

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY.

1ST JULY 2008 AT 2:00 P.M:

MR. QUINN: Good afternoon, Sir. Mr. John Deane, please.

MR. JOHN DEANE CONTINUED TO BE QUESTIONED BY.

MR. QUINN AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Deane?

A. Good afternoon.

Q. 1 MR. QUINN: Good afternoon, Mr. Deane.

Mr. Deane, on Friday I think we found ourselves coming to December 1992, and we know that the vote in relation to Quarryvale was scheduled for the 17th of December '92. And would it be fair to say that there was quite an amount of activity in relation to the upcoming vote, particularly involving the councillors who were likely to vote on the issue?

A. Yes.

Q. 2 And to what extent were you aware of what was going on with Mr. O'Callaghan and Mr. Dunlop and others in relation to the lobbying campaign at that time?

A. Well I knew that Mr. O'Callaghan was spending an awful lot of time in Dublin with Mr. Dunlop and they were involved in intensive lobbying of councillors at that stage.

Q. 3 Would it be fair to say that Mr. Gilbride and Mr. McGrath were also very much on board at this stage?

A. I believe they were actively involved, yes.

Q. 4 And we had seen Mr. Lawlor's involvement in relation to the 1991 vote. Now, Mr. Lawlor lost his seat as a councillor in June 1991. Would it be fair to say that he was also in the background so to speak in the lead up to December '92 as a strategist if not as a lobbyist?

A. I think that's probable.

14:03:03 1 Q. 5 And if we could 8729, please. I think there was some publicity in advance of
2 that meeting. For example on the 10th of December '92, the Evening Herald
3 carried an article entitled "planners oppose shopping centre". I think this
4 probably post dated the publication of the manager's report which had been
14:03:20 5 circulated to the members. Do you recall this type of publicity and
6 controversy in the lead up?
7 A. No, I don't.
8 Q. 6 On the 10th of December, the Irish Times carried an article at 8730 "millions
9 of pounds ride on vote". And with the bi-line "a decision is expected to be
14:03:45 10 made next week on the most controversial issue confronting Dublin County
11 Councillors. The zoning of Quarryvale near Palmerstown for a major motorway
12 shopping complex". And a report by Frank McDonald, the environmental
13 correspondent. Do you recall that level of public debate or discussion?
14 A. No, I don't remember that being discussed.
14:04:06 15 Q. 7 If we could have 8764; you will have seen in the brief, a fax to you from Mr.
16 O'Callaghan where he faxed through to you a letter which or by way of a
17 reminder he had received from a councillor on the 14th of December '92, which
18 was a follow-up to a letter sent on the 16th of October '92. And we see he
19 says "This is a note identifying the solicitor who was also a councillor. We
14:04:37 20 do not reply to this before. We do not intend to now but take a look at it and
21 I will ring you".
22
23 And if we go not to the reminder but if we go for example at 8286, this is the
24 letter of the 16th of October '92, which was a follow-up to a meeting had
14:04:54 25 between the councillor and Mr. O'Callaghan and Mr. Ambrose Kelly. And then
26 accompanying that there was a questionnaire. If we could have 8287 please.
27 Where a series of questions had been addressed by the councillor to Mr.
28 O'Callaghan but which Mr. O'Callaghan had chosen not to respond to. Do you
29 recall Mr. O'Callaghan seeking your advice in relation to that correspondence
14:05:17 30 at that time?

- 14:05:19 1 A. I do remember something coming from Paddy Madigan I think is his name but the
2 detail of it at this stage I don't ...
- 3 Q. 8 The councillor in this case was raising queries on the issue as to whether or
4 not the 500,000 square feet was a gross or net figure in relation to retail
14:05:37 5 sales. Do you see that at item E?
- 6 A. Yes.
- 7 Q. 9 He was asking if environmental impact study had been carried out on the site.
8 Was this the type of correspondence and communication that was being addressed
9 to Mr. O'Callaghan as the developer of the site by councillors at this stage?
- 14:06:01 10 A. Not that I recall, no.
- 11 Q. 10 Yes. At 8855; we see the motion which subject to amendment was successful on
12 the day. And I think your evidence to the Tribunal on Friday was that you did
13 not know how the councillors came to sign that motion or who prepared the
14 motion?
- 14:06:21 15 A. No, I wasn't involved in that.
- 16 Q. 11 And do you know if Mr. Dunlop was involved or did Mr. O'Callaghan discuss with
17 you the involvement of either Mr. Dunlop, Mr. Lawlor or the named councillors
18 there in preparing that motion?
- 19 A. No, I think at that time Mr. O'Callaghan was spending a lot of time in Dublin,
14:06:36 20 so my contact with him would have been not as much as it might have been
21 otherwise.
- 22 Q. 12 Now, we do know that you were present at the meeting at the special meeting on
23 the 17th of December -- December '92, isn't that correct?
- 24 A. I wasn't. Just to clarify that. I wasn't at the actual meeting but I was in
14:06:55 25 the building in which the meeting was taking place.
- 26 Q. 13 Yes. Now, we know from evidence heard in this module, Mr. Deane, that two
27 representatives, two very senior representatives of the bank visited Mr.
28 Gilmartin in either Luton or London on the 17th of December. Were you aware
29 that that meeting was taking place?
- 14:07:14 30 A. No, I wasn't.

- 14:07:15 1 Q. 14 Were you aware that Mr. Gilmartin, when he discovered that it was intended to
2 further, dealing with the size of the project, was a particularly angry and
3 outraged?
4 A. No, I don't believe I knew that at the time, certainly since that, yes.
- 14:07:30 5 Q. 15 Yes. Were you aware that Mr. O'Callaghan had been in touch with Mr. Gilmartin
6 in the lead up to the vote?
7 A. I would have thought he was as a matter of their normal communication.
- 8 Q. 16 Yes. Did you have a strategy on the 17th to deal with councillors or to lobby
9 councillors or to formulate your position with Mr. Dunlop?
14:07:55 10 A. No, I wasn't involved in any of that, Chairman.
- 11 Q. 17 Yes. Now, in your statement, if I could have 1589, you do refer to an incident
12 which is described by Mr. Gilmartin and indeed is supported by Mr. O'Callaghan,
13 concerning attempts by Mr. Gilmartin to get through to one of the councillors
14 on the day, isn't that correct?
14:08:14 15 A. That's correct.
- 16 Q. 18 I think at 1589 in the final paragraph there you have advised the Tribunal that
17 you met Mr. Dunlop on relatively few occasions over the period of his
18 involvement with Quarryvale. And I think you gave evidence on Friday of one
19 such meeting where Mr. Dunlop was less than complimentary to you and your
14:08:32 20 knowledge of the way matters worked in Dublin, isn't that correct?
21 A. That's correct.
- 22 Q. 19 And I think you had the idea that the whips would be contacted?
23 A. Yes.
- 24 Q. 20 And was that with a view to convincing the whips as to the merits of your
14:08:46 25 proposal?
26 A. Well it was more a time saving device than anything else when the first
27 discussion took place shortly after Mr. O'Callaghan met with Mr. Dunlop, I met
28 Mr. Dunlop with Mr. O'Callaghan. And he was explaining how all of the
29 councillors have to be lobbied individually and some on more than one occasion.
14:09:07 30 And I thought a simple way of doing it would be if the party whips could be

- 14:09:11 1 lobbied, if they were in favour of it then, they would bring their supporters
2 of each party with them.
- 3 Q. 21 Where did that meeting with Mr. Dunlop take place?
4 A. In Mr. Dunlop's office.
- 14:09:22 5 Q. 22 And would that have been the third meeting do you think between Mr. Dunlop and
6 Mr. O'Callaghan in connection with Quarryvale or had there been other meetings
7 other than the meeting with Mr. Gilmartin and the second meeting of which he
8 agreed fees with Mr. Dunlop?
9 A. It would, it was certainly after the first meeting with Mr. Gilmartin and Mr.
14:09:41 10 Dunlop. Whether it was before the second meeting which the fees were agreed or
11 after that, I'm not sure.
- 12 Q. 23 Was Mr. Lawlor present at that meeting?
13 A. No.
- 14 Q. 24 Just the three of you?
14:09:52 15 A. Just the three of us, yes.
- 16 Q. 25 And presumably, Mr. O'Callaghan introduced to you Mr. Dunlop?
17 A. That's correct.
- 18 Q. 26 And had you decided at that stage that Mr. Dunlop was going to be your
19 consultant in relation to this matter?
14:10:05 20 A. Yes, Mr. O'Callaghan had told me that he believed he was the right person, with
21 the contacts. And felt he was the person who should be appointed.
- 22 Q. 27 And how long did that meeting take?
23 A. It's impossible to say but probably half an hour maybe.
- 24 Q. 28 And at some stage in the course of the meeting Mr. Dunlop felt it necessary to
14:10:24 25 let you know how matters progressed in Dublin and how business was done
26 concerning rezonings?
27 A. Well, I told you on I think it was the Friday exactly what he said to me, that
28 I knew nothing about politics and the best thing to do was to go back to Cork
29 and forget it and to stay with the legal business.
- 14:10:43 30 Q. 29 I'm trying to put that discussion with Mr. Dunlop in some sort of context,

14:10:45 1 Mr. Deane. There obviously, had to be some sort of a discussion concerning Mr.
2 Dunlop's role and his interaction with the various councillors?

3 A. Maybe I'm misunderstanding what you're saying. But when I went to meet Mr.
4 Dunlop I was obviously interested to meet him, Mr. O'Callaghan had spoken about
14:11:03 5 his contacts. I went to meet him. He, Mr. Dunlop was explaining in detail how
6 the process would work in terms of having to meet every councillor, there was
7 78 of them there. That you might meet a councillor today who would say well
8 thought the idea of rezoning Quarryvale was a good idea and tomorrow they might
9 meet somebody from Green Properties and change their mind and so on. And it
10 was in that context that I made my comment to Mr. Dunlop and he respond as I
11 have told you and I said no more at that meeting and the meeting ended very
12 shortly after that.

13 Q. 30 Yes. Did he say how these meetings would take place, as to where they might
14 take place or how they would be arranged?

14:11:42 15 A. You would have to go and meet them. In some cases maybe their house or
16 constituency office or you would have to generally meet them outside hours
17 because a lot of these people would have jobs, so it would be evening meetings
18 and that type of thing.

19 Q. 31 Did Mr. Dunlop lead you to believe that he was in a position to track down the
14:12:00 20 various members of the council and to effect those introductions?

21 A. He certainly would have. He said that to Mr. O'Callaghan who said it to me.
22 As I say, I don't think my conversation with Mr. Dunlop lasted very long.

23 Q. 32 Did he go into any detail about the necessity for motions and the necessity to
24 have motions signed and countersigned or proposed?

14:12:23 25 A. No, we never got into any of that detail.

26 Q. 33 Or did he indicate whether or not some individual councillors were more
27 important than others and that they held greater sway within the council?

28 A. No, we didn't get into any of that detail.

29 Q. 34 Yes. Now, if we revert to your statement. You say that "you met some of the
14:12:40 30 councillors on occasions such as the occasion of the council vote on the 16th

14:12:44 1 of May and on the occasion of Council vote of 17th of December '92".

2 A. Yes.

3 Q. 35 Can you recall what councillors you met in December '92?

4 A. I certainly met Councillor McGrath and Councillor Gilbride on that evening,

14:13:00 5 that I do recall. And I believe, I was introduced certainly to others --

6 Q. 36 Yes.

7 A. -- just in passing so ...

8 Q. 37 You might recall that when you, at an earlier stage when you signed the option

9 agreement initially with Mr. Gilmartin and Mr. Maguire, you didn't, they

14:13:16 10 weren't necessarily left with the impression that you were a co-owner of the

11 Riga --

12 A. That's correct.

13 Q. 38 -- enterprise. And they felt you may have been a solicitor to that enterprise

14 at that time?

14:13:28 15 A. Yes.

16 Q. 39 When you met with Mr. Dunlop. Was he aware that you were 50 per cent

17 shareholder in Riga and a 25 per cent shareholder in Barkhill?

18 A. Again, I certainly didn't tell him. Now, whether Mr. O'Callaghan explained

19 that to him at that stage, I don't know.

14:13:46 20 Q. 40 In other words, was your meeting with Mr. Dunlop an introduction by a fellow

21 developer of his partner to Mr. Dunlop?

22 A. It didn't, I can't actually remember how he, how I was introduced on the day.

23 Q. 41 Well by December '92, would Mr. Dunlop have been aware that you were Mr.

24 O'Callaghan's partner?

14:14:05 25 A. I'm sure he would.

26 Q. 42 And would Mr. McGrath and Mr. Gilbride have been aware and the other

27 councillors that you met?

28 A. That I don't know.

29 Q. 43 You say that you were not involved in any of the lobbying to for councillors

14:14:15 30 for their the votes in connection account rezoning of Quarryvale and you didn't

14:14:18 1 make any payments to politicians in connection with the Quarryvale project?

2 A. That's correct.

3 Q. 44 And at 1590 you say "you were present at a small celebration after the vote on

4 the 16th of May '91 at which Tom Gilmartin and Owen O'Callaghan also attended".

14:14:31 5 And I think Mr. Dunlop also attended that?

6 A. Yes.

7 Q. 45 And were there a number of councillors in attendance at that celebrations?

8 A. I think there were some, yes.

9 Q. 46 And I think Mr. Eddie Kay may have been in attendance?

14:14:42 10 A. I think he was.

11 Q. 47 Now, Mr. Gilmartin has given evidence of another function to which he wasn't

12 invited. Was there a second function can you recall on the night of the 16th

13 of May?

14 A. No, on the night of the 16th of May, I'm not sure what time the actual vote

14:14:57 15 happened but my recollection is, when I say late in the evening, it was after

16 tea time anyway. I went back home that night. So I would have been getting

17 something like a 10 o'clock flight back to Cork.

18 Q. 48 Were you aware even if you didn't attend it, of a further celebratory event on

19 the night of the 16th of May?

14:15:14 20 A. No. I don't recall such event.

21 Q. 49 Now, if we come forward into the night or the afternoon of the 17th of December

22 '92, at the bottom of that page. I think you have advised the Tribunal that

23 you were present in the Council Offices on the afternoon of the vote taken by

24 Dublin County Council on the 17th. And you say "during the course of the

14:15:43 25 evening I answered a telephone call. I recognised that Tom Gilmartin was the

26 person on the other end of the telephone although he did not give his name when

27 asked". Did you introduce yourself to Mr. Gilmartin when he rang on the night?

28 A. No, and when he rang first of all I didn't recognise who it was. It was when I

29 asked who was speaking and the person said I'll ring back, it then dawned on me

14:15:56 30 who the voice was.

- 14:15:58 1 Q. 50 Mr. O'Callaghan deals with that event at 3150 in his statement. And he says
2 that you were in the Fianna Fail offices in Dublin County Council?
3 A. That makes sense, yes.
- 4 Q. 51 Yes. My understanding and correct me if I'm wrong, Mr. Deane, you obviously
14:16:19 5 know more about this than I do that there were offices or a room set aside for
6 the Fianna Fail and Fine Gael Councillors close to the Council Chamber?
7 A. I just know that I was in a room but I was not in the Council Chamber.
- 8 Q. 52 Did you see any other councillors coming and going to that room?
9 A. Yes, there were a number of councillors coming and going during the evening.
- 14:16:39 10 Q. 53 Yes. And you remained in the room throughout?
11 A. That's correct.
- 12 Q. 54 And if we go back to 1590. You've a dealt with the first call from the person
13 whom you identified as Mr. Gilmartin, and you say that "when Councillor McGrath
14 returned to the room I informed him that Tom Gilmartin had telephoned and he
14:16:56 15 was adamant that I would not mention his name while he was in the company of
16 any other person as the mere mention of his name would revive fears of the very
17 large scale shopping development which Mr. Gilmartin was proposing at the time
18 when it was very clear, difficulty to achieve an agreement on the 250,000
19 square feet."
- 14:17:13 20 A. That's correct.
- 21 Q. 55 You say that the "Councillor McGrath indicated to me that he would not take a
22 call from Tom Gilmartin unless he was in the room on his own. Tom telephone
23 several times that evening but on no occasion was Councillor McGrath in the
24 room on his own".
- 14:17:26 25 A. That's correct.
- 26 Q. 56 Mr. Gilmartin in evidence spoke about phoning the room and finding the phones
27 manned by yourself, Mr. Dunlop and Councillor Gilbride. Was Mr. Dunlop in that
28 room also from time to time?
29 A. I don't believe he was actually. I think, I have no recollection of him being
14:17:46 30 there. Councillor Gilbride, yes, I do recall that.

- 14:17:51 1 Q. 57 The impression being created in your statement. And again, I may be wrong on
2 this, Mr. Deane, is that you were effectively manning the phone on the night?
3 A. No, I don't think so that's a fair comment.
- 4 Q. 58 Yes. You don't for example say that there were calls taken by other
14:18:05 5 councillors for Councillor McGrath. Each time Mr. Gilmartin rang he
6 seems to have got you, isn't that right?
7 A. Well if what he says is correct, that also the phones would be manned by myself
8 Mr. Dunlop and others. Then he obviously got other people on that night.
- 9 Q. 59 Certainly when he got to you he was looking for Councillor McGrath. Councillor
14:18:27 10 McGrath wasn't prepared to take his call?
11 A. When he got through to me certainly, I obviously answered the phone on that
12 occasion, yes.
- 13 Q. 60 And you say you didn't know that Mr. Dunlop (sic) had been visited that
14 afternoon in England by representatives of the bank?
- 14:18:44 15 A. Mr. Gilmartin.
- 16 Q. 61 Or sorry Mr. Gilmartin?
17 A. No, I did not.
- 18 Q. 62 Or that Mr. Gilmartin had advised the bank in a telephone conversation within
19 days of that meeting and vote that it was his intention to go to the newspapers
14:18:57 20 in relation to the matters?
21 A. Again I didn't know that either.
- 22 Q. 63 And you have seen that evidence given by Mr. Gilmartin concerning his threat at
23 that time and indeed the evidence given by the bank in relation to that meeting
24 or conversation between Ms. Basquille and Mr. Gilmartin?
- 14:19:13 25 A. I didn't read Mr. Gilmartin's evidence. I have read some of the bank.
26
- 27 JUDGE FAHERTY: If I might ask you this, Mr. Deane. Can you recall who
28 admitted you to the Fianna Fail rooms on the 17th of December?
29 A. I think when I arrived there I rang Mr. O'Callaghan. As far as I recall either
14:19:33 30 he or somebody else brought me in or ... that's the way I think it happened

14:19:39 1 because I wouldn't have known my way around the building. So I think what
2 happened is when I got there some time mid afternoon, that sort of time, I rang
3 Mr. O'Callaghan.
4

14:19:48 5 JUDGE FAHERTY: And it was he who brought you to the room?
6 A. I can't say for certain but I think that's likely. That's all I can say.
7

8 JUDGE FAHERTY: I see. Thank you.

9 Q. 64 MR. QUINN: And you remained in the room throughout?
10 A. Yes.
11 Q. 65 And at 3150, Mr. O'Callaghan in his statement says that Mr. Gilmartin rang
12 several dimes. Do you recall Mr. Gilmartin ringing several times in the
13 evening?
14 A. Well he certainly rung more than twice anyway, that's my recollection.

14:20:22 15 Q. 66 Well by that do you mean that you had more than two conversations with him on
16 the telephone?
17 A. If I'm guessing, that's all I can do.
18 Q. 67 Did you introduce yourself to him at any stage?
19 A. No, because when I asked on each occasion who was speaking he didn't introduce
14:20:37 20 himself, so I didn't introduce myself.
21 Q. 68 And you didn't give him the impression that you knew who was speaking?
22 A. No, I didn't give him that impression.
23 Q. 69 And he didn't leave a message with you for Mr. McGrath or Councillor McGrath?
24 A. No, he didn't. He said he would ring back.

14:20:52 25 Q. 70 And of course Councillor McGrath was one of the signatories to the motion,
26 isn't that correct?
27 A. Yes.
28 Q. 71 At 8855. Now, Councillor McGrath has told the Tribunal that he has no
29 recollection of these events but he admits is that it may have happened. In
14:21:19 30 any event, I think the vote was ultimately successful and the motion was passed

- 14:21:26 1 and the rezoning went through, isn't that correct?
- 2 A. That is correct.
- 3 Q. 72 And I think that following on the vote on the night I think it was understood
- 4 that there was now a cap of 250,000 square feet on the site and the map would
- 14:21:48 5 have to go on public display?
- 6 A. That's correct.
- 7 Q. 73 At 14793, Mr. O'Callaghan I think wrote to the manager of the Bank of Ireland
- 8 in Cork advising him that the manager, Mr. Fitzgerald, had come on side.
- 9 You've seen that letter on the brief?
- 14:22:11 10 A. Yes.
- 11 Q. 74 Now, you would have discussed with Mr. O'Callaghan in the lead up to that vote
- 12 how matters were progressing and who was on side and how the vote was likely to
- 13 go on the night?
- 14 A. No, I wouldn't have discussed anything like what councillors were on side or
- 14:22:30 15 what councillors weren't on side.
- 16 Q. 75 Well did you know that --
- 17 A. Mr. O'Callaghan would have told me that generally the vote was looking positive
- 18 or that's the sort of discussion.
- 19 Q. 76 Did you know in advance of the vote on the night that it was likely that the
- 14:22:44 20 site would be capped at 250,000 square feet of retail space?
- 21 A. There was a discussion, I'm not sure whether it was on the day. In fact, as I
- 22 recall it there were a number of different propositions being put on the actual
- 23 day. One was to reduce it I think to 100,000 square feet. And it was
- 24 ultimately agreed at 250,000 square feet.
- 14:23:08 25 Q. 77 Yes.
- 26 A. But I don't think that happened. At least I don't recall it happening, when it
- 27 exactly happened.
- 28 Q. 78 At 8894; I think you wrote to Mr. Farrell on the 18th of December '92, in the
- 29 following terms you said:
- 14:23:21 30

14:23:21 1 "Further to our telephone conversation I enclose a very brief projection for
2 the Quarryvale taking into account the revised figures. I have worked on the
3 basis that net 250,000 square feet of retail space would equate to 325,000
4 square feet gross and in addition there would be man space".

14:23:38 5 A. That's correct.

6 Q. 79 Was it your understanding leaving that meeting on the night that you had got a
7 gross or a net retail cap at 250,000 square feet?

8 A. Yeah. The difference there between. The two differences in between net and
9 gross. The cap as I understood it was on retail space. In a shopping centre
10 you have you have other categories of space such as restaurants, cinema,
11 service units, such as banks, building societies, dry-cleaners and that sort of
12 thing which I wouldn't have classed now and probably even then, within a retail
13 category. And then there's the question of most planning guidelines now
14 describe retail space in terms of net retail space and that means you have a
15 box, part of it's retail, part of it's storage. So the net retail is always a
16 lower amount than the gross box that you see in a shopping centre.

14:24:24 17 Q. 80 But it was your understanding that the successful vote on the night had given
18 you a net retail space of 250,000 which equated to in excess of 300,000 gross
19 retail space, is that correct?

14:24:48 20 A. Yes, that's my understanding.

21 Q. 81 We know that Mr. Benson, who had been advising the bank wrote to Mr. McGrath at
22 9026 on the 4th of January '93. This is a, in addition to a note that he had
23 supplied on the 23rd of December and he discusses what had taken place on the
24 night of the 17th of December.

14:25:11 25
26 And if we go forward to 9027, he sets out the time scales going forward. And
27 at paragraph four he deals with the new zoning in relation to Quarryvale. And
28 if we go forward to 9028. If we go to paragraph eight he says "the above two
29 scenarios illustrate the likely range of time scale attaching to the
14:25:35 30 achievement of a commencement of a first phase development of 250,000 square

- 14:25:39 1 feet of gross retail floor space on the Quarryvale site with or without
2 associated industrial development".
3
4 Would you agree with me, that that seems to suggest that Mr. Benson was of the
14:25:50 5 view that what was achieved as a gross cap of 250,000 square feet?
6 A. Yes, that's what it says. Again, just to make the point that retail does not
7 include restaurants and cinema and the service units like banks and building
8 societies, dry-cleaners, post office that type of thing.
9 Q. 82 And indeed, I think it became necessary or at least yourself and/or Mr.
14:26:16 10 O'Callaghan felt it necessary that there should be clarity in relation to the
11 cap, isn't that correct? And an amendment was proposed for the Written
12 Statement commencing with a motion signed at -- if we could have 9563.
13 Councillors O'Halloran, Ridge, McGrath and Tyndall and received by the Council
14 on the 27th of April '93, isn't that correct?
14:26:44 15 A. Yes.
16 Q. 83 Did you know that that motion had been signed and was being proposed?
17 A. No.
18 Q. 84 And I think ultimately a variation on that motion was approved at a meeting on
19 the 4th of June '93, at 9669, at a special meeting of the Council and a
14:27:08 20 substantive motion it's at 9671 was adopted. Again, you say you weren't aware
21 that there had been an amendment to the Written Statement?
22 A. No, I knew there was discussions. I thought the question you asked was I aware
23 of the actual motion being lodged and the answer to that is no. Was I aware
24 there were discussions taking place about clarifying the motions of this area,
14:27:28 25 the answer is yes.
26 Q. 85 Would it be fair to say that the discussions had taken place sometime after the
27 17th of December, when it became obvious that there was some misunderstanding,
28 so to speak, or lack of clarity in relation to the matter from your point of
29 view?
14:27:43 30 A. Again, looking, I do remember this discussion but looking at the motion, I'm

- 14:27:49 1 not -- I don't actually see what it adds to what was already there because I
2 think is is it says is in the order of.
- 3 Q. 86 But not exceeding?
- 4 A. But not exceeding. So I don't see what the motion actually added to where we
14:28:03 5 were back in December 2000.
- 6 Q. 87 Yes. I'm going to suggest to you that the necessity for the motion was to
7 initially was to at least raise the floor space from a gross to a net 250,000
8 square feet and that it was prompted by an attempt to clarify that issue as to
9 whether or not it had been capped at a gross space or a net space?
- 14:28:30 10 A. That could be certainly correct but again, I don't see that it says net in the
11 motion. I'm at a bit of a loss to understand it.
- 12 Q. 88 Now, in January '93 at 9152, I think there was a loan summary done setting out
13 the position within Barkhill of the monies owed by it. It owed monies on foot
14 of a No. 1 account from February 1990. And a No. 2 account from September '91,
14:28:55 15 and then obviously it owed monies to Riga on foot of what was referred to as
16 the subordinated loan, isn't that correct?
- 17 A. That's correct.
- 18 Q. 89 But there were monies, I think due to Mr. Dunlop after that vote. For example,
19 at 8900 on the very next day following the vote on the 18th of December '92,
14:29:14 20 Mr. Dunlop through the entity Shefran Limited, raised a further invoice for
21 25,000 pounds, which I think was paid in February 1993?
- 22 A. I'm not sure does that relate to Quarryvale or to Balgaddy Stadium site?
- 23 Q. 90 Yes. This particular invoice appears to have been paid by Riga Limited and
24 written up to the work in progress Stadium account?
- 14:29:43 25 A. Again, again, I think things were written up to the work in progress Stadium
26 account which weren't necessarily Stadium only related, as I understand it.
- 27 Q. 91 Yes. And we saw the payment I think in November 1992, of the 70,000 pounds
28 raised on foot of an invoice which is dated the 20th of July '92 at 7723. And
29 we dealt with this I think on Friday.
- 14:30:08 30 A. That's correct.

- 14:30:09 1 Q. 92 The invoice, we also dealt on Friday with meetings between yourself, Mr.
2 O'Callaghan and Mr. O'Farrell in the bank as documented between late August,
3 early September '92 and December '92 where -- and in particular there was a
4 meeting I think on the 16th of September '92 where he documented all the
14:30:28 5 outstanding invoices at that stage in relation to the project. But I am going
6 to suggest to you that omitted from that schedule was this invoice if it
7 existed in September '92.
- 8 A. Yes, well from what I recall of the list you are talking about, that certainly
9 does not appear on that list.
- 14:30:52 10 Q. 93 Can you tell or advise the Tribunal as to whether this invoice had actually
11 issued on the 20th of July '92 and was in existence at that stage?
- 12 A. No, I can't.
- 13 Q. 94 Yes.
- 14 A. Again, I just repeat what I have said. I am not involved in the day-to-day
14:31:11 15 mechanics of the accounts. Even to this day, nor was I involved then when I
16 was running my own practice.
- 17 Q. 95 Now, we know that Mr. Dunlop was paid on the 10th of November '92, a sum of
18 11,490 pounds and we see that invoice -- sorry, that payment at 8454. And then
19 he raised a further invoice on the 1st of October '92 at 8152, invoice No. 740
14:31:32 20 for 21,063 pounds there was no VAT payable. And that invoice was paid by
21 cheque drawn on the No. 2 account on the 1st of December '93 -- '92 and we see
22 the cheque and the invoice on screen, isn't that the position?
- 23 A. That's correct.
- 24 Q. 96 And then I think he raised a further invoice on the 7th of December '92 at
14:31:51 25 8738, and at 8739 we see the invoice in the sum of 9,760 pounds?
- 26 A. Yes.
- 27 Q. 97 And I think that invoice was paid on the 14th of December '92. And we can see
28 the cheque dated the 14th of December '92 at 8692. Now, that last invoice, I
29 think there were two invoices raised; one, on Riga Limited and one on -- both
14:32:24 30 on Riga Limited in fact. The invoice for 9,760 was substituted for an invoice

- 14:32:34 1 at 17068. And it has a note "VAT issued" do you see that?
- 2 A. I see that yes.
- 3 Q. 98 Do you know if two invoices were issued and raised by Mr. Dunlop. One VAT
4 inclusive for 11,079 pounds and the other exclusive of VAT and paid by Barkhill
14:32:57 5 No. 2 loan account to Mr. Dunlop in the sum of 9,760?
- 6 A. Again, I'm not aware of those invoices other than seeing them in the brief.
- 7 Q. 99 And on the 21st of December '92, Mr. Dunlop raised an invoice. If I could have
8 8966. Which was paid on the 21st of January '93, in the sum of 64,897.78
9 pounds.
- 14:33:25 10 A. Yes.
- 11 Q. 100 And again, there has been discovered to the Tribunal at 17069, an invoice of
12 the 21st of December '92. It's copy invoice from Mr. Dunlop's office. It's an
13 invoice No. 778, which the is the invoice number given to the invoice raised on
14 Riga Limited. And it was in the sum of 17,070, shows 69,529.29 pounds.
- 14:33:56 15 A. Yes, I see that.
- 16 Q. 101 If we could go back to 17069. It says "this invoice was replaced by one to
17 Riga Limited for 64,897.78 pounds and was paid on the 25th of January '93".
18 And then he has in brackets "VAT issue". What was the VAT issue, Mr. Deane,
19 that was arising with Mr. Dunlop?
- 14:34:22 20 A. I have no idea.
- 21 Q. 102 Now, accompanying the paid invoice to Riga, and that invoice as I say is at
22 8966. Accompanying that was a schedule at 8967. And if I could have 17069 on
23 screen beside that invoice, that schedule please. Some of the items on the
24 invoice to Barkhill Limited are included in the schedule accompanying the paid
14:35:08 25 invoice to Riga Limited. For example, if you look at the first item there the
26 4,375 pounds being cost of Newsweek supplement, do you see that?
- 27 A. Yes.
- 28 Q. 103 Newswest supplement I should say. Well if you look to the left, sorry to the
29 right and bottom under the heading "other miscellaneous costs" you see the
14:35:31 30 4,375.

- 14:35:32 1 A. Yes.
- 2 Q. 104 And then if you take the next item to "your centre" brochure reprint 3,656.
- 3 Again, you will see that underneath under "other miscellaneous costs".
- 4 A. Yes.
- 14:35:50 5 Q. 105 To what extent would there have been discussion between yourself and Mr.
- 6 O'Callaghan and Mr. Dunlop in relation to that schedule as forwarded
- 7 accompanying the invoice to Riga Limited in December '92?
- 8 A. There was certainly no discussions involving me.
- 9 Q. 106 Yes. Now, there were a number of previous invoices from Mr. Dunlop and Frank
- 14:36:09 10 Dunlop & Associates which did not contain any detail either within the invoice
- 11 or by way of an accompanying schedule or document, isn't that correct?
- 12 A. Yes.
- 13 Q. 107 Can I ask you what prompted this particular breakdown at this time?
- 14 A. Again, I am just not familiar with the, how the documents originated or what
- 14:36:28 15 discussions there were at the time in relation to them.
- 16 Q. 108 But in any event, would it be fair to say that the Tribunal can take it that
- 17 yourself and Mr. O'Callaghan would have approved the payment of this invoice on
- 18 the basis that these were necessary costs or out-of-pocket expenses incurred by
- 19 Mr. Dunlop in relation to securing the rezoning of Quarryvale?
- 14:36:46 20 A. I think it's fair to say Mr. O'Callaghan would certainly have done that. I
- 21 don't know, I don't believe each individual invoice was discussed with me.
- 22 Q. 109 Can I ask you, Mr. Deane, if you can assist the Tribunal in relation to an
- 23 entry in Mr. Dunlop's diaries. If I just put one of these entries to you, it's
- 24 at 9133, it's dated the 27th of January 1993. We're dealing with January '93.
- 14:37:25 25 We've moved on after that vote in December '92. And do you see there on the
- 26 27th of January '93, 4 o'clock it's Wednesday and it has OOC re 'big one'. Do
- 27 you see that reference on the right?
- 28 A. Yes.
- 29 Q. 110 Now, if I could take you forward to an entry in his diary for the 3rd of August
- 14:37:43 30 '93 at 14218. 3rd of August '93, it's a Tuesday and it says "spoke to OOC re

- 14:37:51 1 'big one'. Again yes/yes" do you see that?
- 2 A. I do.
- 3 Q. 111 And there's a further entry on the 27th of September 1993 at 10174. Sorry, the
4 30th of September, it's a Thursday. And it reads "OOC report re 'big one'."
- 14:38:15 5 Do you see that?
- 6 A. No, I haven't found that yet.
- 7 Q. 112 It's the bottom left, Thursday the 30th. Do you see it, the very first entry
8 for Thursday?
- 9 A. It's probably the next page, is it?
- 14:38:26 10 Q. 113 No, no, it's not. If you look at the left?
- 11 A. Have we the right document on screen?
- 12 Q. 114 Yes.
- 13 A. Oh, I see it yes, sorry yes, yes, I thought the whole line was one page sorry.
- 14 Q. 115 And if I could bring another one to your attention, it's at 11042. It's for
14:38:41 15 the 1st of June 1994. It's top right hand corner it says "OOC and FDA's spoke
16 re 'big one' OOC said he hoped to have whole situation fixed up by end of
17 month". Do you see that?
- 18 A. Yes.
- 19 Q. 116 Can you assist the Tribunal, Mr. Deane, in relation to the reference 'big one'
14:39:05 20 as we see it in those entries in Mr. Dunlop's diary?
- 21 A. I have absolutely no idea what it relates to.
- 22 Q. 117 Did Mr. O'Callaghan ever discuss with you what appears to be recorded there,
23 namely, discussions between him and Mr. Dunlop in relation to what's described
24 as 'big one'?
- 14:39:20 25 A. No.
- 26 Q. 118 Can you speculate even, Mr. Deane, as to what might be referred to as 'big one'?
- 27 A. I haven't the remotest idea.
- 28 Q. 119 Did you have any other projects or involvement with Mr. Dunlop other than in
29 connection with Neilstown and the Stadium site in Balgaddy?
- 14:39:47 30 A. He did give us some advice I think in relation to Athlone and Horgan's Quay and

- 14:39:54 1 other situations like that but ...
- 2 Q. 120 But --
- 3 A. At this time I don't, I can't recall.
- 4 Q. 121 This was January '93. The first entry that I have put on screen at 9133 is
- 14:40:06 5 dated the 27th of January '93.
- 6 A. I think the only items where I was dealing with Mr. Dunlop at that time were
- 7 Neilstown and Quarryvale.
- 8 Q. 122 And you can't assist the Tribunal at all in what Mr. Dunlop is referring to
- 9 there as 'big one'
- 14:40:26 10 A. I have no idea what so ever.
- 11 Q. 123 And your evidence to the Tribunal is that this Mr. O'Callaghan, your partner,
- 12 never discussed with you any discussions he might have had with Mr. Dunlop
- 13 concerning 'big one'
- 14 A. No, absolutely none.
- 14:40:39 15 Q. 124 And as your partner, I presume Mr. O'Callaghan if he were entering into
- 16 discussions or agreements with Mr. Dunlop, he would have brought those
- 17 discussions or agreements to your attention?
- 18 A. Yes, I would expect so.
- 19 Q. 125 Now, I think in early January '93 at 9062, on the 12th of January '93 in fact,
- 14:41:03 20 Mr. Dunlop appears to have taken Therese Ridge to Cork. She was interested in
- 21 the Seanad Election, which was taking place at that time. Did you ever meet
- 22 Councillor Ridge?
- 23 A. Yes, I met her, I believe, at something to do with Liffey Valley in, I think it
- 24 was around maybe the time that the foundation stone was being laid or something
- 14:41:27 25 like that but yes, I did meet her at that stage.
- 26 Q. 126 But that would have been much later than January '93?
- 27 A. Yes, I don't -- is that meant to be a meeting in Cork, is it?
- 28 Q. 127 Yes. And I think she was introduced to people who might be of assistance to
- 29 her in her Seanad campaign at that time?
- 14:41:45 30 A. I don't remember. Sorry, I don't remember meeting her in Cork.

- 14:41:57 1 Q. 128 And on the 19th of January '93 at 9114, Allied Irish Banks Group committee
2 group -- Credit Committee I think were reviewing the Barkhill loan. Were you
3 aware that that review was taking place at that time?
- 4 A. No.
- 14:42:07 5 Q. 129 And I think under the heading "sought" the records or the mark up records the
6 following "noting of position. Re-grade loan B as bad and cease charging
7 interest on this loan from January '93 and loan B was the loan which is
8 referred to as June '91 but in fact appears to be the No. 2 loan that we have
9 been referring to over the last number of days.
- 14:42:34 10 A. Yes.
- 11 Q. 130 And I think yourself and Mr. O'Callaghan had a meeting with the bank on the
12 20th, that's the day following, that review?
- 13 A. That's correct.
- 14 Q. 131 At 125.
- 14:42:45 15 A. Yes.
- 16 Q. 132 And I think this is a meeting that was attended by Mr. McGrath, isn't that
17 correct?
- 18 A. That's correct.
- 19 Q. 133 And I think you have told the Tribunal and your evidence to the Tribunal has
14:42:53 20 been, that meetings involving Mr. McGrath are crunch meetings and serious
21 meetings?
- 22 A. Certainly serious meetings anyway.
- 23 Q. 134 So can the Tribunal take it that this was a serious meeting taking place in the
24 aftermath of the second successful Quarryvale vote?
- 14:43:11 25 A. It certainly ended up being a very serious meeting from our perspective.
- 26 Q. 135 Yes. And I think under the heading "retail plan" you discussed the current
27 plan in relation to getting anchors for your site, isn't that correct?
- 28 A. That's correct.
- 29 Q. 136 And I think you identified the anchors that you were seeking namely Marks &
14:43:28 30 Spencers, Dunne, Roches, Quinnsforth, isn't that right?

- 14:43:33 1 A. That's right.
- 2 Q. 137 And would it be fair to say that going forward of crucial importance obviously
3 would be the zoning, dependent on the zoning would obviously be the planning
4 then came the possibility of anchors taking up an interest in the development
- 14:43:49 5 --
- 6 A. That would be the sequence.
- 7 Q. 138 -- main anchors. And once you have main anchors presumably you would have
8 other tenants and the development would flush out, is that correct?
- 9 A. The smaller tenants would generally be determined by the calibre of the main
10 anchors you get for the scheme.
- 11 Q. 139 And at 9126, I think having discussed the anchors you went on to discuss what
12 was likely to happen in competing developments. And I think you identify or
13 the note records reference to three such developments namely the Neilstown town
14 centre, I think Mr. Sharkey had applied for planning permission on his site,
15 which would have been adjacent to what was referred to as the Stadium site at
16 Neilstown, isn't that right?
- 14:44:28 17 A. Yes, that's right.
- 18 Q. 140 And that would have had up to then and I think it continued to have a town
19 centre zoning, isn't that's correct?
- 14:44:40 20 A. Yes, that's correct.
- 21 Q. 141 And then I think there was the question of the Clondalkin paper mills site
22 which now appears to have received planning permission but you are recorded as
23 having been in a position to advise the meeting that Mr. Mansfield, who was
24 running that site, would have to reassure the planners in relation to potential
14:44:57 25 flooding problems on that site?
- 26 A. That's correct, there was a flooding issue with his site.
- 27 Q. 142 And then I think the third site identified were lands adjacent to Barkhill,
28 which were I think lands which had been given to the IDA by the Corporation?
- 29 A. That's correct.
- 14:45:15 30 Q. 143 And I think you or somebody advised the meeting that the IDA did not have the

- 14:45:20 1 funds for that development?
- 2 A. Yes, it was an IDA development so it wouldn't really be competing with the
- 3 retail aspect of it. It might have competed with the industrial.
- 4 Q. 144 Would it also be fair to say, Mr. Deane, that just going back to the anchors
- 14:45:33 5 for a moment. That lining up anchors was something that all the western town
- 6 developers were pursuing at that stage, not just yourselves but
- 7 also Blanchardstown?
- 8 A. Yes, Blanchardstown as far as I can recall around this time would certainly
- 9 have been looking to do the same.
- 14:45:55 10 Q. 145 And presumably until you had an anchor tenants or the anchor tenants lined up
- 11 you couldn't say that you had a viable development site?
- 12 A. Well you, I suppose the first thing is when you have a good site you would be
- 13 pretty sure it's viable. The question is how viable is often determined by the
- 14 calibre of the anchor tenants you achieve. If you achieve Marks & Spencers you
- 14:46:23 15 attract a certain type of tenent who would probably pay you more rent than if
- 16 you achieved a lesser named anchor tenant.
- 17 Q. 146 Would it be fair to say that a developer at this stage, you in particular,
- 18 yourself and Mr. O'Callaghan would be keeping a weather eye out for what your
- 19 nearest rival who was also in the market for development at this time namely
- 14:46:42 20 Blanchardstown or Green Property what they were doing?
- 21 A. Yes of course.
- 22 Q. 147 And would you be seeking to attract anchors to your site in the hope that they
- 23 might not go to your competitor, your nearest rival Green Properties?
- 24 A. Well it depends. Some of the anchor tenants can do business in both centres.
- 14:46:59 25 And in fact, today there are anchor tenants in both. Perhaps the key tenant
- 26 for this site to distinguish it from Blanchardstown would have been to get
- 27 Marks & Spencer but Dunnes would have gone I believe to both as would Roches as
- 28 would others.
- 29 Q. 148 Now, there were two other issues, I think at least two other issues which were
- 14:47:19 30 discussed at this crucial meeting and the first was Mr. Gilmartin, isn't that

14:47:23 1 correct? And the note records that Mr. McGrath had highlighted a commitment he
2 had given to Mr. McGrath (sic) last December, that a joint meeting of the
3 Barkhill shareholders would take place during January and inquired whether
4 O'Callaghan/Deane had formulated any strategy to bring him on side. Would it
14:47:40 5 be fair to say that the Tribunal can take it from that reference Mr. Deane,
6 that as of January 1993 Mr. Gilmartin was not on side and that you were being
7 encouraged to formulate a scheme to bring him on side?

8 A. I think it's fair to say that Mr. Gilmartin hadn't turned up to various
9 meetings, hadn't been involved in the process, the banks were anxious that we
14:48:01 10 try and get together and smooth out troubled waters and progress in a more
11 satisfactory manner, yes.

12 Q. 149 So a certain level of disharmony had broken out between yourselves and Mr.
13 Gilmartin by January '93?

14 A. I think it was there for a considerable amount of time before that probably,
14:48:19 15 yes.

16 Q. 150 And would be it be fair to say that having regard to the fact that the note
17 records Mr. McGrath has given a commitment to Mr. Gilmartin to have a meeting,
18 that a meeting was something that Mr. Gilmartin was seeking in December '92?

19 A. If Mr. Gilmartin wanted a meeting at any stage he could have had a meeting.
14:48:38 20 But certainly the banks were obviously anxious to make sure the parties worked
21 together and worked than work in the opposing directions.

22 Q. 151 And you recalled it last week, I inquired of you as to why it was that the case
23 that if wasn't until March 1993, that we had the first board meeting following
24 on the shareholders, share option agreement being entered into in September
14:49:00 25 '91?

26 A. Yes.

27 Q. 152 Account Tribunal take it that the more regularising of the board meetings in
28 1993 and thereafter stemmed from this discussion in January '93 with
29 Mr. McGrath?

14:49:17 30 A. I think.

- 14:49:17 1 Q. 153 And his commitment to Mr. Gilmartin in December '92?
- 2 A. I think that's, that is correct in the sense that obviously after that it
- 3 happened. But I wouldn't want to leave anybody with the impression that there
- 4 was any reticence on our part to meet with Mr. Gilmartin when we were able to
- 14:49:34 5 meet with the banks on a nearly fortnightly basis up to December '92 as you
- 6 would have seen from all the notes we had and there was certainly no impediment
- 7 on Mr. Gilmartin coming to any of those meetings.
- 8 Q. 154 Now, another issue that appears to have arisen at this time were the
- 9 requirements for Barkhill going forward. Barkhill had exhausted all of the
- 14:49:53 10 facilities provided to it by the bank, isn't that correct?
- 11 A. Yes.
- 12 Q. 155 And I think it had a requirement to acquire at least one other property namely
- 13 the County Council lands, having put a deposit on those lands I think in
- 14 September 1991 of 88,000 Pounds, being 10 per cent of the purchase price at
- 14:50:10 15 that time?
- 16 A. Yes.
- 17 Q. 156 You also had ongoing commitments in relation to interest. I think the role up
- 18 roll up on the interest on the two accounts was coming up for review.
- 19 A. Yes, there were regular reviews of the facilities.
- 14:50:25 20 Q. 157 And if we go forward. I think there was a substantial discussion between
- 21 yourself and the bank at this meeting in relation to commitments going forward
- 22 and funding from the bank?
- 23 A. Absolutely.
- 24 Q. 158 And if we look at 9127. It records that "Dave McGrath responded that while we
- 14:50:40 25 would be recommending to our board a further roll up of interest charges for
- 26 the coming year, there would be no funding available from AIB for further fees
- 27 outlay".
- 28 A. Yes.
- 29 Q. 159 "In this regard it was highlighted that the increase in facility was sanctioned
- 14:50:54 30 9 to 14.5 million had incorporated.9 million to acquire the County Council

- 14:50:59 1 lands which remained outstanding despite the fact that this portion of the
2 facility was more besides had been utilised for increased fee/land payments
3 beyond the level anticipated."
- 4 A. Yes.
- 14:51:13 5 Q. 160 "Owen O'Callaghan appeared somewhat taken aback at this and advised that Riga
6 did not have the ability to pick these fees either."
- 7 A. Yes.
- 8 Q. 161 "He then asked whether AIB were prepared to live with the consequences and
9 requested clarification of our thinking/objectives in relation to Barkhill."
14:51:33 10 Now, what consequences were being referred to there, Mr. Deane?
- 11 A. Well if the bank weren't prepared to fund the fees going forward then we had
12 reached a crisis point and the whole problem that we had coming up to
13 Christmas, you will have seen from various notes that we were asking the bank
14 to fund fees and the bank were saying that they wouldn't, they wanted them
14:51:54 15 split and for us to carry some. And we had been doing that and it now got to
16 the stage certainly at this point I think we felt that zoning had been achieved
17 and the bank were saying we've got our zoning we're not paying any more money.
18 We got pretty upset at that whole prospect.
- 19 Q. 162 And it goes on to record "Dave McGrath outlined that and AIB's view, the
14:52:12 20 priorities to obtain planning permission as soon as possible at the lowest
21 cost. He indicated the view that the development was too large for Riga to
22 handle alone and that serious consideration should be given to disposing part
23 of the site at the earliest possible date. In addition Barkhill/Riga should
24 give ongoing attention to seeking a development partner for the project.
- 14:52:33 25 A. That's correct.
- 26 Q. 163 So the bank were encouraging you to introduce a development partner to the
27 project?
- 28 A. I think the bank having got the zoning were now taking a very hard line with
29 the whole thing and in relation to fees and in relation to everything. And
14:52:48 30 their view was at that time we don't want to pay out any more money. We said

- 14:52:53 1 which couldn't so the third option was go and get somebody else who might be
2 able to do it.
- 3 Q. 164 And I think there were some discussions with interstate Johnson lane, is that
4 correct?
- 14:53:03 5 A. Yes, that was a company that was introduced by Mr. Gilmartin and they came to
6 Ireland with their lawyers, I think they were Dryer & Traub from New York and
7 also a solicitor from a London firm, and they were interested in providing
8 facilities which would enable the bank and ourselves to be taken out and the
9 bank repaid and Tom Gilmartin back in charge of the entire situation.
- 14:53:30 10 Q. 165 Now, under the heading "outstanding fees". I think there was a discussion on
11 outstanding fees, isn't that correct?
- 12 A. There certainly was.
- 13 Q. 166 And Mr. O'Callaghan is here recorded as having advised that a payment of 64,000
14 was still due to Frank Dunlop in relation to zoning costs and requested payment
14:53:48 15 of the invoice from Barkhill loan facility. That's the 64,000 referred to in
16 the invoice which I had on screen earlier?
- 17 A. Yes.
- 18 Q. 167 Dated the 21st of December '92 at 8966, and which gave a breakdown of which is
19 to be found in the accompanying schedule at 8967.
- 14:54:11 20 A. Yes.
- 21 Q. 168 Yes.
- 22 A. Sorry, that's not the right number.
- 23 Q. 169 8967. The contributions to the golf classics, the boxing clubs?
- 24 A. Yes.
- 14:54:29 25 Q. 170 Then also the security, isn't that right?
- 26 A. That's correct.
- 27 Q. 171 Of 17,000. And then the miscellaneous costs in relation to the Newswest
28 supplement, the reprint, the photocopying and I think there is a sum of 15,636
29 assigned to expenses for Christmas gifts.
- 14:54:48 30 A. It says and, that's right.

- 14:54:51 1 Q. 172 Other costs including expenses. Who received those Christmas gifts?
- 2 A. I have no idea.
- 3 Q. 173 And then I think he had a sum of 7,300 towards miscellaneous expenses. In any
- 4 event, this 64,000 was due when you met with Mr. McGrath and Mr. O'Farrell?
- 14:55:14 5 A. That's right.
- 6 Q. 174 And if we go back to 9127; this is a record of what Mr. O'Callaghan is alleged
- 7 to have said at the meeting. "He said he was clearly disappointed when told
- 8 that this would not be possible, in view of the fact that the facility was
- 9 drawn to the maximum amount permitted and he highlighted that Riga would be
- 14:55:34 10 covering all fees in relation to the Green take over and the Stadium proposal
- 11 which had indirect benefit for Barkhill and had also paid security costs in
- 12 relation to the Bruton house.
- 13
- 14 In relation to urgent fees, he also indicated that approximately 10,000 would
- 14:55:48 15 be required after all itinerants were cleared from the south to site to put up
- 16 an earth mound around the site in order to avoid further itinerants from moving
- 17 in. At this point it was highlighted that a budget for the coming year should
- 18 be prepared as soon as architects planning/fees had been quantified."
- 19 A. Yes.
- 14:56:06 20 Q. 175 So would it be fair to say that Mr. O'Callaghan has give he be a commitment to
- 21 the bank at this stage that Riga were going to cover all fees in relation to
- 22 the Stadium proposal?
- 23 A. Yes, this is a cashflow exercise as far as I'm concerned this is what this
- 24 whole thing was about; who is going to provide the cash to pay the fees to pay
- 14:56:33 25 for the expenses which were due. Riga had been covering them and was
- 26 continuing to cover some of them out of its own facility and its own facility
- 27 had become, I think had actually gone over its limit at that particular point
- 28 in time. And I think there was discussion later on about increasing our
- 29 facilities.
- 14:56:45 30 Q. 176 Yes.

- 14:56:45 1 A. So it's not a question of us covering the costs as it were forever it's on an
2 interim basis for paying for that.
- 3 Q. 177 And I think the audit on the Barkhill account was still outstanding and we'll
4 deal with the queries raised on that account at a later stage?
- 14:57:06 5 A. Yes.
- 6 Q. 178 Now, I think a meeting was proposed for the 9th of February '93, which might be
7 attended by Mr. Gilmartin and which was likely to be attended by Mr. Gilmartin
8 in the event Mr. Gilmartin didn't attend at that meeting, isn't that right?
- 9 A. Yes, that's correct.
- 14:57:20 10 Q. 179 Now, we know that Mr. Gilmartin was forwarded a loan summary update on the 2nd
11 of February '93 at 9163, we have a fax to Mr. Gilmartin from Ms. Basquille on
12 that date. And she gives him an update and the accompanying documents at 9166
13 shows the loan summary on the Barkhill No. 1 and No. 2 accounts as of the 29th
14 of January '93 and we saw that a moment ago.
- 14:57:53 15
16 And then there was a further document at 9167 which showed the utilisation of
17 the Riga subordinated loan of 1 million and also the fees paid from the No. 2
18 loan account?
- 19 A. Yes.
- 14:58:04 20 Q. 180 And both of those payments would have identified the total payments to that
21 date to Mr. Dunlop and to Shefran Limited. And would have included the three
22 Shefran payments of 25, 40 and 15,000 in 1991 and the two Shefran payments in
23 April and June '92 from the No. 2 loan account of 40 and 30,000 respectively?
- 24 A. Yes.
- 14:58:28 25 Q. 181 Isn't that right?
- 26 A. Yes.
- 27 Q. 182 And all of the other various payments including the payments we dealt with on
28 the last occasion and made in late '92 to Frank Dunlop & Associates?
- 29 A. Yes, that appears to do that, yes.
- 14:58:40 30 Q. 183 But in addition to that, you had an invoice I think in your possession for

- 14:58:45 1 25,000 pounds from Shefran Limited, which was to be paid later that month. And
2 you had an invoice of 64,000 from Frank Dunlop & Associates, which again was to
3 be paid by Riga Limited without reference to Barkhill, isn't that correct?
- 4 A. No, sorry, I don't understand the last part of the question.
- 14:59:02 5 Q. 184 Yes. The 64,000 that was mentioned at the meeting on foot of the invoice
6 raised in the December '92?
- 7 A. Yes.
- 8 Q. 185 That was paid by Riga Limited, isn't that right?
- 9 A. It was, yes.
- 14:59:15 10 Q. 186 You has sought in your meetings with the bank to have that 64,000 paid out of
11 the No. 2 loan account.
- 12 A. Yes.
- 13 Q. 187 What I am suggesting to you is that there isn't any reference to that invoice
14 in the documentation there furnished?
- 14:59:29 15 A. No, it says fees paid from the Barkhill loan account. It wasn't paid from
16 the --
- 17 Q. 188 That hadn't been paid?
- 18 A. No, and therefore it wouldn't be appropriate to be on that list I think.
- 19 Q. 189 And in addition, you had received I think a 25,000 pounds invoice in December
14:59:43 20 '92 from Shefran Limited that is Riga had received an invoice for 25,000 pounds
21 from Shefran Limited. And again, that's not on the list of payments?
- 22 A. Again, if it wasn't paid out of the No. 2 account, it wouldn't be appropriate
23 to have it on that list I would have thought.
- 24 Q. 190 But accompanying the documentation to Mr. Gilmartin at 9165 was a request for a
15:00:04 25 drawdown for two Shefran -- sorry two Frank Dunlop payments. A payment of the
26 21063 pounds which was made on the 1st of December and the 9,760 pounds which
27 was made on the 14th of December.
- 28 A. Yes, I see that.
- 29 Q. 191 And then there was I think a sum of 5,000 pounds sterling paid to Mr. Dunlop?
- 15:00:27 30 A. Mr. Gilmartin.

- 15:00:28 1 Q. 192 Sorry Mr. Gilmartin. In December '92?
- 2 A. That's correct.
- 3 Q. 193 But he wasn't being requested at this stage to sanction a drawdown on the No. 2
- 4 loan account for either the 64,000 pounds or the 25,000 pounds Shefran payment?
- 15:00:41 5 A. No, and again, I wouldn't have expected that when the bank said they weren't
- 6 going to pay it. There was no point having a drawdown request when the bank
- 7 have told you we're not going to pay it.
- 8 Q. 194 Yes. The consequence of all that or the net effect of all that if we look at
- 9 9167 if we look at Mr. Gilmartin isn't aware that in addition to all of the
- 15:01:01 10 Shefran and Frank Dunlop & Associates payments we see on that document were two
- 11 further payments of 25 and 64 respectively?
- 12 A. Well again I don't know that he was aware of it or not. Whether the bank told
- 13 him of this request. He was asked to come to a meeting. He didn't come. So
- 14 again ...
- 15:01:22 15 Q. 195 And if I go back to 9165 in relation to the sanction sought for those three
- 16 payments and included in the three is one directly to himself. Mr. Gilmartin
- 17 doesn't appear to have sanctioned those payments?
- 18 A. Again, I don't know whether that's correct or not.
- 19 Q. 196 And going forward. There were payments made by Riga Limited between early '93
- 15:01:45 20 and I think it's June '93 when a No. 3 loan account is opened and a further
- 21 facility is provided. Your discussions in early January/February '92 within
- 22 the bank and Mr. McGrath I think ultimately led to a further facility being
- 23 granted to Barkhill by way of a No. 3 loan account, which appears to have come
- 24 into play in or around the 18th of June '92 -- '93?
- 15:02:09 25 A. Yes and I think there was a further facility for Riga Limited at the time as
- 26 well to regularise the Riga account.
- 27 Q. 197 And in a moment I can go through the payments on that No. 3 loan account. And
- 28 initially, they are effectively payments to Riga for to reimburse Riga for
- 29 monies expended by Riga during this period on behalf of Barkhill, isn't that
- 15:02:30 30 right?

- 15:02:31 1 A. I'm sure it is, yes.
- 2 Q. 198 But the sanction in relation to those draw downs and the reimbursement of Riga
3 are all sanctions that are signed by Mr. O'Callaghan and Mr. Pitcher, the other
4 director of Barkhill Limited?
- 15:02:44 5 A. That would well be the case, yes.
- 6 Q. 199 And we saw that two of the three directors could, were mandated to sanction the
7 drawdowns on the Barkhill account?
- 8 A. That's correct.
- 9 Q. 200 But at this time, going forward, I suggest to you that Mr. Gilmartin for some
15:03:00 10 reason appears to have not sanctioned the payments that we see on screen nor
11 indeed does he appear to be asked to sanction or have sanctioned any of the
12 other payments on foot of the No. 3 account. That seems to be a change in the
13 sanctioning of drawdowns on the Barkhill accounts.
- 14 A. Well as I understand it the appropriate authority were two directors to sign.
15:03:27 15 If that was operated, then the account was operating within its sanction. Mr.
16 Gilmartin was invited to meetings. You yourself brought up the point that he
17 was invited to a meeting on the 9th of February and he just didn't turn up.
18 There comes a point in time that the business has to continue and really Mr.
19 Gilmartin has to come to these meetings.
- 15:03:49 20
- 21 JUDGE FAHERTY: Mr. Deane, last week we saw a memo from Mr. O'Farrell saying
22 that while Mr. Pitcher was sanctioning payments with Mr. O'Callaghan, it would
23 be preferable that Mr. Gilmartin would sanction payments?
- 24 A. Yes, I remember seeing that.
- 15:04:06 25
- 26 JUDGE FAHERTY: I can't remember now what. It was some meeting in '92, I
27 think?
- 28 A. And he said he would like the shareholders to sign it.
- 29
- 15:04:14 30 JUDGE FAHERTY: The shareholders. While Mr. Pitcher was a shareholder and a

15:04:18 1 director, the bank seemed to be treating him was preferring that you and or Mr.
2 O'Callaghan and Mr. Gilmartin, isn't that correct?

3 A. That's correct certainly that memo did certainly suggest that.

4

15:04:34 5 JUDGE FAHERTY: And I am just asking you, I think it's in that contact that
6 Mr. Quinn is asking you that given that that request was there from the bank,
7 even though Mr. Gilmartin wasn't coming to meetings. There had been occasions
8 previously where mandates were sent to him or faxed to him, isn't that correct?

9 A. That's correct.

15:04:53 10

11 JUDGE FAHERTY: For draw downs?

12 A. That's correct.

13

14 JUDGE FAHERTY: And you don't know why that wasn't done?

15:04:59 15 A. As far as I'm concerned the issue of who signed the mandates was what's in the
16 bank mandate and that's the correct thing. The bank for its own reasons
17 obviously thought it was preferable to get somebody signed off, by Mr.
18 Gilmartin to what extent the bank discussed a change or a change happened or it
19 didn't become an issue, I just can't say, Judge.

15:05:20 20

21 JUDGE FAHERTY: Thank you.

22 Q. 201 MR. QUINN: Now, we saw from the attendance of January '93, a suggestion from
23 Mr. McGrath that you would prepare a schedule going forward of likely, a budget
24 effectively, for upcoming expenditure. And I think you wrote to the bank on
15:05:42 25 the 10th of February '93 at 9244. Two letters one, in respect of Barkhill and
26 one in respect of Riga?

27 A. Yes.

28 Q. 202 And we're just looking at the moment at the one in relation to Barkhill?

29 A. Yes.

15:05:55 30 Q. 203 And you had your meeting on the 9th of February that wasn't attended by Mr.

- 15:06:10 1 Gilmartin isn't that right?
- 2 A. Yes.
- 3 Q. 204 I don't believe that that was a board meeting because the Tribunal has been
- 4 advised that under the share subscription agreement, that the bank director had
- 15:06:10 5 to attend a further meeting to become a board meeting?
- 6 A. No, I don't think there was a board meeting at all, chairman, I think it was
- 7 very much a bank, a bank/customer meeting rather than a board meeting.
- 8 Q. 205 And in this letter of the 10th of February '93. If we go forward to 9246. You
- 9 advised the bank that the current facility being sought by Barkhill would
- 15:06:37 10 appear to be as follows.
- 11
- 12 "The 15.5 million which was the existing loan facility, a roll up of interest
- 13 and then you identify a series of outstanding accounts namely Ovarup, which was
- 14 15,000, Deloitte & Touche 10,000, the repairs and security on the site and
- 15:06:56 15 building, 20,000. Injunction proceedings 10,000. And enclosing the site
- 16 20,000. And planning application at 300,000 and I think there was the
- 17 possibility of the acquisition of an additional minor piece of property in the
- 18 sum of 60,000 identified as the O'Donoghue cottage?
- 19 A. That's correct.
- 15:07:19 20 Q. 206 And you went on to say "as you are aware there is at substantial of 810,000 due
- 21 to the council -- due to the Council. That's in relation to the balance
- 22 outstanding on the Council lands?
- 23 A. That's correct.
- 24 Q. 207 This has not been paid to the Council solely because not requested payment on
- 15:07:33 25 foot of the contract. And you said that Owen is extremely confident that in
- 26 the event of payment being requested within the next 12 months he would be able
- 27 to make an arrangement with the County Manager whereby the payment is postponed
- 28 until the end of the 12 month period?
- 29 A. Yes.
- 15:07:48 30 Q. 208 How were you able to give that commitment to the bank in February '93?

- 15:07:52 1 A. Owen believed he would be able to achieve that.
- 2 Q. 209 Did he tell you how or why he was of that belief at that time?
- 3 A. As far as I recall it was just a general discussion of the Council would
- 4 probably be prepared to extend the time. Obviously, they would get their
- 15:08:11 5 interest and penalties and whatever. But the issue was the capital sum here
- 6 being paid out in a shorter order.
- 7 Q. 210 So those were the anticipated outgoings at that time?
- 8 A. Yes, those were the anticipated outgoings for Barkhill going forward on the
- 9 assumption that Riga carried a number of other costs for which we were seeking
- 15:08:33 10 an additional loan facility to cover those costs.
- 11 Q. 211 Anyone included in the other costs that you were carrying was the 64,000 to Mr.
- 12 Dunlop, the 25,000 to Shefran?
- 13 A. Yes.
- 14 Q. 212 Which had been billed?
- 15:08:46 15 A. Yes.
- 16 Q. 213 The monies being paid to Mr. Sean Gilbride by way of 1,750 per month from
- 17 September '92 to April '93?
- 18 A. Yes.
- 19 Q. 214 And the 70,000 you had given to Frank Dunlop & Associates on foot of the
- 15:09:04 20 Stadium invoice?
- 21 A. Correct.
- 22 Q. 215 And other fees?
- 23 A. Yes.
- 24 Q. 216 And I think as I say, on the same day. If I can have 9240 you wrote a further
- 15:09:16 25 letter in connection with Riga Limited?
- 26 A. Yes.
- 27 Q. 217 And you attached a revise the cashflow statement for the 1st of January '93 to
- 28 the 31st of December '93. And then you gave background by way of the purchase
- 29 of the Cumberland House which appears to have been purchased out of the monies
- 15:09:35 30 paid on foot of the option agreement given to you by Mr. Gilmartin, is that the

- 15:09:40 1 position?
- 2 A. That's correct yes.
- 3 Q. 218 On the basis of the forthcoming payment Riga Limited, invested 2.5 million by
- 4 way of equity in the acquisition of the Cumberland House property. And you
- 15:09:50 5 deal with the value of that property. And at 9241, I think you go on to deal
- 6 with the following. "In addition to the foregoing Riga Limited has also
- 7 incurred additional expenses in um, in the sum of 400,000 pounds approximately
- 8 in order to secure the Quarryvale zoning?
- 9 A. Yes.
- 15:10:08 10 Q. 219 This has been spent in two ways as follows 150,000 has been paid on various
- 11 expenses directly related to the Quarryvale project and for which invoices have
- 12 not been produced to the bank nor has the bank been requested to make any
- 13 payment out of the Barkhill account?
- 14 A. Yes.
- 15:10:23 15 Q. 220 And then you say 250,000 has been spent in connection with the Stadium project
- 16 for the old Neilstown site?
- 17 A. That's correct.
- 18 Q. 221 Now, if we look at the accounts within Barbar & Co. for the year ended April
- 19 '93 at 8911. There are headings given to expenditure in this printout. For
- 15:10:49 20 example in the nominal account number 259 there's a heading given to planning
- 21 fees?
- 22 A. Yes.
- 23 Q. 222 You see that at the bottom and I think they total 20,000 pounds?
- 24 A. Yes.
- 15:10:59 25 Q. 223 And then there is the nominal account 270 and there is a heading given to
- 26 professional fees, do you see that?
- 27 A. Yes, I do.
- 28 Q. 224 And if we go forward to the next page I think we see those professional fees
- 29 and a breakdown of those professional fees?
- 15:11:16 30 A. Yes.

- 15:11:17 1 Q. 225 And I think that 86,309.29 pounds is the 80,000 pounds Shefran payments paid in
2 April and May or May and June 1991. That's the 25, 40 and 15 to Shefran
3 Limited?
- 4 A. Yes.
- 15:11:35 5 Q. 226 Plus a balancing figure over the, over and above on the subordinated loan
6 account of 6,309?
- 7 A. That's correct.
- 8 Q. 227 Then we see the 15,500 to Sean Gilbride?
- 9 A. Yes.
- 15:11:48 10 Q. 228 There is a 5,000 pounds I think professional presentation, is it?
11 A. That's right.
- 12 Q. 229 And then there is the 70,000 to Frank Dunlop?
- 13 A. Yes.
- 14 Q. 230 There is further minor fees there. There is the further 25,000 to Shefran?
- 15:12:02 15 A. Yes.
- 16 Q. 231 And I think a payment to Ernst&Young, Harrington Bannon 500 pounds, Council
17 fees and then there is Deloitte & Touche 31, is that 31,954, is that the
18 feasibility study?
- 19 A. I believe that to be that yes.
- 15:12:18 20 Q. 232 And then Ambrose Kelly 52515?
21 A. Yes.
- 22 Q. 233 Is that the 19,000 for the Stadium plus additional fees?
23 A. Again I'm not certain how the exact make up of that.
- 24 Q. 234 And in any event it's an amalgamation of a number of invoices?
15:12:37 25 A. I would say that's probably correct.
- 26 Q. 235 And then there is the 64,000 to Frank Dunlop?
27 A. Yes.
- 28 Q. 236 And I think that give as total of 405,000?
29 A. Yes.
- 15:12:45 30 Q. 237 And if you add to that the 20,000 planning fees I think you get a total of

15:12:49 1 425322 entered at that time under the heading work in progress Stadium?

2 A. That's correct.

3 Q. 238 And at this time I think it was intended that those fees would enter as on the

4 profit and loss account under the heading planning fees and professional fees

15:13:09 5 but ultimately I think they found their way into the balance sheet and they

6 were transferred across to the assets of the company?

7 A. Yes.

8 Q. 239 Isn't that correct?

9 A. They were assets in that they were money spent on behalf of Barkhill as it were

15:13:26 10 for the Neilstown and for Quarryvale and therefore they were carried as assets.

11 Q. 240 Yes. But when they were entered up initially they were expenses and I think

12 they are transferred across. If go we go to for example to 8914, this is a

13 further extract from Barbar & Co. You see "establishment expenses" just near

14 the bottom and you see the last three items under the heading establishment

15:13:51 15 expenses 259 and 270 are the planning fee Stadium and the professional fees

16 that gives you the 42, isn't that right?

17 A. Yeah.

18 Q. 241 And then you see the closing WIP Stadium 425332. I suggest to you that that's

19 a transfer across from the profit and loss account to the assets of the company

15:14:13 20 of those fees. And we see them entered under assets of the company at 8915.

21 Under the heading current assets. And we see the second item there WIP Stadium

22 425332?

23 A. Yes.

24 Q. 242 I am not saying that there is anything untoward of this accounting treatment?

15:14:36 25 A. I thought that's what you were suggesting.

26 Q. 243 I'm merely stating this is the historical progression of how they were treated?

27 A. Again, I am not an accountant so I have to defer to others on that.

28 Q. 244 And I think if we look at that figure of 435, I think in the note accompanying

29 the accounts for the year ended 30th of April '93, if we look at 8917 --

15:14:57 30 actually if we go back to 8916. We see under the heading "current assets" the

- 15:15:06 1 second item there under debtors "properties held for resale and development"
2 and we see 1.705 million, do you see that? It's under "current assets" second
3 item down "properties held".
- 4 A. Yes.
- 15:15:19 5 Q. 245 And there is a note one, in fact that should be note 11. And if we go to 8917
6 note 11 it gives says that included in that figure is a sum of 425,332 which
7 represents monies invested in the project known as the Stadium. At this early
8 stage of the project the directors are confident having had a feasibility study
9 completed that the project will realise an amount in excess of that which is
10 stated in the balance sheet?
- 11 A. That's correct.
- 12 Q. 246 And presumably that statement enabled those funds to be included as part of the
13 assets of the Stadium, isn't that correct?
- 14 A. Yes and the fact that it was anticipated to be recovered so ...
- 15:15:59 15 Q. 247 So we have an indication new of what items are included in the Stadium, isn't
16 that the position, under work in progress said Stadium for that period ending
17 April '93 and go back again to 8912, please. And we are dealing with the books
18 and records of Riga Limited.
- 19 A. I see there it's in under work in progress Stadium but they were not all
20 related to the Stadium.
- 15:16:36 21 Q. 248 The 86,309.29 pounds I think had appeared in the Riga books and records for the
22 year ended April '92, under the loan account of Barkhill with Riga?
- 23 A. That's correct.
- 24 Q. 249 And evidence has been given that the funds or that that figure or that portion
15:16:52 25 of the loan account had been transferred into this work in progress Stadium for
26 the year ended April '93?
- 27 A. Yes, I think it's part of a larger transfer, yes.
- 28 Q. 250 Yes. And the printout that we have on screen is dated the 8th of June '93. Do
29 you see that just above the?
- 15:17:10 30 A. Yes, I see that.

- 15:17:10 1 Q. 251 And we know that the accounts for Riga Limited for the period ended April '92
2 were signed off on in October '92? I can get you the reference for that.
- 3 A. I am prepared to accept that.
- 4 Q. 252 So would you agree with me that a decision was made somewhere between October
15:17:29 5 '92 and June '93, that that 86,000 was would be transferred out of the Barkhill
6 loan account and into a Stadium work in progress account?
- 7 A. Yes, that would make sense.
- 8 Q. 253 And we saw Mr. O'Callaghan's commitment to the bank at the meeting in January
9 '93, that Riga would take up the Stadium fees, isn't that correct?
- 15:17:54 10 A. Would pay the Stadium fees rather than take responsibility in that sense.
- 11 Q. 254 Would pay the Stadium fees. Was the transfer a transfer on foot of that
12 commitment from Mr. O'Callaghan?
- 13 A. The transfer of the 86?
- 14 Q. 255 Yes.
- 15:18:10 15 A. No, I don't believe that --
- 16 Q. 256 If we could have 9127 please. You see under the heading "outstanding fees"?
- 17 A. Yes.
- 18 Q. 257 You see where it says "he, which is Mr. O'Callaghan, was clearly disappointed
19 when told that this would not be possible in view of the fact that the facility
15:18:28 20 was drawn to the maximum permitted and he highlighted that Riga would be
21 covering all fees in relation to the Green take over and the Stadium proposal".
- 22 A. Yes, I see that.
- 23 Q. 258 So was that commitment by Mr. O'Callaghan to the bank in January '93 a follow
24 through or was it followed through on the transfer of the 86,000 to the work in
15:18:57 25 progress account?
- 26 A. I don't see that there is any connection between the two. I'm sorry, maybe I'm
27 missing the point.
- 28 Q. 259 Okay.
- 29 A. As I understand it the 86 included three Shefran invoices for Frank Dunlop for
15:19:11 30 work done in connection with to Quarryvale and nothing at all to do with the

- 15:19:13 1 Stadium.
- 2 Q. 260 How did they come to be assigned to the work in progress Stadium account for
- 3 the year ended April '93?
- 4 A. The -- when we came to look at the books at the end of the year, Clare would go
- 15:19:26 5 through with me the normal questions and assets and liabilities of the company
- 6 and what could be achieved and what couldn't. And on that particular year I
- 7 think there was something like 200,000 odd pounds outstanding. And a decision
- 8 was, I was asked would we get that money back if we sent an invoice to Barkhill
- 9 for it, No. 1 Barkhill didn't have the money. No. 2 Barkhill, the bank weren't
- 15:19:50 10 going to release money. I didn't think Tom Gilmartin was going to agree to pay
- 11 those fees so I told Clare I didn't think that they would be recoverable in the
- 12 short to medium term. And I think then a decision had to be made that if they
- 13 weren't going to be recoverable directly from as it were the Quarryvale
- 14 project, could they be recovered from the Stadium project as it were. And I
- 15:20:14 15 think that's why the decision was made.
- 16 Q. 261 Just dealing with that 80,000, Mr. Deane. As I understand it those three
- 17 Shefran payments were paid by Riga in May, June 1991?
- 18 A. Yes, that sounds right.
- 19 Q. 262 And in September 1991 an agreement was reached involving Riga, yourself, Mr.
- 15:20:36 20 O'Callaghan, the bank and Mr. Gilmartin, whereby you were given a 40 per cent
- 21 interest in the company and as a consequence I think the bank were given 20 per
- 22 cent interest. They agreed to advance 3 million. Riga agreed to provide
- 23 facility of 1 million plus a further guarantee of 1 million to the bank?
- 24 A. Yes.
- 15:20:57 25 Q. 263 At that stage, that is September '91, that facility of 1 million provided by
- 26 Riga included the payment of the three sums to Shefran Limited which totalled
- 27 80,000?
- 28 A. Correct.
- 29 Q. 264 And going forward then within Riga for the year ended April '92, the accounts
- 15:21:11 30 of Riga showed an amount owing by Barkhill to Riga representing that 1 million.

- 15:21:18 1 In fact it had gone up to 1.2 million?
- 2 A. Correct.
- 3 Q. 265 And that had dealt with going forward -- that had dealt with the position
- 4 vis-a-vis Barkhill and Riga. And what I am suggesting to you if you go forward
- 15:21:35 5 into the period April '93, assuming that there were no other payments made and
- 6 leaving aside the possibility of interest accruing on that account. The
- 7 position going forward would be that Barkhill would owe Riga that 1.2 million?
- 8 A. Yes.
- 9 Q. 266 But you decided I think to take the 80,000 pounds Shefran payment within that
- 15:21:55 10 loan and transfer it out of the Barkhill loan account with Riga and to transfer
- 11 it within the books of Riga to a work in progress Stadium account?
- 12 A. You see, I don't think you can take the 86,000 in -- spend in isolation. I
- 13 think the point here as I understand it, I was asked a question during that
- 14 audit, would approximately 217,000 be recoverable if we sent an invoice to
- 15:22:22 15 Barkhill. And I gave the reasons to the auditor that I thought that would not
- 16 be recoverable in the short-term. So certain consequences flowed from that.
- 17 Q. 267 But the entire -- it was never intended that the subordinated account or the
- 18 loan between Barkhill and Riga would be paid at that stage either the year
- 19 ended April '92, April '93, April '94 and in fact if I understand it correctly,
- 15:22:47 20 it was carried in the books of Barkhill Limited and was only settled ultimately
- 21 sometime in 1996, when Grovenor got involved?
- 22 A. But I think it was went back into again correct me if I'm wrong. I think it
- 23 went back in to the loan account subsequent to the --
- 24 Q. 268 That's correct back in for the year ended April '94?
- 15:23:08 25 A. Yes.
- 26 Q. 269 So why was it taken out for the year ended April '93, and put back in for the
- 27 year ended April '94?
- 28 A. I have explained to you why it was taken out for the year 1993. It was part of
- 29 a larger sum. I was asked the question would we actually get that money back.
- 15:23:26 30 And at that point in time I thought there would be difficulty in doing it and I

15:23:30 1 told the auditors and that's what was done. The following year when we came to
2 do the accounts the zoning had been confirmed as I recall at that stage and it
3 was felt that at the very least we'd get back the 86,309 that was included in
4 the subordinated loan.

15:23:53 5 Q. 270 For the following year that is for April '94, you felt you would recover the
6 money?
7 A. In April ... again.

8 Q. 271 The year end 1994. We're dealing with the year ended April '92?
9 A. Correct.

15:24:06 10 Q. 272 Is part of a greater figure of 1.2 million?
11 A. Yes.
12 Q. 273 Within Barkhill?
13 A. That's right.
14 Q. 274 And Barkhill were advised by I think Barbar & Co. that that was the figure on
15:24:15 15 the loan account, isn't that correct?
16 A. That's correct.
17 Q. 275 And then the year ended April '93 for Riga Limited it moves out of the loan
18 account or the loan account is reduced by that 86,000, isn't that right?
19 A. There is --

15:24:30 20 Q. 276 Within Riga?
21 A. Within Riga.
22 Q. 277 But there were still?
23 A. 217,000 transferred as I understand it to a work in progress Stadium. Again, I
24 am open to correction on that but that's my understanding.

15:24:41 25 Q. 278 And there was a transfer back then I think in 1994 --
26 A. That's correct.
27 Q. 279 -- to the loan account --
28 A. That's correct.
29 Q. 280 -- within Barkhill?
15:24:50 30 A. That's correct.

- 15:24:50 1 Q. 281 And in January '94, Barkhill Limited of which Mr. O'Callaghan was a director,
2 signed off on a figure the same figure that it had been provided in August '92
3 for the loan between Barkhill and Riga of 1.27 million?
4 A. '94.
- 15:25:07 5 Q. 282 Yes. January '94?
6 A. Sure ...
- 7 Q. 283 I'm talking about Barkhill now not Riga because it's slightly different. The
8 April '92 Barkhill accounts are signed off on in January '94. So in the
9 meantime you've had the April '92 --
- 15:25:23 10 A. I am getting confused.
- 11 Q. 284 The April '93 Riga accounts?
12 A. Yeah.
- 13 Q. 285 Yes.
14 A. Well, I mean obviously the accounts had to tally at the respective year ends.
15:25:34 15 So what happened subsequent in Riga's year end could not obviously be reflected
16 back in the year end for Barkhill if the accounts were being signed off two
17 years later.
- 18 Q. 286 Now, if we go back to 9241 which is your letter to the bank on behalf of Riga
19 where you are justifying expenses incurred by Barkhill or sorry by Riga on
15:25:57 20 behalf of Barkhill. You are talking about a figure of 400,000?
21 A. Yes.
- 22 Q. 287 And included in that are fees of 250,000 for the Stadium project?
23 A. Yes.
- 24 Q. 288 And included also within that is 150,000 in relation to expenses for which no
15:26:14 25 invoices have been presented to the bank?
26 A. That's what I say, yes.
- 27 Q. 289 And those were expenses which had been incurred directly in relation to the
28 Quarryvale project?
29 A. That's correct.
- 15:26:31 30 Q. 290 Which had -- that reference Quarryvale project we are referring to the rezoning

- 15:26:31 1 which had taken place in '91 and '92 on the Quarryvale?
- 2 A. Yes.
- 3 Q. 291 Two votes --
- 4 A. All of the expenses incurred architects other fees everything.
- 15:26:40 5 Q. 292 But you had presented I think invoices in relation to the architects fees?
- 6 A. Some.
- 7 Q. 293 Because we saw for example Mr. Kelly's invoice in October '92, for 19,000?
- 8 A. Some, there were some Frank Dunlop invoices presented to the bank, there were
- 9 some Ambrose Kelly's invoices were presented to the bank. There were others
- 15:26:56 10 that weren't and we carried the cost of those.
- 11 Q. 294 Are we talking in that 150,000. Are we talking about Frank Dunlop and Ambrose
- 12 Kelly invoices which weren't presented to Barkhill's bankers Allied Irish
- 13 Banks?
- 14 A. And there may have been others.
- 15:27:10 15 Q. 295 What --
- 16 A. I think there is --
- 17 Q. 296 Is there any breakdown anywhere, Mr. Deane, of that sum of 150,000?
- 18 A. No, I don't have any breakdown on that but I think --
- 19 Q. 297 Does it include the 80,000 pounds Shefran payments?
- 15:27:22 20 A. No, it doesn't. And again, I think there is a schedule that Clare produced in
- 21 her statement that might be helpful for me to explain this.
- 22 Q. 298 Yes.
- 23 A. And I think it's the third schedule.
- 24 Q. 299 I'll get it up in a moment, Ms. Cowhig's third schedule?
- 15:27:40 25 A. I think that's ...
- 26 Q. 300 Did you assist Ms. Cowhig in preparing this third schedule for her evidence to
- 27 the Tribunal?
- 28 A. No.
- 29 Q. 301 Was she aware of the breakdown of that 150,000?
- 15:27:52 30 A. I didn't do the breakdown myself so I can only assume I either asked Aidan or

- 15:27:57 1 Aidan might have got Clare or I might have asked Clare myself. I can just not
2 recall.
- 3 Q. 302 But you would have been provided of a breakdown of that 150,000 when you wrote
4 that letter in February '92 -- '93?
- 15:28:10 5 A. I don't believe that I was provided with a breakdown because I'd probably have
6 sent the breakdown if I had one. I had no reason not to do that.
- 7 Q. 303 Where --
- 8 A. I think I simply asked for what payments we had made or were to make in respect
9 of both the Quarryvale account and the Barkhill account and/or sorry the
10 Quarryvale and the Neilstown. And was given the figures and the approximate
11 make up and that's what I recorded there.
- 12 Q. 304 If we go back for example to 8912. This is the Barbar & Co. report produced on
13 the 8th of June '93 --
- 14 A. Uh-huh.
- 15:28:43 15 Q. 305 -- for the year ended April '93?
- 16 A. Yes.
- 17 Q. 306 And it shows the breakdown of the work in progress Stadium in the work in
18 progress Stadium figures under the heading "professional fees".
- 19 A. Yes.
- 15:28:56 20 Q. 307 And if we add the 20,000 planning fees to those professional fees we get the
21 425,332?
- 22 A. That's correct.
- 23 Q. 308 Now, you have referred to Stadium project fees in your letter of 250,000 isn't
24 that correct?
- 15:29:12 25 A. That's correct.
- 26 Q. 309 Yes. Is that 250,000 to be found within those fees as we see them on screen?
- 27 A. Again, I think it is -- the Clare schedule that I am referring to I think will
28 help us to simplify it. I can't get to 250 for the Stadium as such just from
29 that list. I think it will identify a lot of the issues.
- 15:29:32 30 Q. 310 Now, if I --

- 15:29:33 1 A. Because some of these. All of these items are referred in Clare's actual
2 schedule but they are just broken up to make it easy what relates to the
3 Stadium and what relates to Quarryvale.
- 4 Q. 311 Just while we are getting up the schedule to her list. I think with you went
15:29:48 5 on to give an explanation as to how the Stadium fees were incurred necessarily
6 for the Quarryvale project, isn't that right, you have a justification for the
7 Stadium project and how it assisted the rezoning of the Quarryvale site?
- 8 A. Yes, the discussion with the bank on the 20th basically was along the lines of
9 what is this Stadium project all about, why are you involved in it, can't we
10 drop it, just get rid of it, stop paying for it. And it's never going to
11 happen anyway i.e. the bank were highly sceptical about it. Whereas our view
12 was it was a very real project, a very genuine one, in which we had put a huge
13 amount of time and effort into. Got involved with the IFA, RFU and speaking to
14 the government about it and had got serious financiers on board to see could it
15 be financed. So it was a very real project, from our point of view.
- 16 Q. 312 Yes. We'll just look at what you told the bank in February '93.
17
18 "By way of background to the expenditure, you recall that Neilstown site was
19 the original site zoned for the town centre part of the Quarryvale problem was
15:30:52 20 to obtain the moving of the zoning from Neilstown to Quarryvale. The city
21 Manager made it clear that he expected an alternative use to be found for the
22 Neilstown site and that the site was not simply to be dumped and theft there.
23 With this in mind, the Stadium project was concealed."
24
- 15:31:07 25 And I think you have told the Tribunal that Mr. Lawlor was instrumental in
26 coming up with this?
- 27 A. I think it was he put forward the idea.
28
- 29 JUDGE FAHERTY: 9242 is that what you're on?
- 15:31:17 30 Q. 313 MR. QUINN: Yes. 9242.

- 15:31:18 1
2 "However to make the project seem a real project and not just a mythical scheme
3 it was necessary to prepare detailed and substantial drawings to such a
4 standard that it would lead to a detailed planning application. Furthermore,
15:31:29 5 working model with a sliding roof and moving floor was also prepared.
6 International consultants in the leisure field were retained to vet the project
7 and DeLoitte & Touche accountants were also retained to give a feasibility
8 report for the entire project for the American financiers who were interested
9 in providing the finance. An introduction to the financiers was made by the
15:31:46 10 Taoiseach, Albert Reynolds to Owen when the financiers were in Dublin to meet
11 the Taoiseach who was then Minister for Finance." I think the international
12 financiers there referred to are Chilton O'Connor, is that correct?
13 A. That's correct.
14 Q. 314 And I think Mr. Lawlor's son Niall was also working with Chilton O'Connor at
15:32:06 15 this time?
16 A. I believe that to be the case.
17 Q. 315 Were you present when Mr. Reynolds introduced Mr. O'Callaghan to Chilton
18 O'Connor?
19 A. No, I'm not sure. When I say that introduction. I'm not sure it was a,
15:32:21 20 physical introduction or the passing on of a name or whatever, you know.
21 Q. 316 You are not sure if it was a letter of introduction or --
22 A. Or ring somebody or this is the person to contact or whether they actually
23 physically met. I'd say it was more telephone contact than anything else. But
24 again Mr. O'Callaghan I'm sure can clarify that for you.
15:32:41 25 Q. 317 Was it usual. We've seen diary entries for meetings between Mr. O'Callaghan
26 and Mr. Reynolds. Were there also and was it usual for Mr. O'Callaghan to have
27 telephone contact with Mr. Reynolds?
28 A. Again, as I say, that's not something I can address really you'd have to ask
29 Mr. O'Callaghan that.
15:32:58 30 Q. 318 It goes on to say "In order to establish credibility for the Stadium project it

15:33:01 1 was necessary for the project to be seen as a viable workable project which
 2 would have the support of the government. The FAI and other supporting
 3 organisations who may use the project. Considerable work was done in this
 4 regard in consultants employed to ensure that the project was presented in the
 15:33:16 5 best possible light as a credible project for the site. And then you go on to
 6 say:

7
 8 "As you are aware a full planning application has been lodged for the stadium
 9 project prior to the zoning decision of Quarryvale. The standard of the
 15:33:28 10 drawings and the work and effort put in, in connection with the planning
 11 application was such that it was viewed as a very real project by the planners
 12 local authority officials and indeed members of the council. The fact that a
 13 viable project was being put in for the old Neilstown site was a material
 14 factor for a number of councillors to decide to vote in favour of the retail
 15:33:48 15 zoning for Quarryvale. The Stadium project also had a number of other
 16 advantages.

17 A. It provided a new use for the existing site which was very important for
 18 the goodwill of the local authority and Councillors.

19 B. The lodging of the planning application the planning for the Stadium
 15:34:03 20 obtained priority in relation to any other application for that particular
 21 area."

22
 23 And I think we saw that Mr. Sharkey had an application in for a town centre
 24 lodged in October '92, isn't that right?

15:34:17 25 A. He did. And his land actually I think was landlocked. So that was never going
 26 to go very far.

27 Q. 319 "The local authority would not have any interest in disposing of the site to
 28 any other user until such time as the Stadium project had run its course."

29 A. Yes.

15:34:31 30 Q. 320 Just in relation to Mr. Sharkey. I think we had seen on the previous occasion

- 15:34:34 1 a letter written by Mr. O'Callaghan to the Council, to the Manager in relation
2 to that application, isn't that right?
- 3 A. That's right.
- 4 Q. 321 And I think Mr. O'Callaghan in fact when he saw the application had faxed it on
15:34:45 5 to you with a note saying that this was important or this was urgent. You
6 might recall?
- 7 A. Yes, I'm sure that's correct.
- 8 Q. 322 "In the event Sharkey endeavoured to lodge a planning application for a retail
9 scheme on the lands behind the Stadium, it would be clear to any retailer that
10 this land was not economically viable particularly in view of the large Stadium
11 being built in front of it and effectively all that Sharkey was proposing
12 develop was a site at the rear of the Stadium."
- 13 A. That's correct.
- 14 Q. 323 At 9243. It says. "Perhaps the most material factor was that the Stadium
15:35:20 15 would carry such large volumes of traffic that it required the whole road
16 network to be upgraded at a cost of approximately 36 million. Consequently,
17 any other scheme for the adjoining lands including lands still zoned for a town
18 centre would have to wait behind the Stadium project cannot be advanced until
19 problems which must be solved in order to progress the Stadium have in fact
15:35:37 20 been resolved.
21
- 22 F. The consequences of the foregoing is that the old Neilstown site is locked
23 up for a number of years which will allow Quarryvale to progress without threat
24 of the Neilstown site".
- 15:35:48 25 A. That's correct.
- 26 Q. 324 And was that the strategy devised by Mr. Lawlor and implemented at this stage?
- 27 A. No, that's not correct.
- 28 Q. 325 Yes.
- 29 A. Mr. Lawlor came up with the idea of the Stadium and the Stadium then became a
15:36:02 30 very real and genuine project. The only reason that the stadium didn't go

15:36:05 1 ahead was that ultimately that the Minister for Finance at the time, I think
2 sometime in late '94, refused some lottery funding which would have enabled the
3 project to have been put together.

4 Q. 326 And I suggest to you that in that letter written in February '93, you were
15:36:24 5 putting forward the justification for the fees paid by Riga in relation to the
6 Stadium and their entitlement to recoup those fees from Barkhill?

7 A. Again, just to be clear on what we were trying to achieve. We had agreed with
8 the bank and you will have seen that coming up to December 1992, that we would
9 carry certain costs as a contribution as it were towards the fact that the bank
15:36:48 10 were also paying other costs. We were not obliged to do that under the terms
11 of our agreed shareholders agreement in 1991. The consequences of us carrying
12 these costs is that our cashflow was now being imposed upon to the extent that
13 we needed additional facilities. And we had asked for those facilities, I
14 think early 1992 and they kept being put off and put off by the bank and again
15:37:14 15 it was mentioned, I think before Christmas in 1992, to say that our facilities
16 needed to be addressed and this was the meeting really where it all came to a
17 head where we said to the bank we need additional facilities in order to cover
18 the costs which we have paid and are yet to pay and the bank asked us for an
19 estimate of what we had actually paid out and consequently that letter was
15:37:40 20 written to give them that estimate and I think there were probably other items
21 that we had paid as well that weren't even included in that.

22 Q. 327 Yes.

23 A. So this is, as I say A, cashflow exercise that's really what this is.

24 Q. 328 If we could have 27639 please, this is a schedule three from the statement
15:37:59 25 supplied by Ms. Cowhig.

26 A. Yeah.

27 Q. 329 I think that you were anxious to see. I suggest to you first of all it may not
28 be possible to have both schedules on screen at the same time but that the
29 printout that I was working from at 8912 and I don't want it on screen just at
15:38:14 30 the moment it is more or less the same as the schedule on screen?

15:38:18 1 A. Oh, absolutely. There is very little difference. Probably there is no
2 difference other than this helps me to explain to you where the 150 came from.

3 Q. 330 Okay.

4 A. So ...

15:38:27 5 Q. 331 Well if we look at the schedule on screen. We're talking about 42532 work in
6 progress store the Stadium for the year end the April '93.

7 A. Yes.

8 Q. 332 And on screen is a schedule three accompanying Ms. Cowhig's statement and we
9 see the 86,309 pounds which is the three Shefrans plus the 6,000 balancing
10 figure, isn't that right?

11 A. That's correct.

12 Q. 333 And then we see an additional sum of 130,000 in relation to payments made to
13 Frank Dunlop, Harrington Bannon, Sean Gilbride, to professional presentation,
14 Ernst & Young and the organisation management?

15:39:09 15 A. Correct.

16 Q. 334 And then we add to that then additional figures Kennedy's 6767; Frank Dunlop 70
17 ,000; there is an Ann Morten 1300 odd; Shefran 25,000; and then I think there's
18 fees to Deloitte & Touche, Ambrose Kelly and planning fees?

19 A. Yes.

15:39:28 20 Q. 335 And that gives us our 4 35,000?

21 A. Correct.

22 Q. 336 And they are all Stadium fees, isn't that correct?

23 A. No that's not correct. Sorry, the last ones are the 425 is not all Stadium,
24 that's the point I'm trying to make. The point I'm trying to make really in
15:39:44 25 connection with the 150,000 that's referred to in my letter.

26 Q. 337 Yes?

27 A. You see there is a sum of 130,000.

28 Q. 338 Yes?

29 A. That's 130 of the 150. And I think there was another invoice from Ambrose
15:40:04 30 Kelly in or around December '92 for 30,000. So if you add the 130 and the 30

15:40:04 1 together you get 160,000. So that ...

2 Q. 339 So they are the 150,000 for which no invoices had been presented to the bank?

3 A. Yes, so we hadn't gone to the bank and said we want that money, here is the

4 invoice, pay us the cheque. We'll cover those ourselves as part of our ongoing

15:40:19 5 agreement with the bank. And what we were saying here is we've covered these.

6 We need our facilities increased to cover these amounts of money which we have

7 spent.

8 Q. 340 So included in the 160,000 fees, for which no invoices had been produced, were

9 the 64,000 sought by Mr. Dunlop on the 21st of December '92, at 8966?

15:40:47 10 A. That's correct.

11 Q. 341 The --

12 A. What we were saying to the bank there is that when we met them on the 20th of

13 December we were asking them had they cover for the 64,000. They stayed she

14 they hadn't. We agreed we'd carry it. And this letter was written to explain

15:41:03 15 almost retrospect of the meeting where we were at.

16 Q. 342 So you say that you never presented for payment to Allied Irish Banks that

17 invoice on the 64,000 although you did refer to it at that meeting?

18 A. No, we had, I believe we had the invoice at that meeting. I'm not sure whether

19 we had it at the meeting. We certainly mentioned it at that meeting and they

15:41:26 20 were aware it was there at that meeting. They said we're not covering that.

21 We don't have the money for it or we're not prepared to release it. So we said

22 we'd cover it. It was clear we must have had the invoice there at the bank and

23 the accompanying schedule. Absolutely, there's no reason we wouldn't have had

24 that.

15:41:43 25 Q. 343 So that invoice and schedule, although you refer to it in your letter as an

26 invoice, you hadn't presented to the bank for payment. The bank would have

27 been aware of it?

28 A. You have to remember that the letter was written as almost a prelude to the

29 meeting which happened before it. I'm not describing this very well. The bank

15:42:02 30 said look, you made a case to us on the day, go away and put that in writing.

- 15:42:07 1 We were taking a position when I was writing the letter up to the time of the
2 bank meeting.
- 3 Q. 344 So you included in the 150 was the 15,500 to Sean Gilbride?
4 A. That's correct, that was paid --
- 15:42:19 5 Q. 345 Of course, some of that money hadn't actually reached Mr. Gilbride by February
6 '93, isn't that right?
7 A. So this is --
- 8 Q. 346 You were still being paid --
9 A. This is why I said to you that this is indicative. And again, if he hadn't
15:42:31 10 been paid some of it, it would bring its 160 down to maybe closer to the 150.
11 I am not saying this is the absolute schedule but you drew it up yourself to
12 kind of indicate that it might be referable to that. And indeed, I think
13 that's probably a fair summary. So I am not proposing this as being the exact
14 chapter and verse of what somebody researched to give me the figures. I didn't
15:42:53 15 have a list. But that list is fairly indicative of what might have been the
16 case. And when you add the Ambrose Kelly 30 to that 130, you get 160. If you
17 want to deduct a few Sean Gilbride payments, then it brings it back closer to
18 the 150. I just can't actually get you 150 and 250.
- 19 Q. 347 And you don't have any breakdown of that figure that you might have had
15:43:17 20 available to you when you wrote the letter?
21 A. No, as I said to you, I don't believe that I ever got a breakdown, I simply
22 asked what we were due broken down between the Stadium and Quarryvale and I got
23 the figures and I transmitted those figures to the bank.
- 24 Q. 348 Yes?
15:43:33 25 A. If I had a list and if I was given a list, I would have sent the list on with
26 the letter, there's no doubt about that.
- 27 Q. 349 Did you intend to include, for example, the Ambrose Kelly invoice at 9484 of
28 April '93 in the sum of 30,000 plus VAT?
29 A. No, I think there was an invoice in December '92 for Ambrose Kelly for about
15:43:57 30 30,000. Again, I am open to correction on that.

15:44:01 1 Q. 350 If I could have 8767. That's an invoice of the 14th of December '92 for 30,000
2 and VAT, is that the invoice?
3 A. I'd have to check but that's ... As I say, I'm not list saying that this list
4 is definitive but it is at least indicative of where we were.

15:44:25 5
6 JUDGE FAHERTY: Mr. Deane, can I ask you. You said a moment ago at the
7 meeting in February, you were projecting these figures that you had spent?
8 A. Yes.
9

15:44:44 10 JUDGE FAHERTY: And the bank were being, well they weren't that amenable and
11 they told you to go away and make the case in writing?
12 A. Correct.
13

14 JUDGE FAHERTY: And as I understand your evidence, this is the letter of the
15 10th of February that is your case?
16 A. Yes.
17

18 JUDGE FAHERTY: Being made to the bank, is that correct?
19 A. Effectively, we put in writing that day what we said to the bank.

15:44:53 20
21 JUDGE FAHERTY: Yes, I understand that.
22 A. As it stands on the 20th of January.
23

24 JUDGE FAHERTY: Why didn't you include the invoices or whatever or seek
15:45:00 25 invoices to back up your case to the bank?
26 A. Because I think the bank were well aware of what was going on at the time. I
27 mean, if they wanted invoices they were there. We did discuss the 64,000 with
28 them. And they were aware all along that they were money to be paid and we
29 were paying some and they were paying others so it never became an issue. The
15:45:20 30 issue was solely that we had exceeded I think our facility at that point in

15:45:24 1 time and we wanted, we weren't asking for the money then. We were simply
2 asking for additional loan to cover the funds. It was a pure cashflow exercise
3 no more or no less than that.
4

15:45:38 5

6 Q. 351 MR. QUINN: A moment ago, or earlier in the afternoon, I had referred to the
7 position concerning the anchor tenants and getting the anchor tenants on board?
8 A. Yes.

9 Q. 352 And if I could 9285, please. On the 25th of February' 93 Mr. O'Callaghan
15:46:02 10 appears to be in a position to advise Mr. O'Farrell in more detail in relation
11 to anchors, isn't that right?
12 A. That's correct.

13 Q. 353 And I think he had a meeting I think on the 4th of February with Marks &
14 Spencers?
15:46:16 15 A. Yes.

16 Q. 354 And he was telling Mr. O'Farrell I think by the 22nd of February that
17 Quarryvale was their preferred choice for out of town development?
18 A. That's correct.

19 Q. 355 And that they had confirmed to Green that because of the pressures put on by
15:46:34 20 Green that they were not interested in Blanchardstown and had decided to take
21 space at Quarryvale?
22 A. That's correct.

23 Q. 356 And then in relation to Quinnsnorth, I think he advised that they had met with
24 Green and they had confirmed to Green or were confirming to Mr. O'Callaghan
15:46:53 25 that they had no further interest in Blanchardstown because they were taking up
26 Quarryvale and that they were going to so confirm to Green?
27 A. Yes.

28 Q. 357 And at 9286. I think the position was slightly different in relation to Dunnes
29 Stores. And there was a possibility I think that they might go with
15:47:11 30 Blanchardstown?

- 15:47:14 1 A. I'm just reading it.
- 2 Q. 358 Because I think at this stage it was envisaged that you would not have
3 sufficient space for Dunnes in Quarryvale until the new Council took over.
- 4 A. You see, it depends on what anchor tenants you actually sign up. Obviously,
15:47:37 5 you have room for a number of anchor tenants. I think in this case we were
6 proposing three. And if you were lucky enough to get three then, obviously,
7 you couldn't accommodate the rest. But which three I think was still open to
8 debate at that point in time.
- 9 Q. 359 Now, there were no signed up agreements with any of these anchors at this
15:47:57 10 stage. What you had was an expression of interest from these anchors?
- 11 A. Oh, yes, that's absolutely right. They didn't sign up until 1996 I think.
- 12 Q. 360 And it says continues to say that to date we have had a very easy run with the
13 anchors I hope it lasts it seems too good to be true isn't that right?
- 14 A. Yes I think what Owen was basically saying there is he was reflecting on the
15:48:18 15 quality of the site was that the anchors were very very interested. But when
16 they express interest and getting them signed up is quite a different matter.
- 17 Q. 361 And when did your anchors sign up?
- 18 A. I think we had them signed up before we closed the deal with Grovenor. The
19 deal with Grovenor was the 31st of May 1996.
- 15:48:41 20 Q. 362 So would it be fair to say --
- 21 A. And I think they would have signed up February/March '96 maybe.
- 22 Q. 363 Early '96 and we're talking about --
- 23 A. Late '95 or '96.
- 24 Q. 364 And we're now talking about early '93?
- 15:48:53 25 A. Correct.
- 26 Q. 365 But other than an expression of interest in Quarryvale over Blanchardstown,
27 there is no enforceable contract?
- 28 A. Oh, gosh, not at all.
- 29 Q. 366 That they would come to Quarryvale?
- 15:49:05 30 A. No, no. And again, very often anchors, particularly of the calibre of Marks &

- 15:49:09 1 Spencers and Dunnes and Roches, want to be certain that you have your planning
2 and you have everything sorted out --
- 3 Q. 367 At this stage you didn't even have planning, isn't that right?
- 4 A. No, but the site stood for itself and I think that was one of the great
15:49:22 5 attributes of the site, it was a fantastic site. And I think once the zoning
6 had been achieved, I think people felt more and more confident that this site
7 was going to be delivered and hence the increase the interest from anchor
8 tenants.
- 9 Q. 368 And it would be fair to say, from any objective point of view, assuming what
15:49:40 10 the anchors had had told you correct, you had the more preferred site and you
11 were likely to get the anchors over Blanchardstown?
- 12 A. I think at that point in time, that's fair comment.
- 13 Q. 369 And you were both fighting for what might be termed the 'premier anchors' like,
14 for example, Marks & Spencers and Quinnsnorth?
- 15:50:00 15 A. Absolutely.
- 16 Q. 370 Of course, all of that would be lost, presumably, were Blanchardstown to get an
17 advantage over Quarryvale, for example, were Blanchardstown to get a
18 designation on its site?
- 19 A. Yes, it would certainly raise the profile considerably of Blanchardstown.
- 15:50:15 20 Q. 371 It would have been --
- 21 A. In the minds of anchor tenants if they had designation and Quarryvale did not.
- 22 Q. 372 Other than raising the profile, it would also have been a huge economic benefit
23 to anchors and would have been a huge inducement to anchors to go to
24 Blanchardstown?
- 15:50:30 25 A. Sorry, that's what I meant.
- 26 Q. 373 Sorry, apologies.
- 27 A. By the profile, yes, absolutely that's quite right.
- 28 Q. 374 So would it be fair to say that were Green Properties or Blanchardstown to get
29 a designation any time between January '93 and January '96, for example, over
15:50:50 30 or in preference to Quarryvale, then, obviously, your commitment from your

- 15:50:55 1 anchors was likely to wane?
- 2 A. Yes, if Blanchardstown got designation and the same designation was refused to
3 Quarryvale, then you are absolutely right. The whole momentum was in, back in
4 the melting pot again. You have a very good site with a very good location as
15:51:16 5 against a not so good site with no designation, certainly it would change the
6 playing pitch.
- 7 Q. 375 Going forward then if we look at 9298, we see a memo prepared on foot of a
8 series of meetings of telephone conversations involving Mr. O'Farrell, yourself
9 and Mr. O'Callaghan and indeed Mr. McGrath of Allied Irish Banks. This is a
15:51:36 10 memo prepared by Mr. O'Farrell to represent what had taken place over a number
11 of days in the lead up to the 3rd/10th of March '93. You have seen this memo
12 in the thing ...
- 13 A. Yes.
- 14 Q. 376 Two meetings were held on the above dates with Owen O'Callaghan and John Deane.
15:51:54 15 The first was attended by Michael O'Farrell from the bank Dave McGrath. And
16 again with can we take it the fact that Mr. McGrath attended means that there
17 was a crunch meeting, in the same way that the January '93 meeting was a crunch
18 meeting?
- 19 A. I think this was the opposite type of crunch meeting to the one we had in
15:52:11 20 February. This was the making of the peace meeting, I think that's the best
21 way of describing it.
- 22 Q. 377 And the overall strategy vis-a-vis Quarryvale was set out, namely, that you
23 reviewed the whole history of Quarryvale and the options open to you at this
24 stage. One of the options was to sell immediately, isn't that correct?
- 15:52:33 25 A. I think we started off by reviewing our connection with the bank. That was the
26 most important thing to us at that point in time. We were concerned that the
27 discussion of January and the letters of February, we had a very rough meeting
28 with the bank in January. And that I think disturbed the relationship we had.
29 And these series of telephone calls were designed to put that relationship back
15:52:57 30 on an even keel. And ultimately, we decided that if the bank wanted to sell

15:53:03 1 Quarryvale, let them sell it but make up your mind now. We didn't want a
2 situation where they reluctantly came along with us and we were dragging them
3 along and every time we went looking for money for fees or roll up of interest
4 that we'd have another battle. And the view of this we felt would impact on
15:53:20 5 our business with them. So we wanted the bank at that point in time to decide
6 look, we are where we were. Do you want to run with this for the long-term or
7 do you want to cut and run at this stage.

8 Q. 378 And if we look at 9299. I think one of the things being sought by the bank at
9 that stage was an introduction to the County Manager?

15:53:40 10 A. That's right.

11 Q. 379 And I think Mr. O'Callaghan was less than supportive of the that view?

12 A. He thought it would be an extremely bad idea for the bank to go along and start
13 meeting the County Manager.

14 Q. 380 Now, you review videoed I think the planning process of what remained in
15:54:00 15 relation to the rezoning. And the note records the following. "In response to
16 our specific questioning, they acknowledged that technically the County Manager
17 and the planners and the manager could refuse to deal with the application
18 until the Development Plan is actually made. However, they have been speaking
19 to John Fitzgerald and to the Chief Planning Manager, Al Smith, and the latter
15:54:24 20 two individuals are pushing them to get their plans submitted".

21 Is that correct? were you speaking with Mr. Smith and Mr. Fitzgerald?

22 A. No. But again, it wouldn't be unusual for Managers sometimes to want
23 development on their sites within their county.

24 Q. 381 Well were you telling the bank that you were speaking with them?

15:54:41 25 A. I wasn't telling the bank I was speaking with them, no.

26 Q. 382 Who would have been telling the bank, was Mr. O'Callaghan?

27 A. If anybody had a discussion with the Manager or with the planner, it was Mr.
28 O'Callaghan or Mr. Kelly.

29 Q. 383 You were at this meeting?

15:54:55 30 A. Yes.

- 15:54:55 1 Q. 384 Do you recall hearing Mr. O'Callaghan advise the bank that he had been
2 discussing the matter with the Manager and the Planning Manager?
- 3 A. I remember the issue being discussed. The issue being discussed whether it --
4 there was a proposal of a Draft Development Plan to zone Quarryvale for retail.
15:55:13 5 The issue being discussed was whether or not the Planning Authority would take
6 a planning application in advance of the Development Plan being confirmed. And
7 there were a number of options. One, they could refuse to do it. The other
8 was that they could actually take in the application, be looking at it and
9 waiting for the Development Plan to be confirmed. And also I think Bord
15:55:35 10 Pleanala have, if there was a refusal Bord Pleanala have a right to look at the
11 proposed Development Plan and make a decision. So I think that was the general
12 context of the discussion, it wasn't anything more material than that.
- 13 Q. 385 But certainly you agree with me as far as the bank were concerned, assuming
14 this note was correct. They believe that they were being told that the
15:55:56 15 Planning Manager and the County Manager had both put were pushing to get the
16 planning plans submitted in relation to Quarryvale?
- 17 A. Yes that's what the note says yes.
- 18 Q. 386 And the note also records Owen O'Callaghan having raised the issues
19 specifically with John Fitzgerald and having received assurances to the effect
15:56:13 20 that the statement will issue by the end of October. In other words, even
21 though the planning application hadn't been made and even though the rezoning
22 hadn't been confirmed. That the manager was confirming that planning would
23 issue as far as the County Council were concerned, isn't that right?
- 24 A. Yeah, I understand what the note says. I'm not sure that is necessarily the
15:56:34 25 context in which that note could have been given.
- 26 Q. 387 And the note also I think records that aside from the foregoing, Owen
27 O'Callaghan had been in touch with the Taoiseach and I think the Taoiseach at
28 the time was Mr. Reynolds, is that correct?
- 29 A. I'm not sure was he the Taoiseach then but, yes.
- 15:56:49 30 Q. 388 In the context of moving forward quickly to ensure the maximum jobs are made

- 15:56:52 1 available in the Clondalkin area from the development?
- 2 A. Yes, it was very important in the area of Clondalkin where I think there was
3 over 70 per cent unemployment and jobs in that area were at a premium so it was
4 obviously very important.
- 15:57:06 5 Q. 389 If we go forward to 9300, I think the issue of the outstanding monies due in
6 relation to the County Council lands was addressed. The issue in relation to
7 anchors was further addressed. And then under the heading "Tom Gilmartin" it
8 records:
9
- 15:57:19 10 "John Deane has completed minutes of meeting of the 9th of February '93. It
11 was agreed that Owen O'Callaghan would send these to Tom Gilmartin together
12 with an update report along the line of John Deane's letter to us of 10th of
13 February '93. This would also be sent to Barry Pitcher. In the meantime John
14 Deane will arrange for Seamus Maguire to call a formal board meeting with the
15 company with a tentative date of 24th of March next agreed. This can be
16 followed by a meeting between the directors and the bank if required." And
17 then I think there was the request for the additional funds that you spoke
18 about to Riga?
- 15:57:37 19 A. No, I think that actually is Riga supporting more funds for Barkhill. Here
20 were the bank asking us yet again to step up to the plate and provide --
- 15:57:55 21 Q. 390 This is an additional guarantee from Riga for funds for Barkhill?
- 22 A. Correct. So we were being asked yet again by the bank to provide more support.
- 23 Q. 391 And I think the issue of funds for Barkhill was considered at 9603 and indeed
24 Riga but if we look at 9622, we see a mark up of the 25th of May '93. Where an
15:58:23 25 additional 1.4 million was sought bringing the loan exposure on Barkhill to
26 13.479 million?
- 27 A. Yes, I wouldn't have seen that mark up obviously at the time.
- 28 Q. 392 Yes. And that was sanctioned at 9623 on the 25th of May '93. And I think that
29 on the 18th of June '93 at 9764, that facility letter was forwarded from the
15:58:56 30 bank for those additional facilities. And I think that Riga and indeed

15:58:56 1 Barkhill Limited sanctioned those or accepted that sanction at 9798 on the 24th
2 of June '93, Barry Pitcher on behalf of the Bank Capital Markets and Vera
3 Gilmartin accepted the Letter Of Offer and at 9799 on the same date, Mr.
4 Gilmartin signed as shareholder of the company, a consent to the company
15:59:19 5 borrowing these additional facilities?

6 A. Yes.

7 Q. 393 And I think there was a resolution of the bank at 9800 with Mr. O'Callaghan in
8 the chair attended by the other director Mr. Pitcher on the 24th of June '93,
9 consenting to accepting the Letter Of Offer, isn't that correct?

15:59:37 10 A. That's correct.

11 Q. 394 Now, it's just four o'clock, Sir, I am just moving on to ...

12

13 CHAIRMAN: All right. We are sitting tomorrow at half ten?

14

15:59:53 15 MR. QUINN: I think.

16

17 MS. DILLON: As far as we know, Sir, that's correct.

18

19 CHAIRMAN: All right. And Mr. Deane at two o'clock.

16:00:00 20

21 MR. QUINN: Okay.

22

23 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY.**

24 **WEDNESDAY, 2ND JULY 2008, AT 10:30 A.M.**

16:01:18 25

26

27

28

29

30