

THE TRIBUNAL RESUMED ON THE 2ND MAY, 2006, AS FOLLOWS:

MR. COUGHLAN: Just before we go

MR. MAY: I wonder if I could just address the Tribunal for one moment?

CHAIRMAN: Would you like to please come forward for a moment, if you would. Thank you. Perhaps you'd like to just sit in that seat for the moment. Yes?

MR. MAY: My name is Seamus May from the Quarry and Concrete Family Alliance, and basically what we would like to do is apply for representation. Obviously it's something we accept you'll have to consider, but on Friday, or on Thursday last Mr. Healy in his submission made mention of three distinct categories of people that were affected by this most controversial of sales of State assets. One was the two people that the Department actually engaged with. The second category were a group of people who had expressed interest in writing and whose identities were known, and the third party were people like ourselves, and like a whole range of people who just simply did not know of the existence of Glen Ding, let alone that it may be for sale.

And one of our own members, that's my family business, we actually operated a concrete plant across the ditch from Glen Ding in lands owned by Hudson Brothers, and we were experiencing quite severe difficulties with the overall availability of aggregates at the time. And were we to have known that Glen Ding had been for sale, we would have

done our absolute utmost to buy some or all of it. And in that context, we feel that we would like, if we could have representation, we would be interested in cross-examining a number of various witnesses.

CHAIRMAN: I am aware of something, Mr. May, of the background, and I have read your very pertinently expressed and well-thought-out letter of last Friday. In general terms, the object of granting limited representation in Tribunals such as this, which are orders which are, in general terms, sparingly granted, are to enable people whose good name or other fundamental interests may be adversely affected by public sittings of tribunals have the assistance of trained lawyers to seek to vindicate that good name or other interests, or perhaps to cross-examine evidence that might seek to impugn it.

Now, from what I am aware of in the background, Mr. May, I appreciate that your alliance is a substantial and highly reputable body that obviously has understandable concerns in seeing that this aspect of the Tribunal business is inquired into properly and sufficiently, and from my knowledge of that previous correspondence, I value significantly the assistance that you, and through you your members, have furnished in assisting the Tribunal in its preliminary inquiries.

It does, however, seem to me at this juncture that, as I have stated, an order for representation is in the nature of being a shield to protect somebody's interests rather

than being a sword, perhaps to advance some process of inquiry which is the essential task laid upon the Tribunal by the Oireachtas. And on that basis, whilst I very much understand your concern and the amount of commitment and assistance you have given thus far, it does seem to me that at this stage, matters fall short of requiring an actual order for limited representation.

It may be that something will happen to alter that position, and in the meantime, I would very seriously and significantly value any ongoing assistance that can be given. I don't want to you feel excluded or unfairly treated, Mr. May, and I am conscious of your concerns and interest; but it seems to me, on the legal basis that I have summarised to you, which is binding upon me, matters fall short of requiring me to make an order for limited representation at this stage. I'll keep an open mind on anything that transpires, and I do value your ongoing interest and involvement in matters.

MR. MAY: In that context, I believe we may be able to be of quite some assistance in the area of valuations and the conflicts of interests, or alleged conflicts of interests of some of the experts that were used as part of this process, and we would you know, if we are not going to get representation, we would value the opportunity to privately assist the Tribunal with some further information.

CHAIRMAN: Well, I would invite you then, Mr. May, to make

contact with perhaps Mr. Healy, or one of the other Tribunal legal members, and anything that can be done within the remit of what I'm required to do within that, I will seek to do. Thank you very much.

MR. MAY: Thank you very much.

MR. COUGHLAN: Sir, just one or two matters in the transcript for the Day 326.

Major 127, Question 149, line 6 on page 127, which reads:

"To the extent that he lodged appeal for that point."

"Appeal for" should be deleted, and what should be put in place is "A bid up to" "a bid up to."

CHAIRMAN: It's amended accordingly. That seems clear.

MR. COUGHLAN: Now, the next one is on page 130; it's Question 156, line 15. As it currently stands, it reads:

"I instructed Mr. Carroll, I think, or maybe he did it of his own volition, to inform Fianna Fail". "Fianna Fail" should be deleted and "Finance" should be substituted.

It's the Department of Finance.

And finally Mr. Regan has very kindly brought these to my attention, and that one in particular, and finally on page 138, it's Question 175, line 24, which reads at present: "But you did not have an unreasonable offer from Roadstone". "Unreasonable" should be deleted, and "unconditional" should be substituted in its place.

CHAIRMAN: Those are the three amendments sought, and very good, the transcript will stand amended accordingly. It's no remote reflection on our stenographers, who do an

excellent job over so many days covering a vast spectrum of situations and unusual terminology and names.

MR. COUGHLAN: It's all my fault, because I was taking the witness at that time.

CHAIRMAN: Mr. Healy.

MR. HEALY: Mr. Philip Carroll, please.

PHILIP CARROLL, HAVING BEEN SWORN, WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

CHAIRMAN: Good morning, Mr. Carroll. Thank you for your assistance thus far. Please sit down.

Q. MR. HEALY: Thank you, Mr. Carroll.

You have provided the Tribunal with a narrative of your involvement in this transaction. And what I propose to do is go through the narrative, initially go through the whole lot of it, and then afterwards there will be a number of matters I want to take up with you arising from the narrative and perhaps in the evidence already given.

Now, in the course of the narrative, I think there are a number of documents quoted in extenso. I won't necessarily go into all of those because they have already been ventilated, some of them more than once, in the course of the hearings to date.

And one other thing: Frequently, when witnesses are in the witness box, they remember things in their narrative, or they remember things in connection with the narrative that they sometimes will have forgotten when they were preparing the narrative. So if anything occurs to you and you want

to stop me and say that's not right or that's not wrong, a small thing, just tell me.

You start off by saying: "This narrative was compiled from the Department files for the period in question and is not compiled solely and/or directly from my recollection of events". You go on to say that you joined the Department of Energy from the Department of Industry and Commerce in February of 1990. On joining the Department of Energy, you held the post of Assistant Principal Officer assigned to the Forestry section of that Department. Mr. John Gillespie was the Principal Officer and head of that section.

This Section was established in the Department prior to the establishment of the semi-state body Coillte Teoranta. The late Mr. Tom Smart, Higher Executive Officer, reported to you. Mr. Sean Fitzgerald was the Assistant Secretary of the Department at that time. You recall that Mr. Fitzgerald was not directly involved in the sale of the Glen Ding site to Roadstone (Dublin) Limited until towards the conclusion of the negotiations with that company. The Glen Ding site was one of a number of properties owned by the Department which prior to the establishment of Coillte Teoranta had been earmarked as being surplus to forestry requirements and therefore saleable. At the time the Government was battling economic difficulties and had determined that non essential Government assets might be disposed of to the benefit of the State. Such transactions

also included the sale of advance factories built at the expense of industrial development agencies. You recall that there were approximately 100 forestry properties in total that were to be disposed of around that time. You would have remitted the day-to-day routine aspects of the sales to members of your staff and only become involved personally in particular sales as appropriate, and usually at the point when sales were close to being finalised.

Of all of these properties, the Glen Ding site was the most valuable. Most of the other properties, though not all, were valued in the order of between 5,000 and $\frac{1}{2}$ 15,000. You became involved with the sale of the Glen Ding site in the spring of 1,990. The Department retained local estate agents to conduct the sale of these other properties, which were sold either by tender or public auction or by other means as appropriate. Since the value of the Glen Ding site was thought to be far in excess of the other sites, the Department treated it differently and did not simply engage a firm of real estate agents to dispose of it.

Rather, the Department engaged independent experts to assess the value of the site and also had agreed had regard to a report on the value and quantity of the site's resources prepared by GSI. Independent expert opinion was that it would be difficult for any entity to gain planning permission for the site, but that in the event that it did, the value of the site, with planning permission, was approximately $\frac{1}{2}$ 1.3 million.

You cannot recall with certainty when you became aware of the parliamentary commitment made in October of 1988 by the then Minister for Energy, Mr. Ray Burke, that the Glen Ding site would be sold by public tender after it had been advertised in the public press. You state that this parliamentary commitment would not have been directly material to the decision made in 1990, when the assessment of the appropriate method of sale was actually made, which was judged on the requirement to get the best value for money for the taxpayer.

Furthermore, you state that in order to deviate from the appropriate guidelines relating to such sales, the procedure is to secure the approval of the Department of Finance and that this sanction was obtained. Moreover, the Department of Finance was kept informed of the status regarding proposed disposal of the site.

You state that particular circumstances existed in relation to Glen Ding that, in the view of the Department and the Department of Finance, justified deviating from the standard means of selling such properties.

It was evident that Roadstone was an adjoining owner who had logistical and cost advantages who would be more likely to secure manage permission than others. The view was taken on foot of specialist advice that given the planning permission hurdles for others, advertising the property for sale by public tender might not attract a price level that was warranted. This would potentially reduce the price the

Department could obtain from Roadstone, who would then be aware that no other potential purchaser was willing to pay a similar amount to itself. As a result, the State would secure less in proceeds than actually resulted from the process that was finally conducted.

In effect, this would have restricted the negotiating flexibility of the State. Moreover, there was a real concern that in advertising the property for sale, it would attract negative publicity, since this was a public amenity area, and this might ultimately have prevented the sale proceeding.

You were not aware of the written commitments to the same effect as the parliamentary commitment mentioned a moment ago, and you refer in particular to the written commitment by Junior Minister Michael Smith to Sean Walsh, TD, on the 8th October 1987 and to Chris Flood, TD, on the 5th November, 1987. These commitments preceded your assignment to the Department by some 30 months or so, though again, the circumstance outlined just a moment ago the circumstances outlined just a moment ago are relevant here also, and I take it that this is a reference to the circumstances justifying deviation from a standard procedure.

A. Yes.

Q. Furthermore, while you do not agree fully with Mr. Loughrey's view that's Mr. Loughrey, the then Secretary General of the Department while do you not

fully agree with Mr. Loughrey's view that there had been a loss of corporate memory in the Department due to the retirement of many the civil servants who had dealt with the file and who had been aware of the parliamentary commitment, you accept that there may be merit in Mr. Loughrey's view, particularly at the higher level.

You say that prior to your appointment to the Department, the Department had retained Mr. Kiaran O'Malley & Co Limited to advise it as whether the Glen Ding site should be sold with or without planning permission, and whether it was likely that the Department would obtain permission in advance of the sale. Furthermore, O'Malley was to advise the Department on the value of the extractable materials in the site in consultation with Mr. John Barnett, a minerals consultant.

In a letter dated the 25th April 1990, Messrs. O'Malley and Barnett presented their joint report concerning the value of the deposit. It calculated that the freehold value of the site would be $\text{£}1.3$ million with planning permission, noting, in reality, and without planning permission, there is no value for minerals. Nonetheless, the report placed a value of $\text{£}860,000$ on the site without planning permission.

It went on to state, quoting the report: "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."

Mr. Barnett further advised: "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. 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."

In a letter dated 30th October 1990, Kiaran O'Malley set out the principal planning and decision scenarios and stated there was a risk of planning permission not being obtained. The letter referred to Roadstone having an access and amenity implication for this development, so they are very special adjoining owners. This was the background against which the Department subsequently considered how best to proceed with the sale of Glen Ding. Together with Mr. John Gillespie and Mr. Tom Smart of the Department, you attended a meeting on the 10th May 1990 with Mr. Martin MacAodha and Mr. Seamus Breathnach from Roadstone. The minute of this meeting, which was prepared by Mr. Smart, records that the meeting was convened at the request of Roadstone in order to ascertain the Department's plans for the site. The minute records that Roadstone's representatives were informed that the area would be sold, probably by public tender, and that the matter of sale was still subject to a number of considerations. Roadstone were also told that there was much interest in the property and that the Department would not rule out an offer by

Roadstone or anyone else without prejudice to its right to sell the property by public tender. Roadstone officials were further informed that the area for sale had yet to be decided, but that it was expected to be in the region of 120 acres. Mr. Smart's minute of the meeting records that Roadstone's representatives were told that they would be advised of the exact area for sale as soon as it had been identified.

From a letter on the Department's file dated 22nd May, 1990, addressed to Mr. Carroll and sent by addressed to you, and sent by Mr. Johnston, it appears that Mr. Johnston had expressed an interest in purchasing the property in question on the 10th April, 1989, and again on the 7th December 1989. Rather, in the first of these two letters, Mr. Johnston had given some background of his involvement in sand and gravel in England but did not mention the Glen Ding property. In his letter dated 7th December 1989, he repeated his interest in any sand and gravel that the Department had under its control. He also sought a meeting with the Department to discuss the possibility of operating the Blessington site on a consortium basis with the Department, but did he not mention purchasing the site. Mr. Smart had replied to the letter of the 7th December on the 13th December 1989 and informed Mr. Johnston that the property would be sold by public tender. In reply to Mr. Johnston's letter of the 22nd May just referred to, you wrote on the 29th May noting Mr. Johnston's interest and

suggesting that Mr. Johnston call to see you to set out in more detail your plans for the property his plans for the property. On the 5th June 1990, Mr. Smart sent a copy map to Mr. Johnston showing the approximate area to be disposed of.

On the 20th July 1990, you and Mr. Smart met with Mr. Brendan Johnston. The meeting took place in the Department's offices on Leeson Lane. At this meeting, Mr. Johnston told Mr. Carroll told you and Mr. Smart that he had walked the site and would only be interested in acquiring the property if it had full planning permission and that without permission, the site would be of little value. His proposal was to purchase the site with a lump sum upfront and thereafter pay royalties, about 20p per tonne, as the material was extracted. You informed Mr. Johnston that the Department proposed to sell the site lock, stock, and barrel and would like him to submit an offer on that basis.

Mr. Johnston stated that before considering the matter he would require a statement from the Department of the total area for sale and any borehole information and site investigation information which the Department might have. The Department representatives informed Mr. Johnston at the meeting that the area to be sold would be in excess of 120 acres. Furthermore, Mr. Johnston was informed that he would be notified of the exact area for sale and provided with any other information the Department was in a position

to give him. He was also informed that there were others interested in the property which might be offered for sale by public tender.

On the 1st August 1990, you, together with Mr. John Gillespie, met with Mr. MacAodha and Mr. Breathnach from Roadstone. The Roadstone representatives were told that the area for sale amounted to 58.68 hectares, 145 hectares(sic) approximately. A map outlining the area to be sold was supplied to Roadstone. The Roadstone representatives then indicated that they were considering committing an offer for the site, subject to planning permission being granted, and sought the Department's views on this approach. The Department indicated that any offers received at that stage would be considered without prejudice to the Department's right to sell the property by public tender or auction. As regards planning permission, Roadstone's representatives were advised that an offer conditional on planning approval was unlikely to be acceptable to the Department because this essentially 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, the Department representatives stated that the Department would consider any offer submitted. 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.

A minute of this meeting, which you prepared, was sent to Mr. Fitzgerald, Dr. Niall O'Carroll, Mr. Tom Smart, and Mr. John Gillespie.

CHAIRMAN: I think earlier in that paragraph, Mr. Healy, there is just perhaps a slight error as regards the area.

I think the reference to 145 hectares should in fact be acres.

MR. HEALY: 145 acres.

Q. On the 23rd August 1990, you wrote to Mr. MacAodha enclosing a note that set out the basis on which the Department's valuing of the timber on the site was calculated, together with the average timber prices at the time the valuation was set, or was made. On the 5th September 1990, Mr. Smart wrote to Mr. Brendan Johnston referring back to his meeting with the Department on the 20th July and advising him, as had been promised, that the Department proposed to sell 58.68 hectares (145 acres approximately) and enclosing a map outlining the area to be obtained by OPW.

On the 7th September, 1990, you wrote a memo to Mr. Fitzgerald in response to Mr. Fitzgerald's notes on the report of the meeting with Roadstone on the 1st August 1990. In the memo, you advised Mr. Fitzgerald that Roadstone were expected to make further contact shortly and expressed a reluctance to approach them; first, because the

Department had given Roadstone the impression of other serious interest. You concluded that in fact there was other interest, but of doubtful value.

The Department file contains a minute prepared by Mr. Smart of a meeting held on the 26th September 1990. In attendance at this meeting were Mr. John Gillespie, you, Mr. Carroll, Mr. Smart, Mr. Breathnach and Mr. MacAodha of Roadstone. At the meeting the Roadstone representatives stated that they were prepared to offer $\text{€}1.1$ million for the property. The company would pay $\text{€}700,000$ when the property was handed over to it and the remaining $\text{€}400,000$ on the satisfactory outcome of the planning application.

The Department indicated that they expected a much higher offer for the property. Furthermore, the Department indicated that it had no interest in considering offers to which conditions relating to planning permission were attached. The Department also stated that in the event of Roadstone holding back money pending a satisfactory outcome of a planning permission application, the Department would require full access to the processing of the application in question. Roadstone's representatives stated that Roadstone would have no objection to this request.

The Department then indicated that any withholding of payments would only be favourably considered in the event of a more realistic price being agreed. Notwithstanding the Department's response at the meeting, Roadstone's representatives stated that they would like to get some

indication from the Department of the price required for the reserve. The Department indicated that it would consider Roadstone's offer without prejudice and asked Roadstone to confirm the offer in writing. Furthermore, the Department stated that when the matter was considered, the Department would get back to Roadstone and give the company some indication of the value that would be expected for the property.

On the 4th October 1990, Mr. MacAodha wrote to you confirming Roadstone's conditional offer of $\text{£}1.1$ million, of which $\text{£}.7$ million would be paid on completion of the contract and the remaining $\text{£}.4$ million would be due on obtaining a satisfactory planning permission. The letter stated that the offer was only valid as part of the current discussions, and concluded by requesting a response within a month. You sent this letter to Mr. Smart with a note stating that following a meeting with Kieran O'Malley on the 18th October, it should then be possible to prepare a submission to the Minister advising on and seeking an approval on the approach of the disposal of the property.

Mr. Smart recorded a minute of a meeting that took place on the 18th October 1990. In attendance at this meeting were Mr. Fitzgerald, Mr. Gillespie, Mr. Smart and yourself from the Department, and Mr. Kieran O'Malley and Mr. John Barnett. This meeting was arranged by the Forest Service to seek further information and advice from the consultants following receipt of the Roadstone offer.

O'Malley stated that it would be difficult for the Department to obtain planning permission, and that this was in part due to an access problem to the site. O'Malley advised that Roadstone was the most likely to get planning permission, because they were working in the area at the time and would probably seek planning permission to work the area on a phased basis. O'Malley doubted if many would be interested in the site if many would be interested if the site were let out to public tender without planning permission. He went on to say that apart from Roadstone, he could not see anyone bidding more than $\frac{1}{2}$ 400,000 for the area. He suggested that Roadstone might offer $\frac{1}{2}$ 600,000 for it. When O'Malley was told of the offer received from Roadstone, he strongly advised negotiating the sale of the reserve to that company because Roadstone had the optimum chance of getting planning permission. Furthermore, the property without timber was valued at $\frac{1}{2}$ 1.25 million with planning permission, and if the Department was able to get that amount for it lock, stock, and barrel without planning permission, the Department should take it. O'Malley advised the Department to try to get Roadstone to drop the planning permission condition.

After some discussion, it was agreed that the Department should supply Roadstone with a figure of $\frac{1}{2}$ 1.5 million for the property with a view that they would increase their present offer to $\frac{1}{2}$ 1.25 million without any planning component.

On the 25th October, you prepare a memorandum to Mr. Gillespie and Mr. Fitzgerald summarising the background to the proposed sale to Roadstone and seeking approval for the adoption of a certain approach to the conclusion of negotiations.

And then the contents of that memo are set out. We have been through that memo several times.

If you go to paragraph 7 of the memo. It's headed "Conclusion", and says "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."

Then in paragraph 9, there is the approval of the Minister is sought to allow the Department allow the officials to approach the matter on the basis of an asking price of 1.5 million with a target price of 1.2 million.

Then you go on to say: "Mr. Gillespie forwarded the submission to Mr. Fitzgerald on the 26th October with a note: "Proposal at paragraph 9 recommended for Minister's approval."

Mr. Fitzgerald sent the submission to the Runai Aire on the 5th November stating: "I think the above terms are optimistic but are worth trying on to see if Roadstone's interest is that high".

The Runai Aire replied on the 14th November: "Please see Minister's notation on page 5," which is addressed to the Runai from the Minister, stating: "Proceed as recommended above." And then the initials "RM, 14th November 1990."

The Minister's sanction therefore was given on the 14th November 1990 for exclusive negotiations with Roadstone to ascertain whether they would meet the optimistic price sought.

Prior to this sanction, and indeed after it, the file demonstrates that the Department maintained contact with Mr. Johnston. On the 2nd November, 1990, Mr. Johnston wrote to Mr. Carroll stating that he was prepared to make an unconditional bid for the property without the benefit of planning consent. In the letter, Mr. Johnston stated that he had requested information from Mr. Smart on the quantities of minerals, but that he had not received it to date. A note from Mr. Smart dated the 2nd November 1990, on Mr. Johnston's letter, states that he had informed Mr. Johnston by telephone that the only information he

could give was that the reserve contained a net deposit of 7 to 8 million tonnes, approximately.

On the 5th November 1990, Mr. Johnston wrote to you requesting a complete Ordnance Survey map of the land for sale. A note on the file indicates that Mr. Smart supplied this map on the 6th November.

On the 15th November 1990, Mr. Johnston again wrote to you requesting the information referred to in his letter of the 2nd November. He stated that it was his intention, once he got the information, to make a bid for the subject land early in December of 1990. He ends the letter by requesting a meeting with one of the Department officials to show him over the land, as he had been unable to contact anyone at the Blessington telephone number supplied by Mr. Smart.

On the 15th November 1990, you briefed Mr. Gerry Hickey of the Department of Finance on the proposed sale of the site to Roadstone by telephone. You advised Mr. Hickey of Roadstone's offer and the recommendation which the Minister had approved. You indicated that you did not want to put the matter formally to the Department of Finance at that point, and you made it clear that your Department would be confining the negotiations for the time being exclusively to Roadstone. Mr. Hickey agreed with this approach to the matter and asked only that his Department sanction be sought for any final acceptable offer.

On the 16th November 1990 you telephoned Mr. Johnston and

told Mr. Johnston's Secretary, as he himself was not present, that the Forest Service could not give Mr. Johnston the GSI, the Geological Survey of Ireland, report which evaluated the sand and gravel deposit which he had requested earlier. In further handed notes by Mr. Smart on the 20th November. Mr. Smart recounts speaking to Mr. Johnston's sister, who said that her brother was in hospital and therefore unable to make an appointment to see the property. Mr. Smart asked that Mr. Johnston phone him when he came out of hospital to make another appointment.

On the 23rd November, 1990, yourself, Mr. Fitzgerald and Mr. Smart met with Mr. MacAodha and Mr. Breathnach of Roadstone. At this meeting, the Department informed Roadstone's representatives that Roadstone's initial offer had been rejected, but that the Department was anxious that the company should review the matter again, particularly in relation to the size of the deposit, its location and its interest to Roadstone. The company was also informed by the Department's representatives to consider the value of the timber on the property. The Department required $\text{€}1.5$ million for the reserve, with no involvement in the planning application. This stipulation was in accordance with all properties sold by the Department which were sold unconditionally.

Mr. MacAodha agreed to drop the planning conditions.

Furthermore, he stated that he was anxious to come to an

early agreement with the Department and hoped to arrange a further meeting upon receipt of information relating to the timber crop which he had considered and which was subsequently supplied on the 27th November.

Could I just clarify one aspect of that meeting,

Mr. Carroll, something that has puzzled me a little. If you go to the para 28, you refer to the meeting, and this was after Roadstone had made an offer of 1.1 of which 700,000 was cashed down, if you like, and 400,000 dependent on planning permission. And at the meeting where this offer was tabled, the Department indicated no, that they had no enthusiasm for that kind of offer, but you know, it would be considered, and they'd get back to Roadstone. And Roadstone asked you to get back with your asking price, and you came back and gave your asking price of $\frac{1}{2}$ 1.1 million $\frac{1}{2}$ 1.5 million, sorry indicating that you wouldn't be interested in any offers that contained conditions relating to planning permission. And the note says that at that stage Mr. MacAodha agreed to drop the planning condition.

I can never understand it may be nothing, if anything turns on this but did that mean that his earlier offer of 1.1 was now 1.1 in total cash down, no planning condition, or was he simply indicating that he would make you a new offer in answer to or in response to the 1.5 asking price that would have no conditional element?

Can you recall, did you ever feel that he had made you 1.1 made you a 1.1 offer without planning conditions?

A. Yes, he did. What actually happened was there had been an earlier meeting, as you mentioned, and he had offered a conditional offer, $\text{€}1\frac{1}{2}700,000$, I think, and $\text{€}1\frac{1}{2}400,000$ conditional on planning permission. At this meeting, it was clear to him that offer was not acceptable. I mean, I think, coming to the Department at that stage with an offer that was conditional, he generally had been told prior to that that we weren't interested in a conditional offer.

On this occasion, on the 23rd November, Mr. Fitzgerald took the meeting, and the purpose of that meeting was to see whether that planning restriction could be removed. And that's precisely what Mr. MacAodha did there. He lifted the planning. That was a decisive meeting in the sense that here we had up to that point a conditional offer of $\text{€}1\frac{1}{2}1.1$ million; now we had an unconditional offer of $\text{€}1\frac{1}{2}1.1$ million.

Q. I have always wondered about that. You regarded yourself as having a $\text{€}1\frac{1}{2}1.1$ million unconditional offer?

A. At that point.

Q. Although there was never a formal response by to you it, there must have been some expression of lack of enthusiasm, but there was no formal response by you to it; do you understand me?

A. No, I think at that stage we probably left it at that. We weren't satisfied with that offer. And I think also, and we'll see this as we go on, that we didn't have a mandate to agree a figure at that point.

Q. You certainly didn't.

A. And we required to have such a mandate.

Q. On the 28th November Mr. Johnston wrote to you stating that he would be would be available to view the site on Monday, 3rd December, 1990. He raised a number of queries in relation to the site. Appropriate arrangements were made by Mr. Smart to facilitate the site visit on Wednesday 5th November. On the 19th November, Mr. Smart confirmed these arrangements in writing and replied to certain queries concerning the plantation and confirming that the land was not subject to various rights, and that the land for sale was not subject to preservation orders. He also confirmed that no planning permission had been sought for the area, nor had the land been subject to a planning refusal for mineral extraction.

On the 30th November, in response to Mr. Johnston's letter of the same date, you wrote advising Mr. Johnston to undertake an independent valuation of the potential volumes of sand and gravel on the site for his own satisfaction.

As the figures quoted to him by you were not exact, but were based on a sample survey undertaken on behalf of the Department, you reminded him of an earlier offer in July that the Department would facilitate him to undertake such an evaluation. You also replied to queries from Mr. Johnston concerning the classification of the lands for sale. You ended the letter by noting Mr. Johnston's intention to visit the site on Wednesday, the 5th December,

1990, at 10am.

On the 5th December 1990, yourself, Mr. Fitzgerald and Mr. Smart met with Mr. MacAodha and Mr. Dempsey. At this meeting Roadstone made a revised offer of 1.15 million with no strings attached. The Department rejected this offer as falling short of the asking price of $\text{€}1.5$ million. After a break, Roadstone said the maximum they were prepared to offer, subject to Board approval, was $\text{€}1.25$ million.

Mr. Fitzgerald agreed to submit this offer to the Minister for approval. Mr. MacAodha said he did not envisage any problem with his Board because he had already discussed the matter with the Chief Executive. He promised to confirm the offer within a week.

On the 5th December, you recommended Roadstone's offer of $\text{€}1.25$ million for the Minister's approval. The recommendation noted the conditional approval of both sides, being subject to board approval on the part of Roadstone, and by the Minister and Minister for Finance on the part of the Department. This recommendation was submitted through Mr. Fitzgerald, who agreed the recommendation. The Secretary General, John Loughrey, in his note dated 10th December to the Minister stated:

"Satisfactory and rapid conclusion of negotiations in line with your direction at 14th November, recommended that we accept $\text{€}1.25$ million and close accordingly."

On the 11th November, 1990, the Minister approved Roadstone's offer. This approval took the form of a

handwritten initialled approval at the end of your memo dated 5th December 1990. On the 7th December, 1990, Mr. MacAodha confirmed in writing in a letter to you the offer made at the previous meeting. That written offer was still, however, subject to the approval of the main CRH board.

On the 12th December, 1990, Mr. Johnston met you and had a telephone conversation sorry, Mr. Johnston and you had a telephone conversation. In a letter dated 6th November 1997, which was seven years later, Messrs O'Sullivan & Associates, on behalf of Mr. Johnston, alleged that you had used the phrase "You are too late, the Minister has sold the lands" when Mr. Johnston inquired as to the status of the sale.

And the letter states: "We refer to the above and confirm that we act on behalf of Mr. Brendan Johnston." Now, I think I have read the letter, but I think subsequently, I think you took issue with that expression, "You are too late, the Minister has sold the lands." You weren't aware of this letter at the time, isn't that right, and it was only subsequently you became aware of it; isn't that right?

A. I only became aware of the letter in the context of the request from the Tribunal to meet in private.

May I also make another point here, though? I also took exception to the letter, not particularly about those words, but about the fact that I was accused of having lied to Mr. Johnston in that letter. That was the substance of

what my concern was. And I think I have shown that I did not lie.

Q. Well, I just think we should put your response on the record. We haven't put it on before.

A. That's fine.

Q. You wrote to your Secretary General on the 20th May 2005 saying: "Dear Secretary General, in the course of examining files held in the Forestry Division of the Department concerning the sale of Glen Ding wood, preparatory to meeting the Moriarty Tribunal yesterday in a private session, I came across a letter that makes serious allegations against me personally. I am dismayed as to why this letter was never brought to my particular attention, and I am even more disappointed at the complete inadequacy of the response to these serious allegations. The letter and reply are attached for ease of reference.

"The letter is dated 6th November 1987, from O'Sullivan & Associates, Solicitors, and was written on behalf of their client Mr. Brendan Johnston, who was the disappointed bidder in the aforementioned sale. In the letter I am accused, in the paragraph marked '1' of having misled Mr. Johnston on the 12th December 1990, and a quotation is attributed to me that is untrue. At paragraph 3 I am accused of having "lied."

"In the reply which issued from the Office of the Minister for the Marine and Natural Resources, which had responsibility for Forestry policy at the time, there is an

oblique reference to these improper allegations in the final paragraph apparently inserted at the behest of the Chief State Solicitor.

"It appears that the Department had no intention of challenging these untrue allegations. Even with the amendments of the Chief State Solicitor, the response is wholly unacceptable. The Department dealt with these allegations against me shamefully and with absolutely no regard for my personal integrity. In its response it has left personal allegations of improper conduct answered. Indeed the Department's neglect has effectively given credence to these allegations. I now wish to set the record straight.

"On the 11th December 1990, the Minister for Energy, Robert Molloy TD, formally approved the sale of these lands to Roadstone. Negotiations leading to this had been going on for some time. The following day Mr. Johnston, who had also expressed an interest in the property, phoned me about the status of the property, and I informed him that agreement had been reached with another party for the sale of the land. He subsequently contacted the Minister's Office to protest at the manner of the sale and insisted that he had a firm offer to make. The Minister instructed that Mr. Fitzgerald and I should meet Mr. Johnston to enable him to table an offer, and this meeting took place on the 13th December 1990.

"These are the facts. They are facts that were readily

available on the official files of the Department, had the trouble been taken to properly research the matter. They are facts repeated in the Comptroller & Auditor General special report on the sale of Glen Ding lands at Glen Ding, County Wicklow. This report states, in paragraph 8.4:

"Mr. Johnston's bid for the property was considered before the sale to Roadstone was formally concluded and was not successful because it was lower than Johnston's offer, even though Mr. Johnston indicated that his offer was "his best shot". It must be seen in the context of

" the series of meetings and correspondence with Roadstone to allow the firm to vary its offer progressively.

" the fact that to all intents and purposes the sale had been agreed with Roadstone subject to only CRH main Board approval and approval by the Minister on the 11th December 1990, two days before the meeting with Mr. Johnston at which he tabled his offers. You will see, therefore, that the allegations made on

Mr. Johnston's behalf by O'Sullivan & Associates seven years after the event are themselves a tissue of lies whose motivation I am at a loss to understand.

"I raised this matter yesterday with the Moriarty Tribunal in order to set the record straight. Mr. Jerry Healy for the Tribunal completely concurred with my account of the two facts. I now request the following please:

"that this letter be placed on the official file attached

to the aforementioned correspondence and that this action be acknowledged;

"that the Department should consider how best it might redress the wrong allegations made against me in O'Sullivan & Associates' letter. I would suggest in this regard that a further letter be sent to that company setting out the facts as outlined here, even at this late stage;

that this correspondence should be passed to the Moriarty Tribunal through the Office of the Chief State Solicitor.

"I would appreciate if this matter was given immediate attention.

"Yours sincerely, Philip Carroll".

From a note on the Department file dated 12th December 1990, it appears that Mr. Johnston rang Mr. Kieran Byrne of the Department on that day and inquired whether he could urgently speak to the Minister about the proposed sale.

Mr. Johnston apparently expressed his dismay that he could not bid for the property if the Minister had approved the other offer. He also felt that the wool had been pulled over his eyes, and wished to appeal to the Minister. The note further records that Mr. Byrne had been earlier advised by you that Mr. Johnston would ring, and that it was your advice that the Minister should speak first to either Mr. Fitzgerald or you before speaking to Mr. Johnston.

On the 12th December, Messrs. McGreevy, Solicitors, wrote to you expressing their client's grievance at the news that

the Minister had approved the sale to Roadstone. McGreevys stated that their client had inspected the land for sale on the 5th December and had asked for a meeting with Departmental representatives at the earliest possible date. Also, that you and other Departmental officials were fully aware that Mr. Johnston was coming to a meeting the following day with his solicitor to make an offer for the land; also that he had requested the fullest possible explanation as to how and why the lands were sold without sight of their client's offer, when everyone concerned was fully aware that he was intending to make an offer on the 13th December 1990, and finally stated that they were examining all the possible legal remedies open to their client in the circumstances.

The Department's file contains a manuscript note, dated 12th December 1990, which was written by the then Minister for Energy, Mr. Molloy, in which he states as follows:

"Asked S. Fitzgerald to discuss today 12/12. Has letter issued to Roadstone?"

That discussion led to an instruction from the Minister for officials to meet Mr. Johnston. You recall that you were uncomfortable with this instruction in circumstances where you believed that there had effectively been a commitment made to Roadstone. Furthermore, it was your belief that the Minister had agreed with the proposal to dispose of the property to Roadstone, although this Ministerial consent had not been communicated to the proposed purchaser.

The Department's file contains a memorandum prepared by Mr. Fitzgerald and dated the 14th December 1990. In that memorandum, Mr. Fitzgerald records that a meeting took place on the morning of the 13th December 1990 between you and Mr. Fitzgerald of the Department and Mr. Patrick McMahon of the Chief State Solicitor's Office to discuss the position of the Department with regard to Mr. Johnston. Mr. McMahon stated that Mr. Johnston had no legal basis for the action threatened by his solicitor in his letter dated 12th December 1990. Mr. Fitzgerald notes that Mr. McMahon recommended seeing Mr. Johnston and taking without comment an offer for consideration by the Minister. You recall that you found consolation in the advice given by the Chief State Solicitors Office prior to the meeting with Mr. Johnston to the effect that as the Minister's acceptance had not been formally communicated to Mr. Johnston, it was not legally binding.

On the evening of the 13th December 1990, Mr. Fitzgerald and yourself of the Department met Mr. Johnston. At this meeting, Mr. Johnston made two offers. The first, contained in a letter dated 10th December 1990, made an offer of $\text{€}715,000$ for the property with a further $\text{€}435,000$ payable on the grant of planning permission, which made a total of 1.15 million.

The second, contained in a different letter but also dated 10th December 1990, and again written by Messrs McGreevy & Associates on behalf of Mr. Johnston, made an offer of

€1,800,000 for the property without any planning permission conditions. Mr. Johnston also attached a bank draft as a deposit with this offer. He then wished the Minister luck in selling the property if his offer was not the highest offer. He said he had made his "best shot."

Mr. Fitzgerald then undertook to put Mr. Johnston's offers before the Minister for his decision.

In the memorandum prepared by Mr. Fitzgerald dated 14th December 1990, Mr. Fitzgerald recommended the rejection by the Minister of Mr. Johnston's offer as falling far short of Roadstone's offer, but that the Department would defer informing Mr. Johnston for a few days in order to give Roadstone the opportunity to clarify their offer.

Mr. Fitzgerald further recommended that if Roadstone could not secure formal Board approval before the end of the following week, Mr. Johnston's offer should then be rejected.

According to a handwritten note, Mr. Fitzgerald's memorandum to the Secretary General and the Minister, dated 14th December 1990, Mr. Johnston telephoned the Department that morning, the 14th, inquiring about a decision. On the 14th December 1990, on the advice of the Chief State Solicitors Office, you wrote to McGreeveys noting receipt of their letter dated 12th December 1990, and acknowledged both letters dated 10th December 1990, which Mr. Johnston had handed to Mr. Fitzgerald at the meeting on the 13th.

On the 14th December 1990, you wrote to Mr. Gerry Hickey of

the Department of Finance seeking approval for the sale of the property to Roadstone at an agreed price of $\text{€}1.25$ million. In this letter, you set out the background to the sale, including information on the sand and gravel contents and the advice obtained from the consultants. The letter also set out the two offers from Roadstone and Johnston Industries.

It was recommended that "The Johnston (sic) offer of $\text{€}1.25$ million represents a very satisfactory outcome, and that realistically it would be unlikely that any other potential buyer would either match or exceed the offer, given the planning difficulties to be faced and the strategic advantages which undoubtedly favour Roadstone as an adjoining property owner."

Now, I think because that's a fairly pivotal letter, I gather, from the Department's point of view, it's been referred to on a number of occasions, and sections of it have been read out, I think I should read all of it out at this stage.

This letter is contained at Leaf 112 on Book 76. It's for the attention of Mr. Gerry Hickey.

"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 association. It is regarded by OPW as being 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 the GSI were:

(i) that approximately 7.4 million cubic metres of sand and gravel are present with a fines content of less than 20%.

(ii) 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%.

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

"In June 1989, Kieran O'Malley & Co. Limited, 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:

"(i) that planning approval would be difficult for a new operator because of access and traffic implications in Blessington;

"(ii) resistance is also likely because of amenity considerations;

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

"(iv) the valuation arrived at based on the capitalisation of the discounted royalties for the life of the deposit 20 years was 1.24 million with planning permission and $\text{€}821,000$ 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: $\text{€}1.25$ million

"Johnston Industries: $\text{€}800,000$ unconditional, or $\text{€}715,000$ with another $\text{€}435,000$ 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 $\text{€}700,000$ and a further $\text{€}400,000$ 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 would 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 should be accepted, and I am to request your Department's urgent approval of this arrangement in order to facilitate a quick exchange of contracts."

On the 18th December, 1990, Mr. MacAodha wrote to you confirming that the Roadstone Board had approved the offer of $\text{€}1.25$ million for the land. On the 19th December, Mr. Fitzgerald, in a memorandum to the Secretary and the Minister, recorded the fact that the Roadstone offer was non-conditional, and set out the two valid offers before the Minister on which a decision was necessary. These two offers were the unconditional offer of Roadstone at $\text{€}1.25$ million and the two offers from Johnston Industries, one being unconditional, amounting to 0.8 million, and the other amounting to 0.715 million plus a further 0.435 million subject to planning approval. The Minister approved the recommendation to accept the Roadstone offer on the 20th December 1990, as noted on the memorandum. The oral approval of the Department of Finance was granted on the 20th December 1990 for the sale to Roadstone, and this was confirmed in writing on the 2nd January 1991.

On the 12th December 1990, Mr. Fitzgerald wrote to McGreevy Solicitors informing them that their client's unconditional offer of 0.8 million was not successful and returning the bank draft of 80,000. On the same date, Mr. Fitzgerald

wrote to Roadstone accepting its unconditional offer of
i;½1.25 million.

In a letter dated 21st December 1990, addressed to
Mr. Fitzgerald, Messrs McGreevy Solicitors made a series of
allegations. These were brought to the attention of the
Chief State Solicitors Office on the 4th January 1990, and
the Chief State Solicitors Office replied on the 7th
January 2001.

Mr. Carroll, could I just ask you to clarify one matter for
me in paragraph 1 of your narrative. You say that when you
joined the Department, you held the position of Assistant
Principal Officer and that Mr. John Gillespie was the
Principal Officer and head of the Forestry Section. Can
you recall, did he stay in that Department up to the time
that you ultimately disposed of the land to Roadstone in
December of 1990?

A. I'd be pretty certain he did, yeah.

Q. When you joined the Department in 1990, this the
disposal of these lands was already, if you like, in train;
isn't that right?

A. That's correct.

Q. And the Department had taken a number of steps to bring the
project, if you like, to the stage it had reached by the
time you joined the Department?

A. That's correct.

Q. Of these, I suppose the most significant was that they had
got a GSI report?

A. Yes.

Q. Just to clarify one or two matters. If you look at the mapping monitor that you should have in front of you there to your right, the map on the left-hand side contains the area outlined in red that was ultimately sold to Roadstone.

Can you see that? Do you recognise it?

A. Yes, I do.

Q. The map on the right-hand side contains, in the blackout line, the total of Department lands in the Glen Ding area at the time, while the area outlined in red on that second map contains the section identified for extraction in

Mr. Barnett's report. Do you see that?

A. Yes.

Q. And as you can see, the area on sale is less than the total area of Department lands, but the area identified for extraction is even smaller again; do you see that?

A. Yes.

Q. Can you tell me, how would you have familiarized yourself with this project or this file when you came to the Department? Would it have been by reading the file, or by getting a briefing, or a combination of both?

A. Well, it would have been by reading the file. I do recall, when I joined the Department, this was just one of the functions that I had. And I would say that it was a pretty small element in the functions that I had, and that I concentrated on a number of sites in particular. There are about three that I can recall that I would have had a

fairly active engagement in, and this is one of them. And the reason for that is because these three were the most valuable of the properties. In fact, probably together they were more valuable than all of the other properties put together.

So I would have read the file. I was introduced to the file by Mr. Gillespie for the same reason, that he would have seen this as being the prime property for sale, and there was a degree of pressure on the Department at the time to realise the value of these properties. So I would have read the file at his suggestion; I would have spoken to the people that would have worked in the division, and I also visited Blessington at some stage. I can't recall just when that was, but probably in the early stage, and I would have walked the land.

Q. Right. Can you just expand for a moment for me on your statement a moment ago that this was a small part of your responsibilities. I take it that what you are referring to, when you say this was a small part of your responsibilities, was the entire question of disposal of surplus land, not just the Blessington lands?

A. That's correct.

Q. Can you just give me an indication of the scale of your responsibilities at that time?

A. Well, at the time I joined the Department, which was February 1990, Coillte Teoranta had been established about a year at that stage; I think it was vested on 1st January

1989, and it was at the point of creating its first set of accounts and annual report which were to be published probably in May or thereabouts of that year, and there was a huge job to be done in terms of establishing what the balance sheet value of the forestry estate was, because this had never been done before. So it was a first set of accounts. There was no similar company existing in Ireland.

And then there was the whole question of the forestry programme, the public forestry programme. You see, the division that was there at that time, from the 1st January '89, was a very small proportion of what had previously been the Forest Service; right? And all of the people who were in that division, or a lot of them at least, were new, and they had new functions relative to forestry. This was no longer one composite division, but it was a division with a State-sponsored body which was a commercial State-sponsored body.

So all of the structures that were required to separate the relationship between the division and a State-sponsored body had to be established at that time, and that was essentially my job. Nobody had been doing this job, or at least it had been shared between Mr. Gillespie and Mr. Fearon, who had other responsibilities.

Q. Can you just clarify for me what you mean by your role in ensuring that Coillte produce its first set of accounts.

Perhaps you'd just clear that up for me. Why would you be

involved in the semi-State's first set of accounts?

A. Because in every semi-State body, and in every Department, there is a division that has responsibility for the corporate governance of those state-sponsored bodies. That still applies today, as I understand it, in every government department.

Q. Looking after the Government's shares in the company, effectively?

A. Exactly. And the Government had the full shareholding; the shareholding in that was held by the Minister and the Minister for Finance. So we as line department had responsibility, and of course the accounts of Coillte Teoranta would have had to have been laid before both houses of the Oireachtas, so it was important that they met with the requirements of Government. That was part of my duty.

I also had other responsibilities that related to the funding of certain aspects of Coillte Teoranta's activities that were provided for out of State funding. This would have previous to that, in 1988, I suppose, this would have been part and parcel of the normal vote arrangements for the Forest Service, but of course that was different after the 1st January 1989, because Coillte was now a separate State body. It had a remit to be commercial. And that remit included the fact that it would not be reliant on State funding, but of course there was a period when it was in transition from being part of a government

department to being part of a State body or being a State body, and therefore there was a transition arrangement for funding purposes.

And then I had some wider responsibilities relating to the UN and FAO. There were various timber committees that I was responsible for services, providing information to and attending meetings.

But I would say that the bulk of my work, in that first year in particular, related to the corporate management, corporate governance issues and establishing those, and I think also establishing the relationship between the Department, as it then existed, and Coillte Teoranta, a new State body.

Q. And this was essentially a form of tidy-up responsibility, then?

A. The sale of land?

Q. Yes.

A. Well the sale of land I suppose was. What had actually happened was, and I think you have read this into the record already, there was a Government decision about disposing of non-strategic assets. As I understand it, and as I now recall, and always I think understood, that a list had been drawn up prior to the establishment of Coillte in 1989. At some stage quite late in the process, as I understood it, the list of 100 properties, or whatever number of properties it was, was drawn up quite late, so that those and there is a record of this those

properties were not transferred to Coillte on the 1st January 1989. So I think it was quite late when that list was established. And the reason for that was these were regarded as non-strategic assets. The list would have been drawn up by the people who were in the Forest Service, essentially the people who subsequently transferred to Coillte; they would have drawn up that list based on local knowledge, and that would have been done, I would think, late in '88.

Q. Right.

A. Now, the properties couldn't be sold until I think the commencement of the sale of those properties would not have happened until 1989, because had they been sold before that, they would probably well, the value of that would have already gone into Forestry funds and essentially would probably be in the assets of Coillte at that stage. So these were quite specifically set aside to be retained for the State rather than for Coillte Teoranta's benefit.

Q. The Glen Ding site, no matter what value you put on it we'll say everything from the seven or eight hundred thousand that you were given, in the offers that you were originally made, in the two conditional offers, on even that basis, it was worth far more than any of the other properties. The next nearest property was I think somewhere in the 3 hundred thousands, or something like that; would that be right?

A. That's correct.

Q. And in terms of the value that you had targeted for it, in excess of a million, i.e. 1.25 million, it was nearly a million more valuable than the next nearest property, 900,000, maybe?

A. Well, as it turned out, that was the case.

Q. Oh, I appreciate, but in terms of the price you targeted for it. You had a target price of 1.25 after your initial discussions with Roadstone?

A. Oh, yes, at that stage, but I didn't have a target for it before that.

Q. No. At that stage you had a target price of i.e. 1.25 million which put it at i.e. 900,000 more than the realised price, I think, of the next highest property.

When you were familiarizing yourself with the file, can you recall, did either your own familiarisation with the file or the discussions you had with Mr. Gillespie make you aware of the previous sale to Roadstone in the 1970s?

A. I mean, I clearly am aware of it now.

Q. I hasten to add this is not a trick question, I know that you

A. I know this is not a trick question; I understand that.

And I think I probably was aware of it at the time, but I couldn't be certain of that at this point.

Q. You heard, just after the Opening Statement, I gave a sort of a brief summary

A. Sorry, can I just say on that, I did notice from reading the papers over the weekend that there was a minute

prepared by a person that I knew in the Department at the time, the Chief Inspector, and I think it was a minute that I know I had never seen before, which talked about a value for that particular site, and it talked about selling it at a particular price. And I was certain, having read it at the weekend, that I had never seen it before, because it was the type of minute that I would have recollected.

But having said that, I think I might generally have been aware of the fact that Roadstone had previously purchased property from the Department, because I think that that was part of the contiguous property that they were at that time taking sand and gravel from.

Q. Judging from your own notes, you would certainly have been aware of the fact of the previous sale; you seem to have been aware of the amount of money and the fact that it was paid over a I think it was $\frac{1}{2}$ 150,000, $\frac{1}{2}$ 50,000 down and $\frac{1}{2}$ 100,000 over five years. Now, beyond that, does it appear that you were not aware of the process that had been conducted to achieve that sale, and specifically the fact that a public tender process had been conducted.

A. That's quite possible, because the files that I would have been reading might not have gone back that far. I don't know what year that was. Can you

Q. Well, in fairness, I don't want to go into the details.

They are a fairly interminable file. And I take your point; it goes right back, in fact, I think, to the sixties. It's not indeed I think to the fifties, to

'59, but it reached it crystallised in the late sixties into a sale which was ultimately pinned down in '71 in the form of a contract with Roadstone. To summarise it: There was a tender process which involved advertisements; direct letters to potential interested parties, people who had written in, in other words, and said, "I want to buy this land if it comes for sale".

Then Roadstone made their offer. Their offer was accepted as the highest offer, but there was further negotiation with them, and I think that didn't ultimately that wasn't consummated in the form of a contract until about '71.

A. Okay.

Q. I am just trying to ascertain to what extent there was any consciousness in the Department that that sale had been conducted by way of a public tender process?

A. Well, I think that that was the way sales were conducted. I don't think it necessarily had to confine itself to that particular sale. I think our understanding was that in the general scheme of things, transactions were by public tender.

Q. Now, before you came on the scene, as it were, in the context of this transaction, the Department have, as I have already mentioned, retained the services of the Geological Survey to conduct a survey as to how much sand and gravel was in the area. Were you in fact aware that that survey applied to the entire of the Government lands in

Blessington?

A. Yes.

Q. And I think before you came on the scene, there had been some engagement of an engineer to address the planning position?

A. That's correct.

Q. And also Mr. Barnett, to try and put some value on these minerals?

A. That's correct, yes. I think it had been that process, from reading the files again, had been commenced in 1989.

Q. Yes. I don't think it had got to the stage of formal reports until after you came on the scene; isn't that right?

A. That seems to be the case.

Q. The sale, in other words, was being conducted up to that point, and assuming that you didn't go by public tender, on an in-house basis, with you tapping into various fields of expertise, specialist fields of expertise?

A. Well, there was no sale, if you like, being conducted at that point.

Q. Oh, I appreciate that. The disposal, or the I'm not talking about the sale to Roadstone, but the disposal of the land was being conducted in-house. You didn't engage an estate agent to do this particular sale?

A. No.

Q. You didn't engage any property consultants, which really is just a word for, I suppose, a high-class estate agent, to

advise you on wider ramifications? I am thinking of the very big firms who have a lot of their own specialist expertise.

A. No, we didn't. I think I followed the pattern that had been established by my predecessors, and there was a decision taken to engage engineering consultants and a town planner. I think it was all part of the same contract, as I recall.

Q. It was, yes.

A. I think O'Malley was the contractor who subcontracted part of that work to Mr. Barnett.

Q. That's correct.

A. And that was the proper way, as far as I was concerned at this stage, because we were looking at the question of whether or not the Department itself might be successful in securing planning permission.

Q. We can come back to this later, but I think initially what the Department were seeking to do was to test the waters, or to see what value could be put on this land by getting planning permission for it.

A. Well, I think the first thing we were anxious to do I mean, I don't think it was anything other than a no-brainer to understand that if you had planning permission, then the property was naturally more valuable. And I think the first issue that certainly was of concern to me was whether or not we could secure planning permission. I think the question of value came a little bit later than that.

Q. I appreciate that. And in fairness, the minerals consultant was higher than the context of planning permission. What he prepared was, if you like, he prepared a plan, an extraction plan, which might be approved was the kind which might be approved by a planner.

Now, you have seen from the documents that have been mentioned in the opening, and that we referred to at length the day after the opening, that there were a number of direct statements by the Department to individuals and entities that had expressed an interest in purchasing these lands, that they would not be sold, or that if they were to be sold, they would only be sold by public tender.

Can you tell me, were you aware of those from the time that you became involved in this project? And I am distinguishing at this point between those, if you like, individual expressions or those individual representations by the Department and the response to the PQ.

A. Yeah, I had no direct knowledge of any of those contacts, and what I mean by that is that nobody other than Roadstone and Johnston Industries were companies with which I dealt with at any stage. But it's clear from the file that I was aware that certain companies, prior to my involvement in this thing, had been in contact with the Department.

Q. Right. So do I understand you correctly to be saying that you were aware that there were other expressions of interest, but that you weren't aware that the response to those expressions of interest had been that the lands would

only be sold by public tender?

A. I couldn't answer that directly, but I mean, that was the answer that we would have given to Roadstone and Johnston Industries when we engaged with those at an earlier stage, and I can only conclude from that, that that was the advice that I was given, and that that would have been what would have been said to others in '88.

Q. So, just to go back to your answer that you gave me a moment ago, then, do I take it that what you are saying is that while you weren't directly aware, you hadn't seen the letters sent out to other people informing them that the lands would be sold, if at all, only by public tender, you assumed that if there were other people interested and if there had been contacts with them, they would have been told that they would only be sold by public tender?

A. Well, if that occurred to me at the time I mean, it wasn't something that occurred to me at the time. You are asking me now would I have done something differently; in other words, you are asking me if this had gone to public tender, would I have contacted the companies that had expressed an interest prior to my involvement. I would say I probably would have, yes, but it was not a consideration at the time.

Q. I appreciate that. But can I turn it the other way round, then: If you were conscious if you were directly aware, if you had seen the letters that had gone to those other people informing them that the lands would be sold by

public tender only, would you have felt, before proceeding with Messrs Johnstons or Roadstone, that "Look, we'd better tell these other people they think we are going down one route; we'd better tell them we are going down a different route"?

A. I don't think we had made a decision at that stage.

Q. Maybe not at the early stage, but eventually, jumping ahead for a moment?

A. Well, if we were going down the route of public tender to sell the property, it would have been sensible for us to invite anybody and everybody that we knew who might possibly have an interest in acquiring that property to tender for the property.

Q. Of course, to maximise the interest.

A. And I think that's what we would have done. But I don't think it would have occurred to me that they would make any other contact. Remember, the contacts that were made, as far as I was concerned, and the only one that I had, that if you like well, I suppose, initiated in some way, was the Johnston contact. And that was because Johnston had written to me, and I invited him to come and talk to me about the sale of the property. But that was the only external contact, in other words, the only direct contact that I had.

Q. Yes. And that's what I'm trying to do. I am trying to distinguish what you are calling and I am quite happy to use your words for it direct contact. If you had had

direct contact, or which is presumably the same thing, had actually seen the letters that had gone out to the other people telling them that you were going to proceed by way of public tender, would you have proceeded to close, if you like, with Roadstone without telling those people that "Look, we are not going to go the public tender route; if you have an interest in this property, you should write in to the Department signifying your interest"?

A. I don't know that I would. I think I responded to contacts that had been made to me, and from my recollection, you are talking about letters or contacts that were made in 1987.

Q. Yes.

A. I am dealing with this three years later.

Q. Yes. I think some of them were made later than that; we can check them. I'll let you have a look at them at lunchtime if that's necessary.

A. All right.

Q. As you say yourself, those contacts were made, you think they were made earlier. I think some of them were made in 1988. I am not going to

A. All right

Q. Don't worry about that. I am not going to there is no point in arguing about a fact. We can either establish it from the correspondence or not. But I want to just come for a moment to the response to the Parliamentary Question that I think was definitely in 1988, as far as I am aware; was it not late 1988?

A. It was October '88.

Q. October '88. It's at Book 48 it's at Tab 48 of Book 75.

Now, you see that Parliamentary Question specifically asked the Minister for Energy "if the sand pit at Glen Ding or Deerpark 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." The reply is: "It is the intention that when the sand pit in question is offered for sale, tenders will be invited by public tender competition which will be advertised in the national press."

Am I correct in thinking that when a response is drafted to a Parliamentary Question, the Department usually take considerable care with framing the response?

A. That's correct, yeah.

Q. And the response may go quite high up in the Department, even as far as the Secretary General?

A. Yes. To my knowledge they always go to the Secretary General.

Q. So, I think without knowing much about the background to this, we may assume that it assumed a profile in the Department that went fairly high up?

A. Well, you might assume that. If I could explain that when a Parliamentary Question comes in, it's sent to the division responsible for the particular issue. The first draft might be at a higher executive, Executive Officer level, and it works its way up the line, and it finds

itself in the Secretary's Office and the Minister's Office.

It very much depends.

I don't know that was an oral question. So, on an oral day, if you like, there is a focus on that particular Minister, and there might be, in my own Department, 200 questions on the day of an oral an oral day for that particular Minister. So when you say it takes on a certain importance, I think you should place that in the context of the number of questions that would be put down on the particular day.

Q. Yes, but whatever other questions were raised at the same time that this question was raised, on this file there is only one PQ, as far as I am aware, and that's this PQ.

A. Right.

Q. So in terms of the officials dealing with this file, they only had one Parliamentary Question to worry about; and in terms of their continued processing of the file, there was only one Parliamentary Question, or only one indication had been given in parliament of how the Department intended to proceed. And I am just wondering, did that have a profile was it part of the oxygen that you were breathing when you took up this file?

A. No it wasn't part of the oxygen I was breathing. Let me just go back to that period. October 1988 was prior to the establishment of Coillte Teoranta. The people who drafted the Parliamentary Question most likely, and I don't know who drafted the Parliamentary Question, most likely became

members of staff of Coillte Teoranta. On the law of probability they did, because I think about 95% or thereabouts of people transferred into Coillte Teoranta on the 1st January 1989. So the likelihood is, whoever drafted that went into Coillte Teoranta.

Secondly, I think there were a number of Ministerial changes around that time. So the Minister who replied to the Parliamentary Question was succeeded I think by two other Ministers. The Secretary General was not the same Secretary General. The Assistant Secretary was not the same Assistant Secretary. The Principal Officer was not the same Principal Officer. And as you have noted, I arrived in the division, in the Department in February 1990.

So, I think you have to put it into that context. There was widespread and wholesale change. And also, there was a Government change in June of 1989, and the Minister who came in and who made the subsequent decisions was part of a different Government that made that commitment. Now, I am not saying that that commitment was not a proper commitment, because I think that would have been the standard response to a question of that nature at the time. And I think what we would say is that irrespective of that standard response at that time, there was a dynamic, an evolution about the sale of Glen Ding that gave us reason to change the approach to selling the property at a much later stage.

Q. Can I just ask you to look at that from one perspective for a moment. In your letter to the Department of Finance in 1990, was it the 14th December of 1990 this is in Tab 112.

If you look at the second-last if you look at the last paragraph on the second-last page, where you say "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. Indeed the Minister will 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."

Now, at that stage you recognised that there were individuals who might have an interest in this process?

A. You mean where I say that any other potential buyers?

Q. I mean interested parties. You are referring to people that might object to the planning permission, not necessarily other potential buyers, but there was a public interest aspect in this that could and I quite understand the point you are making, it could controversialise this sale in a way which might make it

impossible to get anything out of it. I am just contrasting that, or the consciousness you had of those things, with the fact that nobody seems to have, or nobody seems to have alerted the Minister or to have thought it worthwhile alerting the Minister to the fact that proceeding in the teeth of the commitment given to the parliamentary response could also attract problems and could also controversialise the transaction.

A. Well, all I can say is it probably didn't occur to me at the time. You know, I don't know whether this was a primary consideration at the time. I am telling you that there were lots of changes, including a change of Government. And that may have been a factor; I just simply can't recall. It's quite clear in all of the process, though, that we understood that we were deviating from a tender process; that was understood by everybody. It's implicit in everything that you see on the record here, that we were deviating, within guidelines, from the standard process that had applied up to that point. And I think we were seriously concerned that well, Number 1, a planning refusal on our part would mean, as Mr. Johnston and Roadstone and many others have said, would render the value of the property worthless.

Q. It would be the death knell to the project, of course?

A. Yes. And if we succeeded in getting a planning approval, we would succeed in the face of very stiff opposition. And even if we succeeded in getting that planning approval

and we decided that we would not succeed in that, because O'Malley pretty much told us we wouldn't but even if we did succeed in that, how many Parliamentary Questions then would we have preventing us from selling the property in the circumstances? I think we would have had many more than the one that we had.

So I think these were considerations, but I am not, in answering that question, suggesting that we deliberately ignored the Parliamentary Question. All I can say to you is that I don't think that it registered very strongly at the time.

Q. Maybe I'll come back to it after lunch.

A. Okay.

CHAIRMAN: Two o'clock.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

Q. MR. HEALY: During the lunchtime adjournment I tried to check what the position was about expressions of interest, and while the books that have been produced don't contain every document from the file, and merely endeavour to give an indication of how the thinking in the Department was evolving from time to time, they do show, I think, that in Tab I think if you look at Tabs 36 and 37 37 is probably the best one to look at; that's in Book 75.

You see that's a letter from Mr. Michael Stokes to Mr. Chris Flood, TD, referring to a meeting that he had had earlier in February of 1988 when he was accompanied by

when his boss, I suppose, Mr. Jack Treacy, was accompanied by Mr. Michael Kavanagh to a meeting with the Minister for the purpose of presenting a combined offer. Do you see that?

A. Yes.

Q. There may be others in 1988, but I think the best way to look at it is, if you look at Tab 63 for a moment. That tab identifies a number of interested parties; do you see that? "Firms interested in quarry: M. Kavanagh, Hudson Brothers, Roadstone Dublin and Johnston Industries". That document, I think, dates from the 30th January of 1990, and if you look at Document 65, which is a few pages ahead, you'll see that in a memorandum to Mr. Smart from Mr. Gunne, Mr. Gunne, in the second-last paragraph, says: "Three other firms have also expressed an interest in the property. See list attached". He says "three other firms" because he refers in the previous paragraph to Roadstone's interest, and he also refers to the disposal to them in 1972 of an adjacent quarry. And from its position on the file, the list of firms the list of the four firms mentioned a moment ago seems to be related to Mr. Gunne's memorandum, do you see that, to Mr. Smart?

A. Yes, I'd be inclined to agree with you. The writing, from what I can recollect, looks like Mr. Gunne's writing.

Q. I see.

A. I wouldn't be sure of that, but I think it probably was.

Q. Well, from its position in the file and from the way that

his memorandum is worded, he is certainly referring to four firms, in any case; and inasmuch as he mentions three other firms, that list contains a reference to four firms, of which one is Roadstone, and then there are three other firms.

So, all I'm suggesting is that by that date, which is just before you joined the Department, the Department had, if you like, itemised the extent to which a number of parties had interested themselves in the project. And in fact that has echoes in the earlier file which, if you have read it, you will recall there were lists from time to time, lists prepared of interested parties?

A. When I answered your question this morning, though, I suppose I would have to note that the letter that you have pointed out to me, the earlier tabs, I don't know what numbers they were, were dated February 1998 or 1988.

Q. Oh, I appreciate that; I'm not suggesting

A. And also there were letters earlier than that, because the very first letter noted in the index to the Book 1 is dated the 27th July 1987. So, I was just working off memory. And clearly there were records going back that far.

The other point I would make is that on the list of the four companies, two of them were Roadstone and Johnston. In other words, it wasn't just Roadstone and three other companies.

Q. I take your point. I suppose this was touched on in the course of Mr. Fitzgerald's evidence as well. The other two

companies were told, both in writing and in the course of a meeting with Mr. Smith, according to Mr. Smith, that if the Department are going to proceed, they'd proceed by way of a public tender. And just if we can go back to that public tender and to the note that you make that makes reference to the public tender, which I think is in Document 71 in Book 75, I'll turn to that for a moment. If we can try to put it in context.

In that tab, the first document is a typed note signed by Mr. Smart of a meeting with representatives of Roadstone on the 10th May 1990, a meeting at which, according to the note, you were present.

Now, behind that there are some handwritten notes in two different hands. If we leave the last document

A. Can I just say they are not in two different hands they're both mine.

Q. There may be slight confusion. When I say there are two notes. The first page is a two-paged note that's in your hand. And the next note, have you got?

A. Yes.

Q. That's in a different note, because that's a Roadstone document?

A. Yes.

Q. But the two pages that follow Mr. Smart's typed note are in fact in your hand. Can you recall that meeting? And the reason I'm asking you that question is, can you recall whether the notes were prepared in part in readiness for

the meeting and in part after the meeting, or can you

A. It's hard to know. It could have been either. But the names of Martin MacAodha and Seamus Breathnach are on the top of it.

Q. That's correct.

A. I can't see myself having said in a meeting, though, that we had a Parliamentary Question committing ourselves to public tender.

Q. That's what I was wondering myself.

A. They may well have been preparatory for the meeting rather than afterwards.

Q. Because there is a repeated reference to the public tender on the next page, and I am wondering, therefore, was that

A. After the meeting?

Q. a record of the meeting itself, yes, of the main points of the meeting? Because it seems to tally very much with Mr. Smart's note that you said, "Look, we are prepared to sell, or we will sell, and probably by public tender, probably most likely by public tender. Need to consult our legal people about the tender documentation", and so on. On the previous page, whether, as we are canvassing now, that page was prepared in anticipation of the meeting or after it, you refer to firstly, "PP planning permission," then you have "Diligence"; is that right? Or something like diligence.

A. Whereabouts are you?

Q. The first bullet point on the first page of your note.

A. Oh, right. "Diligence in drafting tight restoration conditions."

Q. Right. "Natural"

A. "National monument, right of way, harboured trees of amenity value."

Q. "Sale of standing trees", a factor that you wanted to consider.

A. It looks like notes taken from the file.

Q. Yes. You go on then, "PQ 20/10/88 commits us to public tender.

"Bought land back in 1971" again it seems to be a history, so far as you were able to put it together, of the main features of the file.

A. I think this must have been the first meeting I would have attended with Roadstone.

Q. If you go to the meeting, then, as I said a moment ago, your first bullet point is: "We will sell

Probably most likely by public tender. Need to consult our legal people on tender documentation.

" our decision though is still such to a number of considerations;

"We would not rule out an offer by Roadstone or anyone else without prejudice to our right to sell by public tender.

" there is much interest in the property."

A. Which tab are you talking about?

Q. I'm talking about the same tab, but the second page of your

note.

A. Oh, yeah, okay.

Q. Do you want me to go over that again?

A. No, no.

Q. You note that there was you note, having told Roadstone, and we know from another document later on that you did tell them there was much interest in the property, and again one assumes that's based either on what on the list of documents that we saw earlier, the list of interested parties, or on general conversations with Mr. Smart or whatever; but there was, in any case, other credible interest in the property.

A. Well, "credible" is your word. "Interest" is the only word I think that I have used here.

Q. Yes. I was trying to use a neutral word.

A. Okay.

Q. I am thinking of the word you used subsequently, "Meaningful interest." I am seeking to avoid that at the moment.

Now, looking at it from the point of view of, you know, people involved in this business, or landowners in this area who might be interested in purchasing these lands, I am trying to ascertain what you understood the function of the response to the Parliamentary Question to be. My impression I am happy to be corrected is that the function of a Parliamentary Question is to put on record, in a formal way, how the Government or a Minister proposes

to act in a particular matter. Would you agree with that?

A. Yes.

Q. And I think that accords or is consistent with the note you made that it commits you to sell by public tender. I hasten to add I am not holding you to that, because in your next document you do say probably most likely by public tender. What I'm trying to get at is, it seems reasonable that people will be entitled to rely on a response to a Parliamentary Question like that, to the point where they would say, "Look, we'll just sit and wait." Does that seem fair?

A. Well, I think you have to look at it from our perspective. Whatever may appear fair, if you go back to the time when the Parliamentary Question was answered, it was answered in circumstances where there was no prospect of that piece of land being sold. In other words, nobody was actively engaged in the process of examining how that property would be sold. The answer to the question was based on precedent, on pretty much existing practice in regard to the disposal of a State asset, and what happened subsequently was the evolution in the process and arriving at a decision not to sell it by public tender. Now, we weren't at the point at which this note was written, we hadn't made any decision, and you will see from the file that we were still considering selling the property by public tender.

Now, we are talking two years later well, maybe not

quite two years later, a year and a half later, when that note was written. And I suppose it goes back to what I have already said this morning, that in regard to expressions of interest, if you want to call them that, by other parties other than Roadstone and Johnston, and in regard to the Parliamentary Question, it probably wasn't something that I had been directly personally involved in, either the correspondence, had no discussion with any of the parties concerned, and I wouldn't have drafted the Parliamentary Question. And I think you can take it that if I did draft the Parliamentary Question, I would have recalled having drafted it.

Now, I think in this case, we weren't at the point here where you are in the documents of determining that we were going to go other than through public tender

Q. Right. I want to ask you a few questions arising out of that, but could I just clarify one thing: In 1988, when the response so the PQ was given, you say you hadn't got very far down the line. One fairly important step had been taken; you did have the GSI report.

A. Did we? In October '88?

Q. Yes.

A. You are saying we did?

Q. Yes, it was due in '88.

A. Okay.

Q. And I think the engineers, Mr. O'Malley had been just prior to that retained, but you had gone that far down the road.

You knew how much sand and gravel you had.

A. Yes.

Q. And if you recall, prior to that all the departmental thinking was stymied, if you like, and we had some pretty high figures, including some very low figures, of what the sand and gravel was valued or might be valued at. But the one thing all the internal memoranda were lacking in was the knowledge as to how much sand and gravel is there. So that very critical first step had been taken, and then an engineer had been hired to address this question of planning.

Passing on from that, I just want to take the matter a bit further. You said you hadn't made a decision, and that when the parliamentary when the response was given to the Parliamentary Question, that was, I think you are saying, prompted by what was the standard procedure, the precedent. But can I ask you this question, which I think somebody not knowing about this process would almost certainly be likely to ask, and it's this: If at the time the Department felt, "Well, look, according to precedent we have to sell this by public tender, but we are going to keep our options open", wouldn't the response, or shouldn't the response have been "This land will, as a matter of probability, be sold by public tender, in which case it will be advertised in the local press. The Department, however, are going to reserve its position to sell by private treaty if they so wish."

Now, that would have sent out the message to people that "They'll probably sell it by public tender, so we'll be in a tender situation, but we better make our own inquiries, because it seems they are retaining the right to sell it themselves". Wouldn't that be fair?

A. If they were of that mind at that time, then that's exactly what they sufficient done.

Q. Okay.

A. Can I just add there, though, that and you would need to check this, but I think that the properties to be transferred or to be rather retained by the Forest Service had not actually been designated at that point.

Q. You are quite right. And in fact even the when you got the advices from the mineralogist and from the engineer, even at that stage, the lands on sale had never been delineated. What they were doing was discussing, in a general way, "Let's see can we get planning for this". And the mineralogist said, "Well, well, let's see how much you are going to get planning permission to extract".

And it was following that, in fact, and your other discussions with OPW, who were pushing the national monument issue, that you eventually came up with a more limited area for sale?

A. No, I think you used the word "delineated". I used the word "designated", and I am talking about properties being designated and held after the establishment of Coillte Teoranta in January 1989. The properties the list of

properties had to be designated, as I recall, to be retained by the Minister. In other words, not vested in Coillte. And I would think around the time that you are talking about and I stand corrected, because I wasn't there that no decision had been taken, and that the Parliamentary Question was replied to in a period when the entire Department was the Forest Service; it was not Coillte Teoranta.

So there were different people dealing with it. They had a different view about that property, because that property was a commercial forest, for starters. There would have been a view amongst the Estates Division, in what subsequently became Coillte Teoranta, that that property should be rightly vested in Coillte and not retained by the Department. There is also record on the file that subsequent to the establishment of Coillte in January 1989, Coillte were still extracting sand and gravel from that site for the purposes of forest road building or whatever. So, in other words, you know, there was a different mind set at that time, because of the fact that it was seen as a commercial forest. And I suspect it may not have been finally designated as one of those properties to be retained, because when I went in there, I recall being told that the final list of properties wasn't actually settled until January '89. In fact, after the date that Coillte was vested. There was a list, but the designation and there may well have been a designation order for that

matter in respect of that property that that wasn't settled until very, very late in the proceedings.

Q. So you're distinguishing on the one hand between, if you like, the smaller point I'm making, that the lands on sale hadn't been worked out from the bigger question about whether you were going to be able to sell any land in Blessington at all; is that it?

A. Yeah.

Q. But aren't I right in thinking that there was a memo from the Government to the Department conveying Government sanction in response to a minute from the Department? Am I right in thinking that was sometime at the end of would that have been at the end of '87, or was it at the end of '89?

A. No, I think I saw it on the file; it was correspondence that started in '87 and probably ran through into '88. But you have to remember, it was a different Department of Forestry, or the Department of whatever it was called then; it was a different Forest Service in '88 to the Forest Service that existed in '89.

Q. I understand that. I fully appreciate the point you are making, but what I am asking myself is, putting myself in the position of somebody who has heard that response, who has an interest in that response, would you agree with me and I want to ask you this question in two stages: Would you agree with me that that person would feel entitled to think, "Look, I don't need to interest myself"?

And can I take that a stage further. If you were a civil servant looking at this and were as conscious of it then as you are now, right, would you be saying to yourself, "Well, this is 1990; that response was given in 1988; we have moved on; how are we going to get out of this commitment we give? Do we need to make an announcement or whatever? Do we need to signify that we have changed direction, or at least that we are reserving the right to change direction?"

A. Well, as I said to you this morning, the question of determining how we were going to sell the property was only decided probably around December of 1990. Now, that final decision was when the offer from Roadstone was accepted, and throughout that period, we still talked about the possibility of public tender. We had engaged in a process with Roadstone. We had a parallel process with Johnston. But none of that was necessarily going to arrive at a conclusion. So the Parliamentary Question, the PQ, still stood up to that point; and all I can say is that perhaps when the decision to finally sell to Roadstone was made, we may have lost sight of the parliamentary commitment at that point. This was all happening I think in December of 1990. I quite honestly can't help you on that, because I can't say whether that was something that was in my mind at that time. Clearly I was aware that there was such a commitment given two years before I entered the Department, but can I say with certainty whether we consciously ignored it, I know I didn't consciously ignore it.

Q. I suppose you were conscious of it; you must have been, judging from that note.

A. Well, I was conscious, obviously in whenever. February, March, April, thereabouts.

Q. Right. Well, is it possible, then, that can we deal with this in two ways: If you were conscious of it, are you saying that if you had been conscious of it, as conscious of it as we are now in our discussions of it, that in dealing with the Minister, or advising the Minister, say, or advising the Secretary, that you would have drawn attention to it, and are you saying that the fact that you didn't draw attention to it was because you simply forgot about it, or are you saying that you felt that you were entitled to deviate from it?

A. Well, no, I think there are two things here: There is the Parliamentary Question, and then there are the legal the conditions under which State assets are sold. And there is a process whereby you can deviate from the latter, and that's reflected in the documentation. And we went through that process with the Department of Finance.

I don't think you could use the same logic in saying that we could deviate from our parliamentary commitment, but I have pointed out to already this morning that there were three changes I think two Ministers subsequent to the Minister that answered the question. Also there was a change of Government. Also, none of the civil servants who were there at the time were there when the Parliamentary

Question was raised. And I am saying to you that no decision had been made to deviate, if you want to use that term, from the parliamentary commitment, until the time at which the decision to sell to Roadstone was made.

Q. Right.

A. And all I could say is that I don't think the question of the parliamentary commitment was fresh in anybody's mind at that time.

Q. Okay. I think you made a distinction that I have been trying to address. You say there is the Parliamentary Question, and then there are the legal conditions under which State assets are sold; and there is a process, as you say, whereby you can deviate from the, if you like, the Department of Finance protocol, how you approach sales, and you went through that process. But deviating from a commitment given in the Dail is something that there isn't a protocol for proceeding with; is that right? There is

A. Well, I mean, one can go into the Dail and say that "On such and such a date I said that I would do X, and now I am saying I am going to do Y".

Q. Or "I am not you shouldn't rely on what I said before"?

A. Whatever, yeah.

Q. Didn't the fact that you didn't proceed by Parliamentary Question, in a sense, leave the Minister open to being taken up on the matter? Wouldn't it have been fair for any TD to get up in the Dail at the next question time, having put down a question for the Minister to explain how he came

to sell this land to Roadstone having earlier, his predecessor in title, having earlier committed the Department to selling it by public tender?

A. I suppose you could say that the Minister would not have been accused of misleading the House, because that Minister would not have been the Minister who had given the commitment.

Q. I accept that.

A. But the Minister might be asked to account for why there was a change in approach. I would accept that.

Q. Just to clarify one thing in relation to dates. I had the impression that sanction had been given by the 18th December 1987 and lest you and I be talking about different things, could you just turn to Tab 26 for a moment, of Book 75, and there may be other documents that will clarify this matter.

If you look at the second if you look at the first paragraph, I think the words "I am" are missing, or "I am directed by the Minister for Finance to refer to your minute of" and there is no date "1987 enclosing details of the property held by your Department that is 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 the individual properties expected to realise less than $\frac{1}{2}$ 500,000 which were identified in your minute, subject to the following

guidelines and requirements." Etc., etc., etc.

Now, my impression from reading that document was that in response to an earlier, I think it was June or July 1987, invitation from the Department of Finance, the Department of Energy were asked to identify, if you like, in shorthand terms, assets surplus to requirements, to be disposed of, and that a list was sent I do not have it, and it may be there; it may be that we have overlooked it, or it may be simply out of sequence in the documents, and I'm not complaining to anyone, and I am not suggesting for a moment that it has been taken out of the file or anything like that but that a list or a minute was sent to the Department of Finance, and they then gave sanction; and the reason there is no date is because they would have been giving sanction to a number of departments at the same time, but the reason this was retained on the file is that it was the document that you'd need to turn round to Finance and say, "Listen, we are entitled to do it; we have your sanction for proceeding with this."

And to my mind, that contained the sanction to dispose of Glen Ding in the general way that we were canvassing a moment ago. Am I wrong in that?

A. It was the general sanction to dispose of Glen Ding if Glen Ding was on the list.

Q. Yes. But I understood you to say a moment ago that that really hadn't been pinned down until late '89.

A. Yes, because we are dealing with two different things here.

Q. I see.

A. When the letter of the 18th December 1987 was sent to the Department of Energy, the Department of Energy had the Forest I presume it was the Department of Energy at the time.

Q. It was, yes.

A. Okay.

Q. Well, it's on the list there

A. I know it is, but it might have been Agriculture and Food too. Anyway, we'll say it was the Department of Energy; it doesn't really matter. When it went in 1987, the Department of Energy had the Forest Service in its entirety; that is, the Forest Service plus Coillte Teoranta as it became. Okay?

Q. Yes.

A. The entire Forest Service, the commercial arm of forestry. A list, presumably, was drawn up at that time on behalf of that Department. The list that I am talking about then, the designated list subsequently had to be drawn up so that certain properties would not transfer to Coillte Teoranta on the 1st January 1989 and be vested as part of the assets of Coillte Teoranta; that is the list I was referring to earlier.

Q. I see. So what you are saying is that sanction had been granted at that stage to sell these lands as surplus to requirements, but the issue as to who would own them, as it were, hadn't been resolved?

A. Exactly.

Q. I see.

A. Can I just say that I am helping you here because I am not aware of this correspondence from the time that I was there.

Q. Right. Now, when you I think you did the paper; we can clarify this in a moment. In any case, a paper went to the Minister seeking his approval at one point to confine the negotiations at that stage to Roadstone to see what emerges. Do you remember that wording?

A. Yes.

Q. While we are still on the parliamentary commitment aspect, I just want to know whether you think that if you had had if you were conscious of the parliamentary commitment, would you have put that in the memo to the Minister?

Because we know it's not there.

A. Yes, well, we know it's not there. I think it would have been material, yes.

Q. If we could pass on for a moment to the latter part of 1990. From mid-1990 onwards you had been meeting and corresponding with Roadstone on the one hand and with Johnston on the other. Eventually you had a meeting arranged for the 5th December with Roadstone, the meeting as we now know at which basically you, in principle, closed with Roadstone on the price. And coincidentally, that was the day that Mr. Johnston was actually visiting I think that may have been the time that he was visiting the site.

You had a telephone conversation with him subsequently in which he was inquiring about I presume he was inquiring about advancing his proposals, and you told him that the Minister had already reached agreement with somebody else, and then he became aggrieved and endeavoured to make direct contact with the Minister. Is that a fair summary of the facts?

A. Yes, but I think there was a week between the date that he visited the site and the date that he and I had a telephone conversation.

Q. I appreciate that.

A. I think also the coincidence was a coincidence, in fact, because he was to visit the site I think at an earlier stage, but he went to hospital and wasn't available.

Q. It was a coincidence, though, of which I think you would have been aware at the time, because you knew at that time that he was due to visit on the 15th?

A. Yes, I did.

Q. He says that he subsequently tried to contact you to arrange a meeting with you for the 6th or the 7th, and you must have been on leave or something, and that the earliest he could arrange a meeting was the 13th; I think that's correct?

A. Well, no, it's not correct.

Q. Is it not? Right.

A. Perhaps in terms of "Arrange a meeting." If that's as far as you are going

Q. Well, I am happy for to you correct me.

A. Okay. Mr. Smart, it was, that he was in contact with. And Mr. Smart would have been aware of my movements, and I think he was expecting me back according to the file; I don't even remember where I was at the time around the 10th or the 11th, I think, I was due back in the office. So he scheduled a meeting, or penciled a meeting in my diary for the 13th, was it, the 13th.

Now, there are two sets of letters on this. One is from McGreevy Solicitors saying that a meeting was arranged. There is a letter the following day from Mr. Johnston saying that the meeting was arranged subject to it being confirmed by Mr. Smart. A meeting was not arranged. I am quite emphatic about that. There was no meeting arranged for the 13th. No meeting was arranged with me for the 13th.

Q. I appreciate that. Well, can we put this way, then: Having visited the site, Mr. Johnston wished to meet with you, or meet with the Department to make an offer, and the best the Department could do for him at that time, because somebody was because you were on leave was to suggest a tentative date for the 13th. Would that be a fair summary of it from your point of view?

A. Yes.

Q. And then

CHAIRMAN: I think Mr. Fitzgerald said something on Friday about there was some feeling in the Department that perhaps

Mr. Johnston might make a PR killing out of it, and hence the meeting was put on ice for a period.

A. I didn't understand that, sorry, Chairman.

CHAIRMAN: I think it I think he did allude to a fear that Mr. Johnston might be very vociferous, and accordingly you didn't meet him perhaps at the very soonest opportunity.

A. No, I didn't understand him to say that. I think that he may have felt that when Mr. Johnston was coming in on the 13th for the meeting that was subsequently arranged as a result of the Minister's intervention, that he may have been, I don't know what the term he used, but perhaps grandstanding. But not for the original meeting that had not been confirmed. What's peculiar is they were both on the 13th.

Q. MR. HEALY: So that eventually, however the meetings came to be organised, both the Minister's direction or instruction, I think, as you put it, and the earlier tentative arrangements coincided on the 13th?

A. Yes.

Q. I just wonder, before I deal with those two meetings on the 5th and the 13th December, could I just go back for a moment to an earlier meeting, the meeting on the or the approach canvassed in your memorandum, or your paper to the Minister of the 25th October 1990, which is contained in Tab 85. You'll be familiar with this document.

Up to that time you had had the planning advice.

Originally it was envisaged correct me in this summary if I am wrong that you had applied for planning permission. The more that came to be explored, the more the risks of a negative result became clear. And eventually the decision was taken, "We are not going to go down that road; it's far too risky". And it was decided to proceed to market the property without planning permission. At that point I think, again, the Department identified Roadstone as the person who might offer you the most money because they had the best chance, in your view, of getting planning permission, and this was confirmed by Mr. O'Malley. So you were beginning, if you like, to focus on them as the person from whom, or the entity from whom you'd squeeze the most money for this land. Is that a fair way of describing your approach at that stage?

A. It's a generally fair way of describing our approach. I think inasmuch as we might have focused on them, they equally focused on us.

Q. I fully accept that.

A. I would say also that arriving at that conclusion was, if you like, a meeting of minds arising from our discussions with O'Malley and Barnett.

Q. On the 18th? It was the 18th

A. I'll take your word for that. The meeting that we arranged subsequent to our first meeting with Roadstone, yes, that meeting, and it was very clear to us that their analysis I suppose pretty much coincided with ours; but the difference

was that theirs was a professional analysis, whereas ours was the analysis of civil servants dealing with a property to be sold.

Q. They were, of course, not specialists in disposing of property?

A. Oh, no.

Q. They knew nothing of the property market or how to squeeze money out of people?

A. They knew what the value of the asset was. They knew what the obstacles were to securing planning permission, both from the State's point of view and from the operator's point of view. And they concluded that Roadstone were in the most favourable position that yes, that to get planning, that they would cause the least damage in terms of the environment. They would have better and more acceptable solutions to offer to the planning authorities, and therefore they would be capable of paying the best price for the land because of those strategic advantages they had.

Q. I suppose, just before we leave that, in fairness to Mr. Barnett, we should say that he did point out in his report that he could only tell you about the sand and gravel within that red area on the right-hand map on the map monitor. He made it clear he couldn't tell you a thing about the rest of your land?

A. I think he did, yeah.

Q. In your paper to the Minister, if you could turn to it for

a moment at Tab 85, and go to paragraph 5 on the second page, in which you say: "Some general interest has been expressed in the acquisition of this property, but only one party Roadstone has made any meaningful approach."

Now, there is no doubt that there had been interest other than Roadstone, which you described as general interest, and you say: "Roadstone were the only party who had made a meaningful approach." Can I suggest to you, and I can be corrected, that Mr. Johnston had at least expressed an interest and was pursuing his interest up to that point, wasn't he? Now, I appreciate that he hadn't made you an offer, an offer which Mr. Barnett was surprised at from Roadstone, isn't that right, the $\frac{1}{2}$ 700,000 offer?

A. Yes.

Q. But he was still, if you like, actively pestering you for information; isn't that right? And I don't use that term in a derogatory sense, but he was making himself he was busy contacting the Department, wasn't he?

A. Well, he was busy contacting the Department, but you must remember, it's five months now since I first came in contact with Mr. Johnston. He, in his contacts up to that point, was not interested in a property that did not have planning permission. He made that absolutely clear, I think both at meetings which are recorded and in letters that he wrote to us. He had no interest. In fact, he was the first one to tell me that the property had no value without planning permission. And I think Mr. Barnett also

told us that, that the property had no value without planning permission. Now, he put a price on that, at our request, for the purposes of allowing us to sell the property without planning permission, if that's what we decided we wanted to do. So, in that sense, I didn't judge Mr. Johnston's interest as meaningful.

Now, let me also say that he is not mentioned here, I think, in this minute, but everybody that was dealing with this file would have been aware of Mr. Johnston's existence, if you like, having shown an interest, but apart from the Minister, who wouldn't have been aware of that.

Q. And I presume neither Barnett nor O'Malley would have been aware?

A. I wouldn't be absolutely certain about that. I would be surprised if and I have some vague recollection that his name did come up at that meeting. But it's not recorded.

Q. I see.

A. But then again, you know, these are long meetings, and what we attempt to do is capture the meaning of the meetings and the decisions that are made rather than give a verbatim account of what was actually said.

Q. If you look at that memo, it's dated the 25th October; do you see that? And then it goes up through to the Minister and is eventually approved by him in a note to the Secretary: "Proceed as recommended. RM 14/11/1990". Do you see that?

A. Yes.

Q. Underneath that you have: "Sean Fitzgerald the 5/11". You have, I think, "Runai Aire"; that looks like Mr. Molloy, the Minister's Private Secretary, "the 6/11." But if you turn on the next page in the Book of Documents, you will see a reconstituted copy of a faxed letter from Mr. Johnston, dated the 2nd November, saying: "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."

Do you see that?

A. Yes, I do.

Q. And I think on a letter of the 5th November, he asks for an Ordnance Survey plan of the subject land. And he says:

"The sooner you give me the information, the sooner I'll be able to make you an unconditional bid".

Did that convert his approach in some way into a meaningful approach in the context of the manner in which you approached, if you like, the definition of that expression a moment ago?

A. Well, there was no offer, so if you compare it with an offer, where there is an offer, an actual offer as against there being no offer but an expression of intent to make an

offer, five months six months now, I think, after the initial contact, that's a matter of judgement. All I will say is that that letter arrived on the 2nd November. It was on the 27th October, was it, two weeks seven or eight days, at least, beforehand that I had made a submission to the Minister, so that when I wrote about a meaningful approach, it was before this letter arrived.

Q. I appreciate that, and I am not suggesting for one moment that that could have affected you in doing the memo. But if you look at the dates, the memo is acknowledged by the Runai Aire, which is the 6th November, and Mr. Fitzgerald on the 5th November, and ultimately approved by the Minister on the 14th. I am just wondering whether, in light of what you have just said, it might have been appropriate to say, "Well, look, in making your mind up about this, you should bear in mind that there is somebody else who has made who is active". Would that be a fair, neutral term to use?

A. Well, how active, really? Because he is looking for borehole information. Now, my recollection was that he looked for this type of information many months beforehand, and he was aware that there was a GSI survey carried out. He was aware that we had that report. I think he may have asked for that report on a number of occasions. And we made it abundantly clear to him many months prior to this date that if he wanted to establish the quantity of sand and gravel in the deposit, we would facilitate him and

allow him to borehole himself if he wished.

So, I don't really know what makes this any more substantive, apart from the fact, and the only fact that he is now talking about making an offer, which is not set down, without planning permission, or without conditionality. That's the only thing that he is saying.

And this is five months after. And he is still looking for the same information that he was looking for five months before.

Q. Well, in fairness to him, I don't think he asked for the borehole information until July

A. Well, July, then, okay, fair enough.

Q. I suppose what I should ask you is: Is that a rationalisation you are offering now, or are you saying you thought that at the time?

A. Oh, well, it's a rationalisation I am offering now, of course.

Q. If we now go back to the matter we were discussing earlier, which was the lead-up to the meeting of the 13th December, 1990, where the Minister had directed or instructed following, it would appear, communication from Mr. Johnston and his solicitors, and it would appear to be also the intervention of a Dr. Murphy, somebody presumably who knew the Minister and knew Mr. Johnston.

Would I be correct in thinking that the purpose of that instruction was to, as it were, rectify the situation in which Mr. Johnston felt aggrieved at, putting it neutrally,

having been left out, and to rectify that by giving him the same opportunity that Roadstone had had to make an offer

A. I don't know. The Minister made that decision. I think you'd have to ask the Minister why he made that decision.

I think that if one wants to look at it now, it was a good decision, because we did receive Mr. Johnston's offer. And if you like, he was then treated the same as Roadstone, in the sense that he had made an offer; he had the opportunity to present that offer. But I don't know why the Minister what went through the Minister's mind in terms of making that decision. I was clear in my mind that a decision had been made at that point to sell the property to Roadstone.

Q. And is that what you mean by saying you were uncomfortable with the direction to meet Mr. Johnston?

A. I was uncomfortable with the situation because I understood that we had agreed to sell the property to Roadstone, and I was concerned that we would be backing out of that agreement and that there might be litigation consequent on that. Now, I was wrong about that, but that was an immediate concern I had, and I was relieved to get the advice from the Chief State Solicitors Office which said, no, we would not it would not have that implication. That was the only concern that I had.

Q. So, in going to the meeting with Mr. Johnston, if you could have concluded a meeting with Mr. Johnston, concluded a deal with Mr. Johnston at that meeting, would you have done so?

A. No. You mean concluded one at the meeting?

Q. Yes.

A. No.

Q. Why not?

A. Because the instructions we had were to receive an offer.

Mr. Johnston had made it very clear that he couldn't trust the officials in the Department, and the meeting was intended to receive his offer and to convey it back. We were not at least we didn't go in with the intention of negotiating anything with him. It might have led to subsequent negotiations, for all I know. As it turned out it didn't, but it might have. For example, if it had been a competitive offer, it might have led to subsequent negotiations. I don't know; that's pure speculation.

Q. I suppose if you compare the way in which the Department engaged with Roadstone in particular at the meeting at which you closed with Roadstone at 1.25 subject to the various approvals, it would seem that Mr. Johnston didn't get the same, or didn't enjoy the same level of engagement, in that you didn't say to him, "Our asking price is $\frac{1}{2}$ 1.5 million."

A. There were two separate sets of discussions. We had had, was it three meetings, up to the final meeting on the 5th December with Roadstone, and that evolved through a process whereby they had made a split conditional offer; they then combined the two numbers, the $\frac{1}{2}$ 1.1 million, and made it unconditional. And then we moved on from there at the

third meeting, and in that process they had asked at some stage for an indicative figure of the valuation that we would place on it, or what we hoped to get for it. That was never asked for by Mr. Johnston. He had a different view as to how the thing should progress, and that's quite clear from his own statement at this Tribunal also. He had a view, when he arrived in the Department on the 13th December, that he had he had two offers: One was a conditional offer and one was an unconditional offer. In both respects they were written-down offers, I think written in the hand of his legal advisers, and with the unconditional offer he had a bank draft of $\frac{1}{2}$ 80,000, which was 10% of the value that he was placing on the unconditional offer. He had made his mind up what he was willing to pay for the property. And it was a competitive price, when you look at the valuation that Mr. Barnett put on the property, for a piece of property that had no planning permission. It was actually a competitive price. It was actually spot on. It was spot on the valuation that our independent valuers had put on it.

So he came in and had made his mind up. He had made it very clear that he was giving it his best shot; that's noted on the file, and I specifically recollect these words. So he was very clear as to what he wanted. He had already made his mind up. And Roadstone, in a different way, approached it. They made an offer, but nobody was dealing with a tender. And you will notice from his

statement he mentioned that he had I think it was either in the statement or in a letter there was a suggestion in this, which was referred to and replied to by Paddy McMahon of the Chief State Solicitors Office, that he was engaged in a tender process. Now, Mr. McMahon reminded him in a letter that he wasn't engaged in a tender process. But yet he approached it on the basis that he was.

He also mentioned something along the lines here that he had, up until I think it's in the affidavit or the statement to the Tribunal that he had up until the 14th December to make his offer. I don't know where that comes from. I never saw that date mentioned anywhere. He never got any indication from the Department that there was any set date within which he had to make an offer. And he couldn't have been given that date, given that the Minister had decided to sell the property on the 12th December.

Q. But looking at it from the point of view of the officials and the Government, the State, which was trying to maximise the value of this land, leaving aside, you know, the way in which people approach you, at this stage you were down to horse-trading. Why wasn't the asking price of 1.5 put to Mr. Johnston?

A. I don't think he asked.

Q. But leaving aside the fact that he didn't ask?

A. Did we believe that he was going to increase his offer by 50 percent? That's what you are asking me.

Q. Well, can I put it to you this way: Isn't it the case that

his offer was more or less the same as but slightly higher

than Roadstone's initial offer?

A. No, but the offer on the table

Q. Isn't that the first thing?

A. Sorry, say that again.

Q. His offer of 800,000 or 700,000 and 435,000, whatever it

was, wasn't that offer structured in the same way as

Roadstone's initial offer, and wasn't it in fact just

slightly higher?

A. The conditional offer?

Q. The combined offer; the conditional offer, yeah.

A. The conditional offer was structured in the same way, and

it was slightly higher.

Q. Yes, slightly higher. So, if you like, as an indication

of, you know, comparable bona fides, he came in admittedly

seven months later, but he was coming in now, the same

price as, slightly higher than Roadstone?

A. He wasn't.

Q. He was, wasn't he, surely?

A. He wasn't.

Q. Why wasn't he?

A. He came in with two offers; one was a conditional offer.

Q. Can we just take the conditional offer?

A. We can't.

Q. Well, just humour me for a moment.

A. We'll humour you so.

Q. He came in at 1.15 million, of which 435, or whatever it

was, was conditional on planning permission. That offer was similar to Roadstone's initial offer to you, 400 and 700. I am saying if you are looking at these two potential bidders, and you have just got 1.25 from one, and this man now, for the first time, puts money on the table, and his initial approach is to put an offer to you which is structured the same as the initial Roadstone offer, would that not make you say to yourself, "Well, he is not coddling us; at least he is putting serious money on the table"?

A. When Roadstone made their offer of 700,000 plus 400,000 conditional on planning permission, they left that offer with us, and I think a month or so later they withdraw the stipulation for planning. In other words, the 400 became part of the 700, and it became an unconditional offer of $\frac{1}{2}$ 1.1 million.

CHAIRMAN: Just on that, hadn't you told Roadstone at the meeting of the 26th September that you weren't really interested in offers that were conditional on planning permission?

A. Yes.

CHAIRMAN: Did it not occur to you to tell Mr. Johnston, "Look, the ball game has now moved on; we are not interested in matters subject to planning permission"?

A. Yes. And I think, sir, you will see that we did tell him that, that that is on the record that we did tell him that.

He was aware when he came in on the 13th that we had no interest in a conditional offer. The record is clear on

that.

Q. MR. HEALY: Yes, I appreciate that. But you'd said that to Roadstone as well, hadn't you?

A. I'm sorry?

Q. You had also said that to Roadstone?

A. That's correct.

Q. Let me just stick with that. They still sent it in, because that's what people do in business; they keep pushing. And this man was pushing, he was pushing the same route as Roadstone?

A. But the difference was that Roadstone withdrew the conditionality part of the thing, whereas Mr. Johnston came in on the same day, and with two separate letters, and made it clearly had made his mind up that he could afford to pay $\frac{1}{2}$ 1.1 million provided we could wait for the 400,000. Whereas if we wanted an unconditional deal, all he was willing to offer was 800,000. These were the two pieces of paper that he presented to us. And not only that; he was emphatic enough to put a banker's draft of 880,000 with the unconditional offer.

Q. I am just canvassing he hasn't said this, but I am just canvassing this aloud. Is it possible that he brought in the 80,000 because he felt, "Look, they are not taking me seriously up to now. I better put some money on the table. They don't know who I am. I am a man who was working in the business in England. Maybe I better try to convince him that I am serious about that".

Maybe he felt that you hadn't taken him seriously up to then. Could that explain the 80,000?

A. I am afraid you are going to have to ask him that. Could I just say, though, if he didn't think we were taking him seriously, why a week before this did he write a very complimentary letter to the Department about the way he had been treated by the Civil Service and the Department, including myself and Mr. Smart?

Q. I suppose what happened in the interval was that he rang up and was told the land has been sold to another party?

A. No, but you said, is this why he brought in the 80,000? Well, the 80,000 cheque had been written two days before he came in, which was a day before he was told that the property had been sold to Roadstone.

Q. Is that right?

A. That's correct.

Q. I see. So you say it was dated the 11th?

A. I think it was the 11th.

Q. I see. Do you recall opening his letters at the meeting?

A. I don't recall whether I opened it or who opened it, but clearly they were opened.

Q. They were opened, right.

A. Because I do recall Mr. Fitzgerald suggesting to him that there was no need for the bank draft, and he encouraged him on a couple of occasions to take it back. And it became subsequently a point of contention, it seems.

Q. I saw that, yeah. But at the meeting, Mr. Fitzgerald tells

us in his statement that he told Mr. Johnston that his offer was "way off the mark". And he says that he distinctly remembers Mr. Johnston's flabbergasted reaction of shock and disbelief when told that his bid was not the highest by a long shot, to use a sporting expression. Do you remember that discussion with Mr. Johnston?

A. Well, I was there for all of the discussion. I can't remember at this point what precise language was used. I am very clear in my mind that Mr. Johnston said that he was giving it his last shot, or his best shot, or whatever that term was. I am very clear about that. And very clear about him saying, or concluding the process almost by saying that you know, he wished the Minister luck if his wasn't the best offer.

Q. And the next day he wrote a letter again saying how grateful he was to the Minister for getting the opportunity to put his offer; isn't that right?

A. That's correct, yeah. But you have asked me did I know do I remember, you know, the flabbergasted expression, etc.? Well, I maybe one person's flabbergasted expression doesn't have the same meaning to another person.

I can't say that I recall that in particular, but I can say, with certainty, that Mr. Johnston knew that he was in a competitive process.

Q. All right. I think he said himself that he was aware that somebody else was involved. And we'll ignore the way you've described his reaction, ignore all that for a

moment, but can we just then stick to the other aspects of Mr. Fitzgerald's statement.

He says that he told Mr. Johnston his offer was way off the mark; that it was way off by a long shot. And whatever frailty of memory there may be, I think he was endeavouring to convey that he left Mr. Johnston in no doubt that his offer hadn't a hope?

A. Well, I would say that Mr. Johnston was aware of that.

Whether Mr. Fitzgerald used those words, I can't recall.

Q. Well, what words did he use, or what's your recollection of the type of words that were used?

A. I couldn't put a construction on the type of words that were used. I can give you an impression, which was that I think that Mr. Johnston would have left that room knowing that his offer was not the best offer. But I can't describe to you in words how he would have reached that conclusion, nor can I say what his facial expressions were.

Q. I am not asking about his facial expressions. Were you left with that impression because of what you or Mr. Fitzgerald said: that Mr. Johnston knew that he was not in the ballpark?

A. Well, as I said, I don't recall that expression being used

Q. No, you see, but I am anxious to be clear about that for a moment, Mr. Carroll, because it's because you say that you are certain of certain things that were said, and you say that Mr. Johnston would have left the room knowing that

his offer was not the best offer. That's not quite the same thing as Mr. Johnston knowing that he hadn't a hope in hell; that he was way off the mark. I am not pinning anyone to precise words, but I think the words that he was "out by a long shot" are words intended to convey the meaning that an offer is simply not at the races. It's just a total waste of time.

A. Okay. But I am telling you what I recall. Now, I cannot tell you what I don't recall, and I am making that very clear.

Q. So, am I right in saying you don't recall

A. The words

Q. the words used?

A. I don't recall those particular words used, but I do recall having the impression that Mr. Johnston understood that his was not the best offer. And I say that conscious of the fact that he wrote in subsequently assuming that it was.

Q. What behaviour, then, on Mr. Johnston's part left you with that impression, if it's a clear impression you have today?

A. Well, it's not a clear impression I had today. It was a clear impression that I always had. So I am not recalling that

Q. Sorry, I am not suggesting that you formed that impression today. Don't get me wrong on that.

A. Well, that's what you said.

Q. Well, what words did Mr. or what way did Mr. Johnston behave himself to leave you with the impression, which has

always been a clear impression in your mind, that he knew that his offer was not going to win this competition?

A. Well, he said he gave it his best shot, and he wished us luck in selling the property if his wasn't the highest bid. Maybe that's it. You know, I can't specifically recall any other sense of the meeting, but they were certainly the words that he would have used at the time. And I think that was probably an admission that it wasn't it was his best shot but perhaps wasn't good enough.

Q. If at that stage your concern was to get the highest money for this property, and Mr. Johnston has just offered you $\frac{1}{2}$ 800,000, and you have an offer of $\frac{1}{2}$ 1.25 million, did it not occur to you that you might be able to move Mr. Johnston up if you told him that you had an offer of well in excess of a million, and that that might enable you to get more money out of Roadstone at the end of the day?

A. Well, looking back, maybe that was an option; but if you recall, we had been told, advised by the Chief State Solicitors Office to accept the offer and bring it to the Minister. We were not advised to negotiate with him.

That's Point Number 1.

And Point Number 2, at that stage, or indeed at any stage, I was not the negotiator. I was there at the meeting as the junior official with Mr. Fitzgerald.

So it wasn't a call that I would make in those circumstances.

Q. So you are saying that the advice you had received from the

Chief State Solicitors Office was that you should receive

his offer without negotiating with him?

A. Well, I don't know if they said "without negotiating."

Q. Well, what he said was, "Receive it without comment."

A. I think so. My understanding was, whatever again, words

were either said or written down was that we would

receive his offers and deliver them to the Minister. They

were the instructions we had.

Q. I think, in your statement, you have carefully set out the

advice you received, which was if you look at

paragraph 38 of your statement. And you are now referring

to a note that Mr. Fitzgerald made on the 14th December,

1990. Do you see that?

A. Yes.

Q. And the last full sentence on that page is as follows:

"Mr. Fitzgerald notes that Mr. McMahon recommended seeing

Mr. Johnston and taking without comment an offer for

consideration by the Minister."

Does that seem to suggest that, going into the meeting, you

were under the impression that the advice you had was

simply to sit there and take this offer and convey it to

the Minister and do no more?

A. Yeah, I don't think we had any plans to go into the meeting

and have negotiations.

Q. But why, then, would you have told Mr. Johnston at the

meeting, or why would anybody at the meeting have told

Mr. Johnston that his offer was way off the mark?

A. Well, I think that was the advice from the Chief State Solicitors Office, but Mr. Fitzgerald decided to say what was said. I mean, the meeting was conducted in a fairly friendly atmosphere, from my recollection of it. I think Mr. Johnston was quite appreciative of the fact that he was having a meeting at all.

Q. Apparently hugely appreciative.

A. Yes. And I think in that fashion, that discussion took place.

Q. Well, then, why would he have been flabbergasted, then? Why would he have been flabbergasted?

A. Because, as I said, I think that he thought that his offer, his unconditional offer was competitive, and it was. I mean, if you compare it with the advice that we got from Mr. Barnett, it was spot on; it was right on the number.

Q. If you go to the final paragraph of Mr. Fitzgerald's memorandum, it's in Tab 108, and it will be on the monitor, if you prefer to go to the monitor.

Now, after that meeting, the state of play, as far as you were concerned, was surely that Mr. Johnston's offer was, as we have already stated, dead in the water, wasn't it?

A. After the meeting with Mr. Johnston?

Q. Yes.

A. I would have viewed it as dead in the water, yes.

Q. And you were in no doubt that Mr. Johnston had been left with the impression that his offer hadn't a hope?

A. Yes.

Q. If you look at Mr. Fitzgerald's recommendation to the Minister; do you see that?

"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 the end of next week, Mr. Johnston's offer should then be rejected." Do you see that?

A. Yes.

Q. So, as far as you were concerned, at that stage Mr. Johnston wasn't going to be making any progress one way or another; he wasn't going to be entertained as a competitor to Roadstone, and he wasn't going to be entertained if Roadstone didn't formalise their offer. Isn't that right?

A. Well, it had nothing to do with being a competitor of Roadstone. He had made an unconditional offer which was 50% short of the unconditional offer of Roadstone.

Q. But you weren't going to tell him that?

A. Well, the advice was until such time as Roadstone lifted the technical restriction, which was that the CRH Board would approve of the unconditional offer, we should treat we should leave everything on the table, and then deal with the matter.

Q. But hadn't you decided, according to this memorandum, that regardless of the Roadstone offer, you were still going to reject Mr. Johnston's offer?

A. Yes.

Q. Well, then, what was the point in waiting? Why not just write

A. I don't know. I didn't write the minute.

Q. Do you agree with it?

A. I think it was preferable to see everything out. We knew

I don't think we had any doubt that we were dealing with people in Roadstone who had authority to negotiate a price, and there was a technical issue, which I presume arises for good corporate governance reasons in any plc, that the plc Board must approve the transactions that its officials negotiate. And that's all we were waiting on. But we were dealing with the managing director of Roadstone Dublin, and we knew that he didn't come in to make a spurious deal without knowing that the Board would subsequently back him in that deal. So we were only waiting a matter of days for a technicality to be removed.

Q. Yeah, that seems to be the situation, but you were in no doubt that you were going to reject Mr. Johnston's offer regardless?

A. Yeah.

Q. You weren't even going to go back to him if you didn't succeed with Roadstone, in the unlikely event

A. Oh, I don't think that's said anywhere, is it?

Q. It says here: "I recommend that if Roadstone cannot approval formal board approval before the end of next week, Mr. Johnston's offer should then be rejected."

A. Okay.

Q. So you were saying "We are not prepared to deal with it"?

A. That does not mean we would not have negotiated with him, again, had the Roadstone, the plc, the CRH Board not honoured the commitment that had been entered into by the managing director of Roadstone Dublin.

Q. But is that the nub of the matter, then? Why didn't you negotiate with him that week if you felt there was no reason why you couldn't negotiate with him the following week?

A. Of course you are asking me to explain why decisions taken by other people were taken. You had Mr. Fitzgerald here last Friday; he was the one that wrote that minute and made the submission. I doubt if he consulted me on that. But I see what he was doing. We were removing a technicality in relation to Roadstone, but we could not accept an offer which was 50% below the offer that we had from Roadstone.

Q. I am not suggesting you should accept it. All I am suggesting is if you felt there was nothing, or there would have been nothing wrong with negotiating with Mr. Johnston a week later, what was to stop you negotiating with him there and then on the 14th, or the 13th December 1990, even with a view of only seeing could he beat Roadstone's offer by a little?

A. Because I don't think we believed that he would. You are suggesting that he would have increased his offer by 50%

Q. I am not

A. Hold on, this is what is being suggested. He would have to increase his offer by 50 % and more to match the Roadstone offer, to match it.

Q. He would have had to increase his offer by the same amount that Roadstone increased their offer by?

A. He would have had to increase it by 50% plus $\frac{1}{2}$ 50,000 to match the Roadstone offer.

Q. Can I put this way: Would it have been worth your while saying to Mr. Johnston there and then, as you said to Mr. MacAodha, Mr. Dempsey earlier, "Look, if you remove the conditionality from your conditional offer, you might be at the races"? He would then have had an offer which at that moment would in fact have been the higher offer; isn't that right?

A. We were not negotiating with him.

Q. Why not?

A. Because we were told by the Chief State Solicitors Office to take the offers that he was making.

Q. But the point is: You didn't take that advice.

Mr. Fitzgerald actually, according to himself, actually informed Mr. Johnston that his offers were hopeless. Put yourself in Mr. Johnston's position. If that's what you are saying you did, wouldn't it seem reasonable for him to say, "Well, if that's the case, wouldn't you have expected them to negotiate with me there and then?"

A. Because Mr. Johnston had made it very clear what the

construction of his offers were. One offer was a conditional offer; one offer was an unconditional offer.

The unconditional offer was substantially below the twin value of the conditional offer, for obvious reasons.

Q. I'll just ask you to look at what Mr. Johnston says about this meeting; it's in Book 74, Tab 6, and if you go to paragraph number 23.

A. Which paragraph?

Q. Paragraph 23, please.

"On the 13th December 1990, Mr. Johnston met Mr. Carroll and Mr. Sean Fitzgerald of the Department. At this meeting Mr. Johnston recalls that he was informed by the departmental officials that there was only one other buyer.

Mr. Johnston recalls that he was aware that Roadstone would be bound to be in as bidders given their dependence on and location to the site. Mr. Johnston then recalls asking the departmental officials what sort of money was being sought by the Department for the site. It is Mr. Johnston's recollection that the Department's response to this question was an indication to him that this would be a matter for the parties bidding for the site. Mr. Johnston states that he was never given an asking price by the Department officials at the meeting. Mr. Johnston then made two offers for the site. Each of these offers" and so on, was contained in a separate letter, as we have already mentioned.

Now, firstly, can you recall Mr. Johnston asking the

Department officials what sort of money was being sought?

A. No, I am quite clear he didn't ask that question.

Q. Do you recall anybody saying to him that what anything along the lines of the response he has set down here; that it would be a matter for the parties bidding for the site what they'd put up?

A. I think that's his view, isn't it, he is recollecting here?

Q. Yes.

A. How can I comment on his view?

Q. I am asking you that's what he says happened. According to you, did it happen?

A. That there were only two bidders?

Q. What he is saying, according to this document, as I read it, is that he felt that he was aware that Roadstone would be in he asked the Department official what sort of money was being sought, and they said in response to that question that it would be a matter for the parties bidding for the site.

A. I am saying to you very clearly that he did not ask that question.

Q. And did anyone say

A. And if he did not ask that question, therefore the answer wouldn't have arisen.

Q. Did the answer arise response to anything else? Were those words used at all?

A. I don't recall this. And, you know, the point that is being made here, and you have to remember that this

document is written a long time after the event, and it is in the knowledge that Roadstone were aware of an asking price, and what he is now saying is that he wasn't aware of an asking price. And as far as I can recollect, that is true; he didn't ask for an asking price at any stage.

Q. And you didn't see there was any point in telling him?

A. The issue didn't arise.

Q. You see, if you had asked him for an asking price, was there a risk that he might increase his offer, and

A. There was absolutely no risk.

Q. How do you know?

A. There was no risk. The point I am making is there was no risk. If his offer had been $\frac{1}{2}$ 1.3 million, that offer would have been recommended to the Minister.

Q. You have no doubt about that?

A. Absolutely no doubt whatever. And when we set out at the very beginning of this process to maximise value for money for the State asset, that was the only consideration in this thing.

Q. But if that's the case, and if you look at the evidence that was given by Mr. Fitzgerald about targeting Roadstone as the party likely to make the highest bid, what was it that seemed to prevent you from exploring how far this man would go?

A. Well, I think I answered this question twice now already.

At the meeting in question, I was the junior official; I was not mandated to negotiate at that meeting. That was

not my job.

Q. How would you have felt at that stage, going back to Roadstone, in light of what you believed to be a firm commitment with them, leave aside the legalities, to sell at 1.25?

A. Well, on the basis that we had had a meeting with Roadstone and that we said that we would put that to the Minister and that it required the Minister's approval and the approval of the Minister for Finance, we were clearly indicating to them that as far as we were concerned, that offer was acceptable. And I think I do recall shaking hands with Roadstone when we left that meeting, and I think there was an understanding that there was an agreement. Now, obviously that agreement needed to be approved by the appropriate authorities. So, in that context, I would come from a background of honouring that type of agreement. Now, that's and you mentioned this earlier that I was concerned about that, and I was particularly concerned about it in that it might lead us into litigation by Roadstone against the Department. That was my only concern. I certainly wouldn't have felt good about it even if those legal aspects were set aside, but equally, that would have been the case had it been Mr. Johnston that had made the offer and then all of a sudden Roadstone had entered the fray rather late. It would have been the very same thing.

Q. You'd have gone back to them and said

A. We would have done as we did in the case of Roadstone, but I would have had the same sense about, you know, reverting to a company and telling them, "I am sorry, but the deal that we shook hands on is not actually a deal". And that would have applied as equally to Roadstone or to Johnston as it did to Roadstone.

Q. But was there a sense in which, in some way, your meeting with Mr. Johnston was actually calculated not to engage with him, so that you would never be put in that sort of uncomfortable or embarrassing position?

A. Absolutely not.

Q. Now, you say that you walked the land; do you remember saying that to me this morning?

A. Yes.

Q. Can you remember was it soon after you became involved in this, or was it after you started to engage with Roadstone and Johnston?

A. I couldn't really say. I'd say, though, before the summer of '90.

Q. And did you walk it yourself, or did you have the assistance of a forester or somebody?

A. I think there was a forester, and I think either Mr. Gunne or Mr. Smart, one or other. I wouldn't have known where the forest was precisely, so the forester who would have shown it to me had an office in Blessington, right in the middle of the village, practically overlooking the site, and he was a forester working for Coillte Teoranta at that

stage.

Q. And would the purpose of your visit be to see the boundaries or the extent of what you were selling?

A. Not so much that; I think just to get a general sense of where this site was located and to have some indication of the kind of difficulties that might arise in the context of planning. It may well have been around the time that we were looking at that aspect.

Q. All of the discussions that took place within the Department, both before and after experts were retained, touched on this question that we have referred to several times: namely that Roadstone, as the adjoining occupier, would have one major advantage. You wouldn't have to be a genius to see that, anyway; they could get out onto the Dublin Road. But in simple terms, or in abstract terms, I suppose, what that meant was that an adjoining landowner or sand and gravel contractor with access onto the Dublin Road who could get access to these lands would be in a better position than any other adjoining landowner I beg your pardon, than any other neighbouring landowner or any other sand and gravel contractor coming in to try to operate this as a stand-alone pit. Is that a fair way of putting it?

A. I think that was a view, certainly, that in terms of acceptability to the planning authorities, you would not have been entering the site from the Naas side, the Naas Road side, and therefore not be transporting sand and gravel out of that onto a secondary road and then onto

right through

Q. Potentially through Blessington?

A. Yes, but I think there was another economic argument that I recall that Mr. Barnett put forward, which was that that type of access that Roadstone had could have a potential benefit to that company of about 20% of the royalty costs. There was a figure put on it, whatever it was. That it could actually give them a greater margin in terms of purchasing the site

Q. That they could offer you more money?

A. Exactly.

Q. Do you know if anyone else had direct access to the Glen Ding site? By that I mean, do you know of anybody else operating a sand or gravel pit in that area whose sand or gravel operations adjoined the pit or adjoined the lands on sale in such a way that they could gain access to it?

A. I think I read in some of the papers here that there was a company is it Treacy Brothers

Q. Hudson.

A. Hudson, yes, okay.

Q. And were you aware of their potential access?

A. I don't think that I was aware of it in any meaningful sense at the time. I mean, I was aware that these companies, there were some companies that had expressed an interest at an earlier stage, but not the detail of their access, no.

Q. I'm not sure to what extent it's going to be possible to

investigate this in the course of the Tribunal's hearings, because unfortunately the land configuration has changed markedly, I think, since this sale. But if you look at the map I'm trying to find which map is the best one to show it to you on

I am just wondering, is it possible to have the left-hand map on its own? It's not coming through on the monitors.

This map should suffice. Map 3.

Q. Now, I am bringing the cursor up to you see the cursor on the screen?

A. Yes.

Q. You see this point here, the area that I am pointing at?

A. Yes.

Q. You will recall that in the papers there is a report of an engineer who has examined the boundary at that point. And

I want to be very careful about making any comments on, obviously, neighbouring boundaries, but it would appear

that there may be, on the maps, some overlap there. Can

you see an overlap into the field to the northeast? Do you see that? The north is the top of the map.

A. What do you mean, "an overlap"?

Q. If you look at where the cursor is pointing

A. Yes.

Q. you see the heavy black line going to the east?

A. Yes.

Q. Do you see that that overlaps with this field where I have now put the cursor?

A. Yes, okay.

Q. Now, it's possible that there may have been an access at that point, which has not proved possible to ascertain that at the moment. Can you recall observing any potential signs of access at that point?

A. You mean from my visual inspection?

Q. Yes.

A. No, no. That was not the purpose of my visit to the site.

I mean, I would not have walked the perimeter of that.

When I recollect it particularly, I entered that site from the Naas Road, the Naas/Blessington Road side.

Q. I understand.

A. And that walk takes you up to the ring fort.

Q. And this is down here where the cursor is?

A. That's correct, yeah. I doubt very much if I would have walked as far as you are indicating to. And now that I say that, because I remember how I walked into it, it may well have been that I was there with some OPW officials as well, because we were particularly anxious to make sure that that area was transferred to the OPW. That might have been the main purpose of it. But certainly I also wanted to see generally where the site was situated in the context of Blessington.

Q. I understand. It would appear, then, that nobody on the Department side actually walked the lands in sale at any point?

A. I'd say that the land would have been walked and delineated

at a much earlier stage, not in 1990, because well, we would have had technical expertise available, I suppose, in 1990, but I suspect that the area to be sold was delineated before that, and mapped before that.

Q. Well, I just wonder, can you be correct in that? Because if you recall, I drew your attention to correspondence earlier from both Mr. Johnston and Roadstone seeking to know exactly what was in sale, and initially the Department's view was that maybe 120 acres would be in sale, and we know eventually that 190 acres was sold, and the Department don't appear to have been in a position to give that information until well into 1990.

A. Yeah.

Q. So it would appear, then, that that particular map on the left-hand side of the monitor, which is the contract map or copy of the contract map, must have come into existence only sometime in 1990 and after Mr. Johnston, after the GSI sorry, I beg your pardon, after Mr. O'Malley, after Mr. Barnett, after the GSI and after all those people had long got involved in the process.

A. Yeah, I couldn't be sure about that. I think we would have been using the mapping services that were available in the old Forest Service, which, at this point in time, would have been in Coillte Teoranta. So it may well have been that the area had been delineated prior to the establishment of Coillte Teoranta, but the mapping services that we would have used would then have been

Q. There would have been no need, surely, to do it prior to Coillte Teoranta, because, remember, you were retaining the entire area, including the rath, and it was out of that that you carved the piece of land that you ultimately disposed of; so as between yourselves and Coillte, you were keeping the whole lot, all the land that's on the right hand side?

A. Yes.

Q. Just one last matter. When Mr. Paddy McMahon got involved in advising you in around the 13th December 1990, am I correct in thinking that he would have been he did not get the file from you; he simply came to your offices, I think?

A. Well, either that or we went to him. Typically we would have gone to his office.

Q. But he didn't get a file to consider and chew over. In other words, he was simply asked to comment on one or two letters?

A. Yes, I doubt if he would have gone back into the history of the case as we have done here, no.

Q. Thanks very much.

CHAIRMAN: Just before the other practitioners may have a question or two. Mr. Carroll, could I take you back momentarily to the negotiation meeting with Roadstone on the 5th December 1990. Now, from my own fairly distant days trying to recover damages for injured clients from insurance company lawyers, I know that it's not always an

exact science, the process of negotiation. It's not always a question that you think of a figure that you'd accept, that you ask the insurance company lawyers for an inflated amount and they come back with the middle figure. It's often a great deal more difficult and subjective, even though I was supposed to have had some training in it. And what I'm putting to you for your comment is, just reading the bald account of the meeting on the 5th, it all does seem to have been very seamless. You had in your memorandum recommended, after the initial Roadstone offer of $1\frac{1}{2}$ million, that you should settle for one and a quarter million and that you should approach Roadstone with a view to an increased offer by way of negotiation in the area of one and a half million. And it seems that at the meeting Roadstone made a marginally increased offer to 1.15. You, or one of your colleagues, stated that 1.5 was the minimum. They sought a brief recess and came back with the exact median figure of 1.25.

And what I'm just interested in: Could there have been any more discussion? Might somebody on your side have said one and a quarter might kill it, or put your best foot forward, or was it solely a question of you saying you wanted 1.5, Roadstone taking a recess and coming back with the requisite one and a quarter?

A. Yes, I think the meeting would have gone on for quite a while, and there would have been a lot of, you know, kicking tires going on during the process of discussing it.

I think that much of the negotiation had been done the previous day, because if you recall, they had this conditional offer initially on the table of 0.7 plus 0.4; and when they lifted the conditionality on that in October or in November, at the meeting in November, we now were at a point of \pounds 1.1 million, which was an unconditional offer.

Now, you compare that with the value which Mr. Barnett had put on the site of \pounds 1.25 million with planning permission. Here we had \pounds 1.1 million without planning permission, and we got a negotiating framework agreed with the Minister up to \pounds 1.5 million as an asking price with agreement to settle at 1.3. We got that up marginally. They went and phoned somebody and came back and agreed to make their maximum offer, which was 1.25, and they were very firm, I recollect, in that, that they were at the maximum. And I think they were at that figure, which was the figure that we had been given as being the figure with planning permission. We were now at that figure without planning permission, without attendant risks. And I think Mr. Fitzgerald would have said at that stage, We are recognising that Roadstone weren't willing to budge any more, that we were within the ballpark that the Minister had approved.

CHAIRMAN: But you hadn't, before they retired, hinted that you might come down somewhat from the 1.5?

A. I'd say we probably had.

CHAIRMAN: Yes, I would have thought so.

Lastly, since of course any finding under the relevant Terms of Reference of the Tribunal require not merely a fortuitous outcome for Roadstone but one that had some element of political influence, may I take it that you are in agreement with your colleague Mr. Fitzgerald's evidence in that regard last Friday?

A. Yes, absolutely, sir.

CHAIRMAN: Mr. Strahan.

Mr. Regan.

MR. REGAN: I think I have been left with the five minutes again, but I may go over the time.

CHAIRMAN: We'll proceed.

MR. REGAN: Can I just make two preliminary observations directed to yourself, Mr. Chairman, and one is the issue of a question that was raised in relation to, on the basis of a P and Q: Would people be entitled to rely on that? Now, I think that that was actually a legal question as much as a factual question.

CHAIRMAN: Mr. Regan, I am afraid I just have a bit of an ear condition, that I am not receiving on all cylinders, and I am somewhat having to rely on the actual transcript. Can you give it to me a little more loudly.

MR. REGAN: Yes. There was a question from Mr. Healy in relation to the Parliamentary Question, and it was suggested that would people not be entitled to rely on the response to that question? And I feel that that is a legal

question as much as a factual question, and I just wish to draw attention the Tribunal to that point, and it does raise an issue of legitimate expectations, and given the change of Government, change of Ministers, etc., and I don't want to go into a legal submission, but I just want to make the point that we would suggest that there is no legitimate expectations arising from it.

CHAIRMAN: I think that's a matter for submissions at a later stage. Obviously I'm not going to be operating any doctrine that would apply to any litigation that may or may not be brought.

MR. REGAN: Very good.

There is one other point. The State was asked to give its view as to the admission of the two expert reports: That's the Grimley report and Mr. Behan's report. Now, there is an issue about expert evidence, I understand, and in this case we accepted the Tribunal has its own authority in this regard, but we accepted the admission of those reports on the basis that they would be put to the witnesses. Now, I think there is the Behan report and the Grimley report, and I would have thought that they would have been put to Mr. Carroll on the basis that we have an opportunity to comment. So I will propose

MR. HEALY: I think there may be a misunderstanding, sir.

I don't think Tribunal ever indicated that it was going to put anything to any witnesses. What the Tribunal did do, however, was to ask the Department whether the Department

or any of the civil servants involved in the inquiry, or likely to be involved, would wish to comment on the contents of Mr. Grimley's report, and in fact there were no comments forthcoming. There was a letter dealing with, in a sort of abstruse way, admissibility of the document. But there were no comments. I have asked this witness whether it would have been appropriate to hire a property consultant. That's about the only aspect of the report I think I am interested in asking this witness about, but if there are comments that people wish to make on the report, it would have been far preferable if they had been given to the Tribunal in advance. It might be difficult to deal with it now.

CHAIRMAN: Well, I can't see any profit in embarking on this aspect at this stage, Mr. Regan. I think it might be preferable if you proceeded with any examination.

MR. REGAN: Very good.

THE WITNESS WAS EXAMINED BY MR. REGAN AS FOLLOWS:

Q. If I can ask you, Mr. Carroll, in relation to the documentation in these files and the documentation that you had in front of you, or on your file at the material time, could you just contrast that or explain the position? I think you did refer to the fact that some of these documents you would not have been aware of or had on your file at the time. Could you just comment on that?

A. Well, of course, there are documents that go back, that precede by a number of years the period when I was in the

Forest Service, and so I wouldn't have been familiar with the documents. I think we have explored this throughout the examination this morning and this afternoon, where there were various letters drafted by individuals that I would not have drafted myself, Parliamentary Questions and other things, and so, therefore, wouldn't have had the same level of familiarity with the documents as I would have had had I drafted them myself. And clearly many of those documents I think there is almost one full folder here that precedes my time in the Forest Service.

Q. Now, in the introduction of the matters arising in the Tribunal on this issue, it was stated that the disposal may have to be carried through in a way which deviated from the Department of Finance guidelines. I just want to talk about these guidelines for a moment, and how you understand the guidelines in relation to the disposal of public property.

A. Well, I think the guidelines, as I inherited them at the time, were typically operated on the basis that properties were sold by public tender competition. I think that if you analyse the properties that were subsequently sold between 1990 and 1991 to whenever, the process was completed, they would have been sold typically by public tender competition. But there were exceptions, and Roadstone this Glen Ding Roadstone sale was not the only exception to that rule during that period of time, and the exception was provided for within the guidelines, and the

exception stipulated that you must secure the approval of the Department of Finance. The letter that was discussed this morning here, the approval letter of 1987 from the Department of Finance, dealt particularly with a set of properties that were listed in a letter which had been sent by the Department of Energy to the Department of Finance, and that was the appropriate authority for those particular properties. The exception in the case of Glen Ding was availed of because of the evolution of the process and the dynamic that went with that sale, and most particularly, the legal advice that had been given. But we observed that in every respect. And not only did we wait until the final moment to ask the Department of Finance in writing for approval, but we also had briefed the Department of Finance in advance of that.

Q. Now, if I can just refer to Tab 135; this is an outline of Government contract procedures. And in the preface to that, the content of the guidelines essentially refer to service contracts and works contracts, but the preface is: "Public bodies should of course continue to comply with instructions issued from time to time by the Department of Finance in relation to Government contract procedures." And in terms of getting Department of Finance approval, were you satisfied that you know, were you not only keeping the Department of Finance informed, but once you had their approval, you were complying with the Department's requirements, the Department of Finance

requirements and guidelines?

A. Yes. This was the derogation, if you like, from the standard procedures. This was the method through which one could deviate from the general guidelines. And that was the only one that I was aware of.

Q. And in terms of giving the Department of Finance all the necessary information about other interests, etc., it was your note, or your memo of your conversation with Gerry Hickey, for example, would he have been aware of not only the Roadstone offer but any other offers, Mr. Johnston's offer?

A. Oh, I think so. I think the memo was just a note of a conversation. It wasn't a note intended to capture every element of what we discussed. I think I mentioned in that note exclusively, in other words, that we were going to, at that point and for the time being, see how far we could get by negotiating with Roadstone. But the very sense of using that term implied that there were others involved.

Q. Mr. Hickey would have been aware of that?

A. I have no doubt that Finance would have been aware of that, but it isn't recorded in my memo.

Q. And we know that in the subsequent memo that went to the Department of Finance, the two offers were clearly laid out?

A. The two offers were set out in that letter, yeah.

Q. Can I just come back to one question that the Chairman asked you in relation to the negotiations with Roadstone,

and I refer to Tab 98, the report of the meeting on the 5th December. And it says there on I don't know if you have that in front of you

A. Yes.

Q. On the second paragraph, at the bottom, close to the bottom of the paragraph, there is a reference to the 1.15 million, etc. Then it says: "The minimum the Department could accept was $\frac{1}{2}$ 1.3 million." Now, I think the Chairman was asking you about the drop from the 1.5 to the 1.25 coming up to 1.15. But does this suggest that you informed Roadstone, "Well, whatever we are agreeing, we are not going below 1.3"? Or what is the context in which

A. Yes, I'd say when I answered the question the Chairman put to me, I did indicate that before they left the room, we probably would have given them some indication that we weren't stuck with 1.5. And I think that is it. We clearly indicated that the 1.5 could move no lower than 1.3. I think that is the indication that we would give them that we actually gave them. It certainly it isn't reflecting the frame of thought. It's reflecting words that were used, I would say.

Q. Now, on Friday you heard Mr. Fitzgerald's evidence in relation to the rationale for the private treaty sale, where he suggested that what brought things to a head was the actual offer, or substantial original offer from Roadstone, and that that really led to a follow-up on that approach. What is your can you explain the rationale,

or is that your recollection, that that was the element

that

A. It is, because I mean at 0.7 million, they were not at the non planning permission value sorry, yes, at the non planning permission value that Mr. Barnett had put on it at that stage. And, you know, we were in a situation where we had indicated to them in any event, I think, when they made that offer, that we really were not interested in getting an offer that had planning permission attached to it. And when they came to see us then subsequently, I think it would have been clear, or at least should have been clear to them, that there was no point in upping a conditional offer, unless of course that conditional offer went as high as the unconditional offer, if you like.

But in any event, that wasn't the way the thing played out.

And when they were asked to lift the conditionality, that was readily agreed to, because obviously that's what they had decided to do beforehand. Now, that did change the whole dynamic of the thing, because I think at that stage we then saw there was a possibility of a private treaty sale.

Q. In relation to the public auction, Mr. Fitzgerald explained that at a public auction, you run the risk of having to sell the property for somewhat above the best price or the withdrawal price or whatever. There is the other thing of a public auction giving rise to local objections, and as Mr. Coughlan fairly pointed out, could have a negative

effect on price. Was that your thinking also at the time, or did that

A. Yes, it was clearly our thinking that, you know, at whatever the extent to which the sale of this property was in the public domain was going to have a significant impact. Now, having said all of that, we were looking at we had gone through various stages of this. We had gone through the stage of looking at getting planning permission ourselves. We knew that that was highly unlikely, that we would manage to get it, and we knew that we were better transferring the obligation of that to a private operator, whoever that might be. And clearly we knew that if we had a process that was public, it was highly unlikely that we would ever have sold that property. And I think it's clear from what has happened subsequently that we were probably right, though we wouldn't have actually known how it would have transpired at that point.

Q. As you moved away from the notion of a public auction or tender and I am only speculating could that be a reason why you didn't involve estate agents?

A. Not necessarily. I don't recall having any detailed consideration about involving estate agents in this thing, because we were operating on the basis of what we regarded as the professional advice that we required for the purposes of this property. We didn't see that an auctioneer and we used auctioneers in practically every sale where the property consisted of property that was to

be used for the purposes of housing development around the country; that was typically what our properties were sold for. So there were particular skills that auctioneers had in that regard, because they would understand the development land potential for housing purposes or otherwise.

This was something more specific than that. And we felt that we had the advice that we needed, and the way in which this thing proceeded, in the end, there was no need for having an estate agent. Had, on the other hand, we gone through a public tender process, we might have had an estate agent to handle that element of the process. I don't quite know if we would have, because again I would be speculating, but typically we did use estate agents; but as I say, in the context of the type of site that was involved was different.

Q. But if there is no auction, you don't need

A. Sorry, did you say "auction"?

Q. If there is no auction, you don't need an auctioneer, for example?

A. No, not an auctioneer. But I think we used estate agents for the advertising of properties for public tender.

Q. In relation to the suggestion or the question of political interference, did you know of or know Desmond Traynor?

A. I didn't know of him or know him at the time.

Q. And nobody suggested to you or otherwise that Roadstone should get favourable treatment in this?

A. No, absolutely not.

Q. And if you look at the sequence of letters from Roadstone at Tab 15 we needn't necessarily put these on the screen but the 2nd November, you will recall them, 1987, they ask if the lands are available. On the 14th March '89, they mention the West Wicklow News and report of a development of the area for an amenity park. And they ask: "Does this proposed development mean that you do not intend to sell any portion of your lands at Deerpark as a potential sand and gravel pit?"

And there are other letters 6th June '89: "Do you propose to sell the property in the near future?" Again, on the 12th January, 1990: "Do you propose to sell in 1990?" They inquired about the rumour as to whether you were seeking planning permission, etc.

They all seem to be very open letters; letters that the person who is writing them doesn't know the answer and is making a fairly open inquiry; is that your recollection of

A. Yes, I think the one thing about this thing is that practically everything that was any transactions, dealings, discussions, anything in relation to the relationship between ourselves and Roadstone and the relationship between ourselves and Johnston Industries is recorded on the file. There may be some omissions. I don't know what they would be, but certainly there are no improper or deliberate omissions from that file. I think

that I dealt with only three people in Roadstone, and those three names are on the file here; you have seen them, and those were all proper discussions. And they were all conducted in a proper manner.

Q. Now, turning to Mr. Johnston, Sean Fitzgerald stated that he had been facilitated all along the line in terms of meetings, correspondence, site visits, etc. You would agree with that, would you?

A. Who said this?

Q. Mr. Fitzgerald.

A. Yes, and so did Mr. Johnston. In his letter of I think the 30th November, or thereabouts I referred to it earlier he thanked us for what we had done.

Q. Tab 96. And it's a reconstituted letter, and what he says is: "I wish to thank yourself and your Mr. Carroll and your Department for the courtesy you have extended to me during the negotiations on this matter, and I hope it will have a successful outcome."

So up to that point in time, he was happy with the way he had been treated. And I think you mentioned you initiated something I think earlier on, in response to a question, I think it was in 29th May 1990, when he inquired again about the lands, and you invited him to come in to a meeting?

A. That's correct.

Q. To explore what he had in mind. So in fact the initiative came on your side?

A. Well, he wrote and I responded, and I invited him in to

talk about it, yes.

Q. Now, there is one point about two letters on the 2nd November and the 5th November where he inquired about minerals, the amount of material, and he inquired about a map. Now, it was suggested I think in the Opening Statement that he didn't seem to get a reply to those letters, or those inquiries, because he wrote again on the 15th November. He wrote again on the 2nd and the 5th, and then on the 15th, where he said: "Further to my letter of the 2nd November, can I please have the information which I requested". That's at Tab 89.

In your written submission of evidence, you have indicated that there is a note on the file on the 2nd that you telephoned him to indicate that what material was available, what information you would be making available; is that right? Can you just explain those two points?

A. Yes. He was asking I think there were a couple of letters, and he asked for an Ordnance Survey map. And I indicated, I think, in my affidavit or my narrative, rather that it appeared from the file that Mr. Smart had provided him with that Ordnance Survey map the following day, though there is a reference to another map then a week or so later, and I couldn't be certain that he got the particular map that he wanted the following day. But I think if you look at the file, anyway, I mean, typically he was given a reply to anything that he ever asked for within a day or two, or certainly no more than a week at any

stage.

Now, there was a second part to what you said oh, yes, he asked also then about the deposit, the size of scale of the deposit, and I think I told him, or I told his Secretary in his absence what it was, and I followed that up with a letter also.

Q. I think there is a we have this letter of the 15th November, and 5th are reconstituted letters, but in fact there are notes on the original letters to that effect, that this information was provided.

A. That's correct.

Q. And I think you are familiar with those.

In relation to the inspection of the land, Mr. Johnston sought inspection of the land in November. There was a suggestion of the 3rd December, and then ultimately he inspected the land on the 5th December. Now, an inspection really is a walk through the land. But in fact you report the 20th July 1990, there is a report that when you met with him, that he in fact he indicated that he had already walked the land.

A. Apparently he had, yeah.

Q. So what would have been the purpose of the 5th December, and how critical would that have been for him, since there were no detailed examinations to be carried out?

A. I don't know. He didn't drill any boreholes that I am aware of. He might have had some technical adviser with him. I don't know if we ever knew who actually visited the

property with him. I do recall, though, that he said that he wanted to be able to drive the land rather than walk it, because he had come out of hospital and had some leg injury, I think, so he wanted to use a land Rover to get around it. And from my recollection of the property, that would have been a limited examination of the land, because there wouldn't have been a complete network of roads out there.

Q. When we look at the series of contacts between Mr. Johnston and the Department and Roadstone, and they follow up on any discussions, how do you contrast both approaches? They both had the information that ultimately you may go to public tender, but you were not averse to receiving offers, and I just would ask you to contrast the approach of the two in terms of their

A. Well, I think

Q. follow-through with the Department.

A. Roadstone were quite determined to acquire the property.

It seemed to me, at least, they followed up you can see from the correspondence prior to the thing, prior to my involvement, that they had been continuously inquiring about it, even after the Parliamentary Question, when, as Mr. Healy suggested, people might have been put off; it didn't put Roadstone off, and then when I became involved in it, they moved things on fairly quickly. You know, they were anxious at that stage to move it on and get it done.

They were quite professional in their approach, and

whatever they said they would do, they actually did.

In contrast with Mr. Johnston, there was a gap, a long gap where there was no real effective action taking place, and where there was a long period when they were indicating he was indicating, rather, that he had no interest in the property without planning permission. Roadstone got over that hurdle fairly quickly, perhaps because they were very confident that they would have been able to get planning permission.

So I'd say the contrast was that Roadstone looked like somebody who was determined to buy the property, and Mr. Johnston looked like somebody who would buy it if the price was right from his perspective.

Q. Can I touch on the issue of meetings on the 13th very briefly.

I think you are saying that there was a meeting penciled in, but it hadn't been confirmed for the 13th. This is the conversation Mr. Smart had with Mr. Johnston. But in relation to the actual meeting which we know took place arising from the Minister's intervention, and the instructions, the legal advice that you had, as you have said, was to just meet and accept the offers, etc. But Mr. Fitzgerald has indicated that he chose to conduct the meeting somewhat differently.

Now, the question of the opening of envelopes, because if the offers were opened, one can perhaps more readily understand how there might have been an ensuing discussion,

and Mr. Fitzgerald has clearly indicated that the envelopes were opened. Would you accept that is that your recollection?

A. Yes, they were, yes.

Q. Because in that regard, there is, at Tab 103, the letter from O'Sullivan & Associates, acting on behalf of Mr. Johnston, and again I want to raise two questions very briefly on this. It's at Tab 103, and on page 2. I wonder if that could be

A. Yes.

Q. The paragraph 3 there, if we go down the paragraph and presumably this was written on the instructions of

Mr. Johnston it says in the middle of the paragraph:

"Mr. Fitzgerald opened the sealed envelope in the presence of our client and Mr. Philip Carroll, who at this point appeared nervous and uneasy". We'll come to that, but that the envelopes were opened. And also we know that from Mr. Fitzgerald's evidence that he offered to, or suggested that Mr. Johnston would take back the deposit, which I think is perhaps, if you would agree, confirmation that the envelopes were opened.

Now, in relation to the matter of the lie, which is on the next line: "It was our client's understanding at this point that Mr. Philip Carroll had lied to our client in saying that the land was sold previously". I think we are clear that what is alluded to there is that you indicated that the lands were sold, or whatever; if you perhaps can

clarify what you said was indicated

A. This is a very important point for me personally, and I wouldn't have gone to the trouble of writing the letter that I did to the Secretary General unless I felt it was important. I think there is few enough of us in this room have been accused in writing by a firm of solicitors, ten years after an event or more, is it, of having lied on an occasion, and I just want to record the fact that it is very clear that I did not lie; that I gave an honest answer to a question that was put to me, and that it was factually correct in every respect on the day in which I gave it.

Q. And the net issue was?

A. The net issue was: I told Mr. Johnston the land was sold on the 12th December, which was the day the Minister had recorded on the file the approval of the sale to Roadstone; that's what I told him, and he accuses me, I think in the context of the Public Accounts Committee or something, of having lied. And it's an outrageous allegation, and I hope the Tribunal puts that to him when he comes here this week.

Q. But the point is that it was your understanding, as you have clearly explained, that the lands there was a deal done with Roadstone. So it was in that context that, albeit subject to Board approval and ministerial approval, but a deal was done, and it was in that context you were essentially saying to Mr. Johnston that he was late and that the lands were sold?

A. That's correct.

Q. So what you indicated was the truth on that simple question?

A. Absolutely.

Q. And you were upfront with Mr. Johnston?

A. Yes.

Q. And I don't think anybody is taking issue with that.

Can I just come back to one thing you said about Mr. Johnston's understanding of the process and the issue of it being indicated to him that if he pays a price of X, maybe we would deal further with him.

You indicated that he understood the process as a tender process as distinct from a negotiation process, apart from the Department's understanding, but his understanding, I think you indicated you felt he saw it as a tender process, which is why he came with the deposit etc., the one shot at this

A. Yeah.

Q. Was that correct?

A. It couldn't have been his understanding arising from anything he was told by the Department, but it was his interpretation, if you like, that he was entering some kind of a tender process, because he mentions that I think in his narrative, and if it wasn't in his narrative, it was mentioned by his solicitor around the end of December 1990, and it was responded to by Mr. McMahon in the Chief State Solicitors Office.

But he did it had all of the characteristics of a tender

in the way in which the offers were presented, and I think he pretty much says it in the narrative, and he also mentions the date of the 14th December, that he had until the 14th December. He didn't have until the 14th December, because nobody told him that he had until then.

Q. But in terms of his approach to the meeting, of coming with a tender, coming with the formal tenders in sealed envelopes and the deposit, as it were, that he was approaching it as a tender, as a one shot at this, and as I think you reported in your memo of that meeting, his best shot?

A. Yeah.

Q. And that that may explain why he didn't seek another price, the best price, or the price that the Department was seeking, because he saw it as a tender?

A. I can only conclude that that was the case. He didn't suggest any other offer, and I think it's clear also from the correspondence on the file that when he when that opportunity, at least, was available to him in a telephone conversation the following day with Mr. Fitzgerald, neither did he take the opportunity of availing of it then either.

Q. The question, the fundamental question is whether, following the Minister's intervention, Mr. Johnston got a genuine chance to bid for this land and secure the property if he had the best price. In your view, did he get that opportunity?

A. Yes, I think he did, yeah.

Q. It wasn't just a formality?

A. Oh, there was absolutely no question of a formality. I don't know where that idea could possibly emanate from. We were instructed by the Minister to meet Mr. Johnston.

There was nothing at all contrived about that, and I have made it clear already today that if Mr. Johnston had come in at 1.4 million or $\frac{1}{2}$ 1.3 million, that is the offer that would have been presented for decision to the Minister.

Q. One other final question: In relation to the comment by Mr. Fitzgerald in his report, and I appreciate you didn't write the report, but his report said that if Roadstone don't confirm their offer I don't need to refer to the document we then reject the Johnston offer.

Now, I think you were asked if that meant you weren't prepared to deal with Mr. Johnston. But could you just elaborate a little bit on this, because what would have been the consequences if Roadstone rejected, ultimately didn't approve the 1.25 deal, and Mr. Johnston's offer was rejected? Was it intended that the process would start again? Was it considered what would be the situation?

A. I don't think I could honestly say that we had any intention at that particular point. If I am asked what would we then have done had Roadstone not been able to confirm the offer, I can only speculate and say that we would have commenced the process again, possibly with Roadstone and Johnston, depending on the nature of the problem, possibly with others. We might have gone for a

public tender competition then. But I would only be speculating as to what we would have done. We had no expectation that there was going to be a problem with the Roadstone technical issue about getting the CRH Board authority for the deal. We had absolutely no so therefore we weren't thinking about what might then happen.

Q. And just finally, on the gap in price, the 800 unconditional offer and the Roadstone price of $i\frac{1}{2}1.25$ million, the gap in that price was such, as you were saying, 50% plus, does that actually explain why you didn't or no one suggested to Mr. Johnston, "Maybe you'd like to go higher", or whatever?

A. No. As I said, I was not leading the negotiation, so it wasn't a matter for me to initiate a conversation or suggest, "Look it, why don't you have another think about that figure?" That was not a matter for me. But neither did Mr. Johnston suggest that.

Now, you know, mention has been made as to how things are done in business, and if businessmen want to do business, you know, they know how to do business. They know, notwithstanding the fact that we were there to receive an offer, if Mr. Johnston wanted to convey a different offer, then equally, that would have had validity. The written offer that Mr. Johnston gave us had no greater validity than another offer that he might have given us orally. Because if you remember, when we were dealing with Roadstone, until the point at which they put their point in

writing, we still considered their offer as a genuine one.

Q. Finally, can I just ask you, there are these two export reports, one of Mr. Grimley and the other of Mr. Behan.

And since one has the opportunity of commenting on these reports, do you have any observations to make?

A. Well, only in relation to the second one, I forget what the order of them is.

Q. Mr. Behan's is at 136?

A. No, the GVA Grimley report. I think it's interesting that after all of these years and all of the controversy that has surrounded this particular site, the valuation that they had put on it, or at least they have confirmed that the valuation that Mr. Barnett put on the site is in the range that they would now put it, 15, 16 years later. And I think that's satisfying from the point of view of our original objective, which was to secure a value for the taxpayer's property.

Q. And on the other report, have you any observations to make?

A. I don't, no.

Q. Can I just conclude by asking, there is the issue of the valuation; there is the issue of the planning permission, and hiving off that to Roadstone. There is the issue of the method of sale. At this remove, would you are you satisfied with the process you followed, and would you have done anything differently, I take it apart from the issue of the P and Q and the reporting to the Minister, but you are comfortable with the

A. Well, it's very easy for me to say that I am very comfortable with the decision now that I know that planning permission has not been secured on the site. So I think counsel yesterday mentioned how prophetic it was to suggest that there might be a difficulty with planning, and we couldn't have known that at the time; we speculated that that would be the case.

So in that sense, yes. I think any file that that has got the scrutiny that this has got, people are bound to come up with different views. I mean, Grimleys suggested that we might have involved an estate agent, and I would reject that. There were other suggestions. You are not going to find everything that was done perfectly correctly in every single respect, but I would submit that you will find few enough files where you'll get as much detail on the record as you will get on this particular file.

Q. Thank you very much.

CHAIRMAN: Nothing arising, Mr. Healy?

MR. HEALY: Yes. Just a few small details.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Just in relation to your meeting with Mr. Paddy McMahan, there is just one thing I didn't clarify with you, Mr. Carroll. It's this: In discussing with Mr. McMahan the situation in which you found yourself, and then proceeding to the meeting with Mr. Johnston with the advice as you saw it to receive his offer, did you tell Mr. McMahan the extent of your prior negotiations with

Roadstone? Did he know that you had been negotiating with

Roadstone?

A. I would say he did, because I think we would have given him

a general brief on the situation. I don't know that I

would not swear absolutely that we told him all of that,

but we would have no reason to withhold that from him.

Q. Could I put it this way: If you had told him that you told

Roadstone that you wanted $\frac{1}{2}$ 1.5 million, and that Roadstone

eventually settled with you at 1.25, isn't it surprising

that he'd have told you to meet Mr. Johnston and just to

receive his offer without comment?

A. Well, that's you know, I think you have to ask him.

MR. REGAN: I hesitate to interrupt, but is there an

element of privilege in relation to going down the line on

this matter?

CHAIRMAN: I think I'll allow it, Mr. Regan. I am anxious

just to feel that the facts are being explored.

Q. MR. HEALY: Do you follow me?

A. I follow you, but I think you have to ask Mr. McMahan about

his advice. Now, I am sure that I would have we would

have informed Mr. McMahan, as our legal representatives, of

all of the facts of our discussions. Why would we do

otherwise? I can't imagine why.

Q. Because you mention that Mr. Johnston referred to the

process in terms of a tender.

A. Yes.

Q. And as you know, a tender is where you simply put your

offer on the table and the other fellow puts his offer on the table, and then they are all opened, and that's the end of it. And if in fact at the meeting he simply gave his offer, you opened it and went away and made no comment, wouldn't that leave anyone, you know, who wasn't a lawyer, with the impression that this is a sort of a tender process?

A. But sorry, we didn't tell him how to present his offer.

Q. You had instructions to receive it without comment?

A. We had instructions to receive his offer. We didn't determine the methodology of delivering the offer.

Q. He gave it to you.

A. Yes.

Q. But according to Mr. McMahan's note according to Mr. McMahan's advice to you, according to your evidence and your note, according to Mr. Fitzgerald's memorandum, you were instructed to receive it without comment. There is no reference in the memorandum to you having told this man, Mr. Johnston, that his offer was a dead duck, a waste of time; nobody said that to him. In those circumstances, wouldn't it seem reasonable to imagine that you'd been involved, if you were Mr. Johnston, in a tender process, where you hand in your offer and nobody said anything to you about it?

A. No, I was saying to you that it is my impression that he thought that he was in a tender process.

Q. Can you not see why, if in fact his offer had been received

without comment?

A. No. The reason why I say that is because he brought the offer in in writing. He didn't just write it there and then. It was written two days beforehand. There were two letters. And with one of them, there was a banker's draft.

That is a characteristic of a tender. And that was predetermined two days before the meeting was even scheduled. And he actually mentions this, or at least his lawyer mentions this in correspondence.

Q. He does, yes.

A. That's the only reason I am saying that.

Q. Did you inform the Department of Finance I think I am right you didn't inform them in any written documents, but you mention that there may have been some discussions that aren't recorded did you inform the Department of Finance that there were private representations to individuals that the land would not be sold except by public tender?

A. I don't recall having that conversation.

Q. You mentioned in your evidence a moment ago in response to Mr. Regan that the PQ response didn't put Roadstone off.

A. It would appear not.

Q. And I take it that wasn't because of anything anyone in the Department said to them; it was just that they were or was it?

A. No. You asked me a question earlier today, you suggested to me that anybody who might have had an interest in that property, having read the PQ, would feel relatively

comfortable that they would have knowledge of the sale of this property at some subsequent date.

Q. Right.

A. And it was in that context that I answered that question.

Q. I see.

Lastly, in relation to the letter from Messrs O'Sullivan & Associates of the 6th November 1997 which Mr. Regan just opened, and in particular the sentence he mentioned where he says that where he quotes the letter, saying:

"Mr. Fitzgerald opened the sealed envelope in the presence of our client and Mr. Philip Carroll, who at this point appeared nervous and uneasy." Would you agree with that description?

A. Absolutely not.

Q. You had been uncomfortable earlier, but you said you had got some consolation from the advice Mr. McMahon had given you; is that it?

A. No. You are now linking two separate things entirely for your own purposes. I am telling you that I was uncomfortable about a situation that had arisen which could cause the Department to be litigated against. That was a separate issue entirely to dealing with Mr. Johnston. I had a very good relationship with Mr. Johnston at any time I spoke to him on the telephone or when I met him, and that's quite clear from his letter of the 30th November.

And Mr. Johnston's letter, I think that letter that you are referring to, is that the letter that he wrote in

Q. '97.

A. '97. That's a long time after the event, isn't it?

Q. It is, but

A. Why would I be nervous about something? Here we were in a situation where, if Johnston had put in an offer higher than the Roadstone offer, the State was going to secure even better value for the asset that it was disposing of.

We had absolutely nothing to lose.

Q. But if you had negotiated with him, who is to say you wouldn't have reached the same position?

A. You know, you had your opportunity last Friday to ask Mr. Fitzgerald who was the lead negotiator on that.

Q. I am just asking you now.

A. I am telling you that I was not the lead negotiator, and that we had sorry and that we had an instruction from the Chief State Solicitor. It was not for me to alter that process.

Q. All I am asking is for your comment on it.

A. I don't have a comment on it.

Q. Maybe you'll just listen to the question first,

Mr. Carroll.

You say that if Mr. Johnston had made an offer in excess of the Roadstone offer, you'd have achieved more for the State. If that is the case, am I not right in thinking that and you can comment on this that if you had negotiated with Mr. Johnston at that stage, you might have got an offer that was close to or in excess of the

Roadstone offer? If you or Mr. Fitzgerald had negotiated with him, is that not a possibility?

A. Or if Mr. Johnston had suggested a different price.

Q. Yes.

A. That would then have been his offer. But I think I certainly, whatever about Mr. Fitzgerald, took the view that Mr. Johnston had very deliberately prepared for this meeting. He had very deliberately had his solicitors draw up two letters. He had a bank draft for the unconditional offer that he was making; that offer was at the margins of what the advice was for purchasing such a property without planning permission. It was 50% or more below the Roadstone offer. And I think he was he quite clearly understood, as I mentioned to you earlier, that his was not the highest offer, though he denies that.

Q. And he rang up the next day to find out how he was getting on?

A. Apparently.

Q. And nobody told him?

A. I am sorry, that was a conversation he had with Mr. Fitzgerald.

Q. But you were satisfied he wasn't going to be told; you told the Department of Finance the Minister intends to reject his offer?

A. I didn't. It was Mr. Fitzgerald's minute.

Q. In a letter to the Department of Finance, you said "The Minister intends to reject this offer".

A. I thought we said we intended to accept the Roadstone offer. Perhaps it's the same thing.

Q. Well, on the 14th you said you intended to reject Mr. Johnston's offer.

A. Mr. Fitzgerald said that, I think.

Q. No, no, but in your letter to the Department of Finance, you said it.

A. Did we?

Q. Do you not remember that letter to Mr. Hickey?

A. I very much remember the letter, which set out

Q. You said "We intend to reject that".

A. Well, if you are quoting from the letter, I'll take your word for it. What I recollect from that letter is we recommended to the Department of Finance that we should accept the Roadstone offer. And the Roadstone offer, at that point, was 50% plus $\frac{1}{2}$ 50,000 higher than the unconditional offer from Johnston Industries. That is why we recommended that offer.

Q. Thank you.

CHAIRMAN: Thanks, Mr. Carroll.

11 o'clock tomorrow morning. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 3RD MAY, 2006.