

1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 3RD DECEMBER,
2 2002, AT 10.30 AM:

3

4 CHAIRMAN: Good morning everyone.

5

6 MR. QUINN: Chairman, on Friday, we had been dealing with Mr. Cremmins and
7 Mr. Cremmins' involvement with the position paper produced by him in May 1996
8 for the review of the Dun Loghaire Borough Development Plan of 1991 and the
9 Dublin County Development Plan 1993, and we had been dealing with his
10 submission at page 617 of the brief under the heading "Residential Lands".

11

12 And Mr. Cremmins had explained between the publication of his position paper in
13 May 1996 and the confirmation of what became known as the 1998 Dun
14 Laoghaire/Rathdown Development Plan, it had been proposed by the manager and
15 adopted by the councillors, that additional lands would be zoned for
16 residential development.

17

18 Now those proposals of the manager are contained in a report to the members of
19 the council on the 11th December 1997 which follow on an earlier report to the
20 council on the 14th October 1997 at two special meetings. Those special
21 meetings are currently being put into the system and will be available if -
22 with your permission I'll come back to those and move on to what is actually in
23 the brief, namely Mr. Cremmins' proposal in relation to industrial lands at the
24 time.

25

26 Mr. Cremmins, at page 618 of the brief, dealing with your position paper in May
27 1996, you set out the summary of the position in relation to industrial lands,
28 isn't that right

29 A That's correct, yes.

30 Q 1 And I wonder could I refer you to page 618 and ask you to set out for the

1 Tribunal what's contained therein, in relation to your proposals for industrial
2 land?

3 A I'll read out the summary of the issues if you like.

4 Q 2 Yes.

5 A "There are adequate lands zoned for standard density residential development to
6 cater for the projected needs of the county well beyond the duration of this
7 plan.

8

9 A reasonable supply of lands for low density development should continue to be
10 made available. This helps to control the demand for one-off houses in the
11 rural area.

12

13 The 80 hectares of undeveloped industrial lands are primarily in two private
14 holdings. Council has no control over the bringing on-stream of such lands.

15 The council owned Sandyford Industrial Estate is practically complete, a
16 further land bank for industrial use should be identified for development by
17 the council.

18

19 Will I continue?

20 Q 3 Yes. Just before you do continue, I think earlier on on that page, you deal
21 with the actual current position in relation to industrial lands?

22 A That's correct, yes.

23 Q 4 I think you said there were 290 hectares of industrially zoned lands in the
24 county, 80 hectares of which were undeveloped, is that correct ?

25 A I believe so, yes, and the point I think is that while 80 hectares is quite a
26 lot of industrial land, it was in two private landownerships, the Legionnaires
27 of Christ and the Grimes land, that's the 54 hectares at Ballyogan and the, we
28 didn't deal - there was a particular shortage of industrially zoned land, but
29 we did see the benefit, if possible, of the council replicating the successful
30 Sandyford Industrial Estate, where it acquired land, put in the services, built

1 the roads, sold the plots one by one, and in fact kept the landlord interest so
2 it could control the types of uses that went in, and we found that was a very
3 successful way of bringing jobs into the county.

4 Q 5 So your proposals then, or your suggestion to the council, was that the council
5 itself might acquire lands, zone them industrial, keep them within council
6 ownership and control the rate at which they would be released for occupancy?

7 A Well certainly yes, however one acquired the lands, but basically, yes, to
8 replicate as I say the successful Sandyford one and ensure that land would be
9 brought on-stream that would actually be used to provide jobs rather than
10 simply zoning it and perhaps nothing happening.

11 Q 6 Was that decision brought about as a result of your experience or the
12 experience of the council in relation to the existing undeveloped industrially
13 zoned lands?

14 A Yes, that would be part of it, we would have been aware of, I suppose, the
15 Grimes land now, which did have service difficulties, the Carrickmines sewer
16 wasn't built, for example, and it needed a southeast motorway, but we would be
17 aware of industrial lands zoned industrial but not actually providing any jobs,
18 and at the other side we would have been aware of how successful Sandyford was.

19 Q 7 Yes, if could we could have map 90/123?

20

21 I think the October 1990 proposals of the manager were that there would be two
22 areas close to identified intersections on the proposed southeastern motorway
23 which would be dedicated, or zoned industrial, isn't that right?

24 A That's correct.

25 Q 8 Now, it wasn't a proposal that those lands would be taken into the ownership of
26 the council, although one set of lands may already have been in the ownership
27 of the council?

28 A I am not aware of that, I didn't deal with that particular proposal.

29 Q 9 OK. The Grimes' lands had been zoned industrial, I think as far as back as the
30 1983 Development Plan?

00004

1 A I believe so, yes.

2 Q 10 Now, I think there was also - there were also a series of lands which had been

3 zoned for the science and technology park as a result of the variation of the

4 1993 Development Plan, is that correct?

5 A That's correct, there were 27 hectares of lands zoned science and technology.

6 Q 11 Yes. If we look at the map 90/123, I think we see that lands here were

7 proposed to be zoned industrial as were the lands here, isn't that right?

8 A That's right, yes.

9 Q 12 The Grimes lands which were situated in this region, it was proposed that they

10 would be rezoned residential?

11 A Yes, the rationale there was to put the industry around where it was thought

12 the interchanges would go, so that heavy vehicles could access the motorway

13 without having to go through local roads or through residential areas.

14 Q 13 But the proposal was not that these lands in areas be taken into ownership by

15 the council and then zoned industrial?

16 A I believe that's so, but as I say I wasn't involved at the time.

17 Q 14 Well, what do you say about the applications of both Messrs. O'Halloran,

18 Darragh, Kilcoyne and Jackson Way, that their lands would be zoned industrial,

19 particularly in light of what appears to be an admission here that there

20 weren't sufficiently industrially zoned lands at this time.

21 A Well, I would say firstly as I have said, I didn't deal with this particular

22 proposal but I have spoken to the county planning officer about it and I

23 believe it's also detailed in a report which went to council, and I understand

24 firstly that it was a proposal that would have resulted in zoned lands well in

25 excess of those needed for a five year Development Plan period.

26 Q 15 This was the 1990 proposal?

27 A Yes, exactly.

28 Q 16 When you said you spoke to the county planning officer, at what date or --

29 A Oh, just recently.

30 Q 17 In other words, who was the county --

1 A I beg your pardon, Willie Murray, I beg your pardon, former county planning
2 officer; and so it was an attempt to plan, in a strategic and comprehensive
3 manner, for the area over many years, and to be done on a phased basis, and
4 part of the reason was the fear if it wasn't planned in a comprehensive basis
5 like that, in those days in particular, there was a risk of piecemeal proposals
6 being achieved which would result in a sub optimum final result. In other
7 words, a jigsaw of industry, residential, whatever, which wouldn't make sense
8 in total.

9 Q 18 Well, this proposal wasn't adopted?

10 A That's correct.

11 Q 19 And that was 12 years ago?

12 A Yes.

13 Q 20 Were the fears of the council fulfilled in the meantime then?

14 A Well apart obviously from the one rezoning to industry in the 1998 plan, I
15 would say no.

16 Q 21 Now, can I just -- if I could leave the industrial zoning position and revert,
17 if I may, to the residential zoning position which you had been dealing with on
18 Friday.

19

20 We have circulated, Mr. Chairman, copies of minutes of a meeting of the 14th
21 October and the 11th December 1997. On Friday I think you told us that between
22 the publication of the draft plan and the final confirmation of the draft plan,
23 the position of the council or the planners altered, isn't that right?

24 A That's correct, yes.

25 Q 22 And I think to give some sort of a flavour as to how this came about, one can
26 look to a meeting, or a special meeting of the council of Dun Loaghaire,
27 Rathdown County Council held on the 14th October 1997, do you have a copy of
28 that special meeting?

29 A I do indeed, yes.

30 Q 23 And I think at that meeting, when dealing with the representations, the manager

1 produced a report which dealt with representations which had been received by
2 the planners and by the council in relation to its proposals concerning
3 residential zoning, isn't that right?

4 A That's correct.

5 Q 24 At that time, based on your position paper in May 1996, it was the
6 recommendation that no additional lands would be rezoned for residential
7 development, isn't that correct?

8 A That's correct, yes.

9 Q 25 Now, I think that if we look at the manager's report which was read to the
10 meeting as we see it there on page 431, 432; I think at 432 he sets out the two
11 particular strategic issues which were raised which he proposed to address in
12 the report, namely the availability of lands for development and the
13 appropriate shopping hierarchy for the county?

14 A That's so.

15 Q 26 If we deal with the first of those issues which is dealt with in the succeeding
16 paragraphs, and if I could ask you to read it and I'll ask some questions on
17 it?

18 A "On the question of land availability, representation number 117 on behalf of
19 the Construction Industry Federation/Irish House Builders Association requests
20 that an amendment be made to the written statement concerning the supply of
21 zoned and serviced land for residential investment Section 142 as follows:

22

23 The council recognises that the demand for new housing in Dun
24 Laoghaire/Rathdown has consistently out stripped supply. Additional lands are
25 being zoned for new housing development to meet housing demands and facilitate
26 the planned provision of infrastructure.

27

28 In their submission, the CIF/IHBA attach a consultant's report which suggest
29 that there are only 400 acres of zone residential land of Dun
30 Laoghaire/Rathdown of which 300 acres is serviced. Applying a density of seven

1 homes per acre, this land supply is sufficient for only two years at the
2 estimated annual rate of house completions of 1,053 houses.

3 Q 27 I think they subsequently amended those figures to reflect what, in fact, was
4 the true position, isn't that right?

5 A That's correct.

6 Q 28 And I think it goes on to say that subsequently when availing of the
7 opportunity to make an oral presentation, representatives of the Construction
8 Industry Federation and the Irish House Builders Association amended the
9 earlier submission and stated that the revised estimate for undeveloped
10 residential zoned land as per the 1997 draft plan totalled 866 acres or 350
11 hectares, exclusive of infill sites, institutional lands and low density
12 development?

13 A Yes.

14 Q 29 This land bank, at an average density of seven to ten houses per acre would
15 provide between five and a half and eight years housing supply at current rates
16 of take up. The principal argument put forward by the Construction Industry
17 Federation and the Irish House Builders Association is that additional lands
18 are required at three or four times the anticipated demand in order to allow
19 for flexibility of choice, and to assist in keeping prices down; it goes on to
20 deal with the planning department estimates and it says "the planning
21 department had estimated there were 740 acres of 300 hectares of undeveloped
22 residentially zoned land in the county which may reasonably be expected to be
23 developed in the period of the plan of which sanitary services and road
24 constraints effect 360 acres or 145 hectares. These constraints are expected
25 to be removed during the period of the plan. The total acreage, if developed
26 at ten houses per acre on average would yield seven years supply. Infill
27 development would be expected to provide an extra increment of accommodation;
28 so taking both statistics together, irrespective of how you arrive at the final
29 figure, the reality is there was no disagreement between the planners and these
30 representations being made by these bodies, but that at present, at that time

1 there was a seven years supply of residential zoned land?

2 A That's correct, yes.

3 Q 30 And the plan was intended to be a five year plan, isn't that right?

4 A Yes.

5 Q 31 So you would, in essence, be going into the review of the next plan with at

6 least two years supply of residentially zoned land?

7 A That's correct.

8 Q 32 Notwithstanding this, I think the strong urgings of these bodies was that there

9 would be a additional zoned residential zoned lands, isn't that right?

10 A Yes, because there's no guarantee that zoned land will actually be built on.

11 Q 33 It goes on to say, "it can be seen, therefore, there's broad agreement between

12 the Construction Industry Federation and the Irish House Builders Association

13 and the council in relation to the quantity of land available. The CIF and

14 IHBA argue a multiple of the anticipated demand should be zoned in order to

15 provide increased choice and influence the price of houses. The position as

16 set out in the Draft Development Plan, the sustainability, requires a husbandry

17 of scarce and finite resources, in this case development land.

18

19 The Draft Plan also supports the DTI strategy of higher densities in

20 appropriate locations. The consequences of major rezoning in excess of

21 anticipated needs would result in greatly increased in-migration, rapid take up

22 of land and subsequent pressures for the future extension of the suburbs into

23 the hinterland, while it's not recommended, it's recognised that more

24 flexibility of choice may be desirable in areas where prospective availability

25 of serviced lands would permit".

26

27 It goes on to -- the matter would be addressed and consideration was being

28 given in relation to the representations, and it would be proposed to include

29 manager's recommendations on the agenda for the appropriate meeting, is that

30 correct?

1 A That's correct, yes.

2 Q 34 And that matter was taken up at the meeting on the 11th December 1997. I think

3 if we look at page 734 of the meeting, the notes of the meeting of the 11th

4 December, I don't know if you have that.

5 A I have got a hard copy here.

6 Q 35 These are the representations in relation to lands at Stepside, Kilgobbin,

7 Ballyogan and Sandyford and the representation numbers are included; and it

8 deals with the report of the manager, isn't it that right?

9 A That's right, yes.

10 Q 36 Do you have that report and recommendations of the manager?

11 A I have indeed, yes.

12 Q 37 I wonder could I ask you to read there what the manager recommends in relation

13 to these representations?

14 A Could you give me the page?

15 Q 38 Page 734 of the, which is the internal pagination of the Dun Laoghaire/Rathdown

16 County Council special meeting of the 11th December 1997, and it will have a

17 brief page --

18 A My number --

19 Q 39 -- of 431?

20 A My one starts at 766.

21 Q 40 Sorry?

22 A "Lands at Stepside, Kilgobbin, Ballyogan and Sandyford; representation

23 numbers 98, 358, 346, 437, 442 and 455, the following report and recommendation

24 of the manager, which had been circulated, was noted.

25

26 Item 9.1. Lands at Stepside, Kilgobbin, Ballyogan and Sandyford,

27 representation numbers 98, 358, 346, 437, 442, 455 report and recommendation,

28 pressure for development at Stepside has become intense. It is considered

29 that it would be appropriate to rezone this area as delineated on attached

30 drawing number PL/21.130 to A1, to provide for new residential communities in

1 accordance with approved action area plans for the following reasons:

2

3 The line of the south -- of the proposed south motorway is now fixed. The
4 present boundary between the A1 residential zoned and the B agriculture zone is
5 an artificial one which was based on a former line for the motorway. This line
6 divides fields and other physical features and it does not now make sense on
7 the ground.

8

9 Main drainage can now be provided by connection to the recently constructed
10 Carrickmines main drainage scheme. The proposed Sandyford high level water
11 scheme, although not yet approved, would be capable of serving these lands.

12 The possibility of the various developers in this area together contributing to
13 the construction of this scheme in order to service their lands will be
14 investigated.

15

16 The rezoning of these lands would result in the county having a very adequate
17 land bank to cater for the needs of the population over the planned period and
18 it would provide a good element of choice in housing location.

19

20 Rezoning of this area to A1 rather than a mixture of A and A1 as requested in
21 the representations would assist in a proper action plan being prepared which
22 would be presented to the council. The removal of the limitation of 150 houses
23 on the existing land, 13.5 hectares, which is already zoned A1, would result in
24 more appropriate density of development on scarce residential land.

25

26 It should be noted that this representation is made in the context of the
27 inclusion in the plan of the draft policy on social housing, and that the
28 council will seek a minimum of 10 percent provision for social housing in all
29 new residential development areas.

30 Q 41 And based on that report, I think the council, in a motion proposed by

1 Councillor Butler as appears from page 739, seconded by Councillor Fox, that
2 the manager's recommendation to zone lands in Stepside as A1, as shown on
3 drawing PL/97130 be accepted; and on a roll call, the vote resulted in 14
4 councillors voting in favour of the proposal, 13 councillors voting against,
5 with no abstentions; and the vote being carried?

6 A That's correct.

7 Q 42 Now, I think that the proposal of the manager, as contained here, amounted to
8 giving an additional two years of residentially zoned lands to this county,
9 isn't that right?

10 A Yeah, it depends on how many houses are built a year. It was 77 hectares and
11 would be at least two years.

12 Q 43 At least two years, you already had your proposals that there was already
13 seven, so that gave nine years, effectively?

14 A Yes. You see we had -- demand out stripped construction, so we were only
15 building at this time an average of a little over 800 a year, so it's difficult
16 to say how many years supply it provides. You can look at either the demand
17 for housing or the amount that we are actually building. It would be far more
18 than two years supply of house completions per annum.

19 Q 44 Yes.

20 A In other words, far more than 16 hundred houses.

21 Q 45 How many years, if one uses that --

22 A Well, I'd be guessing at maybe four or five.

23 Q 46 Would that four or five compare to the seven that you had identified, are we
24 comparing like with like?

25 A Yes, I think so; we would be.

26 Q 47 So we would be adding five to the seven?

27 A Well five might be an exaggeration, I am not sure of the figures there, but
28 roughly, I am just saying it would be more than two.

29 Q 48 Possibly two, four and maybe five?

30 A Yes.

1 Q 49 This was confirmed in 1998?

2 A That's correct.

3 Q 50 So if we take a figure of four and the existing seven, you had 11 years supply

4 in 1998 of residential low zoned land, approximately?

5 A That might be a little high actually. It might be a little high. I am not

6 sure.

7 Q 51 Will we agree on ten, perhaps?

8 A Around ten. Yes.

9 Q 52 Now, we are four years on, which means we should have six years supply at

10 present?

11 A Indeed and we have, we did a housing strategy last year and we estimated then

12 that we had sufficient supply, at greatly enhanced construction rates, to get

13 us to 2006. In other words, construction rate of nearly 2,000 per annum where

14 in fact we are only building 1,000, but even at nearly two thousand per annum,

15 we have enough land at the moment to bring us to 2006.

16 Q 53 Yes. Perhaps for completeness sake we should just deal with the roll call of

17 the councillors who voted for and against that motion.

18

19 For the motion were: D Boylan, B Butler, B Coffey, Conroy, Cosgrave, Dockerll,

20 Elliott, Fox, Hand, Lowry, Lydon, Marren, Matthews and Mitchell.

21 And against the motion were: Buckley, Connolly Dillon-Byrne, Fitzgerald, E

22 Fitzgerald, E Gilmore, Gordon, Greene, Keogh, Lohan, Misteil, O'Callaghan and

23 Smith, is that correct?

24 A That's correct.

25 Q 54 So just to recap, had there not been a variation as proposed by the manager,

26 and had your proposals as of May 1996 been adopted, would the council have

27 sufficiently zoned industrial lands for the duration of the current Development

28 Plan?

29 A You mean residential?

30 Q 55 Yes, sorry residential, I should say.

1 A Well yes, it is -- it happens, construction rates have not increased in the
2 county and so the land bank that we had in this period, 1997 say, hasn't been
3 hugely eaten into.

4 Q 56 That was my next question. Has there been a take up of the additionally
5 rezoned, residentially rezoned lands?

6 A There has been a take up. There's houses under construction there now but it's
7 still mostly unbuilt on, and as I say our land bank of around about 300
8 hectares of residentially zoned land has not been eaten into.

9 Q 57 That was the existing land bank?

10 A Yes, what happens basically is that as some of the land bank is built on, other
11 plots of land become available, perhaps institutional or that .

12 Q 58 Yes, but the existing land bank as of 1997, as of May, even, 1996; to what
13 extent has that been exhausted at this stage?

14 A Not to any significant degree, there's been some building on, at both
15 Cherrywood and Stepside, but still primarily unbuilt on.

16 Q 59 And the additional zoned residential lands, as a result of the 1998 Development
17 Plan, to what extent have those lands been developed?

18 A Well, certainly less than half. I mean well less than half.

19 Q 60 Now, I think your statement goes on to deal other representations that were
20 received at this time in relation to the Development Plan, isn't that right?

21 You say that in 1997, at page 6 of your statement, you say in 1997 Draft County
22 Development Plan, it was proposed that the Jackson Way lands and O'Halloran
23 lands be zoned on maps nine and ten as objective B, namely protect and improve
24 rural amenity and provide for the development of agriculture; in essence to
25 retain the existing zoning, is that right?

26 A Yes, I don't have that on screen, I am working on the hard copy.

27 Q 61 If we get pages 687 and 688 on the screen please?

28 Now, I think page 687 shows us the map on number 10, is that right?

29 A That's correct, yes.

30 Q 62 And I think we are looking here at perhaps the Monarch end of the lands as

1 opposed to map nine, which is more towards the Carrickmines end, isn't that
2 right?

3 A Yes, that's correct.

4 Q 63 And looking at the map as we see it here, we see the area which has been zoned,
5 I think in the variation of the 1993 plan by Monarch, isn't that right?

6 A Yes, the science and technology park.

7 Q 64 And then we have the town centre?

8 A That's a district centre.

9 Q 65 District centre. We have the Carrickmines Golf Club and then, I think if we
10 look at map 9 which is page 688, we see the -- are those the Grimes land?

11 A The Grimes land, yes, the industrial land there.

12 Q 66 And I think these are the Galvin Golf Course lands, is that correct?

13 A No, Carrickmines Golf Course.

14 Q 67 Of course, sorry, and then up here and to the right, we have the Jackson Way
15 lands?

16 A Yes indeed, and --

17 Q 68 It's proposed that they retain their existing zoning of B, which is
18 agriculture?

19 A That's correct.

20 Q 69 Now, I think you say that during the public display period, 458 representations
21 were received, of which three related to the Jackson Way Property and the

22 O'Halloran lands?

23 A That's correct.

24 Q 70 And if I could take you through those various representations, commencing with
25 representation number 94 which is dated 15th August 1997 from Dean McCarthy and

26 Company on behalf of Jackson Way Properties.

27 A Yes.

28 Q 71 That's to be found, I think, at pages 689 to 707?

29 A Yes.

30 Q 72 Representation 94, as I say is on behalf of the Jackson Way Properties and it's

1 accompanied by a request for an oral hearing, isn't that right?

2 A I believe so, yes.

3 Q 73 And it follows somewhat the earlier outline of submissions from the same source

4 in respect of the same lands, isn't that right?

5 A Yes.

6 Q 74 And the proposal at this stage is for residential zoning A1 for circa 35

7 hectares, isn't that right?

8 A That's correct.

9 Q 75 Which excludes the motorway take, isn't that right?

10 A Yes.

11 Q 76 A1 designation for a --

12 A A residential accordance with an approved action area plan.

13 Q 77 Yes. I think the grounds for seeking the proposed zoning are more or less the

14 same as the earlier grounds put forward by this company on behalf of Jackson

15 Way Properties Limited?

16 A That's correct, yes.

17 Q 78 And as page 705 of the brief, we see conclusions on the basis of the above

18 submission, the following amendment is sought in respect of the lands. Area of

19 circa 35 hectares at Carrickmines Great coloured orange on the attached map,

20 zoned B to be zoned residential A1.

21

22 Alternatively, industrial zoning is considered acceptable, and for the reasons

23 above, appropriate.

24

25 The following additional comments are made with regard to industrial zoning,

26 under the heading "industrial":

27

28 "The future shortage of serviced industrial land was predicted in Dublin County

29 Council reports of October and November 1990 and is now an acute reality within

30 the Dun Laoghaire/Rathdown County Council area."

1 Have you got a copy of it?

2 A Yes, I can see that.

3 Q 79 Was the shortage of serviced industrial lands an acute reality at this time?

4 A Well, we didn't believe it was. We believed the position was set out in the
5 position paper of May 1996.

6 Q 80 Which you had just referred to?

7 A Indeed, which showed that there was some 80 hectares of undeveloped
8 residentially - industrially zoned land, of which some was available for
9 immediate development; and I believe that the position paper was presented to
10 the council and met general acceptance by the council.

11 Q 81 Were you involved in presenting the position paper?

12 A I was, yes.

13 Q 82 And I think that submission then was accompanied by the map DP90/123, which

14 reference has been made previously together with the map at page 707 which set
15 out the position of the lands in question. And also the representation of the
16 southeast motorway at that time, isn't that right?

17 A That's correct.

18 Q 83 I don't believe the line had been proposed, I don't think it had been fixed at
19 this stage?

20 A No, I believe the inquiry into the CPO, I believe, was January 1998.

21 Q 84 Yes. This would have been produced in August 1997.

22 A That's correct, yes.

23 Q 85 I think the second submission received was identified at submission 292 from

24 Brian Meehan of Brian Meehan and Associates seeking a proposed variation of the
25 plan dated 15th August on behalf of B O'Halloran, D Darragh, J.G. Kilcoyne and
26 Jackson Way Properties Limited, isn't that correct?

27 A That's correct.

28 Q 86 And that's to be found at page 2129 of the brief. Again, the submission

29 follows more or less the format of the earlier submissions and perhaps to some
30 extent the reasons put forward previously.

1 A That's correct.

2 Q 87 And I think the conclusion in relation to this station was that on the above
3 basis, the following zoned is sought for the subject lands, namely area of
4 19.09 hectares zoned agriculture B to be zoned industrial E or E1. Remind the
5 Tribunal of the difference between E and E1?

6 A Indeed, E is for industry and E1 is science and technology.

7 Q 88 A business park use to be particularly appropriate at this stage. Would a
8 business park use be included in E1 or E?

9 A Well business park would suggest more science and technology to me.

10 Q 89 Right. Which would have been?

11 A E1.

12 Q 90 Alternatively residential zoning A or A1 was sought. Now, it's fair to say
13 again that Messrs. Meehan's application or submission included some of the
14 lands north of the proposed southeastern motorway which were referred to in the
15 Des McCarthy and Company solicitors --

16 A Yes, there was an overlap.

17 Q 91 Now that submission was accompanied then, I think, by correspondents from the
18 county council identified or advising that the sanitary authority would allow
19 access to the Carrickmines Valley sewer at various locations, isn't that right?

20 A I believe it refers to letters sent by Mr. Jim Carson.

21 Q 92 Yes. Advising -- perhaps if I read the letters, the first is dated 24th
22 January 1996 to Sudway Company in relation to his client, Mrs. VE Kilcoyne,
23 wayleave drawing 2893-W3B-1.

24

25 "I refer to your recent telephone call and wish to confirm that the sanitary
26 authority will allow access to the sewer which passes through your client's
27 property, provided that such access is achieved in accordance with the
28 necessary planning permission ."

29 A Yes.

30 Q 93 I think the other letters are two other owners more or less on the same vein?

1 A That's true, yes.

2 Q 94 And also included is a map at page 2137 which purports to show the area in its

3 proximity to the Carrickmines junction, the Monarch lands and the other

4 developments en route, isn't that right?

5 A Yes.

6 Q 95 Finally, I think, it also includes two additional maps, figure one, which is a

7 draft action plan and that's taken from the Cherrywood action plan. Isn't that

8 right?

9 A That's page 2138.

10 Yes, it's an extract from the 1994 draft action plan, I believe, with the site

11 in question up in Carrickmines marked on --

12 Q 96 This is the site in question, isn't it?

13 A Indeed, yes.

14 Q 97 And finally I think there's a map at page 2139 which shows the access to the

15 site.

16 A Why, that's right, access from a right of way on to Golf Lane.

17 Q 98 Now, I think there was a further submission received in relation to these

18 lands, that's submission dated 22nd August 1997 from Thomas Montgomery and Sons

19 solicitors on behalf of a company Paramount Construction Limited.

20 A Yes, the 26th August.

21 Q 99 And it was received I think on maybe the 26th August, the letter is dated 22nd

22 August?

23 A You are right, yes.

24 Q 100 And it says "we act for Paramount Construction Limited, 5 Lower Merrion Street

25 Dublin 2, who have agreed to purchase the lands at Carrickmines Great at

26 Lehaunstown. The following lands are located near an area predominantly zoned

27 for residential use. The area of the land as such is not economically viable

28 as agricultural land. The land is approximate to a proposed major road works

29 and the proposed light rail but for the aforesaid reasons, it's highly probable

30 that the lands would be seriously affected by trespass, vandalised and other

1 nuisance, thus rendering them agriculturally not productive and unviable.

2

3 Water and sewage facilities are now available to the lands and these services
4 have, taken in conjunction with the proposed road and rail systems rendered the
5 land suitable to development. By virtue of the established shortage of zoned
6 land and serviced land in the county, the zoning of these lands for residential
7 purposes will help to meet a serious growing need within the community.
8 Accordingly, our client strongly urges the lands be zoned for residential use
9 and the submission is accompanied by a map at page 715."

10

11 It purports to set out the lands, the subject of that application?

12 A That's correct.

13 Q 101 Now, I think a map has been prepared outlining the lands in all three
14 submissions. That's map number 9. Do you see this map?

15 A I do indeed.

16 Q 102 First, all the areas outlined in blue is the first submission by Des McCarthy
17 and Company on behalf of Jackson Way Properties Limited?

18 A That's correct.

19 Q 103 The second submission outlined in red is the submission by Brian Meehan on
20 behalf of Messrs. O'Halloran, Darragh and Kilcoyne and Jackson Way Properties
21 Limited?

22 A Yes.

23 Q 104 And the third submission which is the submission on behalf of Paramount
24 Construction, which I have just referred, is outlined in green, is that
25 correct?

26 A That's correct.

27 Q 105 And if we just concentrate, if we may, on the area just to the north and to the
28 east, there seems to be an overlap with the three different submissions in this
29 region, isn't that right?

30 A Yes, that's so.

1 Q 106 Some of the submissions include lands which are proposed to be taken by the
2 southeastern motorway line?

3 A Yes, two of them, is it two?

4 Q 107 At least the Paramount submission and the Paisley Park submission, isn't that
5 right?

6 A Yes.

7 Q 108 Whereas the O'Halloran, Darragh, Kilcoyne submission seems to run on the
8 Jackson Way -- namely the Brian Meehan submission seems to run to the line of
9 the motorway.

10 A That's so, yes.

11 Q 109 There was a further submission, submission 405, received on the 22nd August
12 1997 from Smith Foy and Partners, Solicitors, on behalf of TK Smith, seeking
13 residential zoning for approximately 11 acres. If we look at page 2168? This
14 is a letter of the 21st August 1997, enclosing rezoning submissions in relation
15 to property at Priorsland?

16 A That's correct.

17 Q 110 At Carrickmines as part of the review of the draft County Development Plan
18 1997, advising if you needed any additional clarification of the submissions or
19 further information, to make contact with the writer Mr. Smith, isn't that
20 right?

21 A That's right.

22 Q 111 And then the submissions accompanying that letter are headed "submissions on
23 behalf of TK Smith for the rezoning of lands at Carrickmines County Dublin" and
24 the draft Development Plan for the county in Dun Laoghaire/Rathdown 1997 and
25 gives a description of the lands. A site for proposed rezoning system,
26 approximately 11 acres of lands, the lands are directly adjacent to the
27 proposed busrail and alone with a small parcel of land are bounded by the South
28 Eastern Motorway and then on the east the lands are bounded by another field
29 which in turn is bounded by an objective to establish a golf course,
30 Lehaunstown area. On the west left-hand side are bounded by the Glenamuck

1 Road. Current status is objective B"?

2 A That's correct.

3 Q 112The lands lie immediately to the Glenamuck Road, while on the east, similar

4 type lands are zoned for housing, that's different to the Monarch lands?

5 A The east of Glenamuck Road, no, I wouldn't say --

6 Q 113Are they the Leddy or --

7 A Yes, yes. The variety of ownerships of Glenamuck Road.

8 Q 114"Adjoining housing development, all of the lands are, around the site are now

9 zoned for development either for housing, major road works or golf courses.

10 The lands within are persistently farmed and are currently being farmed with

11 increasing conflict with some organisations, trespassing, vandalism etc with

12 the impending motorway and increasing encroachment, we feel that farming is no

13 longer a viable use for the lands, and a case is put forward for the rezoning

14 of the site, with the above strategic planning, context and prevailing local

15 reality; the following reasons are advanced in favour of rezoning the site for

16 purposes of medium to low density residential development. In the review of the

17 Dun Laoghaire/Rathdown County Development Plan 1997, the immediate proximity to

18 the existing Carrickmines area which has been seen over the past years is the

19 increasing level of development, especially infill housing. Proximity to the

20 bus way and southeastern motorway will provide good access to it via the

21 proposed interchange. Such a high degree of accessibility is particularly

22 significant for private medium to low density development with a high car

23 ownership level. The land is easy serviceable and is eminently suited to

24 residential development. Services are available to the site. The proposed car

25 park reservation on the lands immediately adjoining the house will considerably

26 reduce the amenity level currently enjoyed, it would also increase the risk of

27 trespass on the lands. With regard to all the circumstances, I feel there's a

28 good planning case for rezoning this land for housing with the exception of

29 that portion of land which is required for the carpark. The policy of the

30 Council to provide increased residential would also be met by such rezoning

1 along strategic public transport corridors in order to encourage greater use of
2 public transport. And the area of land in my ownership comprises approximately
3 11 acres is too small to be a viable agricultural holding."

4 A That's correct, yes.

5 Q 115I think your statement goes on to say: "In September 1997, the County Council
6 published the environmental impact statement to the southeastern motorway.

7 This EIS included locational details of the Jackson Way Property lands on a map
8 on page 244 and showed the proposed South Eastern Motorway bisecting the
9 Jackson Way lands. That's to be found, I think, at pages 728 and 729.

10

11 I think the motorway, as we see it, is coming through here?

12 A That's correct, yes.

13 Q 116And they are the Jackson Way lands and these are the O'Halloran, Darragh
14 Kilcoyne lands?

15 A Yes.

16 Q 117You said by letter dated 15th September 1997, representations on the draft
17 County Development Plan were circulated to the elected members of the council
18 and reports were received by the planning department from the water department
19 and the drainage department in relation to representations for the 88 acres
20 owned by Jackson Way Properties Limited; and we just, perhaps if we could,
21 refer to that report together with a report from the water department dated
22 21st October 1997 from Terry Rice, senior executive engineer, and endorsed by
23 Mr. Michael Phillips, senior engineer. They are at page 732 and 734, is that
24 correct? I wonder could I ask you to read the report to Mr. Hodgins from
25 Mr. Rice?

26 A Draft Development Plan 1997.

27

28 "Consideration of objections and representations. I refer to your letter dated
29 18/9/97 to Mr. B Delahun, county engineer, in the above matter, and set out
30 below the observations of the water department with respect to the various

1 submissions noted.

2

3 As a general observation, it is necessary to comment on the overall position
4 regarding water supplies in the Dublin area. This comment is prefacing the
5 comments for each submission.

6

7 It has already been drawn to the attention of various individuals and
8 departments in the council that the balance between the current requirements
9 for water and the water available is deficient. The consequence of this
10 imbalance has been a severe curtailment of water supplies in a number of areas
11 in the Dublin region for over three years.

12

13 In order to redress this imbalance, a number of steps are required,
14 particularly:

15 A. The Dublin region water conservation project and

16 B. The extension to Dublin Corporation's water treatment facility at
17 Ballymore Eustace. Until such time as additional water is made available to
18 consumers, restrictions to supplies with consequent interruptions will continue
19 to be a feature of the provision of water in the Dublin region. The
20 development of additional land will exacerbate that situation. With regard to
21 the individual submission, the following observations apply:

22

23 Submissions number 98, 346, 358, 442, lands from Sandyford to Stepside.
24 Water supplies for these lands will be provided from the Sandyford high level
25 water supply scheme. The preliminary design for this scheme has been submitted
26 to the Department of the Environment, but approval has not been forthcoming.
27 It's estimated that commissioning of the scheme would take approximately five
28 to six years from the date of approval ."

29 Q 118 If I could stop you there, I think one of the grounds advanced in support of
30 the manager's recommendation that the lands at Stepside would be rezoned was

1 that they would be serviced by this water scheme, isn't that right?

2 A That's correct, yes. Subject to the provision of additional water supply in
3 the Dublin region, water will be available for the lands in question.

4

5 However, in the absence of a completed Sandyford high level scheme the
6 development of these lands will give rise to very undesirable and wasteful
7 feature. In the absence of permanent storage it will be necessary to provide
8 proper storage of a temporary nature for the various developments involved. An
9 approach the department opposed, the provision of temporary storage facilities
10 for water is likely to give rise to the construction of a multitude of
11 temporary storage tanks, each possibly with an elevated and unsightly aspect.

12 Such an arrangement is not considered to be good practice and is a short
13 sighted waste of financial resources. Three such temporary tanks already exist
14 in the supply area of the Sandyford high level scheme and a current application
15 for over 600 houses near Lamb's Cross involves a propose for further temporary
16 storage.

17

18 The Sandyford high level water supply scheme involves the construction of two
19 permanent reservoir, one located at Barnacullia. It appears a more economical
20 and preferable approach would be that the various developers affected construct
21 the Barnacullia reservoirs, together with any assorted water mains and make the
22 works available to the county council for taking in charge upon completion.

23 Subject to water being available, this would enable development to proceed on a
24 more structured and tenable basis."

25 Q 119I think with specific reference to the submissions that we have just been
26 dealing with, namely submission number 94 and 405, 94 being the Jackson Way
27 lands submission of Des McCarthy and Company, it says "lands at Carrickmines
28 Great, submission number 94, the lands in question do not fall within the
29 supply zone of any existing or proposed water supply scheme. The proposal
30 therefore is premature. Reference is made to the submissions of the existence

1 of an eight inch water main. No such main is known to this department. The
2 site is, however, traversed by a Dublin Corporation 33 inch diameter water
3 main, that main would not be a viable source of supply for any development ."

4

5 Why, can I ask you, would the 33 inch diameter of water not be made available?

6 A Because it's a very large trunk water main intended for moving large quantities
7 of water from one part of the region to another and a small connection to it
8 would not be acceptable.

9 Q 120And in relation to the proposed Sandyford high level scheme, how close to that
10 scheme were the Jackson Way lands?

11 A I believe the outer edge of the scheme actually abutted the Jackson Way lands.

12 Q 121Finally, in relation to submission 405 from TD Smith Foy in relation to
13 Priorsland, it says water would be available for development on these lands
14 which could be sourced from the network serve, the EMA -- which is the Extra
15 Municipal Area, what does that mean?

16 A I am not a water engineer, and the part of the county used to be served by
17 Dublin Corporation water mains and that part was referred to as the Extra
18 Municipal Area. I don't know if water was available to Mr. Smith from that
19 system.

20 Q 122OK; and then finally, I think there was a report, a drainage report to
21 Mr. Michael Phillips, senior engineer, from Mr. MP O'Brien, senior executive
22 engineer to be found at page 735 of the brief, dealing with drainage, isn't
23 that right?

24 A That's correct.

25 Q 123And I think in relation to representation 94, which is the Des McCarthy and
26 Company representation on the Jackson Way lands, it says the Jackson Way
27 Properties land, circa 35 hectares, lie been the natural catchment of the
28 Carrickmines/Shanganagh main drainage scheme, flows arising from the area to
29 the west of the southeast motorway were not explicitly considered for the
30 design of the sewer. However, anticipated foul flows from this area would not

1 be a major problem. The lands are very flat and boggy to the east of the
2 motorway and there could be landlocking and inadequate gradient problems and
3 difficulties crossing the motorway. The Carrickmines stream, adjacent to these
4 lands appears to have been canalised and I do not agree that it has sufficient
5 capacity to accept the additional flow rates. It will be necessary to
6 attenuate any additional water flows to the stream and to take appropriate
7 steps to prevent pollution so as to avoid any significant change in the stream
8 region. It's also recommended that this stream be incorporated into a linear
9 park from the Druid's Glen to Glenamuck Road to assist in achieving the above
10 objectives and limit flooding on any development?

11 A That's correct.

12 Q 124 And I think in relation to the Priorsland representation at page 738 it says
13 "This 11 acre area lies within the Carrickmines/Shanganagh main drainage scheme
14 catchment and could be serviced by this scheme. Surface water could be
15 discharged to the Carrickmines stream subject to peak flow attenuation and
16 pollution control measures.

17 A That's correct.

18 Q 125 Now, I think a report then was sent to the members of Dublin County Council and
19 would have been available to members who were going to deal with the review of
20 the draft plan, isn't that right?

21 A That's so, yes.

22 Q 126 That report, I think, was accompanied in a letter setting out the manager's
23 report and representations and objections received in relation to maps 6 to 10
24 of the Draft Development Plan 1997. Page 739.

25

26 I think it's page 752 it deals with the representation number 292, Carrickmines
27 Great and that's the Meehan submission on behalf of O'Halloran, Darragh,
28 Kilcoyne and Jackson Way Properties and it says "Summary request, rezoning of
29 47 acres from agriculture B to industrial E or E1 or residential A/A1. Report,
30 consideration of zoning for development of these lands is premature as the

1 lands are affected by the southeastern motorway order and lie outside the area
2 to be serviced by the Sandyford high level water stream and the manager's
3 recommendation was that there be no change.

4 A That's correct.

5 Q 127And I think at page -- 753, dealing with the Paramount Construction submission
6 received from Thomas Montgomery and Son, representation number 454, the manager
7 says under the heading "summary," this representation requests the rezoning of
8 lands at Carrickmines Great from B agriculture to A residential.

9

10 Report: Consideration of zoning for development of these lands is premature as
11 the lands are affected by the southeastern motorway order and lie outside the
12 area to be served by the Sandyford high level water scheme.

13

14 On page 754 we find the Priorsland submission and representation, number 405,
15 the manager, under the heading "summary" says "The rezoning of 11 acres of land
16 west of Glenamuck Road from B to A."

17

18 His report was the lands referred to adjoin the former Carrickmines station.
19 At present these lands are not catered for by any water supply proposed and are
20 affected by the proposed SEM. The lands are also affected by an objective to
21 provide for park and ride for the Luas system. Recommendation -- no change
22 recommended." Is that right?

23 A That's correct.

24 Q 128Now, the manager's report there in relation to the water supply appears to be
25 slightly different to the recommendations to him which we referred to earlier,
26 isn't that right?

27 A Seems to be, yes.

28 Q 129And I think at page 757, in relation to the report and representation
29 objectives on map number 10, we get the manager's report on representation
30 number 94 which is the Jackson Way Property, Des McCarthy submission, isn't

1 that right?

2 A Yes, that's right.

3 Q 130And the heading "summary" he says "The rezoning of 35 hectares of land from
4 agriculture to residential which straddles both sides of the proposed SEM. The
5 rezoning of the land to the south of the motorway is outside the C Ring and
6 contrary to the DTI transport." I presume that's Dublin Transport Initiative?

7 A That's correct.

8 Q 131"The motorway is regarded as an appropriate boundary to the development in this
9 location. South of it the ground rises rapidly to the high amenity lands of
10 the Carrickmines Golf Course. In addition no water services are available on
11 properties for the area. The rezoning of the land to the north is premature
12 and due to the absence of existing or planned water services the lands are also
13 affected by the proposed SEM scheme which is with the Minister for
14 confirmation; and he recommends there's no change?

15 A That's so, yes.

16 Q 132Who would have written those reports for the manager?

17 A I believe it would have been a combination of Willie Murray, the county
18 planning officer, along with Michael Hodgins, the principal officer and then
19 finally, I might have had some input into a first draft possibly; certainly I
20 would have been involved in the discussion of it, but I think Mr. Hodgins and
21 Mr. Murray tended to write drafts they brought to the County Manager and that
22 draft might have been amended by Mr. O' Sullivan.

23 Q 133There's no doubt in relation to all of the submissions, the recommendation of
24 the manager to the councillors was that there would be no change on the
25 existing zoning?

26 A That's correct, yes.

27 Q 134Was Mr. O' Sullivan the manager at this time?

28 A He was indeed, yes.

29 Q 135Now, I think the report at page 9 goes on to maps 9 and 10, and representations
30 numbers 94, 292, 405 and 454 were considered at a special meeting on the 16th

1 December 1997 and the 5th and 21st January 1998 , is that correct.

2 A Yes.

3 Q 136I think at page 740, dealing with the manager's proposed changes to maps five

4 to ten, there's a note to the effect that it is proposed to indicate the

5 motorway line by reference to the proposed fence line with conventional

6 adjustments to adjoining zonings?

7 A That's correct.

8 Q 137Can I ask you to explain what that means?

9 A Yes. What's called the take line for a motorway is all the land needed to

10 actually construct the motorway, and it is wider than what one considers to be

11 the motorway after the motorway is built. In other words, there might be

12 construction land needed to get construction vehicles to, it or perhaps

13 underground pipes or so on. So, rather than as the motorway was becoming more

14 and more detailed in design, it was felt that it would be more accurate to show

15 the motorway on the Development Plan maps from, literally within the fence line

16 that would be fit at either side of the motorway, say at the top of an

17 embankment. Rather than include the embankment within what would be shown to

18 be a motorway. If that's clear. So the fence line is actually narrower than

19 the so-called take line.

20 Q 138Yes. Now, if we could just have a look at those representations having been

21 received and the manager having seized on them, I think the next sequence of

22 events is that a series of motions are received by the council in respect of --

23 respect of these lands?

24 A That's correct, yes.

25 Q 139If we could have page 2238 please? And I think all four motions were received

26 in relation to the Brian Meehan grouping of landowners?

27 A I believe so, yes.

28 Q 140And this is the first of these motions, I think it's signed by Liam T Cosgrave

29 and Betty Coffey and it says that Dun Laoghaire/Rathdown County Council hereby

30 resolves that the lands which are located at Carrickmines Great, which are

1 outlined in red and coloured yellow on the attached map, comprising of
2 approximately 36.858 acres, be zoned A1 residential in the Development Plan.

3 In order to provide for a high quality residential development in this area.

4

5 The map has been signed for identification purposes by the proposer and the
6 seconder of this motion.

7

8 And if we get 2239, we have a further motion for a slightly larger area of
9 lands again seeking A1 residential. That Dun Laoghaire/Rathdown County Council
10 hereby resolves that the lands located at Carrickmines Great, outlined in red
11 and coloured yellow, comprising approximately 47.1 acres be zoned A1
12 residential in the Development Plan, in order to provide for a high quality
13 residential development in this area. The map has been signed for
14 identification purposes by the proposer and seconder in this motion ."

15

16 I think there are two further motions if we could just highlight -- there were
17 two further motions, one for an area of 36.85 and the other for the larger area
18 of 47 acres approximately, one motion seeking industrial, both motions seeking
19 E, industrial; isn't that right?

20 A That's correct, yes.

21 Q 141 And motions, I think, were received on the 27th October, if we could have 2238
22 please?

23 A That's correct.

24 Q 142 They were received the 28th October 1997 at 4.20 pm, copied to P Tuck, do you
25 know who he is?

26 A Yes, Peter Tuck, he was an administrative officer.

27 Q 143 Then I think there were also two motions received in relation to the lands
28 which were the subject of Mr. McCarthy's submissions on behalf of Jackson Way,
29 if we could have page 2247?

30 This is a motion which relates to representation number 94, Jackson Way

1 Properties Limited, and it's in the following terms.

2

3 "That Dun Laoghaire/Rathdown County Council hereby resolves that the lands at
4 Carrickmines Great, coloured red on the attached map comprising about 88 acres,
5 which has been signed for identification purposes by the proposer and seconder
6 of this motion be zoned E industrial in the Development Plan to provide for a
7 high quality job creation centre for Dun Laoghaire/Rathdown, signed Liam T
8 Cosgrave and Tony Fox" and then it appears to have a manuscript note to the
9 effect that it was submitted to the general purposes section by Councillor Tony
10 Fox, Tuesday, 28th October 1997 at 4 pm. Is that correct?

11 A That's correct.

12 Q 144 And I think there was a second similar motion seeking residential, 2248.

13 Sorry, that's the map accompanying the earlier motion and that map I think has
14 been signed by Councillors Cosgrave and Fox.

15

16 Can you identify the lands and the signature on that?

17 A Well, yes, it's signed by Councillor Liam Cosgrave and underneath by Councillor
18 Tony Fox.

19 Q 145 Now, I think the next sequence of events is that at a meeting, a special
20 meeting of the council on the 16th December 1997, the four motions which
21 related to the Brian Meehan Property grouping, O'Halloran, Darragh, Kilcoyne
22 and Jackson Way Properties came up for consideration, is that right?

23 A That's correct, yes.

24 Q 146 Did you attend that meeting?

25 A I believe I did, yes. Yes, I did.

26 Q 147 And I think at page 842, we see a record of what transpired at that meeting,
27 isn't that right?

28 A That's so, yes.

29 Q 148 I think under the heading "Carrickmines Great" representation number 292, the
30 note records as follows: "The following report and recommendations by the

1 manager which had been circulated was noted:

2

3 Summary:

4 Request a rezoning of 47 acres from agriculture B to industrial E/E1 or
5 residential A/A1.

6

7 Report: Consideration of zoning for development of these lands is premature as
8 the lands are affected by the southeastern motorway order and lie outside the
9 area to be served by Sandyford high level water scheme.

10

11 Recommendation: No change. Carrickmines Great. It was proposed by Councillor
12 B Coffey and seconded by Councillor D Cosgrave.

13

14 And this is the motion: That Dun Laoghaire/Rathdown County Council hereby
15 resolves that the lands which are located at Carrickmines Great and which are
16 outlined in red and coloured yellow on attached map, comprising approximately
17 36.85 acres be zoned E industrial in the Development Plan in order to provide
18 for a high quality development which would have the beneficial effect of
19 creating many new jobs in the Dun Laoghaire/Rathdown County Council area. It
20 says Councillor Eithne Fitzgerald declared an interest in this site and left
21 the chamber for the duration of the discussion and voting. The following
22 report and recommendation of the manager was read".

23

24 This is separate from the report he would have furnished on the submissions.

25 A That's correct, this is a revised, updated report on the motion.

26 Q 149 Just to get the sequence, the council would have received a submission as it
27 did in relation to these lands from Messrs. Meehan?

28 A Yes.

29 Q 150 And the manager would have commented on the submission, the submission and the
30 manager's views would have been circulated to the members?

1 A Yes.

2 Q 151 On the 28th October, four motions would have been received in relation to the
3 lands?

4 A Yes.

5 Q 152 These came on for debate on this date in December, the manager would have
6 reviewed, referred to his earlier comments on the submissions, the motion would
7 have been proposed and seconded, and the manager would have reported on the
8 motion in addition to what he had already said?

9 A That's right.

10 Q 153 Now, would you just read the manager's recommendation to the councillors at
11 this meeting?

12 A "It is considered that these lands will not medium to long-term be suitable to
13 be zoned for industrial purposes. Until the southeastern motorway is in place
14 and adequate access to the lands can be provided, it would be premature to zone
15 the land. In addition, the lands are outside the area of the proposed
16 Sandyford high level water supply catchment and could not presently be
17 serviced.

18

19 Even if these restrictions did not apply, the lands the subject of the motions
20 do not have direct access to the existing road system which would, in any
21 event, be inadequate to cater for the development of these lands at present.

22

23 The only present access is an agriculture access to Golf Lane. The south
24 eastern motorway scheme makes provision for an agricultural access under the
25 proposed motorway which would not be suitable for use for excess to residential
26 or trial lands. The immediate to long-term access to these lands when viable
27 from development should be from the Glenamuck Road via the roundabout to the
28 north of the interchange, suitably redesigned and enlarged. It's considered
29 that this proposed zoning is premature until:

30

1 A. The southeast motorway is in place.

2

3 B. Adequate access can be provided to the lands from upgraded local road

4 network.

5

6 And C. A public water supply can be provided.

7

8 In addition, the land the subject of motions 9.6.C and 9.6.D do not make

9 provision for the land required for the flood attenuation measures associated

10 with the proposed southeast motorway which have been included in the southeast

11 motorway scheme.

12 Q 154I think in relation to the four motions we have seen, that two relate almost to

13 the same zoning?

14 A Yes.

15 Q 155Namely residential; and two seek the same industrial zoning?

16 A Yes.

17 Q 156The difference being that two of the motions that seek the industrial zoning

18 are for two different areas of lands, the difference in area arises as a result

19 of a suggestion at this time that some of the O'Halloran, Darragh, Kilcoyne

20 lands would be required to be retained by the council as part of the flood

21 attenuation measures associated with the south eastern motorway?

22 A That's correct.

23 Q 157So in fact four motions had been submitted for two different zonings in

24 relation to two different areas of land as a result of that, isn't that right?

25 A Yes.

26 Q 158Now, just in relation to the report of the manager, although the Sandyford, the

27 Stepside lands that referred to the southeastern motorway line haven't been

28 fixed, the reality was that as of October, December, 1997, whilst a line had

29 been suggested, or been fixed upon as a result of the EIS, it had not been

30 confirmed, and in fact the public hearings which were being sought or which had

1 been promised by the Minister, hadn't taken place. They weren't to take place,

2 I think, for another month, is that right?

3 A They were to take place in January 1998.

4

5 CHAIRMAN: Mr. Quinn, would this be a convenient moment to take ten minutes

6 break?

7

8 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

9 AND RESUMED AS FOLLOWS:

10

11 Q 159MR. QUINN: Mr. Cremmins, I think we had been dealing with the recommendations

12 of the manager as read to the meeting, a special meeting of Dun

13 Laoghaire/Rathdown County Council on the 16th December 1997, in relation to

14 this motion, or these series of motions, isn't that correct?

15 A That's correct, yes.

16 Q 160Just to go through the conclusions of the manager and the reasons for his

17 conclusions. I think he, in essence, was suggesting that the motion was

18 premature because the southeastern motorway wasn't in place and adequate access

19 to the lands hadn't been provided for and a public water supply hadn't been

20 provided for, is that correct?

21 A That's correct, yes.

22 Q 161Dealing with the position of the southeastern motorway as of this time in

23 December 1997, I think the position was that whilst an EIS had been compiled, a

24 route had been fixed upon and an EIS had been compiled upon it, there was

25 nonetheless a public inquiry conducted before the Minister confirmed the line?

26 A That's correct.

27 Q 162I don't think that took place until January 1998?

28 A That's so, yes.

29 Q 163In relation to the provision of access to the lands, the manager advised that

30 the only access to these lands in the future would be from a Carrickmines

1 interchange on that motorway, once constructed, isn't that right?

2 A That's correct.

3 Q 164 So therefore there was no question of access being provided, or adequate access

4 being provided to these lands for either residential or industrial development

5 until after the construction of the motorway?

6 A That's correct.

7 Q 165 This was in 1997. What's the position of the motorway at present?

8 A It's correctly under construction.

9 Q 166 And when is it expected to be completed?

10 A I believe 2005.

11 Q 167 OK. So that's at least eight years on from the period we are talking about

12 here, and certainly outside the five year period of that plan?

13 A That's correct.

14 Q 168 And in relation to the public water supply, I think the position was that even

15 if it fell within the Sandyford catchment area, it was sometime before that

16 water supply would be in place, isn't that right?

17 A Yes. I am no expert on the water supply situation --

18 Q 169 But the manager had available to him, I think, in relation to the submissions

19 as we saw at page 732, a report from Mr. Rice and Mr. Phillips, senior

20 engineers?

21 A That's correct, yes.

22 Q 170 And I think again just to review that, it says and we are now dealing with the

23 Stepside lands, submissions, rather than these lands?

24 A Yes.

25 Q 171 It says "Water supplies for these lands will be provided for the Sandyford high

26 level water supply scheme. The preliminary design for the scheme has been

27 submitted to the Department of the Environment but as yet approval has not been

28 forthcoming, and it's estimated that submissions of the scheme will take

29 approximately five to six years from the date of approval."

30 Can I ask you when was that Sandyford high level water scheme approved?

1 A I don't know.

2 Q 172Has it been approved?

3 A It has; and I believe elements of it have been constructed and others may be
4 under construction.

5 Q 173Can you give any indication of when, in relation to December 1997 approval came
6 through?

7 A I am sorry, I can't.

8 Q 174In any event, it will take another five to six years from the date of approval
9 before the scheme would be capable of servicing any lands, and in any event
10 these lands fell outside the scheme?

11 A Indeed, yes.

12 Q 175Now, I think on a roll call then, there was a vote on that first motion, that
13 is correct?

14 A That's correct.

15 Q 176And the vote resulted in the motion being passed, isn't that right?

16 A That's, so, yes.

17 Q 177And just for completeness again, just take the councillors for and against that
18 motion.

19 For the motion there were 13 councillors who voted in favour of the motion:

20 D Boylan, L Butler, B Coffey, Conroy, Cosgrave, Dockerll, Fox, Greene, Hand,
21 Lowry, Lydon, Madigan, Matthews.

22

23 And against the motion were: Buckley, Connolly Dillon-Byrne, Fitzgerald,

24 Gilmore, Gordon, Keogh, Lohan, Marren, Misteil and O'Callaghan.

25 There were no abstentions and councillor D Marren declared the motion passed,
26 isn't that correct?

27 A That's correct.

28 Q 178And again for completeness sake we should refer to the council's proposals in
29 October 1990 as appears in that map DP 90/123 we might get up on screen? I
30 think that the proposals related to this area of land here, isn't that correct?

1 And it's fair to say that in 1990, and in October and November 1990 the
2 council, at that time Dublin County Council proposal; when I say Dublin County
3 Council, I say the manager and the officials, planning department and officials
4 of Dublin County Council were proposing that type of zoning, namely industrial
5 and residential zoning for these particular lands?

6 A That's correct.

7 Q 179 Now, I think in relation to the other three motions which I referred to
8 earlier, these motions were not moved, isn't that right?

9 A That's so, yes.

10 Q 180 And then I think at a meeting of the council on the 5th January 1998, the
11 Paramount Construction submission was considered, isn't that right?

12 A That's so, yes.

13 Q 181 You attended that meeting, I think?

14 A Yes.

15 Q 182 That's to be found at page 850, isn't that right? And under the heading
16 Carrickmines Great, Paramount Construction, representation number 454, the
17 following is recorded.

18

19 "The following report and recommendation of the manager which had been
20 circulated was noted.

21 Summary: This representation requested the rezoning of lands of Carrickmines
22 Great from B agricultural to A residential report. Consideration of rezoning
23 for development of these lands are premature as the lands are affected by the
24 southeastern motorway order and lie outside area to be served by the Sandyford
25 high level water scheme. Recommendation: No change ."

26

27 And also at that meeting I think the proposals, the submissions on behalf of
28 Mr. Smith were considered, isn't that right?

29 A I believe so.

30 Q 183 Page 851, the following report and recommendation of the manager which had been

1 circulated was noted. This is now in relation to representation 405.

2 A I don't have it up on my screen.

3 Q 184OK, it's page 851. Do you have a hard copy of this?

4 A It says "summary: Request the rezoning of 11 acres of lands west of Glenamuck
5 Road from B to A. Report: The lands referred to adjoin the former
6 Carrickmines station. At present these lands are not catered for by any water
7 supply proposals and are affected by the proposed SEM. Lands are also affected
8 by an objective to provide for park and ride for Luas system. Recommendation:
9 No change recommended. Priorsland/Carrickmines, it was proposed by Councillor
10 Dillon and seconded by Councillor Butler as follows.

11

12 That Dun Laoghaire/Rathdown County Council resolves that the lands known as
13 Priorsland/Carrickmines comprising circa 11 acres and currently zoned B which
14 are outlined in the black on the map attached herewith, which has been signed
15 for identification purposes only, be zoned A1 residential.

16

17 And the manager's following report was read. "It is considered that these
18 lands will in the medium to long-term be suitable to be zoned for industrial
19 purpose. Until the southeastern motorway is in place, and adequate access to
20 the land can be provided, it would be premature to zone the land. In addition,
21 the lands are outside the area of the proposed Sandyford high level water
22 supply catchment and could not presently be serviced. Even if these
23 restrictions do not apply, the lands the subject of the motions do not have any
24 adequate access to the existing road system which would, in any event, be
25 adequate to cater for the development of these lands at present. The medium to
26 long-term access to these lands available for development should be from the
27 Glenamuck Road via the roundabout to the south of the interchange suitably
28 redesigned and enlarged. The lands are also affected by an objective to
29 provide for the park and ride for the Luas system. It's considered that this
30 proposed zoning is premature until the southeastern motorway is in place.

1 2. Adequate access can be provided to the lands from upgraded local road
2 network.

3 3. A public water supply can be provided and

4 4. The issue of park and ride can be resolved.

5

6 Following discussion it was proposed by Councillor Lydon that the motion be
7 amended by the deleting from the last line of the motion, the words "be zoned A
8 is" and substituting the words "be zoned E industrial", the following amended
9 motion was seconded by Councillor Butler and was then put.

10

11 "That Dun Laoghaire/Rathdown County Council resolves that the lands known as
12 Priorsland Carrickmines comprising circa 11 acres and currently zoned B which
13 are outlined in black on the map attached herewith and which have been signed
14 for identification purposes only, be zoned E industrial.

15

16 On a show of hands an Cathaoirleach, Councillor D Marren declared the amended
17 motion defeated".

18 A That's correct.

19 Q 185The earlier motion had been on roll call and this motion had been on a show of
20 hands?

21 A Yes.

22 Q 186How is it decided that one motion or another, not necessarily these motions,
23 will be dealt with in that fashion?

24 A I am not quite sure. I think at the start of the Development Plan process, as
25 I recall, it was decided that generally zoning should be on a roll call, so I'm
26 not quite sure why one was done on a show of hands.

27 Q 187Now, I think the Jackson Way motion then was considered at a meeting of the
28 21st January 1998, isn't that right? And again there is a meeting at which you
29 attended, and it's to be found at page 86 of the brief; and I think the note of
30 the motion of the special meeting dealing with -- with the representation

1 number 94 is to be found at page 872.

2

3 It says "Carrickmines Great representation 94, the following report and

4 recommendation of the manager which had been circulated was noted.

5

6 Summary: Requests the rezoning of area 35 hectares of land from agriculture to

7 residential which straddles both sides of the proposed southeastern motorway.

8

9 Report: The rezoning of the lands to the south of the motorway is outside the

10 C Ring and contrary to the DTI strategy.

11 The motorway is regarded as an approach, yet boundary, to the development area

12 in this location.

13

14 South of it the ground rises rapidly to the high amenity lands of the

15 Carrickmines Golf Course. In addition, no water services are available on

16 properties for the area. The rezoning of the land to the north is premature

17 due to the absence of existing, or planned, water services. The lands are also

18 affected by the proposed SEM scheme which is with the Minister for

19 confirmation.

20

21 Recommendation: No change.

22

23 And then it goes on to provide that Carrickmines Great (Jackson Way Properties)

24 representation number 94. The following motion in the names of Councillor L

25 Cosgrave and Councillor T Fox was not moved.

26

27 "That Dun Laoghaire/Rathdown County Council hereby resolves that the lands at

28 Carrickmines Great coloured red on at attached map comprising about 88 acres

29 and which have been signed for identification purposes by the proposer and

30 seconder of this motion, be zoned A1 residential in the Development Plan to

1 provide for a high quality residential community ."

2

3 And then it goes on to say that Carrickmines Great Jackson Way Properties
4 representation number 94, it was proposed by Councillor L Cosgrave and seconded
5 by Councillor T Fox.

6

7 "That Dun Laoghaire/Rathdown County Council hereby resolves that the lands at
8 Carrickmines Great, coloured red on the attached map comprising about 88 acres
9 and which have been signed for identification purposes by the proposer and
10 seconder of this motion, be zoned E industrial in the Development Plan to two,
11 described for a high quality job creation centre for Dun Laoghaire/Rathdown ."

12 And then it goes on to provide the following, report of the manager was read:

13

14 "The line of the southeastern motorway is regarded as an appropriate boundary
15 to the development area in this location. South of the motorway the ground
16 rises rapidly to the high amenity lands of Carrickmines Golf Course. No
17 services are available or proposed for the area. In addition, it is not clear
18 how development access can be provided to this site.

19

20 At the special meeting of the county council held on the 16th December 1997, a
21 motion to rezone part of the site north of the motorway from B agriculture to E
22 industrial was passed. Recommendation: No change on land south of the
23 motorway."

24

25 Now I think that motion was put to a roll call and the vote resulted as
26 follows. There were, I think, ten councillors voting in favour of the motion,
27 and 16 against. There were no abstentions and the motion was declared defeated
28 by the Cathaoirleach, D Marren, is that correct?

29 A That's correct.

30 Q 188 Just for the record, I'll just read the note of the vote:

1 For: Boylan, Coffey, Conroy, Cosgrave, Dockerll, Fox, Hand, Lowry, Lydon,
2 Matthews.

3

4 Against: Councillors Buckley, Connolly, Dillon-Byrne, Elliott, Fitzgerald,
5 Fitzgerald, E Gilmore, Gordon, Greene, Keogh, Lohan, Marren, Misteil, Mitchell,
6 O'Callaghan, and Smith.

7

8 I think the net effect of the six motions that we have just referred to, namely
9 the four in relation to the Meehan proposals for the O'Halloran, Darragh and
10 Kilcoyne and Jackson Way north of the motorway lands, and the two in relation
11 to the Jackson Way Properties which included the lands north of the motorway,
12 resulted in the one of the motions for, namely for a lesser acreage for the
13 O'Halloran, Darragh, Kilcoyne/Jackson Way lands being zoned industrial?

14 A That's correct.

15 Q 189And these were lands zoned by the councillors industrial, against the advice of
16 the manager, isn't that right?

17 A That's correct.

18 Q 190The advice of the manager being that the proposed rezoning was premature
19 because of the proposed southeastern motorway, the lack of access to the lands,
20 access which was to depend on the construction of the motorway and also the
21 lack of services by way of water supply, isn't that right?

22 A That's correct, I think he may have mentioned in his final report about an
23 action plan.

24 Q 191Yes. Now, there's no doubt but that it was obvious to everyone that these
25 lands, or lands adjacent to these lands, would have to be acquired for the
26 motorway, isn't that right?

27 A That's correct, yes.

28 Q 192Have you anything to say about zoning lands which have to be acquired for
29 motorway from agricultural to either residential or industrial?

30 A Well, in this particular instance the land was accepted by everybody that it

1 could not be built until the motorway was in place, so it didn't seem to me
2 that it was necessary or prudent to zone lands along the side of the motorway,
3 you know, that had yet to be acquired for development purposes. As I say,
4 especially as the land wouldn't be developed in the period of the Development
5 Plan, that five year period anyway, because the motorway wouldn't be there.

6 Q 193 It wouldn't be constructed within that period?

7 A It wouldn't be constructed, the land wouldn't be built on, so he'd be zoning
8 land for a Development Plan period that physically couldn't be built.

9 Q 194 What about the value of the land from the point of view of the acquisition of
10 that land for the construction of the motorway? How is that affected by a
11 change in zoning from agriculture to industrial or residential?

12 A Well, it would seem likely that it would increase the value that would need to
13 be paid for the land needed for the motorway.

14 Q 195 Even though the lands weren't going to be developed in the interim?

15 A Yes, that would seem to be likely to me.

16 Q 196 Even if the lands were required not in the immediate term, but before the
17 expiry of the Development Plan, was there a provision for variation of the
18 Development Plan to take place? Was that a necessity or --

19 A Yes; and in fact we had rezoned land for science and technology back in 1995,
20 two years after the 1993 Development Plan was made, and we have made several
21 variations to the 1998 Development Plan as situations change, so variations to
22 the Development Plan -- its quite a normal thing to do because development
23 doesn't stay stationary for, you know, the five or six year period of a
24 Development Plan, so variations can be justified during that period.

25 Q 197 Well, is it true to say that in October 1990, the planners themselves were
26 recommending this type of zoning for this particular land?

27 A That's correct, as I have said before, I wasn't involved so I am going by, if
28 you like, just general comment. The fear back in 1990, as I understand it, was
29 that if that motorway line went ahead that there would be piecemeal development
30 along it and Mr. Murray and the manager at the time felt that it was worthwhile

1 proposing zoning for that whole general area far more than would be needed for
2 one development period, and that the land would be developed on a phased basis;
3 so the logic there, I suppose, was I presume that you pay more for the motorway
4 land, but the benefit is that the whole general area has the benefit of a
5 comprehensive and rational plan.

6 Q 198 Just in relation to the Stepside lands; was the motorway going through those
7 lands or was the proposal that the motorway go close to the lands that you were
8 now recommending for residential development, at this time also?

9 A The motorway was inside the lands. I'd just like to look at a map to confirm
10 that, but it was inside the lands, and I believe that the lands we proposed for
11 rezoning in Stepside had rational boundaries to them.

12 Q 199 Had the councillors put forward any suggested change on submission at this time
13 that there be a comprehensive review of this area, assuming that they felt
14 necessity for industrially zoned land in this location? Do you know of any
15 request of the manager, or of his staff, to put forward a comprehensive
16 approach to having lands zoned industrial?

17 A No, I don't believe so.

18 Q 200 Would there have been any difficulty with that?

19 A No, it could have been done.

20 Q 201 What about the actual lands themselves and the take of the lands and the shape
21 of the lands? Do you have any view on that, from a point of view of industrial
22 zoning or residential zoning, for that matter?

23 A Well yes, the land that's zoned, actually, isn't the shape up on the map here.

24 Q 202 No, the map accompanying 2238 is the -- if you could just look at the map at
25 the moment on screen, I think the area of land that we are speaking about is
26 this area here, is that correct? Subject to, I think, some lands in this
27 region being retained for flood attenuation, isn't that right?

28 A Yes. Yes, it's generally that, not exactly that. I suppose you have asked me
29 to comment on that particular outline of land, and I would say that if I was
30 picking land to be zoned for industrial development in that location, I would

1 choose a more compact shape, perhaps generally rectangular or so on, not that
2 particular shape.

3 Q 203 For example, you might have taken in the Priorsland, the Smyth lands and
4 squared up the land take, is that correct?

5 A That's correct, yes, and the land that's zoned industrial is almost divided
6 into two by a piece of agriculture zoned land that comes into it.

7 Q 204 This is the Galvin proposed golf course lands at this point here?

8 A Yes.

9 Q 205 And at this time I think, there had been an area of Grimes lands to the left of
10 these lands, which had already been zoned industrial from 1983, is that right?

11 A That's correct, yes.

12 Q 206 I think these are the Grimes lands here?

13 A Yes. Yes. That's right. In fact, I believe the industrial zoned goes a bit
14 beyond that. That just shows the land in the ownership of Grimes, but there's
15 more industrially zoned land there.

16 Q 207 And yet all the time it was obvious to anyone that the lands would have to be
17 acquired by the Department or the local authority for the southeastern
18 motorway, isn't that right?

19 A Yes. I think there's a kind of rule of thumb in valuations, that in valuing
20 the land needed for that motorway, one assumes that the zoning on each side
21 moves into the centre, so that the half of the road on the industrially zoned
22 side would be valued at industrial prices and the half on the outside on the
23 agriculturally zoned land would be valued on the basis that it is zoned for
24 agriculture.

25 Q 208 And of course, I mean it is obvious that the area of land rezoned was based
26 entirely on landownership rather than boundary, isn't that right?

27 A That seems the case.

28 Q 209 Now, I think that the map, the revision to the map then went on public display
29 and at a meeting of the 16th June 1998, the matter came back for confirmation?

30 A That's correct, yes.

1 Q 210And I think you were at that meeting.

2 A Yes.

3 Q 211And if we look at page 938 we see the consideration of the proposed variations

4 to maps 9 and 10, isn't that right?

5 A Yes.

6 Q 212And I think it says under the heading Carrickmines Great/Jackson Way

7 Properties, it was agreed to take items 10.2 and 9.10 together. Then 10.2,

8 changes two and 2.1 map ten, change of zoning from B to E;

9 And 9.10, change 8, map 9, change of zoning from B to E.

10

11 The following report of the manager which had been circulated was considered:

12 Three representations received.

13

14 Zoning 1993 Development Plan B, 1997 Draft Development Plan B, 1998 amendments

15 E; and then there's reference to the meeting on the 16th December 1997, which I

16 have just referred to, isn't that right?

17 A That's correct.

18 Q 213It goes on to say "It is considered that these lands will in the medium to

19 long-term be suitable to be zoned for industrial purposes. Until the south

20 eastern motorway is in place and adequate access to the lands can be provided,

21 it would be premature to zone the land. In addition, lands are outside the

22 area of the proposed Sandyford high level water supply catchment and could not

23 presently be serviced. Even if these restrictions did not apply, the lands

24 subject of the motions do not have direct access to the existing road scheme

25 which would, in any event, be inadequate to cater for the development of the

26 lands at present.

27

28 The only access is an agricultural access to Golf Lane. The southeastern

29 motorway scheme makes provision for an agricultural access under the proposed

30 motorway which would not be suitable access to the residential or industrial

1 lands. The medium to long-term access to these lands, when available for
2 development, should be from the Glenamuck Road via the roundabout to the north
3 of the interchange suitably redesigned and enlarged.

4 It is considered that this proposed zoning is premature until:

5

6 The southeastern motorway is in place.

7

8 Adequate access can be provided to the lands from upgraded local road network.

9

10 And a public water supply can be provided.

11

12 A. Addition, this zoning is considered premature until an action area plan for
13 the Cherrywood area is completed.

14

15 The recommendation is that the amendment be rejected."

16

17 Before I go on to what transpired there, it's obvious what the manager had to
18 say here, not alone was there no access for the proposed zoning industrial, but
19 it was questionable that there was sufficient access to develop the lands,
20 never mind access for their proposed use, is that right?

21 A Yes, the access was on to Golf Lane, the existing access --

22 Q 214 Which was an agricultural access?

23 A Yes. That's correct. So it was an agricultural access and Golf Lane itself is

24 only a few metres wide, it's really only a boreen.

25 Q 215 And the access would have cut the area of where it was proposed to site the

26 southeastern motorway.

27 A Yes; it would have gone underneath the motorway.

28 Q 216 Yes. It wasn't as if they had an access which skirted or avoided the motorway,

29 it would actually come across the motorway for the period of construction?

30 A That's correct, yes.

1 Q 217Now, in response to a specific question from Councillor Coffey in relation to
2 the acceptability of uses associated with technology and various land use
3 zones, Mr. William Murray, county planning officer replied that:

4

5 "Proposals for some uses which are not specifically referred to in the Draft
6 Development Plan are assessed having regard to Section 3.2(6) of the written
7 statement which states other uses not mentioned throughout the use tables will
8 be considered in relation to the general policies of the plan and to zoning
9 objectives for the area in question. In general, uses such as telemarketing,
10 data processing, software development and information technology would be
11 regarded as acceptable in industrial town centres and district centre zones ."

12

13 Just to deal with that. As I understand it, when we referred to uses such as
14 agriculture use, which would be B or residential which was A or A1, depending
15 on the level of development, or industrial E or E1, that the Development Plan
16 further then advised what would be acceptable within those uses, what would be
17 permitted within those uses and what would not be permitted within those uses,
18 isn't that right?

19 A That's correct, yes.

20 Q 218And those definitions weren't exhaustive, but Mr. Murray here was saying
21 effectively, that additional uses not identified within those would be regarded
22 as being permitted by those users, is that correct?

23 A Yes, these uses referred to were seen as new employment opportunities,
24 telemarketing, data processing and so on; and we wanted it in the record that
25 those type of uses would be permitted in industrial town centre and district
26 centre zones, so as to ensure if somebody made a planning application for such
27 uses in those zones, that would be clear to them that they would be generally
28 permitted.

29 Q 219And I think there then followed a motion proposed by Councillor E Fitzgerald
30 and seconded by Councillor F Smith which was unanimously agreed, namely that no

1 industrial development be permitted on the lands referred to at changes 2 and
2 2.1 map ten; and change 8, map 9, until (a) the South Eastern Motorway was in
3 place, (b) adequate access could be provided to the lands from an upgraded road
4 network; and (c) public water supply could be provided and paragraph (d), an
5 area action plan for Cherrywood is completed.

6

7 The proposed amendments, changes two and 2.1 map ten; and change 8, map 9 were
8 confirmed to a specific local objective as set out in the motion ."

9

10 I think that motion, unanimously passed, had the effect of stalling any
11 development until, in essence, the various matters which had been identified by
12 the manager had come to pass, isn't that right?

13 A Yes, that's correct. It put it on record officially that nothing could happen
14 until, for example, the southeast motorway was built.

15 Q 220But none the less, for the assessment of compensation purposes, the lands had
16 industrial zoning?

17 A That's correct.

18 Q 221But they couldn't be built up?

19 A Yes.

20 Q 222Then it goes on to say: "That the following motions in the names of Councillors
21 Connolly and Gordon were not moved. That this council reject the amendment to
22 the 1998 Development Plan on map 10 changes number 2.1 zoning from agriculture
23 to industrial ."

24

25 That this council reject the amendment to the 1991 Development Plan on map
26 number 9 change number 8 zoning from agriculture to industrial.

27

28 The following motion 10.2 B in the name of Councillor Smyth was withdrawn.
29 Namely map ten changes number 2.1, that a specific local objective be inserted
30 for map 10. That no development take place in the area defined in change

1 number 2.1 until specific objective number 1 is achieved ."

2 A That's correct.

3 Q 223Now, in relation to the lands and the motions, I think it's fair to say that

4 they were the subject of some correspondence received by the council by

5 Messrs. Miley & Miley on behalf of Jackson Way. I wonder can we have page

6 number 2478? The Jackson Way motion had been dealt with on the 21st January

7 1998 at a special meeting of the council, is that right?

8 A Yes.

9 Q 224The manager had produced a report and the motion was unsuccessful?

10 A Yes.

11 Q 225And on the 9th February 1998, Mr. Stephen Miley of Miley & Miley Solicitors

12 wrote to the County Manager in relation to the motion, isn't that right?

13 A Yes, that's so.

14 Q 226And if we could just refer to that letter. A letter dated 9th February 1998

15 refers to our client as being Jackson Way Properties Limited, lands at

16 Carrickmines Great.

17

18 "Dear sir, we act for Jackson Way Properties Limited who have instructed us to

19 write to you concerning their lands the Carrickmines. We are instructed that

20 two motions to rezone the lands for residential and industrial development

21 respectively (representation number 94) appeared on the agenda for a special

22 meeting of the county council on the 21st January last. Of these two motions

23 the motion to rezone the lands for industrial purposes was proceeded with and

24 defeated.

25

26 Our instructions are that this matter was defeated because the council members

27 were misled in relation to the development potential of the lands. The

28 briefing paper given to councillors in conjunction with the meeting and which

29 formed the basis upon which a vote was taken, was quite misleading, but for

30 this our client believes the councillors would have voted in favour of the

1 motion and rezoned the lands for industrial purposes.

2

3 The report recommendations included in the briefing paper given to council
4 members provided inter alia as follows.

5 1. The ground rises rapidly to the high amenity lands of Carrickmines Golf
6 Course.

7 2. No services are available or proposed for the area and

8 3. It's not clear how development access can be provided to the site.

9

10 Each of the foregoing statements are misleading and wrong. The actual and
11 accurate situation is as follows:

12

13 The lands are mainly level with a slight fall towards the proposed motorway
14 which facilitates drainage, the grounds neither rise significantly or rapidly
15 and are suitable for development. This has been acknowledged by your
16 officials. All necessary services are available for the area as follows.

17

18 A. Foul sewer.

19 The Carrickmines/Shanganagh main drainage scheme traverses our clients lands on
20 the northern side of the proposed motorway and is the subject of an agreement
21 between the council and our clients permitting connection to it to drain all of
22 our client's lands in the event that the appropriate rezoning and planning
23 permissions are obtained. This was acknowledged during the course of the
24 recent public inquiry into the southeastern motorway proposal, in
25 correspondence, and verbally on other occasions.

26

27 B. Surface water drain, it has been acknowledged by the council's engineers
28 directly to the writer that the adequate surface water facilities can be made
29 available for development purpose and this was indeed acknowledged during the
30 course of the public inquiry into the motorway scheme. The scheme itself makes

1 provision for this.

2

3 C. Water main, a large water main traverses the site and has more than
4 adequate capacity to service our clients lands for development purpose. At a
5 special meeting of the council on the 18th October 1990 dealing with the
6 Development Plan review, the report which the meeting was given include the
7 following provision under the heading infrastructure. There are no major
8 constraints on the provision of water supply for the area. Services can be
9 provided in phases with orderly development of the area over the next three to
10 five years subject to the availability of finance.

11

12 The foregoing report was made in the context of recommendations by your
13 officials to rezone these lands for industrial purposes. On inquiry of your
14 officials, it was made clear that the lands could be serviced with water from a
15 number of different sources.

16

17 Access:

18 It is quite feasible to provide access to full development standards by, an the
19 construction of, an overpass over the proposed motorway. It was acknowledged
20 during the course of the public inquiry that this could be done and you will be
21 aware any additional costs could be recovered by the council in development
22 levies. In any event, the inquiry was informed that our clients would be quite
23 happy to pay any extra expense involved in the provision of access to full
24 development standards. That was given in the context that our clients had
25 already submitted that the council already had an obligation to provide this on
26 the basis of existing zoning. It was also acknowledged by your consulting
27 engineer at this inquiry that the road servicing Carrickmines Golf Club had the
28 capacity to service some development on it's lands.

29

30 All of the foregoing were raised at the public inquiry into the motorway and

1 confirmation of the development potential of the lands were received. This did
2 no more than confirm previous positions adopted by the council in relation to
3 the lands and information received by our clients as a result of contact with
4 individual officials within the council.

5

6 Our client firmly believes that had the council members not been misled by the
7 briefing paper of the 21st ult, they would have voted to rezone the lands in
8 accordance with the motion before the meeting. It was only because the wrong
9 information was before them that the motion was defeated.

10

11 The purpose of this letter is to call upon you to rectify the foregoing
12 situation and we invite your proposals in this regard not later than Friday
13 next, the 12th inst. Failing this, it will be our clients intention to seek a
14 judicial review of the council's decision with a view to having it quashed and
15 an order made reconvening the meeting for the purpose of putting the same
16 motion to the council but on this occasion, after the Council members have been
17 correctly briefed. "

18

19 I think that letter was replied to on behalf of the County Manager by
20 Mr. Hodgins, acting principal officer on the 11th February 1998.

21

22 "I refer to your letter dated 9th February 1998 under the above heading
23 addressed to K O'Sullivan which has been referred to me for reply. The county
24 council is satisfied that the decision made by the members in relation to this
25 matter at a special meeting of the county council held on the 21st January 1998
26 is a valid decision. Yours sincerely ."

27 A That's correct, yes.

28 Q 227Now, you see there the views expressed on behalf of Jackson Way, Mr. Miley, his
29 first complaint is that the lands were described inaccurately as "rising
30 rapidly and significantly toward the Carrickmines Golf Course to the south", is

1 that a fact?

2 A The lands, I think that's an over simplification of it. The lands do rise
3 towards the golf course but they rise more gently at the side nearest the
4 motorway and then they rise rapidly at the eastern portion up to Golf Lane.

5 Q 228But there's no doubt but that the lands north of the motorway were flat lands?

6 A That's correct, yes.

7 Q 229Now, in relation to the foul sewer, it is a fact that the owners of these lands
8 had letters which seem to, subject to the question of planning permission,
9 entitle them to access the Carrickmines/Shanganagh foul sewer?

10 A Indeed. That would be the norm, I think, anywhere along that whole area, if
11 land was zoned for development and subsequently got planning permission, that
12 they would connect to the Carrickmines Valley sewer. I think a point I made
13 last week was, from my discussions with Jim Carson, who signed those letters,
14 that the Carrickmines Valley sewer's capacity was designed primarily to serve
15 zoned land, but with extra capacity for some future development that might
16 happen through either intensification of other zoned lands, but that it
17 couldn't cater for all unzoned lands or agriculturally zoned lands, if you
18 like, that could flow to it.

19 Q 230It's one o'clock.

20

21 CHAIRMAN: We will adjourn for lunch. Sit again at ten past two.

22

23 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

24

25

26

27

28

29

30

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3

4 Q.231MR. QUINN: Now, Mr. Cremmins, before lunch I was dealing with a letter
5 received by the Council from Miley & Miley, Solicitors.

6 A. Yes.

7 Q.232A letter which was critical of the report of the manager to the members of the
8 Council leading up to the vote on the Jackson Way motion in January 1998.

9 A. That's correct, yes.

10 Q.233I was taking you through the complaint of Mr. Miley as contained in that
11 letter, I think we had dealt with the foul sewer, and you had agreed with me
12 that subject to planning, it appears that the owners of these lands had, in
13 fact, permission to connect to the foul sewer?

14 A. That's correct, yes.

15 Q.234I think your point on that was that letter should be read in the context of
16 subject to capacity?

17 A. Zoning and planning permission. It would make those lands, I don't believe
18 much difference to other lands in the same situation.

19 Q.235But from the points of view of zoning, zoning had to precede planning?

20 A. That's right.

21 Q.236Isn't that right?

22 A. First zoning and then planning permission.

23 Q.237Jackson Way were seeking zoning?

24 A. That's correct.

25 Q.238And the impression was being given that they didn't have access to foul sewer
26 or didn't have foul sewers in the area; isn't that right?

27 A. Well, they had -- physically they had access to the foul sewer, my only point
28 being that the foul sewer wasn't designed to take all the unzoned lands, so
29 decision would have to be made picking some lands and not picking others.

30 Q.239Yes. And then in relation to the surface water drain, Mr. Miley makes the

1 point that a council engineer had confirmed to him that there was adequate
2 surface water facilities available for development purposes in this region. Do
3 you know anything about that?

4 A. No, I don't.

5 Q.240Are there adequate surface water facilities?

6 A. I don't know.

7 Q.241In relation to the water main, Mr. Miley's letter makes reference to the report
8 of October 1990 when it was provided, or when it was suggested that the, there
9 were no major constraints on the provision of water supply for the area. Would
10 you accept --

11 A. Yeah, that's going back to 1990 now.

12 Q.242Yeah. Do you accept that the proposal at that time did say there were no major
13 constraints?

14 A. I accept it says that. But I think perhaps you might ask, perhaps the County
15 Planning Officer what was meant. I think, there was no Sandyford high level,
16 for example, I presume it was saying such a large amount of zoning could be
17 serviced by a reservoir which had yet to be constructed. I presume that now, I
18 am not certain.

19 Q.243Okay. And in relation to the question of access, Mr. Miley makes the point
20 that a construction of an overpass would solve the difficulty of the lands
21 being severed by the motorway?

22 A. Yes, I believe that would happen, yes. An overpass would solve it.

23 Q.244And, in fact, I think Jackson Way were prepared to foot the cost of this
24 overpass and undertook to build it to the design standards?

25 A. Yes, that's so, yes.

26 Q.245And Mr. Miley also makes the point that Mr. O'Sullivan, consultant engineer,
27 had conceded at the inquiry that in fact the golf, Carrickmines Golf Club Road
28 or the road servicing Carrickmines Golf Club had the capacity to service some
29 development on the lands, do you know anything about that?

30 A. Well, I don't know about Mr. O'Sullivan's statement but I do know from the road

1 engineer for the Council, Mr. John McDaid, at the arbitration, the recent
2 arbitration, that he would be of the opinion, and I would fully agree, that
3 Golf Lane is such a very very narrow sub standard road, that while it could
4 take some very limited amount of development, it couldn't take any significant
5 amount of development.

6 Q.246 Would it take a sufficient development as would be necessitated by the, these,
7 this land being developed for industrial purposes?

8 A. No, no, absolutely not. No. You wouldn't get two lorries to pass on it, for
9 example.

10 Q.247 Can I just ask you was there ever a judicial review proceedings taken in
11 relation to the --

12 A. I don't believe so.

13 Q.248 -- report of the manner.

14

15 Now I think you say in your statement at page 17, you go on to say that the
16 "New County Development Plan was adopted on the 13th of July 1998." If we look
17 at page 968, we have a special meeting of the Council held on Monday the 13th
18 of July 1998, and I think at that meeting the County Development Plan was
19 adopted; isn't that right?

20 A. That's correct, yes.

21 Q.249 I see. In this plan a reservation for the motorway is again shown bisecting
22 the Jackson way property lands, the lands to the south and west of the motorway
23 line are zoned objective B to protect and improve rural amenity and provide for
24 development of agriculture. As are Mr. Smith's lands at Priorsland. "The
25 Jackson Way Property lands and O'Halloran lands to the north and east of the
26 motorway are mostly zoned objective E to provide for industrial and related
27 uses. There is a small segment of land zoned objective B north of the motorway
28 in the ownership of Jackson Way Property Limited."

29

30 And if we look at pages 978 and 979, we see the map showing the plan, the 1998

1 Draft Development Plan -- 978 gives us map 10 which I think is the one that --

2 A. Yeah, that's the full Development Plan, I think.

3 Q.250Yes?

4 A. Yes.

5 Q.251In fact, I think we are dealing with the lands here in this area, isn't that

6 right? (indicating)

7 A. Yes, that's correct.

8 Q.252These are the lands to the left of the Grimes lands. And these are a portion

9 of the Jackson Way lands?

10 A. Yes, they are --

11 Q.253The O'Halloran Darragh Kilcoyne lands?

12 A. Yes.

13 Q.254And this area here, I think, is a portion of land that's been retained for

14 flood attenuation; isn't that right?

15 A. That's correct.

16 Q.255I think ten acres were originally earmarked for flood attenuation?

17 A. Yes.

18 Q.256And at the public hearing in January '98 it was agreed that in fact only, I

19 think, four acres were required?

20 A. Yes.

21 Q.257That left six acres which had missed the vote, so to speak, in December '98 and

22 remained agriculturally zoned; isn't that right?

23 A. Yes, yes that's so.

24 Q.258And I think at -- you go on to say that the lands are also affected by specific

25 local objectives 3 and 4 of map nine and objectives 13 and 14 of map ten, at

26 pages 976 and 977.

27

28 I think this is the written statement which is part of the Development Plan and

29 refers to what was the motion proposed by Councillor Fitzgerald and adopted

30 unanimously by the Council.

1 A. That's correct.

2 Q.259 In June '93. And just for completeness in relation to - at page 976 under the
3 heading map 9 at paragraph 3 it says, "The Cherrywood area between the proposed
4 motorway and N11 and between Carrickmines and the Bride's Glen shall be the
5 subject of an Action Area Plan, which shall be presented to the Council for
6 approval. No industrial development shall be permitted until the SEM is in
7 place.

8 Adequate access can be provided to the lands from an upgraded road network
9 And a public water supply can be provided.

10 An Action Area Plan for Cherrywood is completed."

11

12 And it says access to be from the adjoining industrial area only; is that
13 right?

14 A. That last one refers to a different piece of lands.

15 Q.260 To Stepside, is it?

16 A. No, to land elsewhere in on Glenamuck Road.

17 Q.261 Okay. At page 977 at paragraphs 13 and 14, we have again a repeat of what I
18 have just read because it relates to a different map.

19 A. That's correct.

20 Q.262 Namely that the Carrickmines area between the proposed motorway and N11 and
21 Carrickmines and Bride's Glen shall be the subject of Area Action Plan which
22 shall be presented to the Council for approval.

23

24 No industrial development shall be permitted until the South Eastern Motorway
25 is in place, adequate access can be provided to the land from an upgrade road
26 network and public water supply can be provided in action area for Cherrywood
27 is completed."

28 A. Yes, the same wording simply because the zoned land was divided between two
29 different development maps.

30 Q.263 Two maps. Yes.

1 A. Yeah.

2 Q.264 Now I think we move on then to a heading the Carrickmines Cherrywood draft
3 Action Area Plan. We have just seen that as part of the written statement, it
4 was provided that there would be a Cherrywood Action Area Plan; isn't that
5 right?

6 A. That's correct, yes.

7 Q.265 And you say that on the 14th of May 1999, the County Council sought
8 representations in advance of the preparation of a Draft Action Plan. And
9 published notice in the Irish Times and Irish Independent and copies of those
10 notices are to be found at pages 1008 and 1009; isn't that right?

11 A. That's so, yes.

12 Q.266 I think the notices provide that "The county council is currently preparing a
13 draft action plan for the Cherrywood area between the proposed motorway and the
14 N11 and Carrickmines and Bride's Glen and hereby invites any interested parties
15 to make representations before the Draft Action Plan is prepared. Any
16 representations to the proposed Draft Action Plan should be made in writing to
17 the Senior Administrative Officer, Planning Department, Dun Laoghaire/Rathdown
18 County Council, County Hall Dun Laoghaire before the 30th of June 1999." Is
19 that correct?

20 A. Yes.

21 Q.267 Can I just ask you, does that procedure differ slightly from the Development
22 Plan in that this notice seems to invite submissions in advance of the
23 publication of the draft plan, whereas in relation to the Development Plan it
24 would appear that the submissions are invited after the draft plan is
25 published.

26 A. Yes, that's correct. And that situation has been altered by the 2000 Planning
27 Act. But at the time of the '98 Planning Development Plan, the first time the
28 public were asked to make submissions was after the first, the draft plan had
29 been produced and put on public display.

30 Q.268 Yes. Now I think you go on to say that "Prior to the publication of the

1 advertisements, a representation was received from Shaffrey Associates
2 received on the 30th of April 1999 on behalf of Mr. and Mrs. Smith." This is
3 page 1005 and 1006 that's a letter I think dated 29th of April 1999, addressed
4 to Mr. Willie Murray, Planning Officer, Dun Laoghaire/Rathdown County Council.
5 Re: Priorsland Carrickmines. It's to be found at page 1005.

6

7 And it says, "We act for Mr. and Mrs. TK Smith, owner of Priorsland, Glenamuck
8 Road. We understand the County Council are presently preparing an Action Plan
9 for their lands and other adjacent areas. The lands extend to approximately
10 112 acres. At present they are zoned agriculture, though the owners made a
11 submission to the County Council during the preparation of the County
12 Development Plan for the lands to be rezoned. This, however, was not accepted.

13

14 In the current Development Plan 1988 -- I presume that means 1998, the lands
15 immediately adjacent and to the south east have been zoned industrial and
16 office park. Most other lands in the immediate environs are now zoned for
17 non-agriculture use, including a major district centre at Loughlinstown -- I
18 think the office park are O'Halloran Darragh Kilcoyne, north of the motorway.

19 A. That's correct.

20 Q.269The district centre, I think, relates to Monarch lands?

21 A. That's right.

22 Q.270The purpose of the Action Plan would be to provide a framework within which all
23 the lands will be development taking into account the other major development
24 in the area and in particular the South Eastern Motorway and the
25 Loughlinstown/Carrickmines interchanges.

26

27 Because of the present zoning and development of the motorway, the current
28 agricultural zoning of Priorsland is incongruous. We would suggest as part of
29 the Action Plan, the entire lands attached to Priorsland house be zoned office
30 park industrial, this zoning would be compatible with the adjacent zones and

1 would provide an appropriate addition to the County Council's developing urban
2 framework in the area.

3

4 We would be pleased if you would take the proposals into account when preparing
5 the Action Plan. As property owners in the area and likely to be seriously
6 affected by your proposal, the Smiths would welcome an opportunity of meeting
7 with the officials before a Draft Action Plan is published."

8

9 And I think you replied to that, the Council replied by letter dated 10th of
10 May 1999.

11

12 Just before I come to this, this submission sought a rezoning at the Action
13 Plan stage and I think you told us on Friday --

14 A. Yes.

15 Q.271-- that you can only get a rezoning on a Development Plan or a review?

16 A. That's correct, absolutely, yes.

17 Q.272The letter from Mr. Murray to Shaffrey is in the following terms to be found at
18 page 1007 of the brief.

19

20 "I refer to your letter dated 29 ult in respect of the lands above. The County
21 Council are at present in the course of preparing an Action Plan for the area
22 from Carrickmines to Cherrywood. It is proposed to place a public
23 advertisement in the near future inviting submissions from the public for any
24 proposals which they would like to see implemented in this area. As the Action
25 Plan is a means of achieving the objectives of the County Development Plan, it
26 is bound by those objectives. However, should it at draft stage, determine
27 that changes should be made to the County Development Plan in regard to the
28 proper planning and development of the area, recommendations to that effect can
29 be put forward as proposed variations to the County Development Plan. Should
30 those variations then be adopted by the Council they can be incorporated in the

1 final Action Plan.

2

3 I have noted the contents of your letter and will treat it as if it were a
4 response to the forthcoming advertisement. It will then be considered as part
5 of the Action Plan preparation process and whatever decisions deemed to be
6 appropriate will be recommended to the Council for variation to the Development
7 Plan or the inclusion in the Action Plan. Public notifications will be issued
8 at variation stages in the process.

9

10 Should you wish to keep in closer contact in relation to the proposal as they
11 affect the lands subject to your letter, Mr. Gibson is dealing with this Action
12 Plan. Yours sincerely, Willie Murray"

13

14 I think two representations were received, one from Mr. Ambrose Kelly, project
15 architect on the 13th of June 1999 and one from Brian Meehan & Associates, also
16 received on the 30 of June 1999 both on behalf of Jackson Way Properties
17 Limited

18 A. Yes.

19 Q.273I think if we look at page 1010, we get the representation from Mr. Kelly.

20 It's re: Carrickmines Great Action Plan on behalf of Jackson Way Properties
21 Limited.

22 "We attached a map of client's land and wish to make the following submissions:

23

24 A. Lands coloured yellow should have a district distribution standard road
25 connection including services. The planning authority on granting permissions
26 will include conditions to give effect to the above proposal.

27

28 B. Land coloured brown should have adequate road connections to any overpass
29 to be constructed as an integrated part of the South Eastern Motorway scheme.

30

1 C. The total holding of land will be divided by the motorway thereby leaving
2 the land coloured brown for mixed developments and residential and business
3 units. These lands have a commitment to full service making them suitable for
4 development which would be in the interest of proper planning and development
5 of the area.

6

7 We request that these proposals be part of the overall Action Plan and
8 therefore look forward to full cooperation with the local authority."

9

10 This was the first time Mr. Ambrose Kelly, a project architect, became involved
11 in relation to either of the lands in this region; isn't that right

12 A. I think so, yes.

13 Q.274 Yes. The map accompanying the letter from Mr. Kelly identifies an area of land
14 which has, or has a proposed line of a spine road, isn't that right, together
15 with an interchange. I think the interchange is at this point here; isn't that
16 right? (indicating)

17 A. Yes, that's the interchange, yes.

18 Q.275 And it is suggested that there be a spine road coming across the top of the
19 lands?

20 A. Yes, that's correct.

21 Q.276 Now it seems to have hatched in an area of land here, which is only part of the
22 lands which had been zoned?

23 A. Industry.

24 Q.277 Industrial, isn't that right?

25 A. Yes.

26 Q.278 And in fact maybe those lands there were still zoned agriculture; is that
27 right?

28 A. I believe so, yes.

29 Q.279 Part of the flood attenuation?

30 A. Yes.

1 Q.280Whereas these lands down here had in fact been zoned industrial?

2 A. Yes.

3 Q.281And there had been no zoning at all, no change in zoning on these lands south

4 of the motorway, namely the agriculture zone had gone --

5 A. That's correct.

6 Q.282-- remained. Now I think you also received this submission on the 30th of June

7 1999 from Brian Meehan & Associates. Again relating to lands owned by Jackson

8 Way Properties Limited; isn't that right?

9 A. Yes.

10 Q.283I refer to page 1013. I wonder could I ask you to read the submission from

11 Brian Meehan?

12 A. Right.

13

14 "On behalf of Jackson Way Properties Limited we wish to make the following

15 representation to the preparation of the Draft Action Plan for the Cherrywood

16 area.

17

18 Figure 1 attached shows the location and extent of the subject lands which

19 comprise some 23.63 acres. Part of the lands are the subject of a current CPO

20 procedure relating to the south east motorway scheme.

21

22 The present submission seeks the objectives as outlined below to be included in

23 the Draft Action Plan.

24

25 Provision for access to subject lands:

26 The issue of access to the subject lands is the subject of High Court

27 proceedings by the present owners.

28

29 The correspondence from the Senior Administrative Officer, Development

30 Department, Dun Laoghaire/Rathdown County Council, attached as appendix A,

1 relates to the proposed Action Area Plan for the Cherrywood area and refers to
2 the provision of services and roads as follows:

3

4 4. The plan will have regard to the SEM scheme to the requirements for
5 services, roads, water, sewers, in the area and shall determine how best access
6 can be provided to lands within the area from an upgraded road network which
7 includes the SEM.

8

9 5. It is expected that this area plan will provide for an access road linking
10 the Carrickmines interchange to the roundabout at Wyattville link road.

11

12 We seek that access be provided for the subject lands from this road, in the
13 Action Plan.

14

15 Provision for servicing of subject lands:

16 The route of the Carrickmines Valley sewer runs adjacent to the subject lands.

17 The connection of the subject lands to the Carrickmines sewer was agreed in
18 principle with the planning authority in January 1996.

19

20 We seek that the servicing of the subject lands be provided for in the draft

21 Cherrywood Action Plan.

22 Q.284I think it goes on under the heading summary to set out the objectives which

23 were being sought for inclusion in the Draft Action Plan and in respect of the

24 lands?

25 A. Yes.

26 Q.285Namely the provision for access to the subject lands from the proposed

27 Carrickmines interchange and proposed east/west spine road.

28 And provision for servicing of the subject lands

29 A. That's correct.

30 Q.286Would those be matters which would in fact form the part of a Draft Action

1 Plan, namely access and servicing?

2 A. Yes, they would, yes.

3 Q.287And then there is an accompanying map which set out the subject lands and a

4 letter I think of the 27th of May which, sorry set out the entitlement to the

5 access; isn't that right?

6 A. I believe so.

7 Q.288And I think you also, or the Council also received a separate submission from

8 Brian Meehan & Associates in June 1999, this time relating to the land owned by

9 Brian O'Halloran, Austin Darragh and Gerard Kilcoyne?

10 A. It's not on the screen.

11 Q.289That's at page 1020.

12 A. Should I look at my hard copy? Yes, that's correct.

13 Q.290Yes. And I think that in essence this submission sought almost the same

14 objectives or proposals as the previous submission, subject to the additional

15 requirement that there be an extension of the E zoning to incorporate the area

16 which was no longer required as part of the surface water attenuation area?

17 A. That's correct.

18 Q.291These are the six acres we made reference to earlier?

19 A. Indeed, yes.

20 Q.292And again at page 1022 and 1023 we have accompanying maps which set out the

21 area?

22 A. Yes.

23 Q.293There is also a letter I think of the 27th of May to Gore Grimes, solicitors,

24 from the County Council from Mr. O'Hehir in relation to the South Eastern

25 Motorways; isn't that right?

26 A. That's correct, yes.

27 Q.294Now I think a draft Carrickmines Cherrywood Action Plan was presented to the

28 members of Dun Laoghaire Area Committee on the 19th of June 2000 where it was

29 agreed that the Draft Action Plan would go on public display and that a report

30 would be brought back to the members?

1 A. Yes.

2 Q.295 The Draft Action Plan was put on public display from the 17th of July 2000 to
3 the 28th of August 2000?

4 A. Yes.

5 Q.296 And a newspaper notice was placed in the Irish Times and Irish Independent to
6 this effect on the 13th of July 2000 which sought representations to the Draft
7 Action Plan. And I think we can see a copy of that advertisement at page 1030
8 and 1031.

9 A. That's correct, yes.

10 Q.297 And the newspaper Irish Times advertisement of the 13th of July 2000 headed
11 Carrickmines Cherrywood area, the Draft Action Plan will be on display from
12 Monday 17th July 2000 to Monday 29th of August 2000 at County Hall, Marine Road
13 Dun Laoghaire County, Dublin, 9 to 17 hundred hours. Dundrum Local Office,
14 Dundrum Office Park, Main Street, Dundrum, again some 9.30 to 12.30 and 13.30
15 to 16.30 hours and Shankhill Library, Library Road, Shankhill, usual library
16 opening hours. Cabinteely Library, Old Bray Road, usual library opening hours.
17 Any representations in relation to the Draft Action Plan should be made in
18 writing not later than the 28th August 2000 to the Senior Administrative
19 Officer Planning Department, County Hall, Marine Road, Dun Laoghaire, County
20 Dublin. Is that correct?

21 A. That's correct, yes.

22 Q.298 Now in relation to that, I think you received or the Council received one of
23 the submission from Auveen Byrne and associates on behalf of Mr. and Mrs. Smith
24 on 28th of August 2000?

25 A. That's so, yes.

26 Q.299 We find this at page 1083. That sets up a number of proposals, and at
27 paragraph 6 I think it sets out the conclusions and says, "The subject lands
28 are accessible, serviceable and suitable for development on planning grounds.
29 This was acknowledged by the County Manager in 1997 who merely considered the
30 rezoning for development purpose premature at that time. The reasons for such

1 prematurity have been overcome, my clients have a mind to seek rezoning as a
2 variation of the current County Development Plan to proposed public open space
3 designation would run counter to this proposal notwithstanding the above the
4 proposed designation would prescribe any such potential, it is unlawful for the
5 County Council to alter significantly my client's statutorily acquired
6 development rights through a non-statutory process, one which is designed to
7 merely refine the provision of the County Development Plan not to review them.
8 If the current proposal survives the adopted Action Plan, my clients must seek
9 to have the council decision reviewed by the courts.

10

11 The Carrickmines Cherrywood Action Plan as drafted is over provided with public
12 open spaces. The designation of Priorsland for such purposes is not required.

13

14 The designation of Priorsland for public open space is not required to achieve
15 any linear parkway or continuous open space." Is that correct

16 A. That's correct, yes.

17 Q.300 Had it been an objective of the Action Plan that the area would be set aside as
18 a public open space?

19 A. Yes, the Draft Action Plan that went on public display showed that land as a
20 proposed open space and the latest version of the Draft Action Plan I think
21 basically acknowledges the validity of the points made in this submission and

22 --

23 Q.301 Yes?

24 A. And show it for future consideration in a variation or review of the
25 Development Plan.

26 Q.302 Yes. I think the manager's report is set out and reviewed by Auveen Byrne in
27 that report at page 1041, first two paragraphs on that page I think if you were
28 to read them and set out what the manager had proposed?

29 A. "Similar manager's reports were recorded in relation to land adjacent to
30 Priorsland to its south. For example, 36.85 acres at Carrickmines Great to the

1 south of Priorsland were proposed to be rezoned from agriculture to industrial.
2 The manager's report was similar to that quoted above. Yet the Council voted
3 to rezone the lands. The failure to rezone Priorsland is difficult to
4 understand in the context.
5 Notwithstanding the decision to retain the agricultural zoning of the land in
6 the 1998 Development Plan, the manager's report prior to its adoption is
7 crucial to current deliberations. It stated that the lands were suitable for
8 development. The rezoning was merely considered premature at that particular
9 time and was contingent simply on certain infrastructural developments. The
10 proposal in the Draft Action Plan to designate them for public open space to
11 serve the wider population of the wider Action Plan area, with a stated
12 objective that they be acquired compulsorily, if necessary, clearly runs
13 entirely contrary to the manager's statement that they were suitable for
14 development at some time in the future."

15 Q.303 Yes, I think the manager's statement in relation to the lands as set out in the
16 Draft Cabinteely Cherrywood Action Plan is referred to earlier at paragraph 4
17 at page 1039, where I think the idea was that they would be acquired and
18 designated open space; isn't that right?

19 A. That's correct, yes.

20 Q.304 Would the designation of the lands as open space have required a variation of
21 the development, 1998 Development Plan?

22 A. Well, there is a specific zoning for open space. I suppose the logic would be
23 that if the Action Plan was accepted that the councillors might alter the
24 zoning subsequently.

25 Q.305 And these lands would be zoned from B to whatever the designation for open
26 space is?

27 A. Yes, exactly.

28 Q.306 Now, I think at page 1046 you set out a representation to the
29 Carrickmines/Cherrywood Draft Action Plan in respect of lands at Carrickmines
30 on behalf of Brian O'Halloran, Austin Darragh and Gerard Kilcoyne, which was

1 received in August 2000; isn't that right?

2 A. That's correct, yes.

3 Q.307And at page 20 of your statement you say that a submission was also received

4 from Brian Meehan & Associates dated August 2000 on behalf of Messrs

5 O'Halloran, Austin Darragh and Gerard Kilcoyne. In summary, this submission

6 sought the following -- and I think you set out what the submission sought?

7 A. That's correct, yes.

8 Q.308Would you just identify what was being sought in that submission?

9 A. "Industrial zoning for the land to the south of the proposed distributor road

10 in the Draft Action Area Plan. Residential zoning in association with an open

11 space zoning for the continuation of the Carrickmines Valley linear park, for

12 the lands to the north of the distributor road. And lastly deletion or

13 redefinition of the water attenuation area objective on the lands in the draft

14 area Action Plan."

15 Q.309How would this have affected the zoning of these lands and surrounding lands in

16 the 1998 Development Plan?

17 A. There would have been subsequent adjustments to the zonings.

18 Q.310Yes. I think there was a map accompanying that submission at page 1062 and

19 1063; is that right?

20 A. That's correct, yes.

21 Q.311If you just -- are you familiar with this map?

22 A. Yes.

23 Q.312I wonder could you take us through the map as we see it -- maybe, is it upside

24 down?

25 A. No, that's fine the way it is.

26 Q.313This is the spine road, that was being proposed, which was to link the

27 Carrickmines interchange to the Cherrywood interchange; is that correct?

28 A. Yes, to the road leading to the Cherrywood interchange and that spine road, as

29 we call it, is intended as the main road to serve all the lands in the

30 Cherrywood Action Plan area.

1 Q.314 So, presumably traffic would come off the South Eastern Motorway at the

2 Carrickmines interchange?

3 A. Yes.

4 Q.315 Would come on to this spine road?

5 A. Yes.

6 Q.316 And then access the lands?

7 A. That's right.

8 Q.317 North and south from this?

9 A. And we envisaged it being dual carriageway up to say the first roundabout in

10 it.

11 Q.318 Which would be this point here?

12 A. Yes, that was a kind of movable feast, if you like, but wherever the first

13 roundabout would be and then single carriageway thereafter.

14 Q.319 I think this is Mr. Smith's house; is that correct?

15 A. That's right.

16 Q.320 And these lands would be the Priorsland?

17 A. Priorsland, yes, indeed.

18 Q.321 And I think the O'Halloran lands would be represented perhaps --

19 A. Outlined in red, I presume.

20 Q.322 All the lands in red?

21 A. Yeah.

22 Q.323 And then the lands here, these lands would be the Jackson Way lands north of

23 the proposed motorway?

24 A. Yes.

25 Q.324 This was the motorway running to the south of the lands?

26 A. That's correct, yes.

27 Q.325 And the proposals being sought at this time then by Brian Meehan if we just

28 stay with --

29 A. That was quite a useful map, yes.

30

1 Well, the first one, what he calls the distributor road is that road running --

2 Q.326 This road here; is that right?

3 A. That's correct, yes. He wanted industrial zoning south of it.

4 Q.327 Which had been, which by and large had been the position?

5 A. Basically there, yes, apart from the little bit of -- yes, exactly just

6 there -- then, secondly, residential above it.

7 Q.328 This would have been this area here or this area here?

8 A. Exactly, within the red line. So residential there.

9 Q.329 Yes?

10 A. And then lastly, either to get rid entirely of the water attenuation area or to

11 reduce it significantly in size.

12 Q.330 Now, the water attenuation?

13 A. That's the hatched area, blue hatched.

14 Q.331 And this area here?

15 A. Yes.

16 Q.332 In other words, it would lead from carriageway through pipes or --

17 A. That's correct, yeah.

18 Q.333 And across the spine road?

19 A. Yes.

20 Q.334 And would fill here.

21

22 You say another of these submissions was from Miley & Miley Solicitors received

23 by Dun Laoghaire/Rathdown County Council on the 16th of October 2000 acting for

24 Jackson Way Properties Limited. And we see those submissions at page 1067 of

25 the brief.

26

27 Have you got a copy of --

28 A. I have it, yes, thank you.

29 Q.335 I wonder could you just read out what Miley & Miley were seeking in that?

30 A. Certainly.

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"Dear Sirs, as you know we act for Jackson Way Properties Limited who are the owners of land at Carrickmines, some of which are included within the Carrickmines/Cherrywood Draft Action Plan and some of which are contiguous albeit separated by the proposed South Eastern Motorway.

We write this letter to you on behalf of our client by way of a submission in respect of the Draft Action Plan.

Subject to the matters mentioned in this letter, our client generally supports the Draft Action Plan and commends the Council on its efforts in preparing it.

Our client, however, submits that the following alterations should be made:

1. The line of the Carrickmines Shanganagh main drainage scheme should be shown on the map which forms part of the Draft Action Plan.

2. Provision should be made in the plan to ensure that the circumference of the roundabout forming part of the Carrickmines interchange at the western end of the proposed spine road is sufficiently large to accommodate the spine road. In this connection our client is quite prepared to waive any obligation the local authority has to provide an agricultural lane adjoining its lands with the roundabout.

3. Provision should be made for the proposed overbridge spanning the proposed South Eastern Motorway linking our client's lands on the northeast and south west sides of the proposed South Eastern Motorway in accordance with the agreements made in that regard with the National Road Authority. Provision should also be made in the plan for the linking of this proposed overbridge with the spine road. This will eliminate the risk of our client's land on the southwestern side of the proposed South Eastern Motorway from becoming land locked."

1 Q.336 And he sought to acknowledge receipt of his submission and let him know of your
2 views in relation to it?

3 A. That's correct.

4 Q.337 And he confirmed that he would be happy to arrange for his client's planning
5 advisers to discuss the submission in more detail with you if you felt it would
6 be of any advantage; isn't that right?

7 A. That's correct.

8 Q.338 That was sent on the 16th of October and I think there was a reminder sent on
9 the 16th of March to that letter?

10 A. That's right.

11 Q.339 He says, "We refer to the matter of our submission of 16th October last and
12 your acknowledgement on 17th October last. We have not heard from you since
13 and appreciate if you would be kind enough to update us when it is anticipated
14 that the Action Plan will be finalised and approved.

15

16 Please also be kind enough to confirm that regard will be had on the plan of
17 the matters raised in our submission."

18

19 I think a progress report on the draft Carrickmines/Cherrywood Draft Action
20 Plan was presented to Dun Laoghaire Area Committee on 22nd of March 2001.

21 A. That's correct.

22 Q.340 That's to be found I think at page 1070 to 1073 of the brief; isn't that right?

23 A. Yes.

24 Q.341 And then again on the 30th of March 2001 Mr. Miley was writing to Mr. Murray
25 saying, "We refer to this matter, in particular our letter of the 16th. We
26 would be obliged to hear from you in response". It's a further reminder; isn't
27 that right?

28 A. That's right, yes.

29 Q.342 And I think on the 4th of April a response was sent from you, in fact, I think
30 to Mr. Miley; isn't that right?

1 A. That's correct so, yes.

2 Q.343 We have that letter at page 1076?

3 A. Yes.

4 Q.344 I wonder would you just read that letter?

5 A. "Dear Sir or Madam, I refer to your recent enquiries regarding the status of
6 the Draft Action Plan for the Carrickmines/Cherrywood area.

7

8 A progress report of the Draft Action Plan was presented to the Dun Laoghaire
9 Area Committee on the 22nd March 2001. There are a number of outstanding
10 issues in respect of the Plan which are yet to be finalised. It is our
11 intention to present a revised report to the Area Committee clarifying these
12 matters on the 10th May 2001.

13

14 As you are aware, the Action Plan must be approved by the elected members. A
15 copy of your submission, along with all written submissions received have been
16 forwarded to the elected members for their information.

17

18 If you have any further queries, please do not hesitate to contact me."

19 Q.345 What outstanding issues were there at that stage?

20 A. They were, there were several issues to be resolved.

21 I'd say most of them related to the Cherrywood side of the Action Plan rather
22 than the northern lands.

23 Q.346 Yes. And again I think on the 6th of April Mr. Miley wrote to you

24 acknowledging receipt of that letter noting what you said therein, and said:

25 "Having regard to your letter we would be obliged if you would be kind enough
26 to let us know how matters stand on the presentation of the revised report on
27 10th of May." Isn't that right?

28 A. Yes.

29 Q.347 Did you write on 31st of May as appears from brief page 1078 referring to his
30 recent enquiries regarding the status of the Draft Action Plan for the

1 Carrickmines/Cherrywood area?

2 A. Yes.

3 Q.348 You said, "There are still a number of outstanding issues in respect of the

4 Plan which are yet to be finalised." It was your intention to present a

5 further progress report to the Dun Laoghaire Area Committee on the 7th June

6 2001?

7 A. That's right.

8 Q.349 And that a revised report will be presented to the Area Committee clarifying

9 these matters at the earliest opportunity following their resolution. And I

10 think Mr. Miley acknowledged that letter on the 8th of June 2001 and again

11 asking to hear from you as soon as possible on the matter; isn't that right?

12 A. That's so.

13 Q.350 And then on the 7th of June 2001 was there a discussion on the Action Plan?

14 A. There was indeed, yes.

15 Q.351 And a progress report noted by the members?

16 A. Yes.

17 Q.352 And did that set out the current position as of that time in relation to the

18 Action Plan?

19 A. It did, yes, it did.

20 Q.353 I think at page 3676 there is a reference to the up-to-date position?

21 A. That's correct, yes.

22 Q.354 Do you want to read the up-to-date position as of that date?

23 A. Yes. "The following report of the manager which was circulated was noted.

24

25 A progress report on the Carrickmines/Cherrywood Draft Action Plan was

26 presented to the members of the Dun Laoghaire Area Committee on Thursday, 22nd

27 March 2001, where it was noted and agreed to arrange a site visit to

28 Carrickmines/Cherrywood for all members.

29

30 Accordingly, a visit has been arranged for all members to the land covered by

1 the Carrickmines/Cherrywood Draft Action Plan has been circulated to all
2 councillors. Responses have been prepared to the submissions received during
3 the draft plan consultation exercise and will be sent to all councillors in the
4 near future.

5

6 The progress to date on resolving the outstanding issues which were previously
7 identified is outlined below.

8

9 Retail floor space:

10 Provision in the district centre to be evaluated:

11 A submission has been received from consultants on behalf of the landowner of
12 the district centre land in relation to the amount of retail floor space
13 provision. This is currently being assessed in conjunction with the Council's
14 consultants who are currently preparing the retail strategy for Dublin and the
15 mid east region.

16

17 Secondary means of access to the north and south of the proposed Wyattville
18 link to be discussed in conjunction with the NRA:

19

20 Ove Arup, consulting engineers, have been engaged to evaluate proposal for
21 secondary means of access to north and south of proposed Wyattville link.

22 Discussions are on going between Ove Arup and council officials. No
23 recommendation received to date.

24

25 Then development strategy for the science and technology park, including
26 objectives and related uses which would be acceptable within the E1 zoning
27 objective to be prepared:

28

29 The development strategy for the science and technology park was circulated
30 with the previous progress report to the members.

1

2 Provision of attenuation pond for South Eastern Motorway to be determined:

3

4 It appears to the attenuation pond will not be required."

5 Q.355If I just stop you there, if that's not required does that mean an additional

6 four acres of land currently zoned agricultural together with the six acres

7 previously referred to, come back in for infill between the currently zoned

8 industrial lands?

9 A. Well they come back for consideration.

10 Q.356Yes?

11 A. But they would have to be rezoned.

12 Q.357Yes. Okay.

13 A. "Provision of park and ride at district centre:

14 This matter is yet to be resolved.

15

16 Alignment of the proposed spine road in the vicinity of Carrickmines

17 interchange to be agreed:

18

19 The alignment of the proposed spine road in the vicinity of the Carrickmines

20 interchange has been amended in accordance with the requirements of the

21 Council's roads and parks departments.

22

23 Work will progress to resolve the above outstanding issues after which a

24 recommended Draft Action Plan will be brought to the area committee and

25 subsequently to the full Council."

26 Q.358Now I think there was a follow-up report done on the 6th of December 2001 and

27 that's to be found I think at brief page 3694. And that sets out the

28 up-to-date position; isn't that right?

29 A. That's correct, yes.

30 Q.359What is the, well up-to-date position in the sense that it outlines the

1 position as of December last; isn't that right?

2 A. Yes, that's so.

3 Q.360What is the position now a year on?

4 A. Well the position is that it's still a Draft Action Plan. We are starting the
5 process of reviewing the '98 Development Plan and the manager's report which is
6 prepared now at the start of reviewing a Development Plan has recommended that
7 this area, the Cherrywood area be considered as basically a kind of new town or
8 major urban settlement which would accommodate a large number of residents and
9 employees.

10

11 Now if that recommendation is accepted by the councillors, then it would
12 necessitate a new Action Plan being prepared for a larger quantum of
13 development.

14 Q.361I see. The South Eastern Motorway is in the process of being constructed, I
15 think, is that right?

16 A. That's correct, yes.

17 Q.362When is it expected to come on line?

18 A. My understanding is 2005.

19 Q.363Now I think your final page of your statement goes on to say, "On the 27th of
20 June 2001, Hamilton Osborne King wrote to the Senior Administrative Officer,
21 Development Department, Dun Laoghaire/Rathdown County Council, document page
22 reference 1082. Submitted a compensation claim for the loss of lands on behalf
23 of Jackson Way Properties Limited necessitated with the construction or siting
24 of the South Eastern Motorway scheme; is that correct?

25 A. That's correct, yes.

26 Q.364Do you have a copy of that letter?

27 A. I do, yes.

28 Q.365I wonder could you read from the letter to set out the --

29 A. Yes.

30

1 "Dear Sir, please note we are instructed in this matter by Jackson Way
2 Properties Limited, care of Miley & Miley, Solicitors, 35 Molesworth Street,
3 Dublin 2.

4

5 Jackson Way Properties Limited own a registered freehold interest in the lands
6 to be acquired and also in other adjoining lands owned by them. They are
7 entitled to vacant possession. The lands are subject to a wayleave in favour
8 of Bord Gais for a gas pipeline and to a further wayleave in favour of Dun
9 Laoghaire/Rathdown County Council for a foul sewer.

10

11 The lands have the benefit of an undertaking by the National Roads Authority to
12 facilitate the construction of a vehicular and pedestrian bridge over the
13 motorway route to connect the severed northern and southern lands.

14

15 On behalf of Jackson Way Properties Limited, we are submitting a compensation
16 claim in respect of the compulsory acquisition. Please note that this claim is
17 made on the basis that the County Council, as part of the motorway works, will
18 construct a bridge across the motorway route, to a specification sufficient to
19 allow office and industrial development on the northern lands which are
20 currently zoned for development in the Development Plan.

21

22 The compensation claimed is £72,700,000 and this is made up as follows:

23

24 Land taken: 19 million.

25

26 Injurious affection: 47,500,000.

27

28 Disturbance: 6 million.

29

30 Accommodation Work: 200,000.

1

2 Please note that if the undertaking requested from the County Council to
3 construct the bridge is not forthcoming, the claim will increase to
4 £91,700,000. This would comprise:

5

6 Land taken: 19 million.

7

8 Injurious affection: 65 million.

9

10 Disturbance: 7,500,000.

11

12 Accommodation works: 200,000.

13

14 In addition the professional fees and costs incurred in preparing and
15 submitting this compensation claim are sought as are the legal costs of
16 conveying the land to the County Council."

17 Q.366 And then I think you conclude your statement by saying that on the 7th January
18 2002, Dun Laoghaire/Rathdown County Council issued High Court proceedings:
19 Submitted by Jackson Way Properties Limited. You say that you are advised by
20 the Council Law Agent that the Council sought an injunction to prevent the
21 arbitration proceedings pending the issue of final report by this Tribunal, is
22 that right?

23 A. That's correct.

24 Q.367 That application was successful. Jackson Way Properties Limited appealed to
25 the Supreme Court which, on the 17th June 2002, overturned the High Court
26 decision. You say Mr. Shackleton then fixed the 9th October 2002 for the
27 hearing of the compensation claim. The hearing concluded on the 8th November
28 2002, after 16 days and a decision of the arbitrator is awaited; is that the
29 current position?

30 A. It is, yes.

1 Q.368And in relation to the O'Halloran Darragh and Kilcoyne lands that have been
2 acquired, has compensation been agreed with those landowners?

3 A. I am not aware.

4 Q.369Yes.

5

6 CHAIRMAN: That might be a point where we might break for five minutes?

7

8 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

9 AND RESUMED AGAIN AS FOLLOWS:

10

11 Q.370Mr. Cremmins, just one last matter I wished to address and that's a note of a
12 meeting which has been discovered to the Tribunal by Mr. Kilcoyne, I think a
13 note of a meeting taken by Brian O'Halloran & Associates, with you on the 22nd
14 of September 1994?

15 A. Yes.

16 Q.371That's page reference 3276. I think you have been shown a copy of this?

17 A. Not yet -- yes, you have, I have seen a copy, yes.

18 Q.372That's page 3276. Can I just ask you, firstly, did you -- do you recall having
19 a meeting with Brian O'Halloran & Associates in your capacity as Planning
20 Officer in September 1994?

21 A. I recall meeting Mr. O'Halloran, it would have been around about that time.

22 Q.373Yes?

23 A. And what I recall meeting Mr. O'Halloran -- I don't recall a second person
24 being at the meeting, but I could well be wrong.

25 Q.374Yes. The note does appear to suggest that Mr. Kilcoyne was also present at
26 that meeting?

27 A. That's right, yes. I just don't remember him being there.

28 Q.375Okay. You have before you, or on screen, a copy of what transpired at that
29 meeting, perhaps --

30 A. Yes.

1 Q.376 If I just go through the note of the meeting and if you have anything to say in
2 relation to what's recorded here perhaps you would do so.

3

4 It gives under heading "Background to the Meeting": It was arranged so that
5 the planning officer of the Dun Laoghaire/ Rathdown Council might outline and
6 confirm the Council's development intention in the Carrickmines area, and, if
7 possible, with specific reference to the development expectancy of the site."

8

9 Do you recall the purpose of the meeting or who arranged it?

10 A. I presume Mr. O'Halloran arranged the meeting. I certainly wouldn't have,
11 because we hadn't started work on the Development Plan, so --

12 Q.377 Yes.

13 A. I think, if one reads the letter one will see that I am basically saying that
14 it's for the future.

15 Q.378 Yes.

16 A. You know --

17 Q.379 You are giving an indication of the plan, as the Senior Planner you are giving
18 an indication of the planning future for this land; isn't that right?

19 A. And also for the time scale for the next Development Plan.

20 Q.380 Yes.

21 A. When all zonings in the county would be looked at.

22 Q.381 Yes, I think the current plan had been confirmed in 1993; isn't that right?

23 A. '93, yes. So, this was only a year later.

24 Q.382 A little over a year later.

25 A. Yes, which is quite soon after making a Development Plan.

26 Q.383 And the note goes on to provide under the heading "Point of the Meeting: RC"--
27 I presume refers to you?

28 A. That's right.

29 Q.384 "Indicated the Council is unlikely to prepare a Draft Development Plan for
30 several years insofar as the former Dublin County Plan was adopted in December

1 1993 and should have an expectancy for continuing for a period of five to ten
2 years". There, it would seem, in his view a new Development Plan will not be
3 prepared for at least four to five years?"

4 A. Yes, I feel that, I suppose, the history of Development Plans in Dublin were
5 that they tend not to be made within five years of the previous one. I mean,
6 the County Development Plan '83 was revised in '93, ten years. So that was the
7 kind of time scale. But, I don't feel that I would have thought it was several
8 years before we had actually do a draft. That would be pushing it out a bit
9 far.

10

11 I think in the last statement there that in his view, that's my view, a new
12 Development Plan would not be prepared for at least four to five years would I
13 feel have reflected my views on it.

14 Q.385 Okay. "RC pointed out any rezoning of the site is not a planning function
15 rather that will have to be sanctioned by the councillors". That's stating the
16 obvious, isn't it?

17 A. Yes. Accept a planning function, it is a planning function but a planning
18 function carried out as reserved function by the councillors not a function of
19 the planners.

20 Q.386 "RC confirmed no decision was yet taken on the line South East Motorway west of
21 Glenamuck Road, where there were two options known to the Council as A and B,
22 as is already known one encroaches into the Leopardstown Race Course". Was
23 that the position as of September '94?

24 A. It must be, although I can't recollect it clearly now.

25 Q.387 "I told RC I was lead to believe an EIS was initiated about 12 months ago for
26 completion in April last to investigate issues relating to the road option
27 encroachment onto Leopardstown Race Course". Do you recall being told that?

28 A. No, I don't.

29 Q.388 "RC confirmed that's not the case, a report will be written on the
30 environmental qualities of option A and B and submitted to the manager who will

1 then decide which option to adopt. That decision will be followed by EIS for
2 either A and/or B. The time scale to complete the EIS looks 12 to 18 months
3 from now at least". I think an EIS did follow at some stage; isn't that right?

4 A. Think it might have been '97.

5 Q.3891997?

6 A. I think so.

7 Q.390In January, of the public hearing in January '98?

8 A. Yes.

9 Q.391"RC also referred to the proceedings still ongoing in the High Court relating
10 to routing proposals in the Marley Grange area, where property owners have
11 challenged a proposed routing. A decision is not due until November next at
12 the earliest. Notwithstanding the outcome, there is a possibility that the
13 matter may then be referred to the Supreme Court". Was there a challenge?

14 A. There was, yes.

15 Q.392"In view of all this, the timing for a commencement of the motorway as far as
16 it will effect the Carrickmines area is much longer than we have been lead to
17 believe so that construction is unlikely to start for perhaps four to five
18 years from now?"

19 A. In fact, it is under construction now some years later again.

20 Q.393"A final design detail of the motorway will be prepared by a consultant yet to
21 be appointed by the local authority, the consultant will take the local
22 authority's final routing whenever that will be finalised and will complete all
23 details of the construction programme in accordance with that". I think MC
24 O'Sullivan were appointed at some stage?

25 A. That's correct.

26 Q.394"RC pointed out there was a strong possibility that there will be an
27 interchange at Glenamuck Road, we were lead to believe last year there would
28 not be as a result of local pressure and on account of the location of the
29 Wyattville interchange relatively close by to the east." Had there been a
30 suggestion that there wouldn't be a Carrickmines interchange at Glenamuck?

1 A. There must have been, obviously as we know now there is one.

2 Q.395"RC was not optimistic about the workability of an access to our site from the

3 new road network, when it would be finally designed. He pointed out traffic

4 authorities are unlikely to agree to an access unless it will be a minimum

5 distance from the motorway etcetera. He suggested that we should pay

6 particular attention to this aspect of our site."

7 A. Yes, and in fact what's happening for the land in general area there is that

8 the spine road will pick up the various parcels of land and connect with the

9 interchange.

10 Q.396You saw this in the Action Area Plan earlier?

11 A. Yes, indeed.

12 Q.397"We discussed the timing and implications of the Carrickmines Valley sewer. RC

13 confirmed the local authority may go ahead with the laying of the sewer before

14 even the final line of the motorway is identified, owing to the urgent need in

15 the area to facilitate in particular the scale of development being proposed on

16 Monarch Properties sites." The variation of the '93 Development Plan hadn't

17 taken place at that stage?

18 A. It had not.

19 Q.398But --

20 A. Isn't that right?

21 Q.399It hadn't. Yes. So, the scale of the development proposed by Monarch, what

22 was the scale of development proposed by Monarch at that stage which would have

23 necessitated the sewer being laid?

24 A. There was zonings there as per the '93 Plan.

25 Q.400Yes. These were fairly limited zonings I think at that time; isn't that right?

26 A. Yes, they were. They were more limited obviously than the '95 but still

27 included a district centre.

28 Q.401Yes, and these were the additional facilities which required the laying of the

29 sewer at this time?

30 A. They did indeed, yes.

1 Q.402 And in manuscript is written "He talked about the size of the sewer", do you
2 recall speaking about the size of the sewer?

3 A. No, and I -- I don't know the size of the sewer, I don't know the diameter or
4 whatever, so I am not quite sure, I may have spoken about it in some general
5 term, about maybe where it was being laid, but I don't think I would have been
6 capable of going into the detail of the actual size.

7 Q.403 Okay. Under the heading "Conclusions" then it says: "It would seem from RC
8 that the Dun Laoghaire/Rathdown Council may not publish a draft plan for
9 several years.
10 Until that plan is published the existing zoning of our site will continue as
11 it is, any attempt to change that must follow a material contravention route,
12 all of the contingent factors such as access, drainage etcetera must be in
13 place before any such application can be made.

14

15 The time scale for the construction of the South East Motorway is much longer
16 than short-term.

17 And the Council have not yet made a study of the population numbers that the
18 Council would like to see in the area, until that study is made the Council
19 policy on housing in the area where it might be located, its density and
20 volume, it is on the long finger and this would have adverse consequences for
21 applications for major housing development"

22 A. Yes. Really what I am saying there is that the study of the quantum of
23 development, the number of households and so on, should be done first and then
24 as planning application to come in.

25 Q.404 Yes. Okay, thank you very much, Mr. Cremmins.

26 A. Thank you.

27 Q.405 Just answer any questions.

28

29 CHAIRMAN: Does anyone, anybody want to ask this witness any questions?

30

1 MR. BURKE: Mr. Chairman Sir, I have some questions, I don't believe I will
2 be more than a quarter of an hour.

3

4 CHAIRMAN: Right, anybody else? Would you like to proceed now?

5

6 MR. BURKE: Thank you Sir.

7

8 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR. BURKE:

9

10 Q.406Mr. Cremmins, for the record I would like to ask you if you agree with the
11 following six rather basic propositions.

12

13 Number 1: That councillors act in a quasi-judicial manner when considering
14 rezoning motions

15 A. Yes, I imagine so, yes.

16 Q.407Thank you.

17 2: That councillors receive representations from their constituents concerning
18 matters such as job creation, more specifically job creation in their council
19 areas and complaints also about having to travel long distances and congested
20 motorways across the city and elsewhere?

21 A. I am not sure what representations councillors get, but that wouldn't surprise
22 me if they did.

23 Q.408Thank you. That it would be perfectly reasonable for councillors to exercise
24 their quasi-judicial duties to consider these representations made to them by
25 their constituents?

26 A. Yes.

27 Q.4094: That it would also be perfectly reasonable for them to consider the views
28 of experts, such as planning consultants not employed by the Council, for
29 example, people like those who work for Brian Meehan & Associates, planning
30 consultants, and D McCarthy & Company?

1 A. I believe, yes, they would have to take all the information that they are given
2 and come to a conclusion.

3 Q.410 Thank you. 5: Councillors are not obliged to agree with the views of a County
4 Manager?

5 A. That's correct.

6 Q.411 Thank you. 6: In the absence of corrupt motives, there is nothing untoward or
7 even suspicious about a councillor not agreeing with the views of a County
8 Manager?

9 A. Yes, I imagine it would depend on what the councillor actually proposed, but
10 yes, I would agree.

11 Q.412 I stated clearly in the absence of corrupt motives.

12 A. No, I mean, I think one would have to look at what was being proposed, did it
13 make sense? You know, whether it, one is talking about housing or transport or
14 planning or whatever, I think one would have to say does this suggestion or
15 proposal make sense?

16 Q.413 So you are saying that if there are, if it is established that there is no
17 corrupt motive involved, that it could be suspicious or untoward if a
18 councillor disagreed with the views of a County Manager?

19 A. I think --

20 Q.414 Surely you are not suggesting that?

21 A. I think I prefer the word untoward, one could imagine a proposal that on the
22 face of it didn't make sense, like say running a, you know a big road to
23 nowhere. And the manager says no don't do it, one would wonder why anyone
24 would persist in it.

25 Q.415 That's a very extreme example. I prefer to return then to the question about
26 suspicious, if you would answer it then. In the normal run of events, if a
27 councillor does not follow the lead of a County Manager, is that, per se,
28 suspicious, yes or no?

29 A. No.

30 Q.416 Thank you.

1

2 I would now like to focus on the proposal to rezone the property of Jackson Way
3 and others in December of 1997.

4

5 Now you have shown earlier this morning that the County Manager was of the view
6 and I quote: "That the lands will in the medium to long term be suitable to be
7 zoned for industrial purposes" and then at a later stage we saw that such a
8 rezoning however was felt to be premature.

9 A. That's correct.

10 Q.417 Now, my question arising from that is this: Do you accept that councillors
11 were entitled, and I stress and repeat that word, entitled, to disagree with
12 the view that the proposal was premature?

13 A. Yes.

14 Q.418 And that there is nothing necessarily suspicious in that?

15 A. No.

16 Q.419 Thank you. Would you agree that from a business point of view, from the point
17 of view of forward business planning, that it would be reasonable for a
18 business person to desire to achieve an industrial rezoning on his or her lands
19 sooner rather than later?

20 A. Yes.

21 Q.420 Thank you. Now you have also shown that the Council has what you described as
22 a landlord interest in Sandyford Industrial Estate. My question arising from
23 that is this: Would you agree that it does not follow that lands which is in
24 private ownership is thereby unsuitable for industrial rezoning, in other words
25 the Council doesn't have to own its land that's going to be rezoned industrial.

26 A. No, it doesn't.

27 Q.421 Thank you. Does Dun Laoghaire/Rathdown County Council, to your knowledge, have
28 any interest in Cherrywood?

29 A. In Cherrywood? Yes, the Council owns, I think, two parcels of land in the
30 Cherrywood area.

1 Q.422The lands in Carrickmines which we all know are not in the ownership of the
2 Council will be in competition with Cherrywood and Sandyford if and when it
3 establishes itself as an industrial park; isn't that correct?

4 A. I am not quite sure about that. The two parcels of land, one is zoned
5 residential and the other is zoned science and technology. I think it's aiming
6 at a different sector of the market.

7 Q.423Well is there a potential for competition? Some of the people who might move
8 into Sandyford or to Cherrywood would have the option perhaps in certain
9 instances to move into Carrickmines in the fullness of time, there is a
10 possibility of competition, that's all I am asking, a possibility?

11 A. A possibility, I wouldn't put it any stronger.

12 Q.424But it is a possibility. Now, I don't want you to be offended by the next
13 question, I fully accept your bona fides in the evidence you have given, I want
14 to ask you this, would you not feel that that was something which should have
15 been brought to the attention of the Tribunal, so, as it were, to give them the
16 full picture?

17 A. That what?.

18 Q.425That there was a potential conflict, the competition point we discussed a
19 moment ago?

20 A. No, I don't at all.

21 Q.426You think that's something that should have been withheld from the Tribunal?

22 A. No, not at all. I think it's such a small possibility that it's the first I
23 have ever heard of it being mooted as, you know, even a suggestion.

24 The --

25 Q.427Well now that is mooted and now that you have had a few seconds to consider it,
26 on reflection do you not think it would have been at least preferable to have
27 brought that to the attention of the Tribunal?

28 A. Well, I am perfectly happy to bring it to the attention of the Tribunal.

29 As far as I am aware there is nothing secretive about the Council owning land
30 further down the motorway, as I say subject to a different zoning, it is, as

1 far as I am aware, it is common knowledge.

2 Q.428 Now for the record, I remind you I said I accepted your bona fides, I am not
3 suggesting you are being secretive.

4

5 I will move on and again I wouldn't like you to be offended in anyway by the
6 following question. Would you agree with the following proposition, that
7 county planners do not have a monopoly on wisdom in planning matters?

8 A. Yes.

9 Q.429 Thank you. The rates from Sandyford are making a huge financial contribution
10 to the county purse, isn't that correct?

11 A. Yes.

12 Q.430 And if successful, an industrial estate in Carrickmines will also make a
13 positive significant financial impact on the county purse?

14 A. That's correct.

15 Q.431 That would be a good thing, wouldn't it?

16 A. It would, yes.

17 Q.432 Would you also agree with this proposition, that it would be perfectly
18 reasonable for a councillor to anticipate such a positive financial input when
19 considering how to vote on a rezoning motion, reasonable to consider that?

20 A. Yes, I would accept that.

21 Q.433 Thank you. Finally, would you not agree that a councillor with experience in
22 national and local politics and a degree in law, with upwards of 20 years
23 experience, would be able to bring his own skill and learning to bear on
24 rezoning issues?

25 A. Yes.

26 Q.434 Thank you. No further questions?

27 A. It is his reserve function.

28 Q.435 Thank you, Mr. Chairman?

29 A. Thank you.

30

1 CHAIRMAN: Mr. O'Dulachain do you want to ask any questions?

2

3 MR. O' DULACHAIN: No, chairman.

4

5 CHAIRMAN: Thank you. Now, before the Tribunal -- is there anybody else?

6 Anybody else? I think my colleagues would like to ask certain questions of the

7 witness.

8

9 JUDGE FAHERTY: Thank you very much, Chairman. Mr. Cremmins, I have one or two

10 questions for you. The first one is a fairly general question, I just want to

11 know to what extent in the run-up to the preparation for the Draft Development

12 Plan for 1997, your evidence has been that in the position paper which you

13 prepared in May of 1996 --

14 A. Yes.

15 Q.436-- that there was substantial land banks already zoned lands, both residential

16 and industrial?

17 A. Yes.

18

19 JUDGE FAHERTY: And I think your evidence was that taking the industrial lands

20 there was two major portions of the lands the Grimes and the Legionnaires of

21 Christ lands I think you called them?

22 A. That's correct.

23

24 JUDGE FAHERTY: And the Legionnaires lands you said were ready for immediate

25 development and I have taken that to mean, you can correct me if I am wrong,

26 that they would have been serviced?

27 A. Absolutely, yes.

28

29 JUDGE FAHERTY: There was nothing to prohibit development?

30 A. Not that I am aware of.

1

2 JUDGE FAHERTY: In the light of that my question is this, in the run-up to the
3 preparation, from 1993 Development Plan and indeed the 1983 Development Plan
4 when some of these lands would have been zoned --

5 A. Yes.

6

7 JUDGE FAHERTY: -- to what extent was the lack of take-up of development
8 monitored either by planners within the county or indeed within the County
9 Council by way of debate or discussion over the years?

10 A. Do you mean a debate between the councillors or at official level?

11

12 JUDGE FAHERTY: At both levels indeed?

13 A. Certainly we did monitor the take up of land because for Dun Laoghaire/Rathdown
14 it was quite a simple thing, we don't have many areas, large areas for
15 development and we just be aware that from our local knowledge, you know that
16 they were there and hadn't been built on and we would know the services
17 situation. I don't recall any significant debate certainly about industrial
18 lands at councillor level, but it may have happened when I wasn't around.

19

20 JUDGE FAHERTY: But it could have happened -- it was something that would be
21 in the remit of the Council to discuss, by way of motion or whatever?

22 A. Oh, yes absolutely, yes.

23

24 JUDGE FAHERTY: Thank you. The other question I have for you, Mr. Cremmins,
25 goes back to the motion, the Jackson Way motion that was moved in January of
26 1998, there was two motions, I think one was moved to zone 88 hectares of land,
27 industrial from agricultural.

28 A. Yes, yes.

29

30 JUDGE FAHERTY: Now, I think your evidence was that in December of the previous

1 year, there was a motion for the 36.8 acres there was a joint submission, which
2 was passed --

3 A. Yes.

4

5 JUDGE FAHERTY: -- and zoned from agricultural to industrial?

6 A. Yes.

7

8 JUDGE FAHERTY: And that the 88 acres then a month later encompassed a portion
9 of those already zoned?

10 A. That's correct, yes.

11

12 JUDGE FAHERTY: I want to ask, this is really a housekeeping question at
13 Council level, that the motion was proposed and the manager's report made
14 reference to the fact that part of these lands were already zoned.

15 A. Or had been passed.

16

17 JUDGE FAHERTY: Had been passed.

18 A. Yes.

19

20 JUDGE FAHERTY: The previous month. I would have thought that given that there
21 already had been passed, that there might have been at this stage, from purely
22 a logistical point of view, an amending motion to say hold on a moment, some of
23 the lands have already been the subject of a motion which has been passed,
24 would that have happened or?

25 A. Well, it didn't happen. And I suppose the point was taken that the later
26 motion referred to a far larger area of land and would stand on its own.

27

28 JUDGE FAHERTY: I see. Thanks very much, Mr. Cremmins.

29 A. Thank you.

30

1 JUDGE MAHON: Mr. Cremmins, in 1996 as I understand your evidence up until 1996
2 or at 1996, as far as the Council was concerned, there was ample, there was
3 ample land rezoned at that stage for the foreseeable future?

4 A. That's correct, yes.

5

6 JUDGE MAHON: And yet again, as I understand your evidence, within a year or
7 so in 1997, it was being suggested that there was an acute need for rezoning of
8 land or for new land to be rezoned?

9 A. The -- in May '96 we estimated as best we could that we had enough zoned land
10 and we set out the facts and figures in the position paper which we have looked
11 at.

12

13 Subsequently, there was a very rapid increase in house prices in the greater
14 Dublin area and so much so that the government commissioned Peter Bacon to look
15 at the reasons for increase in house prices in the greater Dublin area and his
16 first report, if I am right, was published I believe in April 1998. So it is
17 in that, in that context that the Dublin manager's and I think the public were
18 aware of a deteriorating situation as regards house prices, particularly in the
19 greater Dublin area.

20

21 JUDGE MAHON: But --

22 A. May I say that, so the -- it was seen that the primary reasons for that wasn't
23 so much the lack of zoned land, but not sufficient houses were being built.

24 And I think one of the reasons why we suggested or recommended an extra 77
25 hectares at Stepside was in part to try and get house construction going. And
26 in fact in that regard we haven't succeeded particularly well in that.

27 Traditionally the number of houses built in Dun Laoghaire/Rathdown has been
28 somewhat under a thousand and that hasn't changed significantly in the last ten
29 years.

30

1 Most of the land that was rezoned has yet to be built on. So our primary
2 problem is actually getting houses built rather than zoning land.

3

4 JUDGE MAHON: But in 1997, I think it was 1997 that this suggestion that there
5 was an acute need for rezoning, that was before the Bacon Report?

6 A. Yes. Well the Bacon Report came out in I think April '98 and Peter Bacon would
7 have been talking to Council officials I am sure he spoke to Kevin O'Sullivan
8 and so on. So we would have been aware of his thinking.

9 But I don't believe Peter Bacon, for example, said there was an acute shortage
10 of zoning land. I think he said there was a need to get -- there was adequate
11 zoned land if only it could be built on and brought to the market.

12

13 JUDGE MAHON: And was it an opinion that you shared, that rezoning of land in
14 Stepside was advisable in 1997?

15 A. Yes, absolutely. I thought it was a good idea.

16

17 JUDGE MAHON: Another very different area, in relation to the Council meetings,
18 you would have attended a good few of those?

19 A. Yes, most of them, yes.

20

21 JUDGE MAHON: Where various motions were put forward and rezonings were, a
22 rezoning motions were passed?

23 A. Yes.

24

25 JUDGE MAHON: And the picture we have that at those meetings there was a
26 recommendation or rather the manager's view was put forward and then there was
27 a vote taken by the councillors or there was then a motion put forward and a
28 vote taken by the councillors?

29 A. Yes.

30

1 JUDGE MAHON: Now in between the time or -- this is now, say, during an actual
2 meeting and before a vote was taken, was there any discussion to your knowledge
3 by the councillors of the views expressed by the manager?

4 A. Yes. I do recall -- I do recall discussions taking place on the manager's
5 recommendation and report among the councillors.

6

7 JUDGE MAHON: And would the manager ever change his view or was it -- as a
8 result of those discussions?

9 A. Well, no. He wouldn't change from no to yes, if you like. But I believe that
10 when the representation, for example, that came in to rezone land at
11 Carrickmines, the manager basically said no, it was premature and then a motion
12 was lodged a few days or a week before a meeting, which the manager then had to
13 write a revised report on the motion, if you follow me.

14

15 JUDGE MAHON: Yes.

16 A. And his updated report, if you like, facing a motion that came in despite his
17 recommendation for it not to happen, his updated revised report said basically
18 look, in the longer term this land will be suitable, you know. That's if you
19 like a --

20

21 JUDGE MAHON: But his recommendation, as we have it looking at the documentary
22 evidence, his recommendation would be as we see it?

23 A. Absolutely, yes. Oh absolutely, yes.

24

25 JUDGE MAHON: And it would be in the face of that or in spite of that, that a
26 particular motion would then be voted on?

27 A. That's correct.

28

29 JUDGE MAHON: Which in some cases was against his recommendation?

30 A. Yes, indeed. He would stick by his report.

1

2 JUDGE MAHON: And then finally, my last question, the Draft Action Plan Area
3 Committee which has been spoken about, who was on that?

4 A. The -- it's the Dun Laoghaire Area Committee.

5

6 JUDGE MAHON: Yes.

7 A. The way business is organised is that the Council of 28 councillors is divided
8 into two area committees, one for the western half of the county called Dundrum
9 Area Committee and the other the eastern half called the Dun Laoghaire Area
10 Committee, so business relating to the Dun Laoghaire area, which would include
11 Cherrywood, would go first of all to the Dun Laoghaire Area Committee and they
12 would discuss it and when they thought it was right, they would bring it to the
13 full Council for final agreement.

14

15 JUDGE MAHON: And do we know -- was it the same committee all the time?

16 A. Yes, the councillors for the Dun Laoghaire ward areas.

17

18 JUDGE MAHON: And any Council officials?

19 A. No, it's -- the area committee is literally a committee of councillors.

20

21 JUDGE MAHON: From the particular area?

22 A. Yes, the 14 councillors from this the eastern half of the county.

23

24 JUDGE MAHON: All right. Thank you very much

25 A. Thank you.

26

27 MR. QUINN: Thank you very much, Mr. Cremmins. Sir, we also have a witness
28 here from the Land Registry to deal with the registration of the Paisley
29 Park/Jackson Way land and the O'Halloran Darragh Kilcoyne lands.

30

00102

1 CHAIRMAN: Well, it is ten minutes to four. He is welcome to have an
2 introduction --

3

4 THE WITNESS THEN WITHDREW..

5

6 MS. COGHLAN: Mr. Christopher Hogan please.

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1 CHRISTOPHER HOGAN, HAVING BEEN SWORN, WAS

2 EXAMINED AS FOLLOWS BY MS. COGHLAN:

3

4 Q.437 Good afternoon, Mr. Hogan.

5 A. Afternoon.

6 Q.438 I believe that you have been working with the Land Registry for in or about 35

7 years, Mr. Hogan?

8 A. That's correct.

9 Q.439 And you are currently the deputy registrar?

10 A. That's correct.

11 Q.440 And I believe you have been in that position since in or about 1996?

12 A. That's correct.

13 Q.441 If I might just explain to the Tribunal, Mr. Hogan, that you have provided two

14 statements. In fact, if we could put map 373 on the screen, that would be

15 great. Your first statement, Mr. Hogan, in fact, deals with folio 4940, which

16 are lands currently in the registered ownership of Jackson Way Properties

17 Limited and you can see them there on the screen.

18 A. Yes, that's correct.

19 Q.442 And you have provided a second statement which involves the remainder of the

20 land we are currently looking at known as O'Halloran Darragh and Kilcoyne

21 lands, just north of the Jackson Way land?

22 A. Yes.

23 Q.443 Just to explain that your two statements and quite a number of back up

24 documentation is all together in one folder, its called folder number 10 and

25 labelled Land Registry documents, back-up to Christopher Hogan statement on the

26 side, that's the folder we intend to proceed with for the next hour and a half,

27 but in fact we have only five minutes.

28

29 So maybe just at the outset, if you just might explain the difference between

30 Registry of Deeds and Land Registry for the Tribunal?

1 A. Yes. There are two systems of registration of documents affecting land in
2 Ireland. One of them is registration of deeds and the other is registration of
3 title or ownership. And the registration of deeds is operated by the Registry
4 of Deeds and the registration of title is operated by the Land Registry.

5

6 The Registry of Deeds was established in 1707. And what's registered there is
7 the facts of the existence of a deed. That is registered the date of the deed,
8 the names of the parties, and the description of the property and the nature of
9 the document, whether it is a mortgage or a conveyance.

10

11 The Land Registry, the registry deeds does not register the effect of a deed.
12 It passes no comment on the effect of it. The Land Registry registers the
13 effect of a deed. That is Jackson Way Properties Limited are the registered
14 owners of a particular folio.

15 Q.444 Maybe just on that, you say that Jackson Way Properties are the registered
16 owner, but if you might explain whether or not the Land Registry is conclusive
17 of ownership the information that you have?

18 A. It is conclusive of ownership in favour of a purchaser but not in favour of
19 anybody else.

20 Q.445 So, for example, I understand from that, that although an entity or company
21 might be the registered owner, they in fact might not be the true beneficial
22 owner or legal owner, there might be a trust document behind?

23 A. That's correct, but that would apply to any individual, any registered owner,
24 not just a company.

25 Q.446 Yes, Mr. Hogan. Then if you explain to us a folio, we might put on screen in
26 fact folio 4940 which is at page 3713? That's the only document in fact that's
27 not in folder 10. I believe you have copies of it from your brief? Do you
28 have a copy of it in front of you?

29 A. I do, yes.

30 Q.447 In fact we can work from the screen. If you just explain the different parts

1 involved?

2 A. I will certainly.

3

4 The Land Registry is described here as a document, a paper reproduction of a
5 computerised folio. But the original folio is in paper form and follows a
6 particular form at parts one, two and three. And part one is what you see in
7 front of you. This is of the register of ownership of freehold land. There
8 are three registers maintained by the registry, a register of ownership of
9 freehold land, a register of ownership of leasehold interests and a register of
10 ownership of rights prescribed by section 8B of the Act.

11

12 It is commonly known as a subsidiary register because it was established in the
13 1891 Act and called a subsidiary register. The one before you is register of
14 ownership of freehold land.

15

16 Each of the registries are divided into county divisions, on the basis that
17 they were originally local registers. One for each county and secondly on the
18 basis they were based primarily on the ordinance survey maps and the ordinance
19 survey maps at the time were the county series maps.

20

21 And each of the divisions of county are divided into individual numbers
22 relative to that particular ownership as it is. And that's where you have
23 County Dublin, this particular one is division of County Dublin and the folio
24 number is 4940.

25

26 Each folio would be of a particular ownership, it may be of only one property,
27 as in this case, or it may include a number of properties but it would be an
28 ownership it registers.

29

30 The next page if we can show it?

1 Q.448 Yes, if we can --

2 A. First page, sorry about that, what it does describe the property, the
3 description of the property and always by reference to the plan on the registry
4 map. In this case it's shown as plan 11 on the registry map. Reference OS26/2
5 and 26/6 those are the ordinance survey reference. It is more particularly
6 situated they would be the AO size and have a number of townlands on them, in
7 this particular case it is townland of Carrickmines Great in the barony of
8 Rathdown. It shows the area, and it has a common note on all folios that the
9 registration does not extend to mines and minerals. That was first excluded
10 under the Land Act, when it was vested in the property under 1903 they
11 specifically excluded mines and minerals, many subject to the Mines And
12 Minerals Development Act. On the right-hand side there is a reference from
13 whence the folio came, this came from folio 1849 indicating the title was
14 previously registered on folio 1849.

15

16 At the bottom part of the folio there is a reference to a file plan issued,
17 yes. A file plan is an individual plan for this particular property that's
18 filed separately from the main ordinance survey AO map that we retain.

19

20 In the prior to 1972 all property was shown on one AO form map, and you went
21 from the folio to that particular map. The registration, the land registration
22 rules of 1702 allowed for fixing of particular map for that property, there is
23 one in existence for this property. The next note you have a land certificate
24 issued. That's the certificate of ownership which can be given to the owner
25 and, in this case, they are optional. In this case, one has issued and that's
26 the note there.

27

28 Sometimes on the bottom of page one, there would also be a reference if there
29 was one to a land commission annuity reference number.

30 Q.449 So the next page 3714?

1 A. The next page then is described Part 1B property parts transferred. This
2 allows for separate notation of parts transferred from the folio.

3

4 In the earlier folios parts 1A and B would be amalgamated for clarity. They
5 split them up. In this case there was no subdivision of this property.

6 Q.450 Yes. Next page please?

7 A. That's part two the ownership. That really describes who is registered as
8 owner of the property. The part two contains other information, for example it
9 indicates the title is absolute. The Act provides for registration of title is
10 either absolute possessory or qualified.

11

12 And in the case of the leasehold register, the title may be absolute,
13 qualified, possessory or good leasehold.

14

15 It generally provides for the notation as to who is the registered owner. It
16 has a note as to the issue of the lands certificate, in this case when it was
17 issued and to whom it issued.

18

19 And it has a note there across the top, the devolution of the property, subject
20 to the provision of Part 2 of the Succession Act 1965, that is there because
21 all property is now subject to that provision. Prior to the 1965 Act, it was
22 only certain property was subject to the provisions of part four of the
23 Registration Title Act 1891. Property was compulsorily registerable, that was
24 subject to non-commission annuity. Other properties registered under 1891 were
25 not subject to part four so that note wouldn't have been on it.

26 Q.451 Thank you. And if you could just --

27 A. Part three is the other part of the folio.

28 Q.452 Yes, that's actually on page 3719.

29 A. And that's described as part 3 burdens and notices of burdens. It lists the
30 burdens that affect the property, mortgages, rights of way, leases,

1

2 burdens and notice of burdens that are provided for in the Registration of
3 Title Act 1964, Section 69 lists a number of burdens that may be registered
4 and section 72 lists a number of burdens that effect without registration but
5 there is a provision in Section 72 that a notice of that particular burden may
6 be entered on the folio.

7 Q.453In fact -- thank you, Mr. Hogan. I propose now to go into the detail of
8 Mr. Hogan's first statement, I don't know would it be as well to wait over
9 until tomorrow?

10

11 CHAIRMAN: If you are finished with the folio, unless you want to --

12 Q.454I just wanted Mr. Hogan to set out and explain what it is, from now on we'll be
13 in the detail of his statement.

14

15 CHAIRMAN: Right -- I think we'll rise in the circumstances.

16

17 Mr. O'Dulachain, I would hope to give you a decision tomorrow morning in
18 relation to your application on Friday.

19

20 MR. O' DULACHAIN: Thank you, Chairman

21 Q.455Thank you, Mr. Hogan.

22

23 CHAIRMAN: Thank you, Mr. Hogan.

24

25 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

26 4TH DECEMBER, 2002 AT 10.30 AM

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