

THE TRIBUNAL RESUMED ON THE 27TH APRIL, 2006, AS FOLLOWS:

CHAIRMAN: Good morning, ladies and gentlemen. The public sittings that are to commence today relate to what may shortly be described as the matter of Glen Ding Wood in County Wicklow. They are, as I have already indicated at the conclusion of recent sittings in relation to tax matters, what I intend to be the second-last public hearings for purposes of evidence to be addressed by this Tribunal.

Whilst the present matter to be commenced today relates to Terms of Reference addressed in regard to Mr. Charles Haughey, the remaining matter required to be addressed in evidence relates to those other Terms of Reference which are referable to Mr. Michael Lowry. The exact scope of what remains to be addressed in that regard is being determined in coming weeks in the course of litigation that is still pending.

For today's purposes, what is contemplated, that the day will be occupied by an opening by Mr. Jerry Healy, indicating the intended range of the Tribunal's inquiries and, in broad terms, the substance of the work that has been undertaken in preparation for the sittings by the Tribunal in the course of extensive private investigation. After that opening, it is intended that, in ease of time and simplicity, Mr. Healy may cause to be put on the monitors certain of the documents that may arise when they are raised with witnesses over coming days, and the

projected commencement of evidence will start tomorrow and will run then for a period of approximately two weeks on a basis of witnesses that have been scheduled for those sitting days.

I understand that there may be some applications for representation. If any practitioner is in particular difficulty about having a commitment elsewhere, I will, of course, hear him or her now, but it would be my preference, this being a public Tribunal, that we should hear Mr. Healy's opening to indicate the scope of the Tribunal inquiries, and, at the conclusion of that, perhaps it would be a more apposite time to hear any applications for representation.

Apart from any application for limited representation, it, of course, follows, as of right, this being a public Tribunal, that any person interested who has instructed a lawyer, is entitled to have that person retain a watching brief, and whilst I will be primarily concerned with applications for limited representation with regard to these sittings, it would be helpful if people holding a watching brief might, at that stage, also indicate their potential interest.

Subject to that, then, we'll proceed to hear Mr. Healy's opening.

MR. HEALY: Yes, sir.

The sale of state lands at Glen Ding to Roadstone has been associated with both public and private controversy since

the date of the disposal in 1990.

It is unlikely that any of those controversies would, in themselves, have warranted an inquiry by this Tribunal.

The Tribunal's private investigation and these hearings have been prompted by two matters:

Firstly, the association between Roadstone or CRH, its holding company, and the Ansbacher banking activities carried on by the late Mr. Desmond Traynor while a director and, laterally, while Chairman of CRH, and Mr. Traynor's links with Mr. Charles Haughey including his conduct of Mr. Haughey's financial affairs.

Secondly, a number of queries have arisen, some of which have already been mentioned in the course of hearings conducted by the Public Accounts Committee into the conduct of the disposal of these lands by the Department. In these hearings, the Tribunal will be examining the conduct of the disposal and the connections, if any, with the operation of the Ansbacher accounts in the context of Terms of Reference (a), (b) and (d) of the Tribunal's Terms of Reference.

Those Terms of Reference embrace, on the one hand, the money trail, although this should take up very little of the Tribunal's time in the course of these hearings, and, on the other hand, inquiries into the beneficiaries of related or potentially related Government decisions. The sale of the Glen Ding lands in 1990 was not the first disposal of State lands at Blessington. There had been an earlier disposal in the period of 1970 to 1976. The

earlier disposal may be touched upon in the course of these hearings, although to a very limited extent and mainly for comparison purposes only, but, in that context, and in due course, once the matter is ventilated, it may be useful to highlight a number of relevant features of the earlier disposal. At this stage, it will suffice to say that the earlier disposal was by public tender, and that, as in the case of the disposal under inquiry today, the successful bidder was Roadstone.

The 1990 sale was part of a general Government strategy to dispose of surplus State assets. This strategy had been devised to gather in funds to be deployed in the reduction of the national debt. The strategy was under the overall control of the Department of Finance, by whom various departments had been invited to examine their holdings of property with a view to identifying assets surplus to departmental requirements, and the disposal of which might contribute, in the harsh economic climate of the 1980s, to the State's finances. In this context, it might be worth referring to a document at Tab 3 in book 75 of the Tribunal's books of documents.

This is what looks to be a circular letter from the Assistant Secretary of the Department of Finance to the secretaries of a number of departments, of which the Department of Energy was one.

It says, "I am directed by the Minister for Finance to refer to the Government decision (S 25265) of the 30th

July" that was the 30th July, 1987 "that a programme should be devised for the sale of surplus State property and that receipts therefrom should be used to redeem the national debt. A copy of the relevant part of the decision is attached.

"Full details of the properties for disposal by your Department, as decided by the Government in the course of their expenditure reviews, and any further profits your office now considers appropriate for disposal, should be set out in the format at B of the enclosures to this minute."

I'm not going to go into the remainder of the minute, but simply to indicate that this strategy had been devised in 1987 and that it was on foot of the Department of Energy's response to the strategy that this sale ultimately took place.

In the late 1980s, the Department of Energy was responsible for the State forestry enterprises. In response to the Government invitation, a number of properties of different sizes and in varying locations around the country and of different values, were identified. Of these, one stood out as being, on even the most inexperienced assessment, by far the most valuable. This was the Glen Ding property. Its value lay in the fact that it contained a substantial deposit of sand and gravel close to Dublin. The Government proposal envisaged that, in the ordinary way, the disposal of properties would take place according to certain

procedures. These were alluded to in the context of the implementation of this strategy in a later document dated the 18th December, 1987. The procedures, in general, provided that, save without the prior sanction of the Department of Finance, disposals were to be by way of tender or public auction. Liberty was given to the departments to engage outside assistance in marketing the properties, and, in that context, it was suggested that the services of estate agents registered with the Irish Association of Auctioneers and Valuers Institute should be used in relation to the disposals.

In some cases the sales were by private treaty and in others by public tender. It would appear that most of the properties were advertised, and it would also appear, from inquiries conducted by the Tribunal, that most of the sales were handled locally in the areas in which the properties involved were located.

The Government minute referring to these procedures is contained at Leaf 26, or Tab 26 of Book 75. It's dated the 18th December, 1987. It's from the Department of Finance, and appears to be addressed to the secretaries of a number of departments, including the Department of Energy.

It says, "I am directed by the Minister for Finance to refer to your minute of" then a blank date in 1987 "enclosing details of property held by your Department that are surplus to requirements.

"Sanction is hereby given to your Department, in accordance

with the provisions of the State Property Act, 1954, to proceed with the disposal of all individual properties expected to realise less than i;½500,000 which were identified in your minute, subject to the following guidelines and requirements."

Now, that minute appears to suggest that the Department of Energy had identified to the Department of Finance the properties it intended to sell, and that, on foot of the Department so identifying the properties, the Department of Finance had given sanction for the proposal to dispose.

The Department of Finance sanction goes on to say,

"The proposed method of sale of property valued in excess of i;½500,000 should be cleared in advance with this Department."

It goes on to set out the guidelines to be applied to properties expected to realise less than i;½500,000.

"Method of Sale: Property should be sold either by auction or public tender, depending on which method is considered likely to achieve the highest price.

"Reserve Price: The reserve price should be set in all cases in accordance with the advice given by the Valuation Office/auctioneer.

"Conveyancing: While the Chief State Solicitors Office would normally be expected to act on behalf of your department." It goes on to suggest that to avoid delays, outside solicitors could be retained.

On the next page, "Auctioneers: In order to market the

properties effectively, an auctioneer/estate agent may be engaged. As far as possible, members of a recognised professional body, such as the IAVI, should be appointed."

Then it goes on to deal with accounting arrangements, designated areas for special development incentives and reporting requirements.

From documents available to the Tribunal, it would appear that, from the very outset, the general thinking in the Department of Energy was that the Glen Ding lands would be sold by public tender or by public auction. In the late eighties and, in particular, from in or about 1987 onwards, whether connected with the Government strategy or not is not clear, several expressions of interest in purchasing the Glen Ding lands were received by the Department. These expressions of interest were recorded from Hudson Brothers, in, I think one or two cases from the particular firm itself; from the late Mr. Sean Walsh, TD, on behalf of Hudson Brothers; from Mr. Chris Blood, TD, on behalf of Hudson Brothers; from Mr. Michael Kavanagh of Messrs Kavanaghs Sand and Gravel Contractors; and from Roadstone Limited. There were also inquiries from Treacy Enterprises, another sand and gravel contractor, operating in the Dublin/Kildare/Wicklow area.

In 1987, the Department was not in a position to respond to these expressions of interest, as there appeared, at that stage, to have been insufficient clarity as to whether the lands in question, or, if so, how much of the lands in

question would be sold. What was stated to the late

Mr. Walsh, TD, in a letter dated 8th October, 1987, was

that inquiries had been made, and in a letter, which is

contained at Tab 14 of Book 75, the then Minister for State

for Forrestry, Michael Smith, went on to say as follows:

"The position is that the sand and gravel deposits are

required for State afforestation purposes and, as such, are

not available for lease or sale. I would like to add that

even if the deposits were available for sale, the area

could only be offered for sale by public tender competition

in accordance with Department of Finance delegated sanction

for such sales. I am sorry the news is not more favourable

on this occasion."

By late '97, by which time, as we have seen from the

Department of Finance document a moment ago, the Department

had obtained sanction, the thinking in the Department was

that this land constituted a valuable asset; that it needed

to be valued, obviously because of the sand and gravel

deposits; that it was of interest to significant commercial

concerns, including one very large concern, Roadstone; and

that the way to get the best price for it, if it was to be

sold, was by tender. After sanction was received from the

Department of Finance on the 18th December, 1987, the

Department set about disposing of the property. From that

time onwards, Department officials identified a number of

issues which would have to be addressed in approaching the

sale. These concerned questions of the size, value and

developability of the deposit.

While various views were canvassed from time to time in internal departmental memoranda as to the size of the deposit, it was recognised that to properly assess the scale of the deposit, a Geological Survey would be necessary. It was also recognised that the value of any such deposit would require assessment using related geological expertise. The question of developability was also recognised as raising issues, primarily planning issues. In the planning context, one of the issues that would have to be addressed had already evolved by 1988 in the form of a claim, or a contention in fact, ultimately recognised by the Department of Energy a claim made on the part of the Office of Public Works of a public interest in retaining part of the lands containing an important national monument. One of the issues addressed by the Department in 1988, in consultation with OPW, also addressed, I think in 1989, was as to the extent of any such retained lands required to protect the national monument.

The Department, in addressing the issue of the scale of the deposit, sought the assistance of the Geological Survey of Ireland, who were retained to conduct a Geological Survey.

On the planning side, the Department initially arranged an exploratory meeting with Wicklow County Council. From the note of this meeting and other papers generated around this time, it appears that the Department envisaged obtaining

planning permission before any sale, with a view to enhancing the site and maximising its value to the State.

In the course of the initial discussions with Wicklow County Council, the Department was advised to retain the services of an engineer with expertise in dealing with planning matters. Eventually, an engineer, Mr. Kieran O'Malley of Kieran O'Malley & Co Limited, Civil Engineering and Town Planning Consultants, was retained. However, it was obvious that before any question of developability, i.e. before any planning issues could be addressed, the size of the deposit would have to be ascertained and have to be taken into consideration by anyone advising on planning. Questions concerning the size of the deposit were answered when the report of the Geological Survey was provided in June of 1988.

That report is contained at Tab 42, Book 75. The cover page of the report is on the monitor. It's headed "Confidential sand and gravel resources in the Deerpark Forest Area, Blessington, County Wicklow." The authors of the report are Messrs McArdle, Warren & Quinn. They have their names underneath the description of the area.

The area is described as the Deerpark Forest Area.

In referring to these lands as the Glen Ding lands, I may not be precisely accurate, but that is the name that had been attached to them in various controversies and in departmental minutes and notes, and I think it's safer to stick with one name, but there is no doubt but that this

report refers to the lands, or part of the lands, the subject of this inquiry.

I am not proposing to open the entire report, but in the conclusions to the report, the authors state, "On the basis of the above assessment programme, it is estimated that approximately 7.4 million cubic metres of sand and gravel are present at the Deerpark property with a fines content which is probably less than 20%. In addition, 2.6 million cubic metres of sand and gravel occurs, which has a fines content that exceeds 20% but is probably less than 40%.

The better quality material generally overlies that of poorer quality. Volumes are considered to be accurate to within 20%. The quality categories of sand and gravel should be compared with those of currently producing pits in the Dublin area, which are understood to have a 10-15% fines on a run-of-pit basis. It should be noted that sand and gravel extraction at Deerpark might conflict with its present use as an amenity area."

Two features of the report should be noted at this stage.

First, the report extends to the entire area of State lands at Glen Ding prior to the sale of any portion of those lands to Roadstone. The entire acreage owned by the State prior to the sale was approximately 180 acres. In the sale, some 145 acres, approximately, were disposed to Roadstone. The report, therefore, and the scale of the deposit assessed in the report, applies to a larger area than that ultimately disposed of to Roadstone.

Secondly, as will be obvious from the final sentence of the conclusions, the Geological Survey of Ireland recognised that its conclusions should be subject to certain potential restraints or constraints on resource utilisation. Whilst not, strictly speaking, within the area of expertise of the Geological Survey, the report usefully drew attention to what were perceived to be significant restrictions on the workability of the deposits.

In the relevant portion of the report, the authors stated, "The identified sand and gravel resources in the Deerpark area are confined to the east of the Glen Ding river valley. It must be recognised that there may be constraints even on those resources as far as their utilisation is concerned. At Deerpark, it is possible that environmental concerns might conflict with resource utilisation.

"The first constraint arises from the surprisingly high usage of Deerpark as an amenity area. During our assessment work in this State forest, it became quite clear that people from the surrounding district were attracted to its wooded slopes for walking, orienteering, civil defence exercises, and the like.

"The second constraint comprises the occurrence of a substantial rath feature at Deerpark. We have not attempted to investigate the historical or archaeological significance of this impressive feature, but there might be opposition to its being destroyed or damaged by sand and

gravel extraction."

The interest of OPW in the Department's proposal to dispose of the Glen Ding land stemmed from the presence on the land of archaeological features, of which the one mentioned by the GSI appears to have been the most important. These features are alluded to also in various departmental internal memoranda to which reference will be made in the course of the Tribunal's hearings, and also in a report from Mr. Kiaran O'Malley.

In August of 1988, discussions took place between OPW and the Department with a view to resolving the, if you like, claims of OPW to retain a significant portion of the lands to protect the archaeological features. The Department was anxious to have the largest available quantum of land for sale, and initially, while recognising the public interest in preserving a monument, considered the cost of preservation prohibitive, in view of what they perceived to be an extremely valuable deposit. OPW, reflecting the views of its archaeologist, was anxious to retain the area known as Rath Turtle Moat Ring Fort, and its strategic outline. This meant preserving not just the ring fort itself, but an area surrounding it; to protect, I think what's called in this particular field of expertise, its contextual environment. While initially, for the reasons I have just mentioned a moment ago, OPW encountered some resistance from the Department, eventually the OPW concerns were compromised with the Department, and although the

amount of land required, or initially required, by OPW to protect the monument was reduced, an agreement was reached with the Department to exclude the monument and to exclude from any sale an area of land surrounding it with a view to protecting its contextual environment.

In or around the 6th October, 1988, the Department retained the services of Mr. Kiaran O'Malley, a planning consultant.

His assistance was sought in connection with the proposed application by the Department for planning permission intended to enhance the value of the site. Prior to providing his report, O'Malley appears to have made some inquiries with Mr. Frank O'Gallagher of Wicklow County Council Planning Department. In a letter to the Department, O'Malley, based on his discussions with Mr. O'Gallagher, identified a number of planning issues which would require attention, issues concerning access and limitations on the workability of the deposit arising from archaeological monuments.

By January of 1990, it would appear that at least one official within the Department was expressing some reservations about proceeding with a planning application which, having regard to the difficulties outlined by O'Malley in conversation with officials, could take up to two years. It was thought that this might delay the realisation of the value of the asset, and it was suggested, or at least the view was canvassed within the Department, that the Department should proceed to dispose

of the site without further considering the question of planning permission.

Up to the early months of 1990, this disposal does not seem to have come within the area of responsibility of one single senior official charged with completing the project.

However, from in or about the early part of 1990, and certainly from sometime shortly after he joined the Department in February of 1990, Mr. Philip Carroll, then an Assistant Principal Officer in the Department, appeared to assume overall control of the project and, thereafter, became effectively the manager of the project. In one of his earliest memoranda, he noted, from a discussion with O'Malley, that the important consideration at that stage was to decide whether or not obtaining planning approval was the right option for the Department in addressing the disposal of the property. By the time O'Malley's formal report became available on the 30th April, 1990, O'Malley had come to the conclusion that planning could pose considerable problems and was likely to meet with resistance, not only from the planning authorities, but, perhaps even more importantly, from third parties, and especially having regard to the possible impact on the amenities of the area of any proposed sand and gravel activity.

O'Malley, in his report, concluded that he felt obliged to advise the Department of the risk of failure to obtain planning permission. He pointed out that a planning

permission removed all uncertainty and maximised the value of the land, but that, conversely, a refusal would have a fatal effect on the marketing and valuation of the property.

His report is at Tab 70, Book 75, and while I don't want to open the entire report at this stage, it may be useful to refer to the last page of his report, in which, having referred to the value of obtaining planning permission and the fatality that could befall the property if it were refused, he goes on to say,

"Roadstone have shown an interest already and there may be others with or without permission. It may indeed be that no one will make a serious bid other than subject to planning permission. It occurs to me that your Department might be best advised, in the first instance, to invite offers by tender for the sale of the deposit. If it transpires that you receive satisfactory offers, then a deal can be concluded with that interest. If, on the other hand, you fail to attract a good offer, you may then have no option but to seek permission yourself."

Now, I should say that this advice by O'Malley, or this view canvassed by O'Malley, was in the context of a report commissioned to deal with planning issues and was given as a planning expert. By this stage, it doesn't appear that at any point the Department had retained the services of any marketing consultants, any estate agents or auctioneers.

O'Malley's report on the planning issues was accompanied by a report, which appears to have been primarily the work of Mr. John Barnett, although signed off jointly by Mr. Barnett and O'Malley, on the assessment of the sand and gravel deposit and the valuation of the deposit within the lands and sale. Mr. Barnett produced a plan showing the extent of the working of the deposit that would be considerate of the environment; in other words, the extent of the working of the deposit that was likely, presumably more or less, to secure the approval of the planners.

While the total amount of land ultimately sold to Roadstone amounted to 145 acres, Mr. Barnett deemed that the area available for potential extraction amounted to no more than in or about 83 acres. This was to take account of certain environmental factors which would preclude working areas of the land likely to interfere with the amenities of the area.

In his report at Tab 69, Book 75, O'Malley says, "I refer to the meeting" or Mr. Barnett says, perhaps both Mr. Barnett and O'Malley, but presumably based primarily on Mr. Barnett's expertise, "We have now had an opportunity to assess the sand and gravel deposit in the lands at Deerpark and to carry out a valuation of the sand and gravel element within the lands."

This was presumably based, I think as appears from elsewhere in the report, on the Geological Survey of Ireland report mentioned a moment ago.

"We have considered the extent of the sand and gravel deposit and the possible impact the working of these deposits may have on the environment.

"The initial impact is that the working of sand and gravel would have an impact on the area as an amenity area.

Additionally, there is a visual impact as the southern flank of the woodland is open to view from the town of Blessington. A section of the Department's lands comprises a rath. The rath has been excluded from any assessment.

The possible extent of working that would be considerate of the environment is shown edged red on the attached plan.

In this respect, a margin has been left along the southern boundary to protect the visual amenity. This southern woodland is also the more attractive as it contains a number of deciduous trees, some very mature, and pleasant glades. A part of the woodland on the northern boundary is also excluded. Here, we have a beech wood that has (apparently) been planted 10 to 15 years ago. It is in need of a little thinning, but, in time to come, it will certainly be a very pleasant feature and is worthy of preservation.

"The working of the deposits, within the scheme shown on the plan, is phased on a progressive basis to allow for restoration. In considering the restoration of these lands, we envisage a greater part of the area could be replanted as woodland. Where the work is near to the base of the worked areas, glades and heath lands can be created.

Where the silty sands remain in the floor of the worked-out pit, the ground can be graded into undulation and planted with trees.

"The Plan JB2, showing the area edged red, as mentioned above, can be read in conjunction with WJ1. Both plans are draft plans prepared for consultation purposes with respect to considering any planning application for these lands.

JB1 is the survey plan showing the details of the deposit, its profile and depth, based on information provided by the Geological Survey. The second plan, JB2, is the draft scheme of working and restoration and the one on which we have identified the possible working area after environmental and deposit considerations have been taken into account."

That plan I have just put on the overhead projector, I don't propose to refer to it in any detail, but the red area is the area or the red enclosed area is the area of 83 acres referred to by Mr. Barnett, as the limit of workability from an extraction point of view of the lands ultimately sold to Roadstone.

Mr. Barnett goes on in his report, "The area we have earmarked for potential extraction amounts to about 33.6 hectares (83 acres). After allowing for margins to external boundaries and a restoration slope on the pit perimeter of 1 in 1.5, I arrive at the following:

"Gross reserves: 8.43 million tonnes.

"Net reserves (after discounting 20% for excessive fines in

the base of the deposit): 6.744 million tonnes."

Mr. Barnett goes on under the heading, "Mineral valuation:

"The mineral valuation consists of the capitalisation of

the discounted royalties of the life of the deposit.

"If we consider a 20-year life for the working of this deposit, we have then an annual extraction rate of 337,198 tonnes. I do not consider this to be an unreasonable rate of work. With regard to the royalty rate, I am considerate of this reflecting about 10%-15% of the ex pit price for the area. I therefore elect to use a royalty of 50p per tonne.

"With the benefit of planning permission, I consider the deposit to be well-secured and would apply a risk rate of interest at 12%. The valuation would then be as follows:"

I'm not going to go into the detail of it, but his valuation of the sand and gravel with planning permission is $\frac{1}{2}$ 1,259,434.

The value is for sand and gravel rights only and does not include any surface rights or rights to timber.

He goes on to put an additional figure of $\frac{1}{2}$ 500 per acre for the surface residual value rights. He says that the freehold value of the area edged red with access rights would then be 1.3 million. "With respect to the value of all your land-holding at Deerpark, I am not competent to give you that value as my specialisation is only with respect to minerals.

"We have been asked to differentiate between the value with

and without planning permission. In reality, and without planning permission, there is no value for minerals. Under the terms of the planning and development acts, any working of the deposits on your lands constitutes a development requiring planning permission.

"An operator may agree to a figure with which you are satisfied, but he may make it conditional on permission being granted. You then run the risk of losing all if he gets a planning refusal. The other major issue on this site, besides the environmental/visual one, is that of access and the introduction of a new access for trucks which will (for the greater volume of traffic) pass through Blessington."

And I just go back to the map, again, to show Blessington is in the bottom centre of the map, and the bit where the lands on sale is up approximately where the cursor is. The lands where the cursor is now, were, I think at that time, owned by Roadstone, and the only access out of the lands where the cursor is now would appear to be onto the Blessington/Naas Road, roughly where the cursor is now. So it would be seen that if you were to exit the site on the Blessington to Naas Road, in order to get to Dublin, which would be the major market for the sand and gravel, you'd have to come along the Naas to Blessington Road, through the town or village of Blessington at the bottom of the plan, and then out onto the Dublin Road, heading off to the top right-hand side of the map.

Mr. Barnett goes on to say, "Any operator, other than the one working the adjoining land, would have to overcome this problem. The problem may well arise, if not from the planners, from third-party objection at the planning decision stage.

"To cover this query, a value without obtaining planning permission first, I have applied my mind to a base value. Such a value has to be reflected through the risk rate of interest within the valuation formula. In calculating the base value, I would use a risk rate of 20%."

And he then comes up with a value, again for the freehold area to the red edging on the map I had on the overhead projector a moment ago, of approximately $\frac{1}{2}$ 860,000 without planning permission.

From this, therefore, it would appear that Mr. Barnett was putting a value on the deposit of approximately 1.3 million on the assumption that any operator was granted planning permission to work the deposit. While recognising that without the planning permission, the mineral deposit had effectively no value, he, nevertheless, attempted to put a value on the deposit on the assumption that it would be sold without planning permission, arriving at a figure of approximately $\frac{1}{2}$ 860,000.

In arriving at that calculation, what he effectively did was to value the risk that any purchaser buying without planning permission would be taking, and to discount the value of 1.3 million down to $\frac{1}{2}$ 860,000 to take account of

that risk.

In the period during which the Department was making its preparations for the disposal of these lands, in other words attending to getting reports from the GSI, O'Malley, Mr. Barnett, and so on. There were continuing expressions of interests from individuals and entities who saw themselves as potential bidders. It would appear that Mr. Michael Kavanagh expressed interest both on his own behalf and also in the course of a joint approach to Mr. Smith. He approached Mr. Smith jointly with Treacy Enterprises, making an offer of about 1 million for the lands in February of 1988. The precise status of this offer is unclear, and while an indication was given by the then Minister of State at the Department of Energy, Mr. Smith, that the matter would be followed up, there does not appear, from the files of the Department, to have been any follow-up, nor does there appear to have been any follow-up from the combination of Treacy Enterprises and Mr. Kavanagh. In other words, neither the Department nor the bidder appears to have followed up on this proposal. Mr. Smith, in a letter to the Tribunal, has indicated that, in any case, he would have informed those parties that any disposal would have to be by way of open tender. In October of 1988, the matter was raised in the Dail by Mrs. Gemma Hussey, TD, who, in a parliamentary question to the Minister for Energy, asked the following question:

"If the sand-pit at Glen Ding or Deerpark, Blessington,

County Wicklow, which belongs to the State, will be advertised for sale openly and bids accepted from all interested parties before any question arises of selling it off to the neighbouring concern." In reply, Mr. Ray Burke, who had been appointed Minister on the 10th March, 1987, stated, "It is the intention that when the sand-pit in question is offered for sale, tenders will be invited by public tender competition which would be advertised in the national press."

Now, shortly afterwards, on the 24th November, 1988, Mr. Burke ceased to be Minister for Energy.

Roadstone renewed its interest in purchasing the property by a letter of the 14th March, 1989. By a letter of the 10th April, 1989, Mr. Brendan Johnston, trading as Johnston Industries, wrote to the Department expressing an interest in purchasing sand or gravel, without specifically alluding to the Glen Ding site. However, as his letter was addressed to the late Mr. Tom Smart, who was a relatively junior official, one assumes that there had been some prior contact to enable Mr. Johnston to identify the appropriate official dealing with disposals. Mr. Smart had handled most of the inquiries concerning the Glen Ding site up to that date.

Roadstone renewed its interest by letter of the 6th June, 1989, and, in response, on the 12th June, 1989, Mr. Smart, on behalf of the Department, indicated that the Department did intend to sell land at Deerpark. In his letter,

Mr. Smart went on in words which repeated, almost verbatim, the terms of the response to the parliamentary question of the previous year, stating, "It is the intention that, when the land is offered for sale, tenders will be invited by public tender competition which will be advertised in the public press."

Roadstone continued to press its interest, and in a letter of the 12 June, wrote again indicating a desire to purchase the land. There does not appear to have been any specific response to that letter. By the 7 December, 1989, Mr. Johnston had again renewed his interest in another letter to the Department. He indicated that he would be interested in talking to the Department about land at Blessington, County Wicklow, specifically with a view to discussing the operation of the site with the Department on the consortium basis. It appears from the file that Mr. Smart rang Mr. Johnston, informing him that the property would be sold by public tender and promising to advise him when tenders were being invited. Roadstone continued to press its interest, and it would appear that a meeting took place on the 10th May, 1990, between Messrs MacAodha and Breathnach, on behalf of Roadstone, and Messrs Gillespie, Carroll and the late Mr. Smart on behalf of the Department. At that meeting, it would appear that the Department indicated that they would sell, and quoting from a note, "probably most likely by public tender".

While it would appear that the parliamentary commitment by

which the Department undertook to sell by public tender was mentioned, it also appears that the Department indicated that they would not rule out an offer by Roadstone, or anyone else, without prejudice to the Department's right to sell by public tender. By the end of May of that year, Mr. Johnston had again written to the Department expressing his continued interest, and, in response, Mr. Carroll invited Mr. Johnston to meet him to set out in more detail his plans for the property. It would appear that copies of maps showing the approximate area to be sold were sent around that time both to Mr. Johnston and to Roadstone. On the 20th July, Mr. Carroll and Mr. Smart met with Mr. Johnston. Mr. Johnston indicated that he had walked the site in Blessington and that he would only be interested in acquiring it provided it had full planning permission, and that without planning permission, it would be of little value. He proposed to purchase the site with a lump-sum upfront, and, thereafter, pay royalties as material was extracted. Mr. Carroll informed Mr. Johnston that the Department proposed to sell "lock, stock and barrel," and would like him to submit an offer on that basis. Mr. Johnston indicated that before considering the matter, he would require a statement of the total area for sale and any bore-hole information. It appears that he also pointed out that it was usual for the Planning Authority in such cases to stipulate a 60-metre step-back all around any extraction site, and that he would be

submitting an offer for the floor area only and not the surface area.

The Department indicated that the area for sale would be the surface area and not any reduced area preserved to comply with the planning laws. Mr. Johnston was also informed that the property might still be offered for sale by public tender competition.

From this time onwards, it would appear that these two parties intensified their interest in the property, and the Department's dealings were confined to those two parties, namely Mr. Johnston and Roadstone. Not long after the Johnston meeting, the Department held a further meeting with Roadstone on the 1st August, 1990, and the note of this meeting is worth referring to in its entirety at this stage.

This is contained at Tab 77 of Book 75. This is Mr. Carroll's note dated the 7th August, 1990, containing a report of a meeting dated the 1st August, 1990, in Leeson Lane, at which present on behalf of the Department were Mr. John Gillespie and Mr. Philip Carroll, and on behalf of Roadstone, Mr. Martin MacAodha and Mr. Seamus Breathnach, and the purpose was to discuss further the proposed site of Deerpark, Blessington forest. The note goes on: "The Roadstone representatives wanted to clarify four issues prior to submitting a proposal to their board for approval to negotiate for the purchase of the site.

The four issues were:

the precise area;

a basis for calculating the value of the trees;

planning permission;

felling licences.

In relation to area, the note goes on, "Following consultation with the OPW concerning the retention of the ring fort, the Department indicated that the area for sale amounted to 58.68 hectares (145 acres approximately). A map outlining the area to be retained was supplied to Roadstone.

"Value of trees: Roadstone had received advice that the tree crop comprised approximately 40 hectares spruce, of which 30 hectares was semi-mature and 10 hectares was suitable for felling. They had calculated this in volume terms as approximately 20,000 cubic metres, valued at $\text{€}10$ to $\text{€}15$ per cubic metre, giving a value in the range of $\text{€}200,000$ to $\text{€}300,000$. The Department explained the normal method of calculation used for valuing the forest crop using the DCF method and agreed to revert to the company with details of the basis of calculation which would be used by us to determine value for timber.

"Planning permission: The company indicated that they were considering submitting an offer subject to planning permission being granted. They sought the Department's views on this approach. The Department indicated, again, that any offers received at this stage would be considered without prejudice to the Department's right to sell the

property by public tender or auction. As regards planning permission, the company was advised that an offer conditional on planning approval was unlikely to be acceptable to the Department because this would eventually involve the Department handing over a valuable asset to a third party to process such an application when the Department might pursue the same course itself, and, if successful, hold a much more valuable asset. However, it was agreed that the Department would consider any offer submitted.

"Felling licences." This is not of particular significance.

And finally, Mr. Carroll noted, "The meeting concluded on the basis that the Roadstone representatives would put the matter to their board, following which they hoped to revert to the Department with a solid proposal before the end of August."

Towards the end of August, Mr. Carroll provided Mr. MacAodha, Managing Director of Roadstone, with some further information concerning the site. On the 5th September, 1990, Mr. Smart wrote to Mr. Johnston referring to his earlier meeting with the Department and informing Mr. Johnston that the area which the Department proposed to sell amounted to approximately 145 acres, and that the lands in sale would include the trees.

The next contact with either of the two parties took the form of a meeting between the Department's and Roadstone's

representatives on the 26th September, 1990. At that meeting, Roadstone offered $\text{€}1.1$ million for the property, of which $\text{€}0.7$ million would be paid on the closing of the sale and the balance of $\text{€}0.4$ million on the satisfactory outcome of planning permission. The Department indicated that they expected a much higher offer for the property and also indicated that it had no interest in considering offers to which conditions relating to planning permission were attached. Roadstone's representatives indicated that they would, nevertheless, like to get some indication from the Department as to the price the Department required for the reserves. The Department responded that it would consider Roadstone's offer.

Whatever internal consideration of the Roadstone offer took place is not clear, but it would appear that on Thursday, 18th October, some two or three weeks after the offer was made, the Department arranged a meeting attended by Mr. Sean Fitzgerald, the Assistant Secretary; Mr. John Gillespie, Principal Officer; Mr. Carroll, Assistant Principal Officer; and Mr. Tom Smart, Higher Executive Officer, on the one hand, and Mr. Kiaran O'Malley, accompanied by Mr. John Barnett, on the other. From the record of the meeting, it would appear that O'Malley had advised that planning was going to pose a greater problem than had originally been envisaged; that Roadstone, as an adjoining occupier, were most likely to get planning permission and that they would probably seek planning

permission to work the area on a phased basis; that this was something which it was always felt would be more likely to attract the approval of the Planning Authority, although, for obvious reasons, not an option open to the Department. In other words, if the Department were to apply for planning permission, they'd be applying for planning permission for the whole site with a view to selling the whole site on with planning permission. If the site was purchased by the third party, it would be open to that third party to apply for planning permission in respect only of a small portion of the site, perhaps enhancing its chances of getting planning permission for a small portion as opposed to a large portion or the entirety of the site.

It also appears that the two advisers present doubted if many would be interested if the property were advertised for sale by public tender without planning permission, and that, apart from Roadstone, they could not see bidders offering more than $\text{£}400,000$, but that perhaps Roadstone might offer $\text{£}600,000$.

It would appear that, at that point, Messrs Barnett and O'Malley were informed that an offer had been received from Roadstone, and while there is some differences as to precisely what was said thereafter, it seems that it was either recommended or agreed that the sale of the reserve should be negotiated with Roadstone. The note records that Roadstone was seen as having the optimum chance of getting

planning permission, and therefore, presumably, was the potential bidders most likely to pay the highest price. It was recommended that the Department should try to persuade Roadstone to drop the planning condition subject to which the second part of its offer was made. The note also records that the property without timber was valued at 1.25 million with planning permission, and if that amount could be obtained for it without planning permission, then that offer should be accepted. After some discussion, it was apparently agreed that Roadstone should be supplied with a figure of 1.5 million for the property with a view that they would increase their offer to 1.25 million without any planning components.

On the 25th October, 1990, Mr. Carroll prepared a memorandum to the Minister seeking the Minister's approval to confine negotiations to Roadstone exclusively at that stage to see what would emerge. That memorandum is contained at Book 75, Tab 85. It's headed "Sale of lands at Deerpark, Blessington, County Wicklow," and the two addressees at the top appear to be Mr. Gillespie and Mr. Fitzgerald.

It goes on:

Paragraph 1: "For Minister's approval of the recommendation in paragraph 9 below.

"2. The property.

The site comprises a total of 72.9 hectares and was retained by the Department following the establishment of

Coillte because of its substantial reserves of sand and gravel. The property contains a ring fort which OPW have identified as being an impressive monument strategically located with possible Viking associations. It is regarded by OPW as one of the finest of its type in the country and they have requested that it be transferred to them. The associated area of land required is 14.22 hectares. This leaves a net area for sale of 08.65 hectares.

"3. GSI report.

The Geological Survey of Ireland was commissioned by the Department to carry out an assessment of the sand and gravel resources at Blessington in 1988. The conclusions of the GSI were:

"1. That approximately 7.4 million cubic metres of sand and gravel are present with a fines content of less than 20%;

"that an additional 2.6 million cubic metres of sand and gravel occurs with a fines content of over 20%, but probably less than 40%;

"that sand and gravel extraction at Deerpark might conflict with its present use as an amenity area.

"4. Consultants' report.

In June 1989, Kieran O'Malley & Co, Civil Engineering and Town Planning Consultants, were commissioned to carry out an initial appraisal from the point of view of planning and property disposal. In association with John Barnett, Minerals and Environmental Science Consultants, a valuation

was put on the deposit. The outcome of these assessments

was:

"1. That planning approval would be difficult for a new operator because of access and traffic implications in Blessington;

"2. Resistance is also likely because of amenity considerations;

"3: Roadstone, because of their proximity, are very special adjoining owners whose access to the site would give them an advantage over potential operators;

"4. The valuation arrived at, based on the capitalisation of the discounted royalties for the life of the deposit 20 years was 1.26 million with planning permission, and £821,000 without planning permission. In reality, the consultant says that without planning permission there is no value for the minerals.

"5. Roadstone interest:

Some general interest has been expressed in the acquisition of this property but only one party Roadstone has made any meaningful approach. Following three separate meetings with the managing director of Roadstone, a formal offer for the property has now been made and a copy is attached. The offer is as follows:

" £0.7 million to be paid on completion of the contract;
£0.4 million to be payable on obtaining satisfactory planning permission.

"Roadstone have requested a response to this offer by the

4th November, 1990.

"6. For/against private sale to Roadstone:

The offer from Roadstone is considered to be a good basis for reaching agreement on the disposal of the Blessington property to that company. The reasons in favour of dealing privately with Roadstone are as follows:

"For:

" planning permission will be very difficult to obtain for a new operator;

" Roadstone are already working on adjacent deposit and have all the advantages of access, plant and infrastructure in place;

" they have made a firm offer of £700,000 upfront which represents some element of risk but also some element of optimism that planning permission will be granted to them;

" our consultants advise in favour of continuing to negotiate with Roadstone; they seriously doubt that any remotely close offer will be made from other sources without planning permission;

" Roadstone may be running short on resources in the area and would be anxious to secure this deposit;

" transport and establishment costs for Roadstone in moving to a new location allows scope for a higher offer.

"Against:

" a third party might make a better offer, although the best advice we have suggests not;

" we may wish to retain the property for amenity

purposes and to manage the timber resources which are valued on the DCF basis at approximately 300,000.

"7. Conclusion:

Retaining the property for commercial forestry purposes will give a substantially lower economic return than the first offer of Roadstone. It also involves us in retaining a property for which we have no direct management resources. Roadstone have special advantages insofar as obtaining planning permission is concerned, and on the basis of the best advice we have, there are compelling reasons to confine our negotiations to them. The alternative is to offer the property for sale by restricted tender to selected promoters, but if this process fails to produce a better offer, as we believe it will, then we effectively strengthen Roadstone's bargaining position. For these reasons, it is concluded that we confine our negotiations to Roadstone exclusively at this stage to see what emerges.

"8. Reply to the Roadstone offer:

The value which has been placed on the mineral resource with and without planning permission is 1.26 million and 800,000 respectively. Roadstone fall short of the higher value in absolute terms by approximately 160,000. Indeed, because of the structure of their offer retaining approximately 400,000 subject to planning permission it is not regarded as acceptable overall. Essentially, the Department would end up receiving approximately 700,000 on completion of the contract and

waiting years, perhaps, for the final tranche, and, in the meantime, becoming embroiled in a planning application which may highlight many environmental issues." They may seem to be somewhat prophetic words, but anyway, it continues: "Moreover, if the planning application is a partial one or includes onerous conditions, it is more than likely that the agreement which Roadstone will wish to draw up will tie us into sharing any associated costs, resulting, possibly, in a substantial reduction on the balance due of £400,000.

"9. Recommendation:

Accordingly, the Minister's approval of the following approach to Roadstone's offer is recommended:

" our asking price without planning permission to be set at £1.5 million for the freehold interest in the property, including timber and net of the area reserved for OPW;

" AND

rejection of any condition linking the Department to obtaining planning approval in any shape or form;

" subject to their response, approval to settle at £1.25 million in total at completion of contracts;

" if it proves necessary, the phasing of that payment at £1 million on completion of contracts and £250,000 one year later, at latest, with an appropriate penalty clause."

Now, as will be apparent from the manuscript notes, this memorandum was approved and initialled by the then Minister, Robert Molloy, on the 14th November, 1990. It's

worth mentioning from the other manuscript on the other manuscript note on that page that the Assistant Secretary, although agreeing with the approach, felt that the terms were optimistic.

In recommending that the Department confine its negotiations to Roadstone, the Department stated that some general interest had been expressed in the acquisition, but that only one party had made any meaningful approach. It also stated that while a third party might make a better offer, the best advice the Department had suggested otherwise.

In due course, the Tribunal will wish to inquire why neither the Minister nor any of the two consultants with whom the planning and other aspects of the project to that date had been discussed, were not informed of Mr.

Johnston's approach, nor of the stage reached by the Department in its dealings with Mr. Johnston.

In this context, I think reference should be made to a letter of Mr. Johnston's dated the 2nd November, 1990, which is to be found in reconstituted form at Tab 86. It is reconstituted because it has proved impossible to put the original available copy on the overhead projector due to illegibility.

The letter headed is "Johnson Industries" and lists Mr. Johnston's address, the fact it is a faxed letter, 2nd November, 1990. It is addressed to Mr. Philip Carroll, Assistant Principal Officer, Department of Energy, Forest

Service, Dublin.

"Re departments land at Deerpark, Blessington, County Wicklow, approximately 148 acres.

"Dear Mr. Carroll,

"Further to my various correspondences and meetings with you and your staff in relation to your proposed sale of the above-mentioned property, I am prepared to make an unconditional bid for the above land without the benefit of a planning consent.

"I will take on board all the planning risks involved. It would be of great assistance to me if you could provide me with details on the bore-hole information, and the quantities of material contained in the subject land from the appraisal that your Department carried out for yourselves.

"As you are aware, I have requested this information from your colleague, Mr. Tom Smart, but have not received it to date. I will undertake not to rely on the information that your Department provides to me.

"I will need this information to enable me to make a speedy decision as to my best offer. For me to carry out a complete site investigation would cost approx i;½50,000 and be time-consuming, and cause further delay in my making an offer to you."

Although Mr. Carroll's memorandum was dated the 25th October, it will be obvious from the handwritten notations that it went through the hands of a number of officials on

the 26th October, the 3rd November, the 5th November, the 6th November and the 14th November, and that during all that time, it does not appear that the contents of Mr. Johnston's letter were brought to the attention of any of the officials or of the Minister.

The same goes for a letter of the 5th November, 1990, again from Mr. Johnston to Mr. Carroll. Mr. Johnston does not appear to have had a reply by the 15th November, because on that date he again wrote to Mr. Carroll referring to his earlier requests, and indicating that it was his intention, as soon as he received the information he was seeking, to be in a position to make a bid in early December of 1990.

Now, at that time, inasmuch as the proposal to confine the Department's negotiations exclusively to Roadstone effectively amounted to a deviation from standard guidelines, it appears to have been felt necessary to alert the Department of Finance to the situation. While not at that time seeking the formal sanction of the Department, Mr. Carroll deemed it appropriate to draw to the attention of the Department the alteration of the Department's course as to the manner in which the disposal would be conducted.

In a note, which seems to be a record or memorandum for his own use, that is to be found at Tab 90 of Book 75,

Mr. Carroll made the following note:

"I briefed Gerry Hickey, Department of Finance, today, on the proposed sale of Deerpark, Blessington to Roadstone. I advised him of Roadstone's offer and the recommendation

which the Minister had approved by way of our response. I indicated that I did not want to put the matter formally to his Department at this point. I made it clear that we would be confining our negotiations for the time being exclusively to Roadstone.

"Mr. Hickey agreed with our approach to the matter and asked only that his Department's sanction be sought for any final acceptable offer."

Once again, the Tribunal will wish to inquire why the approaches of Mr. Johnston, which had intensified significantly by that date, were not brought to the attention of Mr. Hickey. It would appear from a note made by Mr. Carroll that, on the day following the minute of his conversation with Mr. Hickey, he contacted Mr. Johnston's secretary to inform her that the Department would not be prepared to make available confidential internal reports referring, presumably, to the bore-hole studies conducted by the Geological Survey of Ireland. In other communications with Mr. Johnston in the latter part of 1990, arrangements were made for him to view the site. On the 23rd November, 1990, at a meeting attended by Mr. MacAodha, Mr. Breathnach and Messrs Fitzgerald and Carroll and the late Mr. Smart, Roadstone's representatives were informed that their offer was being rejected. The late Mr. Smart's note of the meeting is contained at Tab 92. It says "Report of meeting with Roadstone Limited in Clare Street at 11am on Friday, 23rd November, 1990.

"Present: Roadstone Limited: Messrs MacAodha and S. Breathnach.

"Department: Messrs S. Fitzgerald, Assistant Secretary; P. Carroll, Assistant Principal; and T.M. Smart.

"Purpose: To discuss further the proposed sale of Deerpark, Blessington forest.

"Roadstone representatives were informed that their offer had been considered and, while good, did not reflect the real value of the property. The Department were anxious that the company should look at it again, particularly in relation to the size of the deposit, its location and interest to Roadstone. The company should also consider the value of the timber on the property. The Department required 1.5 million for the reserve with no involvement in the planning application. They were anxious that the company withdrew this component because the Department wished to dispose of all of its properties without planning permission. Roadstone had a significant advantage over other interested parties and should have no difficulty in getting planning permission in stages. The fact that OPW were getting part of the area should be an advantage to them.

Mr. MacAodha said that he appreciated the Department did not want to get involved in the planning application and agreed to drop this component. Roadstone had not carried out any detailed analysis of the timber and asked to be supplied with details of the volume and stand maps, if

possible. He was anxious to come to an early agreement with the Department and hoped to arrange a further meeting in about a week after receipt of the information requested.

Subsequent to the meeting and on the 23rd November, 1990, the late Mr. Smart sent a copy of the stand map inventory of timber to Roadstone.

a few days later, on the 28th November, 1990, Mr. Johnston wrote to the Department, indicating that he would be available to view the site at Blessington from Monday 3rd December, 1990, and requested the Department to confirm a time and place. He also raised a number of queries concerning aspects of the land in sale.

In a reply dated 29th November, 1990, Mr. Smart arranged an appointment for Mr. Johnston to view the site and he also responded to Mr. Johnston's other queries. There was further correspondence from Mr. Johnston on the 30th November finalising arrangements to view the land, and Mr. Carroll, by letter of the 30th November, noted Mr. Johnston's intention to carry out his inspection on the 5th December at 10am.

It would appear that at 11.30am on the 5th December, Mr. MacAodha and Mr. Dempsey of Roadstone met once again with Mr. Fitzgerald and Mr. Carroll and the late Mr. Smart on behalf of the Department, and Mr. Smart's note of that meeting is contained at Tab 98.

This minute, or report, is dated the 6th December, 1990, and it is as follows:

"Report of meeting with Roadstone Limited in Clare Street at 11.30am on Wednesday, 5th December, 1990.

"Present: Roadstone Limited: Messrs MacAodha, Managing Director, and D. Dempsey, Company Secretary.

"Departmental: Messrs Fitzgerald, Carroll and Smart.

"Purpose: To discuss further the proposed sale of Deerpark, Blessington forest.

"Mr. MacAodha said that Roadstone had considered the matter in detail since the last meeting. Without planning permission they valued the land plus the timber crop at $\text{€}1,500,000$. Planning and development would cost the company $\text{€}1$ million, and, from advice received, any planning permission granted would be subject to severe restrictions. However, having considered all the factors, Roadstone were prepared to offer 1.15 million for the area with no strings attached. This offer was subject to board approval.

"The Department agreed that Roadstone had to consider all factors involved. The company had many advantages over other interested parties. The area was located beside their present operation, and to locate it elsewhere would be very costly. It was convenient to Dublin and they had access advantage. The fact that OPW had retained a sizable area would be an advantage to them in seeking planning permission and planting unused areas should also assist. 1.15 million was a reasonable offer but fell short of the asking price of $\text{€}1.5$ million. The minimum the Department could accept was $\text{€}1.3$ million. Roadstone representatives

accepted that they had many advantages and, for this reason, they were anxious to finalise a deal with the Department. They asked for, and were granted, permission to leave the room to discuss the matter further among themselves.

"On their return they said that the maximum they were prepared to offer, subject to the approval of their board, was 1.25 million. Since this offer was close to the 1.3 million minimum which the Department could accept, Mr. Fitzgerald agreed to submit it to the Minister for approval. He would also have to seek sanction for the sale from the Minister for Finance.

"Mr. MacAodha did not envisage any problems with his board because he had already discussed the matter with the Chief Executive. He was grateful to the Department for all the assistance given to the company in the matter and promised to confirm the offer of 1.25 million within a week.

Mr. Fitzgerald, in turn, conveyed his thanks to Roadstone for the manner in which they handled the discussions. The Department would be in touch with the company as soon as they heard from the Minister.

"This concluded the meeting."

The state of play following that meeting, therefore, was that the Department, and Roadstone had agreed a price in principle of 1.25 million. This was to be recommended by Roadstone's representatives to their Board whose approval would be required before the offer could be confirmed. On

the Department side, Mr. Fitzgerald agreed to submit the proposal for approval, but, as can be noted from the earlier minute, the Department negotiators had effectively achieved a price in accordance with the authority granted by the Minister on foot of his approval of the 14th November, 1990. In other words, the Department had come in at the price of 1.25 million they had already fixed for themselves and for which they had received the Minister's imprimatur.

In a minute of the 5th December, 1990, Mr. Carroll sought the formal approval of the Minister to accept the Roadstone offer. This minute was approved by the Minister on the 11th December and initialled by him on that date, and is contained at Tab 99.

It's headed "Sale of land at Deerpark, Blessington, County Wicklow.

"1. The Minister approved the negotiating approach to Roadstone for the sale of this sand and gravel deposit on 14th November, 1990 see paragraph 9 of the attached note." That's a reference to the earlier minute of the 25th October, 1990.

"2. Following this, two meetings were held with Roadstone representatives on Friday 23rd November and on Wednesday 5th December. Following negotiations on both occasions, the Roadstone representatives have revised their offer to 1.25 million. This offer is conditional on the approval of Roadstone's main board which is not considered problematic.

"3. For our part, Roadstone were informed that their offer would be recommended to the Minister for acceptance and would require the approval of the Minister and the Minister for Finance.

"4. This present offer represents a very substantial improvement over their first offer of i½0.7 million up-front and i½0.4 million on satisfactory completion of planning permission. The offer does not carry any condition relating to planning permission nor is any phasing of payment involved.

"Accordingly, the Minister's approval of Roadstone's offer of i½1.25 million is recommended. Roadstone will confirm their offer in writing within a week."

If we could return for a moment to the first page of the note, or memorandum; it's addressed to the Secretary and the Runai Aire. It would appear to have, in what seems to be Mr. Fitzgerald's hand, the note, "Approval of offer of i½1.25 recommended" initialled "SF", Sean Fitzgerald, 5th December." Underneath that, in what appears to be the Secretary's hand, on the 10th November, that's Mr. John Loughrey, "Minister's satisfactory and rapid conclusion of negotiations in line with your direction of 14th November recommended that we accept i½1.25 million and close accordingly." Then on the final page of the note, or on the second page of the note, in the Minister's hand, is "Approved 11/12/90," initialled "RM" Robert Molloy.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF OPENING STATEMENT BY MR. HEALY:

MR. HEALY: Now, according to Mr. Brendan Johnston, following his examination of the site which took place on the 5th December, 1990 as I said, the day of the meeting during which, in principle, the deal with Roadstone appears to have been concluded he pressed for an early meeting with the Department, but was told that, for one reason or another, the earliest possible date was Thursday, 13th December, apparently mainly due to Mr. Carroll's absence.

While there are various letters from Mr. Johnston's solicitors referring to telephone calls from Mr. Johnston to the Department in the period between 5th December, 1990, and the 12th December, 1990, there appear to be no internal departmental records referring to those telephone calls.

According to Mr. Johnston, on the 12th December, 1990, he had a telephone conversation with Mr. Carroll in which Mr. Carroll indicated to him that he was sorry that the land in question had already been sold by the Minister.

While Mr. Carroll doesn't necessarily agree that those were the words he used, he has stated to the Tribunal that he informed Mr. Johnston that agreement had been reached with another party for the sale of the land.

It would appear that, at that point, Mr. Johnston contacted the Minister's office expressing dismay that notwithstanding the arrangements he had made to visit the site, he was now left in the situation where he could not

bid for the land, and he complained that he felt that "the wool had been pulled over his eyes" and that he wished to appeal directly to the Minister. It seems that following representations by a third party associated with Mr. Johnston, a Dr. Noel Murphy, a meeting was arranged for Mr. Johnston to make a bid for the property. In a letter of the 13th December, 1990, sent by fax and addressed to the Minister, Mr. Johnston referred to the matter. This letter is to be found at Tab 107, Book 76. It's headed "Johnston Industries," gives the address, dated 13th December, 1990, addressed to Mr. Bobby Molloy, Minister for Energy, Department of Energy.

"re land at Deerpark, Blessington, County Wicklow, approximately 145 acres.

"Dear Minister,

"Further to my conversations with your Kieran Byrne and the above matter.

"Given the events of the last week in relation to dealing with your staff at the Department of Energy, Forest Service, Leeson Lane, Dublin 2, when I requested an early meeting with Mr. Philip Carroll, Assistant Principal Officer, and his senior staff for Friday, 7th December, 1990, or Monday, 10th December, 1990.

"I explained in detail to Mr. Tom Smart, assistant to Mr. Philip Carroll, who told me that he was taking Mr. Carroll's telephone calls as Mr. Carroll was away and would not be back until the following week. I also

explained to Mr. Tom Smart in detail that I would be bringing my solicitor with me to the meeting and that I would be making a substantial unconditional offer for the freehold of the said land and I would also be making a conditional offer separately, and that my second offer would be subject to planning permission.

"Mr. Smart's remarks were that the Department was not interested in a conditional offer that was subject to planning permission. I requested that he would have Mr. Philip Carroll and any other senior persons necessary present at the meeting in order for them to tell us if our offer was acceptable or not.

"After giving Mr. Smart all these details, he said that the earliest date he could arrange a meeting was Thursday 13th December, 1990, at 11.30am. I accepted that date, and Mr. Smart said he would confirm this date as soon as Mr. Carroll returned, which he expected to be either Monday, 10th December, or Tuesday, 11th December, 1990. On Monday, 10th December, 1990, I phoned Mr. Philip Carroll's office three times and my calls were intercepted each time by Mr. Tom Smart, who informed me that Philip Carroll was still away and he would get Philip Carroll to call me as soon as he got back.

"Because of the lack of progress, I decided to phone the Principal Officer, Mr. John Gillespie, to make him aware of my proposals. Yet again, my telephone call was intercepted by Mr. Smart, and I was unable to gain access to the

Principal Officer.

"Because of these events I am unable to rely on your staff at Leeson Lane and I intend to furnish my offer to you direct today as soon as you are able to meet me.

"I can be contacted at all times either by telephone or fax," and he gives a number of telephone and fax numbers.

Now, if you turn or if you look at the second paragraph of that letter where Mr. Johnston states that he requested an early meeting for Friday, the 7th December, or Monday, the 9th December, one assumes that he must have made his telephone calls at sometime between the Wednesday, the 5th December, 1990, when he made his site visit, and Thursday or possibly Friday, the 7th December.

Mr. Johnston did eventually arrange, on foot of the representation made by Dr. Murphy, to meet with the Department with a view to making an offer to buy the Glen Ding lands. Around the same time, in a letter from Mr. Johnston's solicitors, Messrs McGreevys, the Department was threatened with legal proceedings arising out of what was perceived to be or contended to be their failure to afford Mr. Johnston an opportunity to make a bid for the lands.

It would appear that, following representations made by Dr. Murphy and perhaps following the telephone calls from Mr. Johnston and maybe some internal departmental discussion of the matter, the Minister directed or instructed the officials that the Department should meet

with Mr. Johnston. Having regard to the threat of legal proceedings, the officials felt it appropriate to seek legal advice. In his Memorandum of Intended Evidence, Mr. Carroll has stated that he recalls that he was uncomfortable with the Minister's instruction in circumstances where he believed that there had been effectively been a commitment made to Roadstone. It was Mr. Carroll's belief that the Minister had agreed with the proposal to dispose of the property to Roadstone, although his Ministerial approval, as signified to Mr. Carroll, had not been formally communicated to the proposed purchaser. In his Memorandum of Intended Evidence, Mr. Carroll has noted that the Department's file contains a memorandum prepared by Mr. Fitzgerald dated the 14th December, 1990, which deals with aspects of the event that occurred on the previous day in connection with the Department's instruction to meet and the actual meeting with Mr. Johnston; in other words, Mr. Fitzgerald's memo deals both with the meeting with Mr. Johnston and with the events that took place prior to that meeting in preparation for the meeting, including the officials' desire to obtain legal advice.

Mr. Fitzgerald's memorandum records that a meeting took place on the morning of the 13th December between Mr. Fitzgerald and Mr. Carroll, on the one hand, and Mr. Patrick McMahon of the Chief State Solicitor's Office, on the other, and that Mr. McMahon stated that Mr. Johnston

had no legal basis for the action threatened by his solicitor in his letter of the 12th December, 1990, and that Mr. McMahon recommended seeing Mr. Johnston and taking, without comment, an offer for consideration by the Minister. Mr. Carroll recalls he found consolation in the views expressed by the Chief State Solicitor's Office prior to the meeting with Mr. Johnston to the effect that the Minister's acceptance had not been formally communicated to Roadstone and that, in those circumstances, it was not then legally binding. At the meeting which took place on the 13th, it would appear that Mr. Johnston made two offers: the first contained in a letter dated 10th December, 1990, and which he handed over at the meeting, made an offer of $\text{€}750,000$ for the property, with a further $\text{€}435,000$ to be payable on the grant of planning permission, making, in all, a total of $\text{€}1.15$ million. It will be noted that that offer was very similar to the initial offer made by Roadstone, although the total consideration involved was slightly higher than that offered by Roadstone.

The second offer, contained in a separate letter which was again dated 10th December and handed over at the meeting on the 13th December, 1990, contained an unconditional offer of $\text{€}800,000$ for the property. Mr. Johnston had attached a bank draft of $\text{€}80,000$ as a deposit in respect of the $\text{€}800,000$ unconditional offer. According to a note made by Mr. Carroll on the 14th December, 1990, Mr. Johnston indicated that his offers reflected the fact that the

property was landlocked, and that planning approval would be difficult to get; that if his was not the higher offer, he would wish the Minister luck in selling to another party.

In his note of the meeting, the one I mentioned a moment ago, Mr. Fitzgerald recorded a similar exchange.

Mr. Fitzgerald undertook to put Mr. Johnston's offers before the Minister for his decision. Mr. Johnston, in a Memorandum of Intended Evidence provided to the Tribunal, states that he recalls that he was informed by the Department that there was only one other buyer; that he himself was aware that Roadstone would be bound to be in as bidders, given their dependence and location close to the site. He also states in his Memorandum of Intended Evidence that he recalls asking the Department's officials what sort of money was being sought by the Department for the site, and that the Department's response was an indication to him that this would be a matter for the parties bidding for the site. He states that he was never given an asking price by the Department officials at the meeting; that, having made his offer, and this is confirmed by both Mr. Carroll and Mr. Fitzgerald, Department officials, as I have already said, informed him that his offer would be considered.

Mr. Fitzgerald's memorandum on the 14th December, 1990, referring to the meeting on the 13th December, was prepared for the Minister, and having recounted the circumstances of

the officials' meetings with Mr. McMahon on the morning of the 13th and subsequently the meeting with Mr. Johnston and his solicitors later on on the 13th, goes on as follows and this document is contained at Tab 111.

If you go to paragraph 4, the memo goes as follows:

"The unconditional offer of $\text{€}800,000$ is in line with the advice on market value given to us but falls well short of the Roadstone offer of $\text{€}1.25$ million. The second offer of $\text{€}2.715$ million plus $\text{€}2.435$ million, subject to planning approval, also falls short of the Roadstone offer without planning approval."

That appears to be a mistake of arithmetic, because it's actually larger than the Roadstone offer.

"It is in very similar terms to the original Roadstone offer which was rejected.

"Roadstone have written in, copy attached, but their offer is still conditional on 'consent by the main CRH board' and cannot therefore be formally accepted. I would suggest that we inform Roadstone that the Minister has been made another unsolicited, unconditional offer and that he cannot consider Roadstone's offer until it is made absolutely.

This could also help to defuse any possible rumours and misunderstanding that may arise suggesting that the Minister or Department were acting in bad faith and should facilitate a quick response from them.

"I recommend rejection of Mr. Johnston's offer as falling far short of Roadstone's, but to defer informing him for a

few days to give Roadstone an opportunity to clarify theirs. If Roadstone cannot secure formal board approval before end of next week, Mr. Johnston's offer should then be rejected."

And then in a handwritten note, in what appears to be Mr. Fitzgerald's hand, is the following:

"Mr. Johnston phoned this morning inquiring about a decision." Then it's signed "Sean Fitzgerald" and the date is altered in manuscript to "14th December, 1990".

Now, that note, if we can go back to the first page of it for a moment, was addressed to the Secretary and the Minister, and opposite the Secretary's name is a manuscript note "discussed with secretary." That's in Sean Fitzgerald's hand, and it's initialled "S.F."

Then underneath that, next to the word "Minister," is "noted by Minister" and then the initials are what we believe to be "S.M.", and dated the 14th December, 1990.

Now, it would appear that the Minister was not in the habit of approving documents in this way, but, at the same time, is not in a position to offer any assistance as to how this note, apparently made by Mr. Seamus Molloy no relation to Mr. Robert Molloy, who was his Secretary how this note came to be made. It may be, and this is something the Tribunal has only divined in the last few days, it may be that Mr. Molloy was out of the country at the time and the effect of the document may have been communicated to him by telephone, but this may require the Tribunal to make some

further inquiries.

Now, the Tribunal will wish to inquire to what extent the different versions of the meeting of the 13th December, 1990, those of Messrs Carroll and Fitzgerald, on the one hand, and Mr. Johnston, on the other hand, can be reconciled, if at all.

Precisely what happened after this memorandum was prepared, and presumably approved, is not clear from the file. But it would seem that, despite Mr. Fitzgerald's memorandum dated 14th December, 1990, and its clear recommendation of a rejection of Mr. Johnston's offers, by letter of the 17th December to Mr. Johnston's solicitors, Mr. Fitzgerald stated that the Minister was considering Mr. Johnston's offers as requested and that he had not, by that time, made any decision. On the face of it, that would appear to be inconsistent with the handwritten note on the memo recording the Minister's approval of the contents of the memo on the 14th December.

To return, for a moment, to the 14th December, when the Department appear to have fixed its strategy in accordance with Mr. Fitzgerald's memorandum, Mr. Carroll appears then to have formally sought the approval of the Department of Finance for a private sale to Roadstone. That was done by way of a letter to the Department of Finance, a letter which contains an account of the process up to that date, together with the basis of the Department's case to proceed by way of private treaty. This letter is contained at

Tab 112.

It's from Mr. Philip Carroll, Assistant Principal Officer, to the Secretary, Department of Finance, Merrion Street, Dublin 2, 14th December, 1990. This is obviously the office copy of the letter obtained from the files of the Department of Agriculture. It's addressed to the Secretary, Department of Finance, but marked for the attention of Mr. Gerry Hickey.

I suppose, strictly speaking, it's in the form of a minute rather than a letter.

"I refer to previous discussions concerning the sale of the Department's property at Deerpark, Blessington, County Wicklow. Approval is now sought for the sale of this property to Roadstone Limited at an agreed price of $\text{€}1.25$ million.

"The site comprises a total of 72.9 hectares and was retained by the Department following the establishment of Coillte because of its substantial reserves of sand and gravel. The property contains a ring fort which OPW have identified as being an impressive monument, strategically located with possible Viking associations. It is regarded by OPW as one of the finest of its type in the country and they have requested that it be transferred to them. The associated area of land required is 14.22 hectares. This leaves a net area for sale of 58.65 hectares.

"The Geological Survey of Ireland was commissioned by the Department to carry out an assessment of the sand and

gravel resources at Blessington in 1988. The conclusions of GSI were:

"That approximately 7.4 million cubic metres of sand and gravel are present with a fines content of less than 20%.

"That an additional 2.6 million cubic metres of sand and gravel occurs with a fines content of over 20% but probably less than 40%.

"3. That sand and gravel extraction at Deerpark might conflict with its present use as an amenity area.

"In June 1989, Kieran O'Malley & Co, Civil Engineering and Town Planning Consultants, were commissioned to carry out an initial appraisal from the point of view of planning and property disposal. In association with John Barnett, Minerals and Environmental Science Consultants, a valuation was put on the deposit. The outcome of these assessments was:

"1. That planning approval would be difficult for a new operator because of access and traffic implications in Blessington.

"2. Resistance is also likely because of amenity considerations.

"3. Roadstone, because of their proximity, are very special adjoining owners whose access to the site would give them an advantage over other potential operators.

"4. The valuation arrived at, based on the capitalisation of the discounted royalties for the life of the deposit 20 years was $\frac{1}{2}$ 1.26 million with planning permission and

£821,000 without planning permission. In reality, the consultant says that without planning permission there is no value for the minerals.

"Some general interest had been expressed in the acquisition of this property, and two parties, Roadstone and Johnston Industries, have made firm offers.

"These offers are as follows:

"Roadstone: £1.25 million

Johnston: £800,000 unconditional or £750,000 with another £435,000 payable in the event that planning permission issues for the extraction of sand and gravel from the site.

"Roadstone had earlier made a conditional offer of £700,000 and a further £400,000, subject to obtaining a satisfactory planning permission. This was rejected because of the attendant problems envisaged in regard to the planning process. Similarly, the Minister proposes to reject the Johnston Industries conditional offer.

"The Minister believes that the Roadstone offer of £1.25 million represents a very satisfactory outcome and that, realistically, it would be unlikely that any other potential buyer would either match or exceed that offer, considering the planning difficulties to be faced and the strategic advantages which undoubtedly favour Roadstone as an adjoining property owner. Indeed, the Minister would be particularly concerned that if the property was put on the market for public sale without planning permission, not only might it draw many objections from interested parties,

but would most likely damage the prospects of reaching the price on offer from Roadstone. Moreover, retaining the property for commercial forestry purposes will give a substantially lower economic return than the Roadstone offer. It would also involve the Department in retaining a property for which it has no direct management resources. Roadstone have special advantages insofar as obtaining planning permission is concerned, and, on the basis of the best advice we have, there are compelling reasons to sell the property to them at what is a very fair and reasonable price. The alternative of offering the property for sale by restricted tender to selected promoters is a dangerous option, because if it fails to produce a better offer, as the Department believes it will, then we effectively strengthen Roadstone's bargaining position.

"For these reasons, the Minister is satisfied that the Roadstone offer is to be accepted and I am to request your Department's urgent approval of this arrangement in order to facilitate a quick exchange of contracts."

While this letter contains an account of the main features of the transaction, including a compelling basis for proceeding as the Department believed was appropriate, by selling to Roadstone, it does not allude to the Government commitment given by Mr. Ray Burke in the Dail on the 20th October, 1988, that the property would be sold only by public tender, nor does it allude to the various oral and written indications to several interested parties that the

property would not be sold save by public tender.

On the 18th December, 1990, Roadstone wrote to Mr. Carroll confirming CRH main board approval and the fact that their offer had become unconditional. In a minute to the Minister of the 19th December, 1990, Mr. Fitzgerald sought the final formal approval to instruct the Chief State Solicitor's Office to finalise the sale. By letter of the 20th December, 1990, Messrs McGreevy, solicitors for Mr. Brendan Johnston, were informed that his unconditional offer had been considered and was not successful.

Thereafter, the legal formalities were put in train, and although the matter was significantly delayed by further negotiations concerning stamp duty and ancillary matters, felling licences for trees, and so forth, the contract was eventually signed in June of 1991, with the formal transfer not being executed until December of 1992. From the information canvassed in outline above and from the documents examined by the Department, the main features of this transaction would seem to be as follows:

In 1987, the Department of Finance invited various Government departments to identify assets surplus to requirements for the purpose of disposal to defray the national debt.

The Department of Energy, then the Department having control of the matter, although it's now the Department of Agriculture which appears to be in control of the files, the Department of Energy identified a number of assets, of

which the State lands at Glen Ding were the most valuable, as surplus to its requirements.

In response to expressions of interest received from persons anxious to purchase the lands, a number of commitments, both oral and written, were made to the effect that the lands would not be sold save by public tender.

The Government itself, in the form of a response to a Parliamentary Question, stated that the lands would not be sold save by public tender advertised in the national press.

The lands were eventually sold by private treaty and not in accordance with earlier commitments to proceed by way of public tender.

Quite apart from the commitments to proceed by way of public tender, the disposal of the property may have been carried through in a way which deviated from the Department of Finance guidelines. A process, therefore, which it was envisaged would be by public tender and in which the Department and the Minister committed themselves to proceed by public tender, ultimately resulted in a sale by private treaty to Roadstone.

In those circumstances, at least the following questions would appear to warrant further examination:

Notwithstanding the dealings between the Department of Energy and the Department of Finance, was there a justifiable deviation from the standard Government procedures in the disposal of these lands?

Was there a justifiable deviation from the commitments given both in correspondence at private meetings and in the Dail that these lands would not be disposed save by public tender?

If a deviation of the kind canvassed above occurred, it would appear to have resulted in the confining of the Department's dealings in the disposal of these lands to two parties. Confining the Department's dealings to those two parties necessarily excluded any of the other already identifiable parties interested in purchasing the lands from any part of the process. Needless to say, it also had the effect of excluding any new potential interested parties.

on the face of it, this conferred a benefit of those two parties, namely Roadstone and Mr. Brendan Johnston of Johnston Industries.

By subsequently confining the negotiations to one person, the Department, again on the face of it, would appear to have conferred a benefit on that single entity, in this case Roadstone, to the exclusion not just of the parties already excluded, as mentioned a moment ago, but also to the exclusion of Mr. Johnston.

Particular features of the procedure whereby the commitment to proceed in public was departed from and whereby the approval of the Minister was secured to confine negotiations to Roadstone, may require examination, specifically the fact that neither the Minister nor the

Department of Finance appear to have been informed of the extent of the Department's dealings with Mr. Johnston or the degree of interest he had shown in purchasing the property, nor the parliamentary and other commitments to proceed by way of a public tendering process. In this context, and having regard to some of the documents I opened earlier, it will be necessary to examine the basis upon which officials were justified in characterising Mr. Johnston's interest as less than meaningful. One way or another, the effect of the course followed by the Department was to make Roadstone the sole interested entity with whom the Department engaged, giving them, as was to some extent alluded to by the Comptroller & Auditor General in his report, a clear run in the negotiations.

The question which warrants inquiry in that particular context is whether Roadstone, therefore, were in a position where they could buy at an undervalue, where they could bid without regard to competitors, whether knowingly or not.

In light of the material mentioned above concerning the meeting that was set up on the instructions of the Minister on the 13th November, 1990, the Tribunal will need to consider whether that situation, the situation in which Roadstone were apparently the sole bidder, was rectified by the intervention of the Minister; whether, in fact, the meeting of the 13th December, 1990, could have rectified the situation in which Roadstone, up to that date, appear to have had a clear run and where the Department's

engagement with Mr. Johnston might justifiably have been characterised as something in the nature of "going through the motions," in other words, whether the subsequent engagement with Mr. Johnston on the 13th December, 1990, was more illusory than real. One of the features of any property disposal where the asset for sale does not appear to have been exposed fully to the market by way of an auction or a public tendering process, it's whether its value has been maximised.

The Tribunal will endeavour to examine the extent to which notwithstanding the criticisms, if any, which might ultimately be made of the approach adopted by the officials the value achieved was within the range of likely market values.

the Tribunal has obtained a report from Mr. Christopher Lockwood, a partner in the firm of Messrs GVA Grimley, an international firm of property advisers based in England.

Mr. Lockwood has experience in the area of mineral assessment and valuation, and he has informed the Tribunal that the price achieved was in the order of the appropriate market value. His views, of course, and certain limitations affecting the circumstances in which he has had to carry out his examination, will have to be examined in light of the evidence of other witnesses, in light of information made available to the Tribunal from other intended witnesses and in the light of any new information that may emerge in the course of the Tribunal's hearings.

Of course, even if the property was disposed of at market value or within a range of reasonable market values, it does not necessarily follow that the disposal, in circumstances where the process appears to have been confined to Roadstone, did not confer a significant benefit on that company.

It's obvious from the submission to the Department of Finance from Mr. Carroll in January of 1991 seeking sanction for the decision to proceed with Roadstone, that the Department contends that there was a sound commercial rationale behind the decision to dispose of the property, ultimately, to Roadstone, notwithstanding the degree of interest from other parties. If, however, the transaction were ultimately to be characterised as in some way irregular by reason of the deviation from the private commitments to proceed by way of public tender, the Government commitments so to proceed, a possible departure from standard guidelines concerning the disposal of State property, the question remains whether this was due to political or other influence exerted by or on behalf of Roadstone to deflect the process in their favour. A further relevant question is whether it may have been due to a breakdown in the process resulting either from a lapse of administrative standards, or, as has been suggested in evidence to the Public Accounts Committee by the former Secretary of the Department, Mr. John Loughrey, whether it resulted or may have resulted from a loss of corporate

memory; whether, in other words, it arose from administrative failures or because the Department simply couldn't remember that it had given commitments to proceed by public tender, couldn't remember that its Minister had indicated in the Dail that the lands would not be disposed of save by public tender.

In this context, it should be borne in mind that one of the features of the disposal of this property is that it occurred over a very long period of time, from approximately late 1987 to late 1990, nearly three years.

During that period, there were a number of significant structural changes in the Department, and in particular in the section of the Department by which the sale was being handled. There were also a number of Ministerial changes over that period of time.

On the 1st January, 1989, for instance, a division of the Department of Energy, the Forest Service, was hived off to become Coillte Teoranta, a semi-State body dealing with forestry, responsibilities which were formerly within the ambit of the Civil Service. This, apparently, involved the loss of a significant number of officials, due either to early retirement or their transfer to Coillte.

Mr. Loughrey has informed the Tribunal that this resulted in a significant erosion of corporate memory specifically with reference to the official response to the earlier expressions of interest and the Government response to the parliamentary question. At the same time, it will be borne

in mind that from the documents we mentioned this morning, Mr. Carroll, who was managing the project, appears to have been aware of the parliamentary commitment, though he may have taken a certain view of its force, or lack of force. During all this period of time, in other words, during the period of time that the transaction took to complete from late 1987 to late 1990, and I am not counting the subsequent period devoted to the formalities, the late Mr. Desmond Traynor was associated with CRH plc, the holding company of Roadstone. The Roadstone group of companies, it would appear, are managed on a federal basis, whereby individual companies operate within a realm of freedom subject to an overall supervisory role of the board of CRH. Roadstone, in this case, was, in other words, capable of operating, to a significant degree, independently, but ultimately, and as will appear from the evidence, this transaction had to be brought to the Board, and as we saw from the documents mentioned this morning and this afternoon, ultimate sanction for the proposal and for the purchase had to be obtained from the main board of CRH. In 1986, a year before the process of disposing of this property commenced, the late Mr. Desmond Traynor ceased to be Chairman of Guinness & Mahon. At that time he was, and had been for a number of years, a director of CRH. By 1987 he had become Chairman of CRH. Evidence has already been heard by the Tribunal concerning Mr. Traynor's role in the management of the financial affairs of Mr. Charles Haughey.

The Tribunal has also heard evidence concerning the operation under the control of the late Mr. Traynor of what appears to have been a highly secret banking service initially from within Guinness & Mahon and subsequently from the offices of CRH in Dublin. Evidence has already been given by Mr. Tony Barry, former executive of CRH, concerning the extent of his knowledge of these activities. The Tribunal has, since then, had the benefit of the report of the Ansbacher Inspectors concerning the operation of the Ansbacher accounts and the extent of the involvement of other individuals associated with CRH in the operation of those accounts.

From information made available to the Tribunal by CRH, it would appear that the proposal to acquire the Glen Ding site was presented to an acquisitions committee of CRH by Mr. Tony Barry. The late Mr. Traynor was the chairman of the acquisitions committee. The Tribunal will wish to examine the extent to which Mr. Traynor was aware of the negotiations leading up to the acquisition, the extent to which he participated in the ultimate decision to acquire this property, more specifically the extent to which he may have involved himself in the handling of the project by company executives in either CRH or Roadstone.

At the time of the Government decision to dispose of surplus assets, Mr. Ray Burke was Minister for Energy. He was, however, replaced as Minister by Mr. Michael Smith on the 28th November, 1988, who, in turn, was replaced as

Minister by Mr. Robert Molloy on the 12th July, 1989. The pivotal decisions to which reference has already been made in relation to this transaction commenced, or appears to have commenced in any case, with the approval by Mr. Robert Molloy of the proposal to confine negotiations to Roadstone, and effectively to deviate from the private and parliamentary commitments to proceed by public tender.

Mr. Molloy has indicated that, to his knowledge, there was no involvement of Mr. Charles Haughey in this transaction; that he, Mr. Molloy, was not approached by Mr. Haughey, or anyone else on his behalf, in relation to the sale, and that he has no recollection of ever being approached, either directly or indirectly, by either CRH or any of its subsidiary companies.

Lastly, I should say that the Tribunal continues to conduct private investigations in relation to aspects of this transaction, and it has received submissions and representations from a number of individuals concerning the handling of the transaction and the benefits deemed to have accrued from the transaction to Roadstone. These submissions deal not just with the transaction itself, but with a range of matters, most of which pertain to the subsequent history of the site. On the basis of the Tribunal's current inquiries, most of these matters would appear to be outside the ambit of the Tribunal's Terms of Reference. This is not to say that some of them may not ultimately require to be pursued by this Tribunal. They

are undoubtedly of genuine concern to the individuals from whom they have been received. If demonstrated to be substantial, they may warrant an inquiry, but, as things stand, not an inquiry upon which this Tribunal would have any mandate to embark.

Now, I just want to mention one or two things about the technical adornments to the Tribunal's proceedings of the last few days. I am not going to deal with these maps in any detail, but I am simply going to describe the maps as they stand.

The map which is now on the overhead monitor, which I have now enlarged, is a map of the entire Roadstone area, or entire Blessington area. Where I have now put the cursor, if it's visible to everybody else, is where the old or earlier CRH quarry was situated adjoining the place where I have now put the cursor, if it can be seen, which is roughly the area of the Glen Ding site.

The map which I have now put on the overhead projector shows, outlined in red, the area actually sold to Roadstone by the Department. I am now moving the cursor over to what is effectively the area of the Rath Turtle Moat Ring Fort.

It will be seen that an area surrounding the moat has been excluded from the sale.

This map is one to which I have already referred, was prepared by Mr. John Barnett in connection with the Department's proposals to seek planning permission for the site. It will be obvious from the map that Mr. Barnett's

original instructions were more or less at large to examine the site as a whole with a view to ascertaining what could be realised out of it by way of a marketable deposit of sand and gravel. The area outlined in red on that map is smaller than the area sold to Roadstone, and it's Mr. Barnett's impression of, if you like, the area that could be developed for the purposes of sand and gravel extraction.

At this stage, sir, I would have envisaged proceeding to read most of the main documents into the record, but I think it might be preferable if I were to try to do that tomorrow morning and to take up the evidence of Mr. Fitzgerald tomorrow afternoon as there is quite a volume of documents to be put into the record, and if I am to make any sense of them and to try to, I think, hopefully reduce the number of documents in light of some of the documents already mentioned this morning, it's better to start fresh in the morning.

CHAIRMAN: In those circumstances, Mr. Healy, it is the case that other Tribunal work be done today, is it desirable we start at half ten or eleven?

MR. HEALY: I think it has to be eleven, sir.

CHAIRMAN: All right, I'll just deal, in conclusion, then, with any representation applications. I see you present, Mr. Regan.

MR. REGAN: I would like to seek representation. I appear with Ashley Martin for the Department of Agriculture. Now,

they are the Department which are successor to the Department of Energy which have been referred to, but they have custody of the files. So I think we have four witnesses.

CHAIRMAN: Well, you are dealing with the present entity and its lineal antecedents, effectively. Well, I think it's clear, in view of the matters that we have heard of in the opening, that taking the criterion that effectively I have operated throughout such applications, that an order for limited representation is in the context of being a shield rather than a sword; that there are possible interests of individuals within the State apparatus that may come under some inquiry or scrutiny, and, in those circumstances, I believe an order for limited representation is appropriate.

MR. REGAN: I am obliged.

MR. STRAHAN: I am for Roadstone, and my application is for representation of CRH and Roadstone on the basis of Mr. Healy's opening.

CHAIRMAN: Yes, again, in the light of what we have heard and my brief remarks, I think fairness demands that there should be such an order.

MS. LEYDEN: : Might I seek to make an application for representation of Kiaran O'Malley, planning consultant. I am instructed by Noel Clancy, solicitor.

CHAIRMAN: Well, there has been reference to his involvement, and whilst my involvement in preparations for

these hearings has been limited, because obviously I have to base my report on the evidence that is actually heard in public session rather than on any inquiries behind the scenes, nonetheless, do I correctly recall that your client may have been the subject of some adverse criticism at some of the previous inquiries, or one, at least, of those?

MS. LEYDEN: I am aware that O'Malley has been referred to on numerous occasions in the opening speech, and I am aware that it may be imperative to have an eye and ear here for the next two weeks to ensure that he can fully answer any questions that are put to him in cross-examination, and, for those purposes, I would wish to make representations on his behalf.

CHAIRMAN: Well, in the context of what I am aware of and the criteria that have been operated, I think an order for limited representation is warranted. It may possibly be desirable that you liaise with Mr. Healy insofar as your interest isn't as wide as that of the other two individuals mentioned, and it may be that on individual days it may not be necessary for you or your solicitors to be involved, but I'd invite you to discuss those matters with members of the Tribunal legal team. I'll accordingly make that order, but, as in the other two orders, I should emphasise, as has always been the position, that an order for limited representation in no way implies any successful outcome in any costs application, which is a separate matter entirely.

Very good. We'll resume, then, at 10 o'clock in the

morning sorry, 11:00. So be it.

THE TRIBUNAL ADJOURNED UNTIL THE 28TH APRIL, 2006.