Hotel on  
16 the 5th July 1990, I was one of about five or six people on the rostrum to  
17 address issues that might arise. I can remember only one question, Owen  
18 O'Callaghan asked my opinion about access to lands at Neilstown by I understood  
19 he owned and controlled at the time. Two days later when I wrote to Tom  
11:47:22 20 Gilmartin suggesting an intensive objective meeting at our office to review the  
21 scheme proposal on appeal. I don't believe it took place. A file note of the  
22 12th of 1990 noted that at a meeting of the 2nd July 1990, the governors had  
23 commented that the third and fourth options installments of the 50,000 each  
24 hadn't been paid by Tom Gilmartin raising the question was he still interested.

11:47:39 25  
26 On the 18th July 1990 I sent Tom Gilmartin a note indicating three planning  
27 procedural motions in application/appeal, b) planning and variation and C  
28 await next plan. A week later John Reed, planning consultant and I sent him a  
29 joint quotation for drafting of proposal for variation of the then current  
11:47:59 30 development plan to facilitate his Westpark scheme development. By September

11:48:02 1 1990 it seemed to us Tom Gilmartin's interest in Westpark and the lands at St  
2 Patrick's Hospital was in decline perhaps even at an end.  
3  
4 On the 19th December 1990 I presented an account to him. Our planning work  
11:48:14 5 took two years, that is 1989 and 1990 chasing our accounts took seven, 1991 to  
6 1997. Signed Kieran O'Malley."  
7  
8 Is that your evidence Mr. O'Malley in relation to your --  
9 A Yes.  
11:48:25 10 Q 242 With Mr. Gilmartin?  
11 A Yes.  
12 Q 243 Now, you were also written to by the Tribunal and asked if you had any  
13 involvement in a company Arlington Securities which were involved in developing  
14 Bachelors Walk and I think you responded to the Tribunal on the 15th December  
11:48:40 15 saying that you had no involvement with that company?  
16 A Correct.  
17 Q 244 If we could have document number 1306. I'm putting on screen, Mr. O'Malley, a  
18 document which appears to be a note of a meeting which was held in the Dublin  
19 International Hotel, some time around July of 1987 and at paragraph 13 of that  
11:48:58 20 note, the following is recorded.  
21  
22 "It was agreed to talk to Kieran O'Malley town planner, to prepare a panel of  
23 architects for consideration. They would be appointed after signing the  
24 Stillorgan contract."  
11:49:10 25 Do you know anything about any contacts being made of you by Arlington or  
26 Mr. Gilmartin in 1987?  
27 A There were none.  
28 Q 245 Now in the course of his evidence to the Tribunal, Mr. Gilmartin has given an  
29 outline of his dealings with you, can I ask you, you say you opened a file on  
11:49:27 30 the Quarryvale, Westpark project in December 1988. Can I ask you how you came

11:49:32 1 to open that file at that time?

2 A I got contacted by Gilmartin probably by phone and I opened the file just to  
3 record that event and some months later, it became more intense, it was quite  
4 quiet for a start.

11:49:49 5 Q 246 Can we take it then that your first contact with Mr. Gilmartin was in or about  
6 December 1988?

7 A Yes.

8 Q 247 Mr. Gilmartin had a meeting with Mr. Redmond sometime prior to July 1988, if I  
9 could have document number 1774 please. Now in the course of his evidence to  
11:50:09 10 the Tribunal, Mr. Gilmartin indicated that you might have arranged a meeting  
11 for him with Mr. Redmond, that is a meeting which would have taken place prior  
12 to this letter which is now on screen, having been written. You see the first  
13 paragraph of that letter.  
14

11:50:24 15 "Dear Mr. Redmond, I was very pleased to have the opportunity of meeting with  
16 you and I would like to thank you for your advice and assistance." Can the  
17 Tribunal take it, Mr. O'Malley, that your evidence is that you did not arrange  
18 a meeting sometime in early or mid 1988 for Mr. Gilmartin with Mr. George  
19 Redmond?

11:50:41 20 A Correct.

21 Q 248 That is because you had met or known of or heard from Mr. Gilmartin prior to  
22 December 1988, is that correct?

23 A That is my recollection.

24 Q 249 Did you -- you know Mr. Redmond and you knew he was the Assistant City and  
11:51:00 25 County Manager?

26 A I know Mr. Redmond.

27 Q 250 Did you ever arrange meetings with clients for Mr. Redmond?

28 A Not that I can recall, almost certainly not.

29 Q 251 Now, we do know that after you met Mr. Gilmartin some months later, you say  
11:51:16 30 your involvement with him and for him became more intense, is that correct?

- 11:51:20 1 A Well nothing much happened in the tail end of 1988 or the early months of 1989.
- 2 Q 252 Mr. Gilmartin has given evidence to the Tribunal of a meeting which he says he
- 3 had or was supposed to have had with the road engineers and Mr. Redmond in the
- 4 offices of Dublin County Council in, I think it was the 23rd February 1989. He
- 11:51:42 5 has given evidence that among those present at that meeting was you, Mr.
- 6 O'Malley, can you recall --
- 7 A I have no recollection of it. But I mean you know, it is possible, but I have
- 8 no recollection or note of it at all.
- 9 Q 253 The reason that the meeting is significant in itself, Mr. O'Malley, it was a
- 11:52:05 10 meeting which was initially cancelled and rescheduled with the intervention and
- 11 assistance of Mr. Sean Haughey who was the Assistant City and County Manager.
- 12 Leaving Mr. Gilmartin to one side for the moment, do you have any recollection
- 13 of an incident involving clients of yours having a meeting cancelled at short
- 14 notice, a meeting that is with Mr. Redmond and other officials of Dublin County
- 11:52:30 15 Council in 1989?
- 16 A I have no recollection of it at all. In January 2000, Mr. Hanratty, senior
- 17 counsel, asked me that question or a question about a meeting with Mr. Redmond
- 18 and I said I would recall nothing of it but I would look at my diary to check
- 19 and I wrote to Mr. Hanratty saying, that I could find no written note of it
- 11:52:52 20 anywhere and I had I have no recollection of it.
- 21 Q 254 There would have been a number of consultants other, other consultants
- 22 assembled in relation to this meeting and you would have been familiar, I
- 23 think, from the later meeting of May, 1989, you would have been familiar with
- 24 the other consultants that Mr. Gilmartin had retained?
- 11:53:16 25 A If the meeting you referred to is about roads matters, it wouldn't have been
- 26 necessary to bring me along to it, he would have Ove Arup, the consulting
- 27 engineers dealt with roads matters for them. I was aware of that general
- 28 involvement but I wouldn't have to go to a meeting on roads necessarily.
- 29 Q 255 Yes. So you had no recollection of any cancelled meeting involving
- 11:53:36 30 Mr. Gilmartin and possibly Mr. Redmond and/or Mr. Sean Haughey?

- 11:53:39 1 A No, I have none at all.
- 2 Q 256 But you do have a recollection I take it, of a meeting on the 25th May 1989  
3 which appears to have taken place at Buswells Hotel?
- 4 A Yes.
- 11:53:53 5 Q 257 And if I could have document number 3520, this is a manuscript note of what  
6 transpired at that meeting, a note taken presumably by someone from Ove Arup  
7 because it's on their headed notepaper and you have seen this and it has been  
8 circulated?
- 9 A Yes.
- 11:54:09 10 Q 258 Do you recall being at that meeting?
- 11 A Yes.
- 12 Q 259 And do you recall being asked to give advice in relation to what transpired,  
13 what options were available or open to Mr. Gilmartin at that time?
- 14 A I would have dealt with any planning queries that arose.
- 11:54:22 15 Q 260 Now as I understand it, this site which was in the process of being assembled  
16 didn't have the correct zoning for what was intended to be constructed on the  
17 site, is that right?
- 18 A That is correct.
- 19 Q 261 And in those circumstances, the planning department of Dublin County Council  
11:54:37 20 would have been unable to give planning permission on the site in the absence  
21 of a material contravention vote, isn't that right?
- 22 A That is correct.
- 23 Q 262 Or in the on sense of a Section 4 motion from councillors?
- 24 A That is correct.
- 11:54:49 25 Q 263 And I think that was the advice you gave, isn't that right?
- 26 A I explained that mechanism to him.
- 27 Q 264 Now there would have been one other option that, having refused permission,  
28 that an appeal to An Bord Pleanala might result in planning permission  
29 being granted on the site?
- 11:55:03 30 A The board wouldn't have been constrained in the way the council was in relation

- 11:55:06 1 to material contravention issue.
- 2 Q 265 However the material contravention under Section 4 mechanism would require the  
3 support of a substantial number of councillors, isn't that right?
- 4 A Yes, whether it was three quarters at the time or not, it certainly became  
11:55:24 5 three quarters ultimately. And if the manager recommended it, you needed three  
6 quarters of the members. If the manager didn't and you had to go the Section 4  
7 route, you needed three quarters of the local area members as well as three  
8 quarters of the members of the full council.
- 9 Q 266 If we go to page 3523 please, we see there is a discussion there on that  
11:55:46 10 subject of the number of councillors, it's a 78 councillors plus Belgard  
11 committee, about one third of these publicity, is that right? Set up a  
12 publicity stunt on the eve of the lodging of the planning application?
- 13 A Would you mind repeating that again.
- 14 Q 267 It's on the screen Mr. O'Malley I'm reading it very quickly. It's hard to  
11:56:06 15 decipher, is it? I can give you --
- 16 A No, I have it now.
- 17 Q 268 I can give you a hard copy?
- 18 A Belgard committee, about a third of these publicity stunt. Gosh it's hard to  
19 read it.
- 11:56:18 20 Q 269 If we take the reference Belgard committee, about a third of these, that's a  
21 situation where the manager wouldn't be supporting the --
- 22 A The project.
- 23 Q 270 The project. So you would require 75 percent of the 78 councillors plus 75  
24 percent of the local councillors which would be the Belgard committee in this  
11:56:37 25 case, is that correct?
- 26 A Yes.
- 27 Q 271 Now it does go on then to record, "Tom does not want to deal with the  
28 councillors." Do you recall Mr. Gilmartin expressing that view at that  
29 meeting? In other words they did not want to deal with the councillors?
- 11:56:52 30 A No, I don't recall it.

- 11:56:53 1 Q 272 But someone has recorded it there?
- 2 A Yes.
- 3 Q 273 Would it be fair to say that the outcome of that meeting was that that route  
4 would not be taken? In other words that neither the Section 4 nor the material  
11:57:04 5 contravention route would be adopted by Mr. Gilmartin?
- 6 A Well, that seemed to be the position then, I merely outlined the options to the  
7 meeting.
- 8 Q 274 But I think there was a view taken at the meeting as to how you go forward, is  
9 that right?
- 11:57:19 10 A Well all I can say is that subsequently, other ways forward were examined.
- 11 Q 275 Yes. I'll come to those in a moment but at this time now and I'm talking about  
12 May 1989?
- 13 A I can't remember all the details, I have to admit. It's so long ago. I can't  
14 I can't recall.
- 11:57:40 15 Q 276 But you would as part of your preparations for giving evidence to the Tribunal  
16 have read the documentation available to you and supplied to you by the  
17 Tribunal?
- 18 A Well, it's so long ago I am being asked to confirm that that was a view taken  
19 at the time. I can read what's here in front of me. I'm not sure -- I mean --  
11:58:01 20 I have actually no notes of it.
- 21 Q 277 Yes. Well if we look at the very first page again on that written document,  
22 3520 you see there it commences by having recorded those present and I'm just  
23 read what I understand the document to say, it says "K O'Malley voices that  
24 there are only two ways to approve the application. A is Section 4 and go to  
11:58:30 25 the members, B appeal to an An Bord Pleanala. The application will be for  
26 material contravention. K O M advises to go to an board straight away. Do you  
27 see that? Did you give those advices?
- 28 A I did.
- 29 Q 278 That was your advice.
- 11:58:44 30 A Yes. I can't remember the consensus or the view of the conclusion of the

- 11:58:49 1 meeting.
- 2 Q 279 Because of its size, ABP, an An Bord Pleanala, I presume will probably want an  
3 oral hearing and there's a discussion or nomination of councillors specialising  
4 in planning matters and it goes on, "Should we be -- I am not sure --  
11:59:09 5 innumerate, Litchfield's don't think so".  
6  
7 Applications for two months and then you set out to the the timescale for going  
8 to an An Bord Pleanala. Your advice was lodge an application for permission in  
9 the knowledge it would be refused as it had to be by the County Council  
11:59:25 10 planners and it would then appealed to an An Bord Pleanala and that was the  
11 route to go?  
12 A If you chose not to take route A, you had no choice but to do nothing or go  
13 route B. Yes.
- 14 Q 280 Now, that note records Mr. Gilmartin expressing himself as not wanting to deal  
11:59:43 15 with the councillors, you say you don't recall him saying that?  
16 A I don't recall.
- 17 Q 281 Do you recall Mr. Gilmartin at any stage telling you that he didn't want to  
18 deal with the councillors?  
19 A I don't, frankly.
- 11:59:53 20 Q 282 Do you recall Mr. Gilmartin at any stage complaining about approaches to  
21 councillors?  
22 A I remember him being dissatisfied with the response he was getting in the  
23 public arena, the public political arena. I mean he hadn't much contact with  
24 the executive as such. He didn't seem to be getting the support he wanted and  
12:00:22 25 that would be consistent with not wanting to go the Section 4 or the material  
26 contravention route. You needed the numbers on your side to get the work and  
27 you would end up in an An Bord Pleanala in any event with a third party appeal.
- 28 Q 283 Now I think subsequently then, we know that Nathaniel Litchfield supplied a  
29 report or a draft report that's included amongst the papers and you had sight  
12:00:54 30 of that?

- 12:00:54 1 A Yes.
- 2 Q 284 And I think you wrote to Mr. Gilmartin, commenting adversely on the contents of  
3 that report, if could have document 2445, that's a letter of the 11th July  
4 1989. Do you recall getting a report done on on Nathaniel Litchfield report?
- 12:01:12 5 A Yes, well indeed and I suggested that just as he had recruited me, if you like,  
6 to supply the Irish technical planning dimension, that would be well worth his  
7 while and his interests to have the comparable retail planner, retail rather  
8 than me. I didn't deal with retail, I was aware of the issues in retail which  
9 were particularly significant because unlike all other land use forms, where  
10 you had one hurdle to cross, with retail, you had to deal with retail impact  
11 assessment.
- 12 Q 285 Which is outside the planning scheme?
- 13 A Well it's within the planning scheme but it's an extra hurdle to -- it's the  
14 one land use where the impact on other land uses must be considered and  
15 assessed as a mandatory requirement of the planning system. You wouldn't have  
16 that with that other land use at the time.
- 12:01:59 17 Q 286 Now, we have just discussed what appears to have been the approach as of May  
18 1989, namely that he would go to an An Bord Pleanala and you would lodge a  
19 planning application on his behalf. Was it in that context that Nath  
20 Litchfield report were was compiled?
- 12:02:20 21 A Nathaniel Litchfield report presumably was to prepared to advice generally but  
22 a document like that, which we would call a retail impact assessment, would be  
23 part of an application to the local authority and ultimately to an An Bord  
24 Pleanala. It would be a fundamental part of it and upon it would largely  
25 determine, it would largely determine the outcome of the application because  
26 it's all to do with retail. Most of the other elements he had would have been  
27 dealt with on the merits but retail was an especially difficult issue.
- 12:02:42 28 Q 287 In fact I think if we go back to document 3523, we see that it also records the  
29 following statement having been said about his unwillingness to deal with  
30 councillors. It says "be ready for planning application on the 1st August".
- 12:03:07

12:03:13 1  
2 So by 25th May 1989 can the Tribunal take it it was intended that Mr. Gilmartin  
3 would put in a planning application by the 1st August?  
4 A Yes.  
12:03:23 5 Q 288 I think there was one other difficulty at that time in that there was a retail  
6 statutory instrument which governed planning applications, isn't that right?  
7 A That's right.  
8 Q 289 That was Statutory Instrument number 264 of 1982?  
9 A Yes.  
12:03:37 10 Q 290 And that would have affected Mr. Gilmartin's planning application, isn't that  
11 right?  
12 A It was the hurdle I referred to a few minutes ago.  
13 Q 291 And this was something that you were alive to and aware of, isn't that right?  
14 A Yes.  
12:03:47 15 Q 292 And that would have required amendment or revocation?  
16 A That meant that in essence, it meant that the impact of the proposed  
17 development on other shopping facilities had to be considered. It was a  
18 central planning issue.  
19 Q 293 If we could have 3277 please.  
12:04:06 20 A Sorry?  
21 Q 294 I'm just calling up the Statutory Instrument itself. I'm sorry Mr. O'Malley, I  
22 interrupted your evidence. You are familiar with that?  
23 A I am indeed.  
24 Q 295 And say that would have affected other, the effect of the of the application on  
12:04:22 25 other developments would have been relevant, is that correct?  
26 A This was the only directive in the Irish planning system at the time. What it  
27 meant was that if you had a significant retail facility, you had to have it  
28 examined under the six headings, A to F, of that directive of 1982. And the  
29 significance was if the only land use that the system had a directive like this  
12:04:48 30 in relation to it.

12:04:51 1 Q 296 Now in relation to that, I think on the 27th June 1989, you faxed a draft of an  
2 amendment to that instrument to Mr. Gilmartin. If we could have document 3275  
3 and 3276 please, is that correct?  
4 A That is correct.

12:05:08 5 Q 297 Now, where did you get the draft?  
6 A I invented it myself.  
7 Q 298 Okay. Did you write this draft?  
8 A I did.  
9 Q 299 Or did you have it written for you?  
12:05:19 10 A I wrote it myself.  
11 Q 300 And you faxed it through, you say, to Mr. Gilmartin, is that correct?  
12 A Correct.  
13 Q 301 To what end?  
14 A The purpose was that if you had a directive of that nature, it would ease the  
12:05:35 15 prospects of his application. It was designed to diminish the difficulties of  
16 the hurdle we referred to, 264, of 82.  
17 Q 302 Well did Mr. Gilmartin instruct you to draft that amendment?  
18 A I pointed out to him the difficulties with 264 of 1982 and arising from that  
19 discussion, it was decided I would draft a more benign version of it, which I  
12:06:06 20 did. It was designed to remove the hurdle in effect.  
21 Q 303 What was Mr. Gilmartin to do with the draft when he received it?  
22 A What he would have to do is he would have to have the earlier one of 1982  
23 repealed and have it replaced by something of a nature that I drafted for him.  
24 Q 304 And did he discuss with you how this might be done?  
12:06:31 25 A Well I made it quite clear that this was a matter for the government or the  
26 Oireachtas to deal with it.  
27 Q 305 It wouldn't have required an act of the Oireachtas?  
28 A It would have required some work by the Department of the Environment and/or  
29 the Oireachtas. I didn't put it beyond that. The minister may have been  
12:06:52 30 capable of doing it, he might have been able to do that.

- 12:06:55 1 Q 306 If we could have document 3274 please. This is an attendance by your secretary  
2 on a phone call she had with Mr. Gilmartin on the 26th June 1989. You will  
3 have seen this document, I think in fact you furnished it to the Tribunal. Do  
4 you recall this document?
- 12:07:10 5 A Yes indeed.
- 6 Q 307 This appears to have been a document or memo of a conversation which appears to  
7 have preceded the your faxing of the draft instrument to Mr. Gilmartin, is that  
8 right?
- 9 A Yes.
- 12:07:29 10 Q 308 And he appears to require the draft, isn't that right?
- 11 A Yes.
- 12 Q 309 The document records he is hoping you will be able to fax him your draft of the  
13 circular tomorrow. The circular I take it is the draft statutory instrument?
- 14 A Indeed.
- 12:07:48 15 Q 310 And you he discussed saying that the proposals, suggesting the omission of the  
16 Ministerial Directive and the insertion of a new one. This would go in the  
17 brochure he is presenting. That appears to suggest that Mr. Gilmartin is  
18 presenting a brochure which would include the draft, isn't that right?
- 19 A Yes.
- 12:08:02 20 Q 311 Also if you have the time he would like to talk to you tomorrow, he is meeting  
21 a number of Ministers and would like to have the complete package to present to  
22 them, he is obviously being asked to present this?
- 23 A The complete package, I was doing a couple of paragraphs out of a bigger  
24 document, most of which was being assembled probably in London.
- 12:08:20 25 Q 312 What was the in the bigger document?
- 26 A I am not sure what was in it. It would have been a document designed to  
27 present the proposal in its best light.
- 28 Q 313 Mr. Gilmartin has given evidence to the Tribunal that he had been given  
29 commitments by government ministers that he, road blocks as he described them,  
12:08:37 30 would be removed, that is road blocks in the path of the development of the

- 12:08:42 1 Quarryvale or planning of the Quarryvale site would be removed. Did he ever  
2 tell you that he had those commitments?
- 3 A He didn't, he wouldn't have needed to engage then with me. But I was aware of  
4 what I call the hurdle and that was, the purpose of this, these papers we are  
12:09:02 5 dealing with right here was to remove the hurdle to ease the passage of an  
6 application with a retail component in it.
- 7 Q 314 This was going to create a substantial number of jobs and was going to be a  
8 substantial development, isn't that right?
- 9 A That is correct.
- 12:09:17 10 Q 315 And one of the hurdles was this statutory instrument?
- 11 A It was the hurdle as far as I was concerned, it was the hurdle.
- 12 Q 316 In May, June 1989?
- 13 A That's right, because if you went on option B, which is to make an application  
14 and take your chances on appeal, you had to deal with it. It was on the  
12:09:42 15 planning thread mill whether you liked it or not.
- 16 Q 317 So irrespective of the actual zoning on the ground, that statutory instrument on  
17 its own could have prevented a planning application going through?
- 18 A Well the zoning was was a hurdle enough but the instrument, I call that the  
19 second hurdle. Even if it was zoned correctly, you should still have that  
12:10:05 20 hurdle to deal with but you would have a much improved prospect of proceeding  
21 if it was zoned correctly. This site enjoyed an inappropriate zoning and of  
22 course you had the hurdle, 264 of 82.
- 23 Q 318 Did Mr. Gilmartin ever tell you how he proposed to get over that hurdle?
- 24 A Well I was aware that he was active in the political arena. He was dealing  
12:10:29 25 with politics at local and central government level and I just made it sure  
26 that he was aware of the significance of this directive, of the S I --
- 27 Q 319 It would have taken the intervention of politics at central level to remove  
28 that hurdle whereas it might have taken local politics to remove the zoning  
29 hurdle?
- 12:10:52 30 A Indeed, indeed.

- 12:10:53 1 Q 320 And it was to assist him in removing the hurdle at central level that you  
2 provided him with the suggested draft amendment?  
3 A I mean he wouldn't have been aware of it himself, I informed him of it and I  
4 said to him here's a much more suitable directive if you can arrange it.
- 12:11:21 5 Q 321 Did he report back to you to tell you how he was progressing?  
6 A I don't remember any conclusion to that issue of the draft directive. It just  
7 disappeared into the mists of time.
- 8 Q 322 I think in October then, there's a further attendance on a phone call with  
9 Mr. Gilmartin by your secretary on the 25th October, if we could have document  
12:11:41 10 3278 please.  
11  
12 It says "I tried chasing him this morning but there was no phone call. Gave  
13 him the gist of your notes, he was at first meeting this morning at 9 a.m. and  
14 a meeting in Jurys prior to that then he went to D E. (I presume that's the  
12:11:54 15 Department of the Environment). For another couple of meetings. Hence no call  
16 from him. He is sorry about not getting back yesterday afternoon, as says with  
17 the meetings he was involved in went on and on. Says he will ring you later  
18 this evening. He is delighted with his political progress so far, thinks he  
19 can bring off St. Pats as well, they are totally enamoured with the whole  
12:12:17 20 progress, etc etc. The plans you have already given him are quite sufficient  
21 for his meeting. He will fill you in an all aspect of his meeting when he  
22 talks to you later this evening. He has got a meeting in D E (which again I  
23 presume is the Department of Environment) around five and should be finished  
24 around 7 or so and he will phone you then."  
12:12:33 25  
26 Do you recall getting that attendance or getting that advice?  
27 A Yes.  
28 Q 323 What was that in relation to, can I ask?  
29 A What was the date of this.  
12:12:41 30 Q 324 October 1989?

- 12:12:42 1 A October 25th. 1989. Well, he did whatever lobbying is required, he did for  
2 himself. And that suggests that he was making headway and as far as I was  
3 concerned, I had only one interest and that was the issue of the retail  
4 component of it and the circular and the zoning.
- 12:13:05 5 Q 325 As as far as you were concerned, that's what he was lobbying on as far as it  
6 concerned you?  
7 A He may be lobbying on many other fronts but as far as I was concerned, that's  
8 all that concerned me.
- 9 Q 326 Yes and this was a vital issue to any development as far as you were concerned  
10 and that was your advice to him?  
11 A Yes, it was fundamental because not too far away you had not only was the site  
12 not zoned but not too far away you had a town centre zoning a couple of miles  
13 away to the southwest.
- 14 Q 327 Now on the 7th November, then, you wrote to him, if we could have document  
12:13:41 15 3279, forwarding to him a copy of the Urban Renewal Act 1986, isn't that right?  
16 A Yes.
- 17 Q 328 Now this has already been opened but the Urban Renewal Act of 1986 amongst  
18 other things established the Customs house docks development authority?  
19 A Yes.
- 12:14:00 20 Q 329 And that provided I think that the authority would prepare a plan in relation  
21 to the site and that that plan would be forwarded to the Minister for the  
22 Environment with a copy going to the local planning officers in Dublin County  
23 Council and Dublin Corporation and that on receipt of their advices, the  
24 minister, subject to amendment or alteration, would confirm the plan and that  
12:14:24 25 any development which took place in accordance with the amended plan as signed  
26 by the minister would be regarded as exempt development and wouldn't require  
27 planning, is that correct?  
28 A Yes.
- 29 Q 330 In this letter, were you suggesting that that was a perhaps an approach that  
12:14:38 30 Mr. Gilmartin might take at this stage?

12:14:40 1 A Yes.

2 Q 331 Why did you decide to put forward that as an approach in November 1989 to him?

3 A Because if you could get it a scheme to your liking which included the retail

4 content and everything else and if you could succeed with that, you effectively

12:15:00 5 took it out of the normal planning thread mill.

6 Q 332 How did you come to the conclusion in November 1989 that this might be a more

7 advantageous way for him to proceed?

8 A Well we hadn't got very far as it was. I wouldn't have -- with the directive

9 of 1982 in being, I would have taken a pretty gloomy view of the prospects of

12:15:24 10 proceeding with an An Bord Pleanala. It was an option in the sense that the

11 process was there but in relation to the prospects, they would not have been

12 good.

13 Q 333 So the draft amend the statutory instrument wasn't having any effect, it wasn't

14 being implemented an the 1982 statutory instrument was still current?

12:15:43 15 A You had two problems with the site. You had the wrong zone an the you had the

16 82 directive.

17 Q 334 Yes.

18 A That's what you had. If you could remove the 82 directive and get a more

19 benign one in or none at all and if you had a planning scheme that bypassed the

12:15:59 20 Development Plan, now your prospects were looking brighter.

21 Q 335 And you said having speculated on whether or not this might work, you conclude

22 that first paragraph by saying "I don't quite see how the same thing could be

23 done in our case.?"

24 A Well I just wanted to put in front of him all the options, for better or for

12:16:20 25 worse.

26 Q 336 You go on to the could the minister, I presume you are talking about the

27 Minister for the Environment?

28 A Yes.

29 Q 337 Could the minister set up another authority for your area and do more or less

12:16:31 30 what the CHDDA did in the docks, if not planning will still be required, were

- 12:16:37 1 you suggesting he might lobby the minister?
- 2 A Whoever it took.
- 3 Q 338 Now I think you followed up that letter to Mr. Gilmartin with a further letter
- 4 on the 16th November if we could have 3281 and 3282 please, which is an issue
- 12:17:08 5 of the journal of engineers, isn't that right, where they discussed the Customs
- 6 House docks?
- 7 A That's correct.
- 8 Q 339 And you highlighted that portion of the article which dealt with the Customs
- 9 house docks authority, isn't that right?
- 12:17:23 10 A Yes.
- 11 Q 340 And again, the Customs House docks-type model was not introduced for the
- 12 Quarryvale site, isn't that right?
- 13 A Correct.
- 14 Q 341 And by March 1990, I think, Mr. Gilmartin had advised you that it would appear
- 12:17:44 15 that Mr. O' Callaghan was going to assist in lobbying for that type of
- 16 authority for you, isn't that right?
- 17 A I'm not sure of that.
- 18 Q 342 Well if we could have 3283 please. This is another telephone attendance on
- 19 Mr. Gilmartin and again it's a document I think discovered by you to the
- 12:18:02 20 Tribunal?
- 21 A OK.
- 22 Q 343 It says re: Gilmartin drawing to Owen O'Callaghan, Cork, 11.45 call from Tom
- 23 Gilmartin re drawing KOM received the other day from HIM, who was HIM?
- 24 A Sorry?
- 12:18:17 25 Q 344 Sorry, it's a drawing received by KOM the other day from him, isn't that right,
- 26 KOM is you, isn't that right?
- 27 A Yes indeed.
- 28 Q 345 So this is a drawing you had received from Mr. Gilmartin, is that right?
- 29 A Yes.
- 12:18:30 30 Q 346 And it says "Tom Gilmartin asked if we could send this drawing to Owen

12:18:36 1 O'Callaghan in Cork, there's a meeting down there Saturday at which some of the  
2 Ministers will be present and Owen O'Callaghan told Gilmartin he would do some  
3 lobbying on his behalf. Hence the need to get the drawing before Cork on  
4 Saturday." Isn't that right?

12:18:49 5 A Yes.

6 Q 347 And you sent a document to Mr. O' Callaghan with a copy to Mr. Gilmartin, if we  
7 could have 3284 and 3285 and you set out options again in relation to the  
8 development, isn't that right?

9 A Yes.

12:19:02 10 Q 348 And I think your suggestion in that document, if we look at 3286 on the bottom,  
11 did you give two options for the development to succeed, you say "For the  
12 development to succeed, Mr. Gilmartin needs either one to have these lands  
13 extracted from the planning process as for example occurred to the Customs  
14 House Docks Development Authority or two, Dublin County Council to vary its  
12:19:25 15 plan to fit its schemes and administer to withdraw or modify SI 264 of '82."  
16 Again that's your evidence to the Tribunal as to how it might proceed, isn't  
17 that right?

18 A Yes.

19 Q 349 Now that document which is prepared by you contains some facts, isn't that  
12:19:42 20 right? For example, on that 3286, under the heading "Employment" you talk  
21 about the development which was likely to take up to 10 years would generate  
22 approximately 40,000 jobs, do you see that?

23 A I was told this and at the time in the Ireland at the time, employment was  
24 everything and Mr. Gilmartin was using that as a major advantage of his scheme.

12:20:11 25 Q 350 Yeah.

26 A Strictly speaking it had nothing to do with the retail orders as it were, or  
27 the zoning but it seemed like a good argument in the round to pour a scheme of  
28 that magnitude and I was just merely recording it in a letter to, where I'm  
29 assembling all the arguments that are being advanced to support it.

12:20:29 30 Q 351 Yes. Who gave you the figure?

12:20:32 1 A I couldn't tell you but it would have come indirectly through Tom Gilmartin.

2 Q 352 And then I think in May 1990, if we could have document 3576 you faxed through

3 to Mr. Gilmartin a document headed re: Gilmartin's development and on the

4 left-hand side under the heading issue, you have a series of statutory

12:20:53 5 instruments referred to there and on the right-hand side, you have remedy

6 requested, do you see that?

7 A It's just coming up now.

8 Q 353 Yes.

9 A It hasn't arrived here.

12:21:13 10 Q 354 Sorry, 3577. Now in relation to that document, Mr. Gilmartin's evidence is

11 that the statutory instruments on the left-hand side, were remedies which were

12 suggested to him as a means of overcoming obstacles as a means of obtaining his

13 planning permission.

14 A Yes.

12:21:36 15 Q 355 He says he didn't fully understand those possible remedies and he engaged you,

16 his planning consultant, to review the legislation and to detail the possible

17 remedies and it was in that context that that document came into existence?

18 A Yes.

19 Q 356 Is that correct?

12:21:50 20 A Yes it would appear that at that time he must have been thinking in terms of

21 what we called an outline application, it would have been an application with

22 not a lot of detail just giving the general principles involved and what

23 happened was around that time we got the environment impact assessment

24 regulation from Europe and they disallowed an outline application for schemes

12:22:26 25 of this size. That's the significance of that. So if you went at all, you had

26 to go for a full permission, which of course was a different order of magnitude

27 in terms of resources and costs. That was one of the hurdles. Number 3 is the

28 one we have been talking about, the one about the motorway was the fact that

29 you couldn't propose an access to on to a motorway and the last one,

12:22:50 30 enterprise, zoned designation, they were all trying to major on the employment

12:22:55 1 capacity that the scheme had.

2 Q 357 Did Mr. Gilmartin ever at any stage complain to you about demands being made of

3 him by councillors or others in relation to his proposed development?

4 A It was clear to me that he was upset or less than satisfied with the

12:23:20 5 councillors in the area.

6 Q 358 Thank you, Mr. O'Malley.

7 A Thank you.

8

9 CHAIRMAN: Mr. Maguire, do you want to ask some questions?

12:23:42 10

11 **THE WITNESS WAS QUESTION BY MR. MAGUIRE AS FOLLOWS:**

12

13 Q 359 MR. MAGUIRE: Mr. O'Malley, if I might just ask you a few questions. If I

14 might refer to document number 3274, you have already been referred to this,

12:23:50 15 it's a memo of a telephone conversation. Do you see that in front of you

16 there?

17 A Thank you, yes.

18 Q 360 I think that that's a dated memo and it has the date of the 26/6/1989 and it

19 has more than that, it has the time of the actual phone call that it records,

12:24:08 20 isn't that correct?

21 A Yes.

22 Q 361 And I take that that the EF there is your secretary?

23 A Correct.

24 Q 362 And she was obviously efficient in the sense that she writes the time and the

12:24:19 25 date.

26 A Yes, it's very accurate on this occasion.

27

28 MR. QUINN: Sorry I have you had have said to Mr. O'Malley that Mr. Maguire

29 was acting on behalf of Mr. Ahern

12:24:29 30 A On behalf of whom?

12:24:32 1  
2 MR. MAGUIRE: I appear on behalf of the Taoiseach and I'm going asking you  
3 questions in relation to these matters on his behalf, if you understand.  
4 A I understand.

12:24:40 5 Q 363 We are just dealing with this as being a record of a telephone conversation  
6 made at a particular time when it was recorded by your secretary and reported  
7 to you, is that correct?  
8 A Yes.

12:25:00 9 Q 364 Now, in the last paragraph of that, it says "Also if you have time, he'd like  
10 to talk to you tomorrow, he is meeting a number of ministers and would like to  
11 have the complete package to present to them, he is obviously being asked to  
12 present this".  
13 A Yes.

14 Q 365 Did you understand by that, that he was going to the Dail to meet what he  
12:25:19 15 describes as a number of ministers?  
16 A Yes.

17 Q 366 And did that fit in with what you understood his approach to things, that he  
18 wanted to meet a number of Ministers?  
19 A Yes I made it clear to him. I gave him -- I made clear to him what the hurdles  
12:25:34 20 were and he went about his business to resolve those as best he could.  
21 Q 367 And that meeting with ministers, do you know, did it occur?  
22 A I can't say, this is an note made by my secretary, you know, I couldn't say. I  
23 don't know.

24 Q 368 And I think it's recorded at the top on the first line of the memo after the  
12:25:51 25 phone numbers, it's recorded that Mr. Gilmartin rang, he will be over in Dublin  
26 on Wednesday, "Dail on Wednesday/Thursday", is that correct?  
27 A Yes.

28 Q 369 And that would seem to fit in with the meeting with ministers in the Dail on  
29 the Wednesday or Thursday, would that be correct?  
12:26:10 30 A Yes.

12:26:10 1 Q 370 And did you ever discuss with him anything about that meeting or what had  
2 occurred at it?  
3 A Not that I can recall.  
4 Q 371 Can you tell us, Mr. O'Malley, I think you are a well known planner, you are  
12:26:30 5 somebody who is of considerable expertise I think of the planning area, is that  
6 correct?  
7 A Well I have been at it long enough.  
8 Q 372 How many years have you been at it if that's not an impertinent yes?  
9 A I have been at it since '64.  
12:26:46 10 Q 373 And you have been involved in quite a considerable number of projects, both  
11 nationally and I suppose specifically the Dublin area?  
12 A Mostly the Dublin area.  
13 Q 374 And you would be very familiar with the way in which planning has developed  
14 over the years, is that correct?  
12:26:59 15 A Yes.  
16 Q 375 And you would be familiar with the way what's achievable and the length of time  
17 it takes to achieve in respect of planning permissions or in respect of getting  
18 authorisation in the planning sense for projects such as we are talking about  
19 here, is that correct?  
12:27:16 20 A Yes.  
21 Q 376 And you have watched, I presume, the Development Plan develop as it were, over  
22 the years?  
23 A Yes indeed.  
24 Q 377 Does it take long to change the Development Plan?  
12:27:29 25 A Well in the Dublin situation, it end tended to take about ten years and indeed  
26 that was the case in many other authorities too.  
27 Q 378 And if you had been asked when you were consulted in relation to the change of  
28 the Development Plan when you were consulted by Mr. Gilmartin, how long it  
29 would take him to change the Development Plan, what sort of timescale would you  
12:27:48 30 have told him?

- 12:27:49 1 A You would be talking years, usually.
- 2 Q 379 Years, in the order of ten years?
- 3 A The first modern Development Plan for County Dublin was in 1972, the next one
- 4 was 1983. Notwithstanding the fact that it should be done every five years so
- 12:28:06 5 it was looking like taking -- the only experience it had it took ten years the
- 6 first time round.
- 7 Q 380 What delays it actually? What's the cause of the delay or the length of time,
- 8 the time lapse between one change and another, can you say?
- 9 A I don't know, the authorities --
- 12:28:26 10 Q 381 There's a lot of consultation that goes on, is that correct.
- 11 A There are and I suppose the question of resources, everything hinges on it. I
- 12 mean in recent times, it has changed dramatically, we are now down to five and
- 13 six-year reviews, at the time it was taking ten.
- 14 Q 382 And who is responsibility for the changing of the plan in that sense?
- 12:28:48 15 A The government.
- 16 Q 383 When you were being consulted by Mr. Gilmartin and you were outlining options
- 17 to him in relation to that, this was in respect of planning applications or how
- 18 you might get his planning applications through, is that correct?
- 19 A Yes.
- 12:29:03 20 Q 384 It was going the planning route, as it were, the planning application route in
- 21 that regard?
- 22 A They were pretty obvious, the alternatives were pretty obvious.
- 23 Q 385 And you were discussing those with him and he was discussing them with you and
- 24 that's what you were advising him about, is that correct?
- 12:29:18 25 A Yes.
- 26 Q 386 Just can I ask you specifically, just looking at your statement and indeed
- 27 hearing you talk about it there this morning, you were talking initially I
- 28 think in terms of some advice around the St. Patrick Hospital, the he had
- 29 Edmondsbury lands, is that correct?
- 12:29:43 30 A Yes, I had advised the governors of St. Patrick's hospital who have land at

- 12:29:48 1 St. Edmondsbury, Lucan, I had been inviting them to for many years before  
2 Mr. Gilmartin came along.
- 3 Q 387 You knew the lands in question?
- 4 A I knew the lands at St. Edmondsbury very well, I knew west Dublin reasonably  
12:30:01 5 well anyway.
- 6 Q 388 You negotiated, you went so far as to negotiate a price in respect of some of  
7 the lands?
- 8 A When Mr. Gilmartin's aspirations went beyond his initial land holding, I made  
9 an arrangement for him with the governors which pertained to the best part of  
12:30:17 10 400 acres-odd, that is correct.
- 11 Q 389 I note that in the final paragraph of your statement, that in fact that you had  
12 done work, as you say, in respect of the planning work that you did in 1989 and  
13 1990, but you didn't get paid very quickly in respect of that?
- 14 A It took a bit longer for sure.
- 12:30:38 15 Q 390 You say about seven years, is that --
- 16 A Yes.
- 17 Q 391 Sorry, just in relation to the question of the change of the Development Plan,  
18 as far as that's concerned, you say it's government that's responsible, it's  
19 the local authority that's responsible?
- 12:31:05 20 A I was really referring to the fact that we now, have a situation where the  
21 authorities are obliged under the 2000 Planning Act to prepare a plan every six  
22 years, the failure to produce them every five of course was a responsibility of  
23 the local authorities. I was just giving the government credit for the change  
24 that we now have.
- 12:31:23 25 Q 392 Yes but that's since 2000, I think, back in the time we are dealing with here,  
26 back in the time you were advising Mr. Gilmartin, it was a local authority  
27 responsibility?
- 28 A Oh yes still are, there's no question they failed to produce them in time, I am  
29 not trying to accuse that in any way.
- 12:31:42 30 Q 393 Thank you very much.

**THE WITNESS WAS QUESTIONED BY MR. SREENAN AS FOLLOWS:**

12:31:44 1  
2  
3 Q 394 Mr. O'Malley, your client here was Mr. Gilmartin, is that correct?  
4 A Would you say that again, my hearing isn't what it used to be, sorry.  
12:31:55 5 Q 395 It's possibly the microphone.  
6  
7 MR. QUINN: Again I think perhaps we should say Mr. Sreenan appears on behalf  
8 of Mr. Owen O'Callaghan.  
9 A I was here long enough to understand that here this morning.  
12:32:10 10 Q 396 MR. SREENAN: Your client here was Mr. Gilmartin, is that correct?  
11 A Yes.  
12 Q 397 He came to you towards the end of 1988?  
13 A Correct.  
14 Q 398 You acted for him up until September of 1990?  
12:32:20 15 A Well I suppose the file was open for many years afterwards but effectively I  
16 acted for him during 1989 and 1990. Whatever bits trickled in before it or  
17 after it were not of much consequence. De facto I finished with him in '90  
18 sometime.  
19 Q 399 I think to judge by your statement, it seems to be around September 1990 but  
12:32:42 20 your file remained open simply because your fees hadn't been paid?  
21 A That's right.  
22 Q 400 And that remained the position up until 1997?  
23 A In terms of planning work, it ceased sometime in the tail end of 1990. Correct.  
24 Q 401 That's what I was getting at. Yes. What was your brief for Mr. Gilmartin what  
12:33:01 25 were you supposed to be doing for him?  
26 A He had UK planning consultants when he arrived in Dublin and it seemed to me  
27 that he wanted an Irish dimension on the planning front and he picked me. That  
28 seemed like my role. There were never any formal arrangement but you know he  
29 rang up like anybody else and it became very obvious very quickly that he  
12:33:24 30 needed some technical planning advice which I gave him.

- 12:33:27 1 Q 402 And I think he had northern Irish architects involved as well?
- 2 A Correct.
- 3 Q 403 And apart from the first telephone call, obviously you met him fairly quickly
- 4 after that?
- 12:33:39 5 A Yes.
- 6 Q 404 And I told you about his proposal in relation to Quarryvale?
- 7 A Well it evolved, as the thing went on it evolved, I'm sure he had the general
- 8 idea in his head before he met me but as we got to work together, it became
- 9 more obvious what he was doing, the reason was a shopping centre.
- 12:33:57 10 Q 405 You also became familiar with the size of what he was proposing, the size for
- 11 example of --
- 12 A Yes.
- 13 Q 406 Certainly as of October 1989, he was talking about a retail shopping centre of
- 14 one and a half million square feet?
- 12:34:13 15 A Yes.
- 16 Q 407 Together with a retail warehouse park of 400,000 square feet, a business park
- 17 of 400,000 square feet and a leisure complex of 250,000 square feet?
- 18 A Yes.
- 19 Q 408 Was it more or less the same proposal when it came to you at the end of 1988?
- 12:34:31 20 A I am not sure how it evolved but the component that stands out was the retail
- 21 component. The retail warehousing would have been a sort of a variant of that
- 22 but you know I'm sure he had a scheme in his mind before he met me and it
- 23 probably evolved and was developed by his architects in Belfast as we went
- 24 along.
- 12:34:57 25 Q 409 When he came to you, obviously you were very much aware of the planning
- 26 environment in which this proposal was intended to achieve reality?
- 27 A Yes.
- 28 Q 410 Namely that the land in question had at that point in time the wrong zoning?
- 29 A Yes.
- 12:35:12 30 Q 411 You had the 1982 retail planning directive which was certainly an obstacle to

12:35:20 1 the proposal?

2 A Yes.

3 Q 412 There was also some difficulty in relation to access from the motorway, I

4 think?

12:35:26 5 A Yes.

6 Q 413 Some of the lands were part of the Liffey Valley special area amenity order,

7 not the retail park area?

8 A Early on, your last point wouldn't obtain earlier on. It was only when the

9 thing evolved over time that the idea occurred to him that perhaps if he got

10 more land into the scheme, he could do other, he could include in it other

11 proposals that might improve the look of the entire, shall we put it that way.

12 Q 414 That was a subsequent development there?

13 A Well if you, if it suited him to propose park land along the Liffey with a

14 couple of miles frontage to the south bank of the river Liffey, that might

15 shine up and improve the prospects of the total package which included the

16 retail component.

17 Q 415 Retail component of one and a half million square feet, that presumably would

18 be regarded as enormous in Irish terms?

19 A Yes.

12:36:26 20 Q 416 Apart altogether from it having the wrong zoning, would I be right in thinking

21 that the prospects of getting planning permission for a retail development of

22 that size would be remote because of the impact it would have on other retail

23 areas?

24 A Yes.

12:36:40 25 Q 417 When he came to you firstly, did you tell him that that really wasn't on or

26 what advice did you give him?

27 A It became obvious to me immediately when I heard of the size of it, it became

28 immediately obvious to me that he had two or three major problems, namely the

29 zoning, the 682 directive and the fact that around the corner, there was another

12:37:01 30 site, in fact earmarked for more or less that or a smaller version of that,

12:37:06 1 namely the Neilstown site that your client at some stage controlled or still  
2 controls.

3 Q 418 Yes. And did you give him that advice?

4 A Yes indeed.

12:37:14 5 Q 419 And how receptive was he to it, did he say right, what do I have to scale this  
6 down to in order to get planning permission?

7 A Well, he had a site which I was happy to label main road Ireland, it was a  
8 junction of the M50 and the N4 so he had an astonishingly good location. He  
9 had the wrong zoning and he had a town centre a couple of miles away so I  
10 didn't put a tooth in it when I told him what the difficulties were.

11 Q 420 In other words the prospects for planning for that site for a retail  
12 development for were pretty close to nil?

13 A Certainly for a retail development of that scale were close to nil and indeed  
14 it would be quite a task to figure out at what level they would diminish from  
15 being significant because the zoning was completely wrong.

12:38:00 16 Q 421 So that even if one took the wrong zoning out of the equation altogether,  
17 something like 250,000 square feet I would suggest to you would be the sort of  
18 development that might be a possibility?

19 A Well as I'm sure you know, that's where it floated around to ultimately. I  
12:38:21 20 think it got zoned directly with a company of 1250,000 square feet odd plus or  
21 mine husband. That's where it ended up at the end of the day.

22 Q 422 And did you advise Mr. Gilmartin to scale down this proposed retail  
23 development?

24 A There was very little debate about that. The decision seemed to be to see if  
12:38:44 25 one can he move the difficulties with the larger one. There was very little  
26 discussion about shrinking it quite frankly.

27 Q 423 Would I be right in suggesting Mr. Gilmartin was presented to you an idea he  
28 had in his own mind and he was determined to see that idea come to fruition  
29 regardless of whatever technicalities there were with planning?

12:39:04 30 A Well I didn't know the man before that and I wouldn't like to pretend to step

12:39:15 1 in his shoes but once it seemed to me that is what he wanted, it seemed to me  
2 to be might duty and role to see what I could do to assist him in that  
3 direction. I didn't spend much time drying trying to talk him out of it, put  
4 it that way.

12:39:31 5 Q 424 Would you form a view as to whether or not you had spent any time trying to  
6 talk him out of, whether you would would have made any progress or not?

7 A Well he had enough land to do the 250,000, that was for sure. I took it that  
8 the client was God, he decided what he wanted and it was up to me to do the  
9 best I could to promote it rather than talk him out of it.

12:39:52 10 Q 425 If for example you had been advising not Gilmartin in relation to that site but  
11 for example another potential investor who was coming to you and saying I'm  
12 thinking of investing in 50 percent of the site or somebody at bank that was  
13 proposing to lend on it, how risky would you have regarded the proposal from a  
14 planning point of view?

12:40:12 15 A Very risky.

16 Q 426 In that period between the end of 1988 and the end of 1990, when you ceased  
17 acting for or when you ceased doing work for Mr. Gilmartin, did he tell you at  
18 any stage that in fact he had entered into an agreement to acquire the Balgaddy  
19 Neilstown site from Mr. O' Callaghan?

12:40:37 20 A I can't recall that, to be honest, and it wouldn't have interested me terribly.  
21 I would try to stay focused on what the task in hand was. That's news to me,  
22 quite frankly.

23 Q 427 I mean would you have considered it to be relevant that your client,  
24 Mr. Gilmartin, would then at least be able to present himself to the planning  
25 authority as a person who owned the Neilstown, Balgaddy site, wouldn't be  
26 building on that and that he might be able to persuade them to give him  
27 permission for a similar size development on the Quarryvale site?

28 A I can see the logic or the comfort in an argument that you have now got,  
29 there's some prospect of a persuading a planning authority of having one town  
12:41:31 30 centre rather than having the added hurdle there was at the time, not only had

- 12:41:36 1 you the wrong zoning in Quarryvale but there was a town centre down the road.  
2 There would have been some comfort, whether it got you home or not, I couldn't  
3 speculate.
- 4 Q 428 I mean it would essentially have removed that one hurdle at least because you  
12:41:49 5 could say to the planning authority that may be there but I own it and it's  
6 just got going to happen but you can have the same size retail development over  
7 here perhaps?
- 8 A It would move the barometer in your favour, I am not saying it would get you  
9 home because the Quarryvale site was still on the northeast corner of the  
12:42:09 10 Clondalkin, Lucan, newtown whereas Neilstown was right in the middle of it and  
11 had been since 1972.
- 12 Q 429 Yes, so Neilstown obviously was the planners' choice and they regarded that as  
13 the optimum location for that type of town centre development?
- 14 A Well it was a town centre an the town that they were talking about was Lucan,  
12:42:29 15 Clondalkin and Neilstown was near as damn it in the middle of it.
- 16 Q 430 By centre should be in the middle?
- 17 A Yes.
- 18 Q 431 But you would have certainly have identified this to Mr. Gilmartin as one of  
19 the hurdles in the way of getting planning for his proposal in Quarryvale,  
12:42:47 20 namely the existence of this designated town centre in Neilstown, Balgaddy?
- 21 A Yes indeed but I mean he had two other hurdles. Both of which were difficult  
22 climbs.
- 23 Q 432 And perhaps even greater than the Neilstown Balgaddy one?
- 24 A Well, at that end you had three and any one of them could have nailed you.
- 12:43:07 25 Q 433 And you obviously have kept fairly comprehensive notes to document the extent  
26 of your involvement on behalf of Mr. Gilmartin?
- 27 A Well, some of the most important things presented to me today are memos of  
28 phone discussions between him and my secretary as it turns out.
- 29 Q 434 They are all documents created in your own practice?
- 12:43:30 30 A Yes, but -- I mean I wouldn't describe my notes as comprehensive, to be honest.

12:43:38 1 Q 435 But a lot of the flow of information seems to be one way to some extent, you  
2 communicating to Mr. Gilmartin rather than Mr. Gilmartin communicating to you?  
3 A Even if he didn't use the formal channels like faxes and letters and stuff I  
4 mean I knew what drove him in relation to his scheme. I would have no doubt  
12:43:54 5 about it. I didn't need any letters from or anything from him and I found him  
6 great to deal with.

7 Q 436 But shortly after you were instructed, it seems that he made an agreement with  
8 Mr. O' Callaghan whereby he acquired an option to purchase the Balgaddy site  
9 and in fact paid a substantial deposit for it. He doesn't seem to have told  
12:44:15 10 you about that?

11 A To be honest, I am not sure I would be terribly interested in it. I dropped  
12 out towards the end of 1990 and I would just stop -- when the client stopped  
13 asking me questions, I wouldn't go chasing him to know where he is going next,  
14 to be honest.

12:44:34 15 Q 437 And did he ever say anything to you about demands from councillors for money?

16 A I have already said that he mentioned to me, his disquiet, he is a a pretty  
17 open guy, his disquiet with the way he was received, shall we say, by the  
18 elected members. He made that evident to me on a number of occasions.

19 Q 438 Yes well disquiet with the way he was received by elected members might well be  
12:45:05 20 that they weren't enamoured with his proposals. It was contrary to their views  
21 of planning, it would impact too much on Blanchardstown or Tallaght or it might  
22 be disquiet, because when he told them about it, instead of being negative  
23 about the proposal, they were asking for money, I was trying to get  
24 specifically at the issue as to whether or not he had ever told you that  
12:45:28 25 councillors had asked him for money?

26 A I can't say whether he did or not, all I can say he was pretty obvious he was  
27 dissatisfied with them, and it wouldn't have interested me in any event,  
28 because all I was concerned with was finding my way through the official  
29 executive planning course or obstacle course might be a better way of putting  
12:45:45 30 it.

- 12:45:46 1 Q 439 Yes but just to take an example, a suggestion that a councillor, for example,  
2 had asked him for 100,000 pounds in a brown paper bag or otherwise in return  
3 for his support for the proposal, if you heard something like that, it's the  
4 sort of thing that --
- 12:46:03 5 A Well there were rumours like that flying around the city. I can't say where I  
6 heard them.
- 7 Q 440 Yes.
- 8 A I mean those sort of rumours had been rife since that time and presumably are  
9 the reason we are here.
- 12:46:17 10 Q 441 But as far as your recollection goes, you have no recollection of Mr. Gilmartin  
11 saying such a thing?
- 12 A Well he was pretty upset. I can't remember, but I would -- it took me all my  
13 time to stay focused on what I call the planning hurdles and I would have  
14 little interest in matters like that. I would be dealing with what I was  
15 trained to deal with, which was the question of how do you deal with the  
16 system, the planning system, as you got it.
- 17 Q 442 Do I get the impression from that, correct me if I am wrong, when you speak to  
18 Mr. Gilmartin, he would be talking perhaps at length about a wide range of  
19 things but you would be trying to focus on what your particular job was?
- 12:46:57 20 A Well, it became -- I made it quite clear what the focus should be in relation  
21 to the hurdles or the obstacles the three we have talked about and that's all  
22 that concerned me.
- 23 Q 443 Am I right in thinking that during your meetings therefore with Mr. Gilmartin,  
24 he was talking perhaps at length about a range of issues whereas you wanted to  
25 stay focused on that element of your involvement and expertise?
- 12:47:20 26 A Well we didn't meet that much really because once I had identified the planning  
27 obstacles, it was a matter of dealing with them, you know, virtually nothing  
28 happened or for the six months other than I had an understanding of what he  
29 wanted, that brought me to the middle of 1989. Then we were constricting the  
12:47:47 30 Westpark scheme which went on for a long time, it was tabled on the 25th July

- 12:47:52 1 in the hotel in Ballsbridge and soon after the thing just fizzled out.
- 2 Q 444 And when you prepared the very helpful summary of the development which you  
3 faxed to Mr. O' Callaghan, 24th March 1990, we have looked at that already, I  
4 think the last page of it is perhaps 3287, at that stage you felt that the only  
12:48:20 5 hope essentially for the proposal going ahead was to have the lands extracted  
6 from the planning process as, for example, occurred with the Customs House  
7 docks development authority. Would that be?
- 8 A We hadn't got anywhere with the Development Plan which was unsuitable. I had  
9 heard nothing, no feedback about whether the statutory instrument 264 of 82 was  
12:48:46 10 still alive. So I was just scrambling around looking for any bit of  
11 inspiration that might find him a way out of the logjam. He was stuck badly in  
12 conventional planning and it occurred to me, take it out of it and have a  
13 planning black hole so to speak, where you have a scheme agreed and if you do a  
14 development in accordance with the scheme, they are not even an appeal right.
- 12:49:11 15 Q 445 To you at that point in time the prospects for proceeding with this development  
16 seemed to Boyle down to that?
- 17 A Well they did because the plan didn't seem much nearer to fruition, the plan  
18 became a plan I think in 1993 in the end and I left it three years-odd before  
19 that. So, I was, if you like, desperate, in a way for a suggestion that might  
12:49:34 20 unlock the impasse for him.
- 21 Q 446 And around that time, shortly afterwards, July 1990, the governors of  
22 St. Patrick had come back to you and told you that the third and fourth option  
23 installments hadn't been paid, that Mr. Gilmartin was in default in relation to  
24 those. Were you aware that he was under some financial pressure in relation to  
12:49:56 25 the development?
- 26 A I wasn't and I wouldn't have been aware he hadn't paid those either except I  
27 was told it from the other side of the equation.
- 28 Q 447 Right. Can I refer you to the meeting at the Berkeley Court Hotel on the 5th  
29 July 1990 that you mention, was there a large attendance at that or a small  
12:50:16 30 attendance, can you remember?

- 12:50:19 1 A Well I was up on the stand with these dreadful bright lights in my face. I  
2 would say at max there was 100, maybe 200 but I could see nothing. The lights  
3 were in my face.
- 4 Q 448 And just to -- 100, I would say 100 max of the height of it.
- 12:50:39 5 Q 449 Well just to refer you to part of your statement there where my client, Mr. O'  
6 Callaghan's recollection just differs from yours and I just want to put it to  
7 you, maybe that you will accept Mr. O' Callaghan's version of events, on page  
8 1010, the third page of your statement where you say that you can only remember  
9 one question and Mr. O' Callaghan asked you your opinion about access to the  
10 lands at Neilstown which you understood he owned or controlled at the time.  
11 Mr. O' Callaghan's recollection is that he was at the Berkeley Court but when  
12 he arrived, that meeting had finished, that he didn't ask any question at all  
13 from the floor as a result. He says he may have spoken to you face to face  
14 afterwards and asked you that question?
- 12:51:06 15 A Well if he says that, I apologise, it's my recollection that's incorrect.
- 16 Q 450 Right?
- 17 A But at least he asked a question, it may well have been after the event. I  
18 could have sworn that he asked me the question out of the dark because all I  
19 could see was dark but I may be wrong.
- 12:51:42 20 Q 451 That's, he has no specific recollection at all we can election of at all of  
21 asking you the question but he readily accepts that he may have asked you that  
22 in the course of face to face conversation but that he wasn't there while the  
23 meeting was actually taking places?
- 24 A If he wasn't there, he wasn't there and I apologise on that front.
- 12:51:59 25 Q 452 I don't think anything turns on it but I'm obliged to put that difference of  
26 recollection to you, Mr. O'Malley?
- 27 A You see, to even write three pages of my involvement over two years, I had to  
28 resort to details of that nature.
- 29 Q 453 That's perfectly understandable, Mr. O'Malley?
- 12:52:15 30 A Yes, I mean to make a story out of it, so it was fairly fitful, I can tell you.

12:52:20 1 Q 454 Thank you.

2

3 CHAIRMAN: Mr. O'Donnell?

4

12:52:29 5 **THE WITNESS WAS QUESTION BY MR. O'DONNELL AS FOLLOWS:**

6

7 Q 455 Good afternoon, I'm here on behalf of Mr. Gilmartin. Perhaps ask you a few  
8 questions. Arising out of what Mr. Sreenan asked you, I think you were aware  
9 that Mr. O' Callaghan had some association with Mr. Gilmartin because you were  
10 being asked to fax information to Mr. O' Callaghan in Cork where he was doing  
11 some lobbying on Mr. Gilmartin's behalf, isn't that right?

12 A Yes.

13 Q 456 And that's indeed the document that's contained at document 3285 of the brief  
14 that we have looked at?

12:52:59 15 A Yes.

16 Q 457 And I think in that document, as it happens, also, it sets out your views on a  
17 number of of the issues in relation to the development, isn't that right?

18 A Yes.

19 Q 458 And it deals at the very start with the town centre plan that had been  
20 developed in 1966?

12:53:14 21 A Yes.

22 Q 459 And one of the things it says, that plan which had been devised in 1966 and had  
23 made very little progress and particularly in relation to the west Dublin area,  
24 it appeared it was about to be abandoned in favour of two different centres, is  
25 that right?

12:53:33 26 A Yes.

27 Q 460 I think you expressed your conclusion at the end of that, that abandoning a  
28 plan of 20 years and more standing is a measure of serious discontent with its  
29 performance and prospects.

12:53:50 30 A Yes well the right plan of 1966 was in an advisory regional plan and it

12:53:53 1 recommended from recollection four new towns to the west, four fingers.

2 Q 461 Yes.

3 A And in the event, we are building three. And you know back 15 years ago,

4 things were a lot different in Clondalkin, Lucan, than they are in this town

12:54:14 5 today. It looked as if nothing would happen out on those areas on that

6 occasion. That was the reference to that. You know, if you wanted to contest

7 the wisdom of the new town plans for Clondalkin and Lucan, you could argue they

8 wouldn't produced much in the way of results on the ground so far.

9 Q 462 And that was the point in 1990, that this position was in flux, the fact that a

12:54:44 10 new town development somewhere in between Lucan and Clondalkin had been

11 developed identified in 1966 was rapidly losing any prospects of being put in

12 place, as it were, that whole plan was starting to be revised, isn't that

13 right?

14 A Well, I mean if you want to attack it, you had an opportunity to attack it on

12:55:03 15 the basis that that, you know, 24 years later, what have you got? Very little.

16 Q 463 And that's the very argument that could be used by somebody who wanted to

17 develop a site and centre elsewhere?

18 A It would have been part of an argument available to your client to support his

19 position, yes.

12:55:20 20 Q 464 And just as far as Mr. O' Callaghan is concerned, it does appear that he was

21 being advised by Mr. Lawlor at page 1940, that he was very confident that

22 Mr. Gilmartin's plan would get permission that this as it were, shift might

23 take place, you wouldn't have known that. But certainly there was an element

24 of flux about what was going to happen there, is that right?

12:55:43 25 A Well the situation was very volatile, nothing much was happening and it was an

26 opportunity to do something, to do that or move away from it. So different

27 from today its hard to believe.

28 Q 465 When you go back to those days as well, it's clear that involvement of central

29 government in pressing on a development could effect significant changes in

12:56:04 30 what was being done?

12:56:06 1 A Well there wasn't much stirring 15 years ago in Clondalkin/Lucan that's for  
2 sure.

3 Q 466 I think the evidence being given here up to date is that member of the  
4 government at that time seemed to be very enthusiastic about Mr. Gilmartin's  
12:56:19 5 plans in the hope of having something happen as it were in west Dublin?

6 A Well the little I heard about his meetings were as recorded already. I mean he  
7 had some good meetings, which I heard a bit about, he may have had other  
8 meetings that weren't so good or didn't produce any results or whatever.

9 Q 467 But the general impression that he was having contact at central government  
12:56:48 10 level and there was some enthusiasm and support being expressed?

11 A I got that impression from him.

12 Q 468 On the following page of your memo, at page 3286, you expressed some views of  
13 the prognosis of the plan as a purely commercial prospective and you said that  
14 you said "from the response of promoters and investors it appears to me the  
12:57:12 15 plan would be a success. And it's perhaps just the initiative that is needed  
16 to raise the spirits of Clondalkin/Lucan/Newtown much of which appears in need  
17 of a lift." Is that right, Mr. O'Malley?

18 A Well everything I said at the time was what I believed at the time. It was a  
19 big -- I mean half a billion sounds small beer now, at the time was an enormous  
12:57:28 20 sum. And that investment and the employment content, well one would have  
21 expected support within the political spectrum for it.

22 Q 469 Particularly given the circumstances in the general economy an the Dublin  
23 economy?

24 A That's right, and if it wasn't for the zoning and the '82 directive, it might  
12:57:48 25 have managed it.

26 Q 470 Yes. And in relation to your dealings with Mr. Gilmartin, I think you said he  
27 was a pretty open sort of guy and from your perspective, he was great to deal  
28 with, is that right?

29 A He was clear and straightforward, I mean what he wanted, I had no trouble  
12:58:09 30 understanding it and I didn't try to talk him to a shrunken version of it, I

- 12:58:14 1 did what I could to indicate to him the way forward.
- 2 Q 471 Mr. Maguire on behalf of the Taoiseach has asked you questions about the  
3 position in relation to the payment of your fees and just to deal with that,  
4 Mr. O'Malley, I think you said in your statement that that you attended a  
12:58:32 5 meeting of the 25th May 1989 which was headed Barkhill Limited and I think you  
6 knew that was the company that had been established through which the  
7 investment was being made, is that right?
- 8 A The odds are I hadn't heard of Barkhill until then. I just took the man as I  
9 found him.
- 12:58:49 10 Q 472 I think you were aware that subsequently there were other parties had an  
11 interest in Barkhill and indeed Mr. Gilmartin was ousted from that company and  
12 that's part of who occurred?
- 13 A I had a general understanding but it didn't interest me to be honest.
- 14 Q 473 And I think Mr. Gilmartin's view was that the work you had been doing was on  
12:59:04 15 behalf of Quarryvale, on the development, as it were, that Barkhill was to  
16 benefit from?
- 17 A Yes.
- 18 Q 474 And there was some time before Barkhill eventually paid some of your fees and  
19 there was an amount left outstanding which, I think, of 10,000 pounds which  
12:59:20 20 Mr. Gilmartin personally discharged to you?
- 21 A That is correct.
- 22 Q 475 Thank you, Mr. O'Malley.
- 23 A Thank you.
- 24
- 12:59:28 25 CHAIRMAN: Mr. Redmond?  
26
- 27 **THE WITNESS WAS QUESTIONED AS FOLLOWS BY MR. REDMOND:**  
28
- 29 Q 476 Mr. O'Malley, your original qualification was civil engineering?
- 12:59:45 30 A That's right.

12:59:46 1 Q 477 And am I correct in saying you joined Dublin Corporation planning department as  
2 a planning assistant?  
3 A Yes.  
4 Q 478 In your early days?  
12:59:55 5 A In 1964, the 17th November.  
6 Q 479 The 17th November?  
7 A 1964.  
8 Q 480 And so that one can say you were in at the threshold of the Act, it came into  
9 operation on the 1st October, 1964?  
13:00:12 10 A Like your good self.  
11 Q 481 And subsequently you obtained the Royal Town Planning Institute qualification?  
12 A Yes.  
13 Q 482 Did you have to go to London for your exams?  
14 A I had to do the exam in London but I think they actually had a centre in Dublin  
13:00:34 15 to do it because there was so many of us trying to do it. I think -- I had to  
16 go to London for a tiny part of it, a professional interview. The rest of it  
17 was done by arrangement in Dublin.  
18 Q 483 Yes. But I think I'm correct in saying at that time there was no graduate  
19 course in UCD and you were one of the few people who had the qualification in  
13:00:58 20 relative terms?  
21 A Well, if you recall, it had just started before me in Bolton Street, the  
22 College of Technology in Bolton Street. It subsequently went to UCD. A year  
23 or two before, I attended Bolton Street. It had already been opened. I would  
24 say it was in Bolton Street from about 1960, '61 maybe, '62. Just when the  
13:01:26 25 imminent '63 Planning Act was taking effect, I think the Corporation of Dublin  
26 and some other authorities promoted a course in Bolton Street. I went there  
27 but I wasn't the first of them.  
28  
29 CHAIRMAN: Sorry, Mr. Redmond, unless you are challenging the witness's  
13:01:42 30 qualifications, there's no need to deal with this early history of his career.

13:01:46 1  
2 MR. REDMOND: Well it's just to outline, there were many questions asked here  
3 by other people in relation to the early days of the plan and I think I'm  
4 correct in saying that while Mr. O'Malley was on development control work, he  
13:02:04 5 did some work in relation to planning schemes, the first planning scheme.  
6 A That's correct.  
7 Q 484 So that I just wanted to get the background. I'm finished with his  
8 qualification.  
9  
13:02:14 10 CHAIRMAN: All right.  
11  
12 Q 485 MR. REDMOND: But the position is -- now in relation to the first plan, the  
13 city and county planning professional planning staffs were joined, isn't that  
14 right?  
13:02:24 15 A Yes, that is correct.  
16 Q 486 Did you do, did you have any input in relation to the scheduled towns and the  
17 county?  
18 A I think that I did some work on some of the north county towns. I was actually  
19 employed by Dublin Corporation as it was at the time but as I said, we did  
13:02:44 20 whatever was required and that included doing some work in Rush and Skerries  
21 and Swords and places like that.  
22 Q 487 It was an informal arrangement, no statutory basis but you did it?  
23 A Yes.  
24 Q 488 In relation to the Balgaddy site, which was the scheduled town for  
13:03:01 25 Lucan/Clondalkin, you weren't involved in that?  
26 A I don't believe I was.  
27 Q 489 But the basis for it was, it's -- would you agree -- that it was different from  
28 Mr. Gilmartin's proposal in that he was proposing an out-of-town retail  
29 shopping centre with 12,000 cars whereas the other one was town centre.  
13:03:23 30 A Well the scales were poles apart and the locations were significantly different

- 13:03:28 1 in terms of planning.
- 2 Q 490 Yes.
- 3 A One of was a centre, the other was at the edge.
- 4 Q 491 Yes.
- 13:03:34 5 A The first real plan for Balgaddy or Clondalkin, Lucan, would have been the '72  
6 plan.
- 7 Q 492 Well I, yes -- there was a '69 plan surely that was found to be, that it would  
8 be impossible to impose statutory control under it, you may not remember it?
- 9 A I remember the '72 plan all right.
- 13:03:55 10 Q 493 It was a combined plan. It did city and county together. But just getting  
11 back to the set-up in 1988, when Mr. Gilmartin retained you as consultant, had  
12 he earlier on retained Nathaniel Lichfield?
- 13 A I would guess he had.
- 14 Q 494 He had.
- 13:04:17 15 A But I don't know for a fact but he certainly had him, whether he had him before  
16 me or not, I would guess that he had him before me.
- 17 Q 495 Well in view of the fact he had two very prestigious planning consultants,  
18 Lichfield and yourself, one of the leading Irish consultants, did you liaise or  
19 did he suggest you should get together?
- 13:04:44 20 A We worked with Lichfield in the evolution of the Westpark scheme, as it was  
21 called.
- 22 Q 496 You did?
- 23 A Oh yes. I suppose I would have just added the, if you like, the key ingredient  
24 of explaining the significance of SI 264 of '82 and the significance of the  
13:05:09 25 zoning of the land. All the retail modelling and other analysis would have  
26 been old hat to Lichfields in London.
- 27 Q 497 Have you knowledge or recollection of Lichfield coming to Dublin?
- 28 A I remember Lichfield coming to Dublin when I worked in Dublin City Council.
- 29 Q 498 No I agree with that, but in relation to Westpark?
- 13:05:29 30 A I would doubt Nathaniel Litchfield himself was still in the practice, I could

- 13:05:36 1 be wrong.
- 2 Q 499 You never met the man?
- 3 A I never met him. I met some others from his office.
- 4 Q 500 That's all right. Well now the, Mr. Quinn at the commencement of his
- 13:05:49 5 cross-examination, referred to a meeting which took place in February, it's
- 6 stated to be February 1989 and I'll call out the -- from Mr. Gilmartin's
- 7 evidence, the following people are stated to have been present. Himself, of
- 8 course, Mr. McCannon, Mr. O'Malley, Mr. John Higgins of Ove Arup and Mr. Noise,
- 9 he was an English person, Ian Fowler, Ove Arup I think, Ove Arup UK. Morgan
- 13:06:30 10 Sheehy and Richard Forde. Now have you any recollection?
- 11 A I have no recollection nor have I any note of it but probably if six or eight
- 12 say I was there, I was clearly there but what may have happened was that the
- 13 meeting was called at short notice and I didn't have time to put it into my
- 14 diary.
- 13:06:52 15 Q 501 I really hadn't finished. What I said to you in his evidence, they are the
- 16 people which Mr. Gilmartin says was at the meeting but one of those people,
- 17 Mr. Morgan Sheehy, he attended and he has a written record of a meeting and
- 18 what makes it valid in my opinion, he says that Mr. Redmond, Mr. Haughey were
- 19 there, Mr. McCannon, Ian Fowler and Morgan Sheehy, Willie Murray and John Bond,
- 13:07:29 20 you are not mentioned?
- 21 A Oh, is that right?
- 22 Q 502 You are not mentioned. So I just mention that to you.
- 23 A Well I have no recollection or note of it but I mean I could get a phone call
- 24 at 3 o'clock saying there's a meeting in your office or wherever at 4. And I
- 13:07:49 25 could go to it and still not be in my diary.
- 26 Q 503 Well the other significant thing about this meeting was that the professional
- 27 people assembled in the Gresham Hotel at 9.30 and that the meeting didn't take
- 28 place until the afternoon. Have you any recollection of being in the Gresham?
- 29 A No, and Mr. Hanratty asked me that question four years ago.
- 13:08:09 30 Q 504 Yeah, well, that's fair enough.

13:08:11 1  
2  
3 A I don't remember everything, I don't mind admitting that I don't recall  
4 everything.  
13:08:17 5 Q 505 Yes. Well just the nature of the consultancies he had. Was Taggarts in the  
6 north of Ireland, they were preparing the plans?  
7 A Yes indeed, I suspect that Mr. Gilmartin had used them perhaps before.  
8 Q 506 He had Nathaniel Lichfield on the economics of the scheme?  
9 A Retail impact, as we would call it.  
13:08:41 10 Q 507 He had as his Irish consultant in relation to, you know, the bureaucracy, and  
11 he had Ove Arups for the roads.  
12 A Yes.  
13 Q 508 Well now in '88, he was nowhere near having a plan which might be submitted to  
14 a planning authority. In '88.  
13:09:08 15 A Well he may have had a plan near enough for an outline application which would  
16 have been possible in '88.  
17 Q 509 It would have been possible?  
18 A Sorry, that the system could digest an outline application in '88. It was only  
19 when you got the EIA regulations in 1989 that it ruled them off-side, that you  
13:09:34 20 had to go for a full permission. He might have had permission for that.  
21 Q 510 Yes, well an outline, an application, an outline application is virtually a red  
22 line around the site.  
23 A Well I'm just making the point, he could have made one of those applications in  
24 '88.  
13:09:45 25 Q 511 Yes, yes, but you hadn't advised him along those lines at that stage?  
26 A No, but when it -- when -- remember, we are dealing with an issue of principle  
27 here. The zoning didn't fit and A, the mechanism in the legislation for  
28 dealing with an issue of principle up to 1989 was the outline application, test  
29 the water to see how it would go. He certainly had that in mind until I said  
13:10:11 30 the new regulations, 25 of '89 or whatever it was, sidelined the outline.

- 13:10:18 1 Q 512 Yes. Well going into 1989, a prerequisite to any application, apart from  
2 overcoming any technical difficulties would have own the ownership of the site  
3 or sufficient interest in the site to enable him to carry out development?  
4 A Yes.
- 13:10:36 5 Q 513 And from your own knowledge, had he that or had he not that?  
6 A Well if he got as far as an application, I would have made it absolutely  
7 certain to him that he required it but we were well short of filing a full  
8 permission application so the issue never arose, it would only arose in the  
9 run-up weeks to make an application then you crawl all over to to see what  
13:11:01 10 rights he had.  
11 Q 514 Well in so far as a key element of the proposal was Corporation land and the  
12 final decision by the Corporation agreeing to the disposal of the land was made  
13 at a plenary session of Dublin Corporation on the 12th June 1989 so he didn't  
14 have that ownership at that stage so it would have been impossible to make an  
13:11:27 15 application, a lawful application at that time.  
16 A Without the consent of the owner, who was the city -- yes indeed.  
17 Q 515 They were not prepared to give you consent until it was paid for?  
18 A Well then you couldn't do it.  
19 Q 516 And then so that insofar as allegations by Mr. Gilmartin that he was being held  
13:11:55 20 up on the planning field by any of the council officers or local authority  
21 elected representatives, there was nothing, would you agree, that there was  
22 absolutely nothing which the planning authority for Dublin County Council was  
23 being asked to consider or to make a decision on at that time?  
24 A No. I agree.
- 13:12:21 25 Q 517 Absolutely.  
26 A If he hadn't control of the land, he couldn't have tabled an application.  
27 Q 518 But even if he did put in a lawful application, there was -- and you say there  
28 were no drawings prepared, there was nothing, no public advertisement; if there  
29 was, if there had been, that would be valid but I'm only establishing in your  
13:12:43 30 view that there was, there could be nothing before the planning authority at

- 13:12:47 1 that stage, up to June, say, in 1990?
- 2 A You could not have a formal application up to that date. That's agreed.
- 3 Q 519 Yes. So if somebody was saying that, you know, he was being held up in  
4 relation to planning, it certainly couldn't relate to a planning application?
- 13:13:06 5 A Correct.
- 6 Q 520 You accept that?
- 7 A I agree.
- 8 Q 521 The other thing -- yes, my other questions have been covered by yourself and  
9 counsel in their questions. The only one thing I'm going to mention, your  
10 second involvement with him, St. Edmondsbury land?
- 11 A Yes.
- 12 Q 522 That would be described as a maverick development.
- 13 A Sorry?
- 14 Q 523 Would you consider that that could be described as a maverick development?
- 13:13:45 15 A Maverick?
- 16 Q 524 Maverick development. I mean maverick development is one that runs contrary to  
17 the zoning.
- 18 A The regional development we are talking about was in the same category.
- 19 Q 525 Oh well that's the point I'm making, you are making it for me.
- 13:14:01 20 A I thought you were making a point that it applied to St. Edmondsbury rather  
21 than --
- 22 Q 526 No, no, I'm just taking the two proposals, the first one for a million and a  
23 half square feet and 12,000 car parks, in Irish terms, maverick?
- 24 A Well I have already said --
- 13:14:21 25 Q 527 OK.
- 26 A -- it needed to cross several serious hurdles, that's agreed.
- 27 Q 528 The other one, the St. Marys or St. Edmondsbury one, it wasn't straightforward,  
28 was it?
- 29 A What do you mean by the St. Edmondsbury one?
- 13:14:39 30 Q 529 Sorry, I must apologise, Mr. O'Malley, my hearing is very bad and I have

- 13:14:49 1 trouble speaking as well. I'm only making the point that the St. Edmondsbury  
2 proposal that he had in his mind would not conform with the plan?
- 3 A That I can agree with.
- 4 Q 530 You can agree with that, so then they were both mavericks?
- 13:15:00 5 A I don't fancy the word 'maverick', to be honest, I'm quite happy to say that  
6 they did not accord with the Development Plan. That's probably your point.
- 7 Q 531 That's exactly it. They were both contrary to the Development Plan?
- 8 A Yes.
- 9 Q 532 And insofar as the first one was concerned, the Westpark, that was turning the  
10 plan completely on its head?
- 11 A Well, it would take a bit of digesting for sure but it had -- it had what,  
12 commonly referred to as planning gains in it, it could have produced the river  
13 side, the Liffey Valley and the Liffey Valley-related public park of some  
14 hundreds of acres, which would have been in accordance with the plan at the  
15 expense of some other uses that wouldn't have been and there might have been a  
16 balancing done and say well, nothing wrong with that, I mean it would be nice  
17 to have two hundred acres in public control along the banks of the river and  
18 that's why he would have included in his application, it would have been shined  
19 it up and made it and made you think about it, because as we speak, it's still  
13:16:16 20 privately held.
- 21 Q 533 But the point is that he didn't complete his negotiations with Edmondsbury to  
22 acquire it?
- 23 A That is agreed but there's nothing wrong with the notion. Sometimes there's a  
24 solution to a larger problem than there is to a smaller one and I take the  
13:16:35 25 responsibility for pointing out to him that the component of it that would  
26 include in the dedication to the local authority of a public park would  
27 ordinarily be regarded as a welcome planning gain and that's on its own.
- 28 Q 534 I can see that.
- 29 A And it could offset the difficulties with the other uses.
- 13:16:58 30 Q 535 Yes. Could be a sweetener?

13:17:00 1 A It would be, indeed.

2 Q 536 Yes. But the point is when the brochure was produced in the -- is it the

3 Burlington Hotel?

4 A The Berkeley Court, I think.

13:17:13 5 Q 537 There's no reference anyway but it wasn't joined with the St. Edmondsbury

6 lands?

7 A I would have to look at the Westpark brochure to remember where it went but I

8 think it included everything.

9 Q 538 Sorry?

13:17:28 10 A I haven't to hand a copy of the Westpark brochure but I think it's -- I think

11 it included the public park lands and access to the river banks and everything

12 at the time. He still hadn't, if you like, relinquished his interests in the

13 options relating to St. Edmondsbury, I think it included those open lands but I

14 would have to check it.

13:17:56 15 Q 539 I stand corrected. All these things happened a long time ago. Well in

16 relation to discussions, your own role as a planning consultant, as a general

17 rule, your discussions would have been with professional planners in the main?

18 A Generally speaking my opposite number would be a planner in the council, yes.

19 Q 540 And it would be rarely when the manager would be brought in to the discussion,

13:18:27 20 rarely?

21 A Yes.

22 Q 541 That was your experience?

23 A Yes, in my case, I would try and agree and settle the details with the planner

24 in the area. It would be rare for me to go to the manager, that is correct.

13:18:42 25 Q 542 And that was the drill that was followed in authorities, you dealt with the

26 planners because in the end, the manager had to make the decision?

27 A Yes.

28 Q 543 That would be the grounds for it?

29 A Yes.

13:18:53 30 Q 544 I don't think I have anything else. Had you ever any meetings involving myself

13:18:59 1 in relation to Westpark?  
2 A Well I don't recall any.  
3 Q 545 No, that's all. I'm finished now, your worship, thank you very much, Kieran.  
4 A Thank you.

13:19:14 5  
6 CHAIRMAN: Mr. Lawlor, can you indicate how long you expect to be?  
7

8 MR. LAWLOR: An hour so or, chairman.  
9

13:19:22 10 CHAIRMAN: Yeah, well, we have to vacate the hall at half one, so we have to  
11 reschedule Mr. O'Malley for some other day.  
12

13 MR. LAWLOR: Whatever suits you, chairman, yes, of course.  
14

13:19:35 15 CHAIRMAN: You can discuss that with Mr. O'Malley and Mr. Lawlor can be  
16 informed then of a suitable alternative date.  
17

18 MR. LAWLOR: Thank you, chairman.  
19

13:19:46 20 CHAIRMAN: So we'll adjourn now until --  
21

22 MR. QUINN: Tuesday at 10.45.  
23

24 CHAIRMAN: 10.45. I just want to, on behalf of the Tribunal, I want to thank  
13:19:57 25 Mr. Gerard Fagan who stepped in as registrar in place of Mr. Kavanagh for the  
26 past week.  
27

28 **THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 4TH MAY AT 10.45 A.M.:**  
29

13:20:50 30