

THE TRIBUNAL RESUMED ON THE 4TH MAY, 2006 AS FOLLOWS:

MR. HEALY: Mr. Brendan Johnston, please.

BRENDAN JOHNSTON, HAVING BEEN SWORN, WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

CHAIRMAN: Good morning, Mr. Johnston. Thank you very much for your attendance and cooperation so far. Please sit down.

I had explained to people present yesterday that I have a little bit of temporary deafness, so I hope you won't think me rude if I look at the machine that's recording your words, rather than yourself.

A. Okay.

Q. MR. HEALY: Now, Mr. Johnston, I think Mr. Brady, the Tribunal solicitor, has put some books, some blue folders in front of you there; do you have them?

A. I have, yes.

Q. You have provided the Tribunal with a Memorandum of Intended Evidence; do you have a copy of that?

A. I don't have a copy with me, no.

Q. Now, you are at Tab 6, which contains a copy of that document I mentioned to you, a Memorandum of Intended Evidence. What I propose to do is to go through that document first; I'll read through it. When I finish reading it, I may ask you a few questions about it, or else we may look at some documents first and come back to it; but if, while I am reading it, anything occurs to you that you think I may have missed or anything I slip up on,

please don't hesitate to stop me. Is that all right?

A. Thank you, fine.

Q. Now you say you had several years' experience in the UK in the sand and gravel industry. I take it that what you mean there is prior to returning to Ireland, you had many years' experience in the sand and gravel

A. About ten years, fifteen years.

Q. On your return to Ireland, you wrote to all of the Government departments outlining your expertise and inquiring as to whether or not the State had any land on which you could help them realise its full potential. You sent a sort of a circular letter to all the various departments, saying, "I have been in the sand and gravel business, I have been in the development business, I have worked with local authorities; is there anything you have to sell or any activity that I might have experience in that you'd like to join up me on", that type of letter, isn't it? We have seen a copy already.

A. That's correct, yes.

Q. On the 10th April, 1989, you wrote to Mr. Thomas Smart, the late Mr. Thomas Smart of the Department of Energy, as it then was, expressing a general interest in the acquiring of sand and gravel deposits. On the 7th December, 1989, you again wrote to Mr. Smart expressing your continued interest.

In your 7th December 1989 letter you mentioned your particular interest in the Department's land in

Blessington, County Wicklow. According to a manuscript note to Mr. Smart dated 13th December 1989, Mr. Smart rang you advising you that the property would be sold by public tender. The note further records that Mr. Smart promised to advise you when tenders were being invited.

On the 22nd May 1990, you wrote to Mr. Philip Carroll of the Department of Energy, as it then was, expressing your continued interest in making an offer to the Department for land at Glen Ding, Blessington, County Wicklow, or as you proposed in the past, a joint venture with the Department for the development of the full site as a sand and gravel operation.

On the 29th May, 1990, Mr. Carroll wrote to you noting your interest and suggesting that you meet in order that Mr. Carroll might set out in more detail your plans for the property. I think what that should read was that Mr. Carroll suggested you meet in order that you could set out your plans for the property; isn't that right?

A. That's correct.

Q. A manuscript note of Mr. Tom Smart records that a copy of a map showing the approximate area to be disposed of was sent to Mr. Johnston, that's to you, on the 5th June 1990.

On the 20th July 1990, you met with Mr. Smart and Mr. Carroll. A report of the meeting was prepared by Mr. Smart, and the report notes that you had walked the land in Blessington and would only be interested in buying provided the site had full planning permission for the

extraction of sand and gravel. The note also records your view that without planning permission, the site would be of little value. At the meeting you proposed to purchase the site by way of a lump sum up front and thereafter pay royalties, about 20 pence per tonne. You envisaged opposition to the planning application because the site appeared to be used as an amenity area, but you thought that this could be overcome.

Mr. Carroll informed you that the Department proposed to sell the site lock, stock and barrel and would like you to submit an offer on that basis. You said that before considering the matter, you'd require certain information from the Department: namely, firstly, a statement of the total area for sale; and secondly, any bore hole information and site investigation information which the Department might have.

You were told that the area to be sold would be in excess of 120 acres, given that the OPW would be getting an area around a fort that was located on the site. You were also told that the Department was awaiting confirmation from the OPW of the area it required, and when this was received, you would be informed of the exact area for sale and provided with any other information the Department was in a position to give you.

Finally, you were informed that there were others interested in the property, which might still be offered for sale by public tender competition.

On the 5th September 1990, Mr. Smart wrote to you stating the area of the land for sale that is the exact area of the land for sale, presumably in response to your request for that information which was 58.68 hectares, or approximately 145 acres. A copy of the map outlining the area to be retained by the OPW was attached to this letter.

On the 2nd November 1990, you wrote to Mr. Carroll stating that you were prepared to make an unconditional offer for approximately 145 acres of the Department's land at Deerpark, Blessington, County Wicklow, without the benefit of planning permission. The letter states that you would take on board all the planning risks involved, and requested the Department to provide you with details on the bore hole information and the quantities of material contained in the subject land from the appraisal that the Department carried out for its own benefit. You end the letter by stating that you required this information to enable you to make a speedy decision as to your best offer.

On the 5th November 1990, you again wrote to Mr. Carroll, requesting a complete Ordnance Survey plan of the subject land, as the plans sent to you only showed the land in the Department's ownership that would not be included in the sale. You state that as soon as you received the site plan you stated that as soon as you received the site plan, you would then arrange with the Department to view the property by appointment. You end your letter by saying that the sooner the Department provided you with this

information, the sooner you'd be in a position to make your unconditional bid.

On the 15th November 1990 you wrote to Mr. Carroll requesting the information referred to in your earlier letter of the 5th November 1990 as soon as possible. You reiterated your intention to make a bid for the land in early December, 1990. You ended your letter by asking for an appointment the following week with a member of the Department staff to show you over the land, stating that you were unable to contact the Department staff at the Blessington telephone numbers provided by Mr. Smart.

From a note on the Department's file, dated 16th November, 1990, it appears that Mr. Carroll telephoned your office on the 16th November 1990, that day, and spoke to your Secretary. It appears from the note that Mr. Carroll informed your Secretary that the Department could not give you an internal confidential report. From the note it also appears that your Secretary told Mr. Carroll that you would ring Mr. Smart on the following Tuesday, presumably the 20th November, to arrange a meeting to view the land in sale.

Now, I think around this time you were in hospital as well; is that right?

A. I was, yes, for a few days, because I suffer from diabetes, and I do have to go in for a checkup now and again.

Q. I see.

On the 28th November 1990, you wrote to Mr. Carroll seeking

an appointment to view the property and asking about certain factors that might affect the site. You ended your letter by stating that as soon as you had this information and following your site view, it would be your intention to make an unconditional offer.

On the 2th November 1990 you wrote to Mr. Johnston or, sorry, Mr. Smart wrote to you and stated that he had arranged for you to view the site on Wednesday, 5th December, 1990.

On the 30th November, 1990, a day after that letter, in a letter to Mr. Smart, you accepted the appointment to visit the land as arranged.

On the 30th November, also, Mr. Carroll wrote to you indicating that the figure of 8 to 10 million cubic metres mentioned by him to your secretary in relation to the quantity of sand and gravel on the site was as a result of a sample survey undertaken on behalf of the Department. He further clarified that it was for to you independently evaluate the potential volume of sand and gravel existing on the site, and that the figures mentioned should not be relied upon as representing the actual level of the deposit. In that regard, Mr. Carroll also referred to the meeting of the 20th July 1990, at which it had been indicated by the Department that you'd be facilitated in relation to any such evaluation to be conducted by yourself. The letter ends with Mr. Carroll noting your intention to visit the site on the following Wednesday, the

5th December, at 10am.

On Wednesday, the 12th December, you spoke to Mr. Carroll on the telephone. You recall that Mr. Carroll had the

following words to say to you, and you are quoting:

"Sorry, Mr. Johnston, the land in question was sold by the

Minister." You disagreed in strong terms with Mr. Carroll

on the telephone and indicated that you still had not

that you still had until Friday the 14th to put in your

offer. You also inquired as to how Mr. Carroll would know

that the Minister had sold the land, given that he,

Mr. Carroll, had been on holidays for the previous while.

On that day you also telephoned the Department directly and

spoke to a Mr. Kieran Byrne.

A. Excuse me; can I just stop there.

Q. You can.

A. I didn't, because it's not ethical to ring a Minister

direct, so I got a friend of mine who knew Bobby Molloy to

ring him, just to ask him a simple question: Had he sold

the land? And he says certainly not.

Q. I see.

CHAIRMAN: Well, I think we come on to that in the next paragraph.

MR. HEALY: Yes, we do.

Q. On the 12th December, 1990, you telephoned the Department

and spoke to Mr. Kieran Byrne. Mr. Byrne, in a handwritten

note on the Department's file, records that you wanted to

speak to the Minister about the sale of the land in

question. The note further records a conversation in which you apparently stated that you had been negotiating with the Forest Service yourself with the land, had visited the site with Forestry staff, and had arranged a meeting with Mr. Philip Carroll for Thursday, the 13th December, 1990, to formally table your offer. The note records that you were dismayed that you could not now bid if the Minister had approved the other offer, and you felt that the wool had been pulled over your eyes and wished to appeal to the Minister.

And then with reference to the point you made a moment ago, you state that you asked a friend of yours, Dr. Noel Murphy, to get in contact with the Minister to establish the position in relation to whether the land was sold or not.

A. That's correct.

Q. On the 12th December, 1990, Mr. Conor McGreevy of McGreevy Solicitors wrote to Mr. Carroll on your behalf. The letter refers to the cancellation of your meeting with Department officials for Thursday, the 13th December, to view the land due to the apparent decision by the Minister to sell the land to a third party. The letter alleges that both Mr. Carroll and his officials were fully aware that you were coming to a meeting the following day with the Department officials to make an offer for the land. The letter concludes by asking for the fullest possible explanation as to how and why the lands were sold without

sight of your offer, and states that all possible legal remedies open to you were being examined in the circumstances.

On the 13th December, you wrote to Minister Molloy further to your conversations with Mr. Byrne. The letter set out your grievances and stated that you felt unable to rely on the Department staff at Leeson Lane and intended to furnish your offer directly to the Minister that day, or as soon as the Minister would be available to meet you.

On the 13th December, 1990, you met Mr. Carroll and Mr. Sean Fitzgerald of the Department. At that meeting you recall that you were informed by the Department officials that there was only one other buyer. You recall that you were aware that Roadstone would be bound to be in as bidders given their dependence on and location to the site.

You then recall asking Department officials what sort of money was being sought by the Department for the site.

It's your recollection that the Department's response to this question was an indication to you that this would be a matter for the parties bidding for the site. You state that you were never given an asking price by the Department officials at the meeting.

You then made two offers for the site. Each of these offers was contained in a separate letter from Mr. McGreevy on your behalf, and both were dated the 10th December, 1990. The conditional offer consisted of an up-front payment of $\text{€}715,000$ for the site with a further $\text{€}435,000$

being payable on the grant of planning permission. An unconditional offer was also made, which consisted of an offer of $\text{€}1,280,000$, and a draft of $\text{€}1,280,000$ was attached to this letter. You included this cheque in order to show your good faith and the fact that you had resources.

After submitting your offers, the Department officials told you that your offer was being considered.

On the 14th December, 1990, you telephoned Mr. Fitzgerald asking whether a decision had been made in relation to your offer.

On the 17th December, 1990, Mr. McGreevy wrote to Minister Molloy expressing his appreciation. I suppose really your appreciation for the meeting with the Department officials on the 13th December, 1990, and referring to the fact that the letter of offer that the letters of offer were handed over to Philip Carroll together with an $\text{€}1,280,000$ draft deposit. The letter also asserted that the bid made by Mr. Johnston was presumed to be higher than the other bid referred to at the meeting, on the basis that the letter and cheque were accepted by Mr. Carroll.

On the 17th December, Mr. Fitzgerald, in a letter which obviously crossed with Mr. McGreevy's sorry, it didn't; it responded to Mr. McGreevy's letter of the same date to Minister Molloy. It stated that you were entitled to your presumption but that the mere receipt by Mr. Fitzgerald of the offer for the purpose of putting it before the Minister did not constitute acceptance of your offer by the Minister

or his Department. The letter stated that the Minister was considering your offer as requested and that he had not made any decision at that time.

On the 20th December, 1990, Mr. Fitzgerald wrote to your solicitors, Messrs. McGreevys, rejecting your unconditional offer and returning the bank draft furnished in the sum of $\text{€}1,280,000$. You maintained that as far as you were concerned, you were totally obstructed and never given a fair chance to purchase the land.

A. Am I allowed to say something here?

Q. You may, of course.

CHAIRMAN: Of course.

A. Once anybody that's not involved reads the file, you can see yourself that, for I don't know what reason, but as far as I am concerned, personally, I am used to winning and losing games, so it's no big deal to me one way or another; but basically, my offer I was never given the same privileges as Roadstone. My unconditional offer was higher than Roadstone's, because I never submit an offer of a million; I always put something on at the end. So that most people deals in even monies; I don't deal like that. So that's why my offer was higher, my conditional offer was higher than Roadstone's.

Q. Could I interrupt you for one minute, Mr. Johnston, and I'm not trying to stop you saying what you have to say. I am actually going to go through the file with you.

A. Yeah, okay.

Q. And would you prefer to make your comments as you go along, as you go through the file? It might be easier than trying to put everything together as you are sitting up there in the witness box.

A. Yeah, okay.

Q. If there is anything we don't touch on, you can then at the end of it all add in anything else you want to say. I am actually going to go through a lot of documents to enable you to make the points you are seeking to make, and to make them with more force, once we put the documents up on the screen. Okay?

A. That's fine.

Q. Now, if you reach over for Book Number 75 of the blue books?

A. Yes, I have got it here.

Q. Okay. Now you'll be generally familiar with most of this documentation, and I'm not going to refer to every document. If you could go to Document Number 53, Tab Number 53; do you see that? It's a letter on your headed notepaper addressed to Mr. Tom Smart. Do you see that? I think it must be the next tab to the one you are at.

A. Yes, it's the next page. Yes, this is it, yeah.

Q. Now, one way of making sure that we are all at the same document is if you look at the television screen to your right, the television monitor to your left, sorry or your right, in fact to your right. You see straight in front of you, the monitor straight in front of you, the

television screen?

A. This one?

Q. No, the one below that. Do you see it right in front of you?

A. Oh, yes, here.

Q. Take a minute to orientate yourself. The document on that is the document that you have?

A. Yeah.

Q. So we are both on the same document?

A. Yeah, exactly.

Q. Now, that's the second of the letters you wrote to the Government, if you like, about this. You sent your circular letter to various departments, and then you sent a specific letter addressed to Mr. Tom Smart.

A. That's right.

Q. On the 10th April 1989. And I think that was your first expression of interest in buying land that was sent directly to this Department and not to any other Department?

A. Yeah, they could discover all this if they wanted to, yeah.

Q. Now, if you go on to Tab 73 in that book 72, sorry.

A. Yeah.

Q. You'll see that this is another letter from you, this time addressed to Mr. Carroll, referring to your interest in the land. And the reason I mention this letter is that you refer to three previous letters; do you see that?

A. Yeah.

Q. You say, "Dear Mr. Carroll,

"Re: Land at Glen Ding.

"Further to my letters to your Department on the 10th April 1989, the 7th December 1989, and the 15th December 1989 regarding the above land, I wish to express my continued interest in making an offer to your Department for this land or, as I proposed in the past, a joint venture with your Department for the development of the above site as a sand and gravel operation.

"I look forward to hearing from you."

A. That's correct.

Q. So, now, in addition to your general, if I can call it, circular letter, you had written those three letters and now this letter of the 22nd, which was a fourth letter; isn't that right?

A. That's right.

Q. In fact a fifth letter.

You got a response, which is contained over the page, over the leaf, in the next tab, Tab 73, and it says, dated the 29th May 1990: "Dear Mr. Johnston,

"I refer to yours the 22nd, and I note your continued interest in the Blessington property.

"Perhaps you would like to call to see me to set out in more detail your plans for the property.

"Yours sincerely, Philip Carroll, Assistant Principal Officer."

Now, there are two manuscript notes at the bottom of that

document. One of them says: "Note: Copy of map showing approximate area to be disposed of sent to Mr. Johnston on the 5/6/90". And underneath that: "Copy of map also sent to Mr. Seamus S. Breathnach, Roadstone", on the day after it was sent to you; do you see that?

A. Yeah.

Q. Because they were expressing interest around the same time as well?

A. Exactly.

Q. Now, if we just go on a few tabs to Tab 76, this contains a note of a meeting that you had with Mr. Carroll and Mr. Smart on Friday, 20th July, in Leeson Lane, the Department's offices in Dublin?

A. That's right.

Q. And Mr. Smart notes that himself and Mr. Carroll met you at 11.30am on Friday, 20th July. And then he goes on:

"Mr. Johnston informed us that he had been in the quarry business in England for a number of years and had returned to this country just a year ago. While in England he had completed a lot of contracts for road building with London County Council. At present he is Chairman of International Research, a pharmaceutical company in which he has a 20% shareholding. He had already purchased a quarry at Donard but later sold it to Kells Mineral Resources because it was too small for him to operate.

"Mr. Johnston had walked the site in Blessington and would only be interested in acquiring it provided the site had

full planning permission. Without planning 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 20 pence per tonne) as the material was extracted. You envisaged opposition to the planning application because it appeared to be used as an amenity area but thought that this could be overcome. Mr. Carroll 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 said that before considering the matter he would require the following information from the Department:

"1. Statement of total area for sale and

"2. Any bore hole information and site investigation information which the Department might have.

"It was usual for the Planning Authority in such cases to stipulate that 60 metres all around the site would have to be preserved, and he would only be submitting an offer for the floor area which would be measured and not the surface area. He was told that the area for sale would be surface area, not any reduced area preserved to comply with the planning laws.

"Mr. Johnston was informed that OPW would be getting an area around the fort, and it was expected that the area to be sold by the Department, less that required by OPW, would be in excess of 120 acres. The Department was awaiting confirmation from OPW of the area they required, and when

this was received, he would be informed of the exact area for sale and provided with any other information the Department was in a position to give him. He was informed that there were others interested in the property, which might still be offered for sale by public tender competition.

"The meeting concluded by Mr. Johnston thanking the Department for affording him the opportunity to discuss the matter."

Now, just to deal with what's recorded in that note, which I take it in general terms you agree with, I take it you agree that the note is a more or less accurate note?

A. Exactly.

CHAIRMAN: Are the details at the start pretty accurate, Mr. Johnston, of what you told Mr. Smart and his colleagues about your experience, your time in England and your other interests? They are fairly accurate?

A. Oh, yeah. They are all there; they can be discovered. All you have to do is ring up any of the people.

Q. MR. HEALY: Now, at that stage you had walked the site. Now, you use the word "site" you had walked the lands, the general area; is that right?

A. Well, I drove around it in my Range Rover, and I also walked in parts it where it was overgrown, where you couldn't get yeah, I looked at it. I was quite satisfied that I would have thought that it was undermeasured, not overmeasured; that there was a minimum

of 208 tonnes. Because I am used to looking at big piles of stuff, so I could have a fairly good judgement of what would be in it by looking at it.

Q. But at that stage, presumably you were looking at all the Department lands in this area?

A. Yes.

Q. You had no map of precisely what was in sale?

A. Well, I don't know whether I had the map previous or not, but we didn't use a map. I was only just interested in looking at it in the entirety; you know.

Q. I appreciate that. And we know that from the file, in any case, you don't appear to have got any map by this point.

A. Yeah.

Q. So you had visited the land. What you had done was you had gone out to look at the general Blessington, Deerpark, Glen Ding area?

A. Exactly. But I was familiar with the area anyway because I had a summer house down beside the lakes, so I knew the Blessington area, and I knew the local views about the quarrying operations there.

Q. Do you see the monitor which is directly to your right at the moment? Yes, that one. Do you see the area outlined in heavy black?

A. Yeah.

Q. That's the entirety of the Department lands in that area at the time that you visited it.

A. Mmm.

Q. So you could have roamed over that, to the extent that it was physically possible to do so, at the time that you visited it, but you wouldn't have been aware at that stage of any precise area of land in sale; do you understand me?

A. No, but I observed that there was a large area had already been worked by the Forestry to make haul roads.

Q. All I am trying to establish is this: You had no map at that stage. Is that right?

A. As far as I am aware, yeah.

Q. So in visiting the area, you could only have been making a general visit?

A. Yeah, exactly.

Q. Now, you put your proposal to the Department. You said you wanted to make a bid but that your bid would be subject to planning permission and that what you wanted to capture, if you like, in your bid, was the sand and gravel, and that's all; isn't that what you said to them at the time? And they said, "Well, we won't agree with that; we'll only sell you a surface area. It's up to you to work out with the local authority, or whoever, the planning authorities, how much sand and gravel you can take out". Would that be a fair way of describing what happened?

A. Well, it's a fair way of describing it, but it wasn't my intention. My intention was to do like what I done with the greater London Council and other big local authorities. I mean, at the time the Greater London Council had a bigger budget than the whole of the Irish Republic, because of the

recession that was going on at the time.

Q. I appreciate that. I want to just focus exclusively for the moment on what you said to the civil servants and what they said to you.

A. Yeah, exactly.

Q. You said to them it was usual for planning authorities to stipulate a 60-metre setback, I think it's usually called, all around a quarry, and that you only wanted to buy the quarried area; and the Department said to you, "No, we won't deal on that basis; you have to buy the lot, including the setback; you have to buy the surface area".

That's all I am saying. They laid their position out; you made your position. You were obviously trying to do the best deal for yourself?

A. Yeah, exactly.

Q. But they weren't prepared to deal on that basis.

Now, as we know, following that meeting, judging from the minute we read a moment ago, you were sent a map by Mr. Smart, on the 5th June. You obviously don't remember the precise date, but you were sent a map, in any case, after the

A. Oh, I know I got a map.

Q. Now, if you turn for a moment to Tab 79.

A. Yeah, I am at 79 now.

Q. That's a letter from Mr. Smart, addressed to you, dated the 5th September, 1990.

A. I have got it. Thank you.

Q. It says: "Dear Mr. Johnston,

"I am to refer to our meeting of the 20th July" that's the meeting that we have just been discussing "and to advise you that the area which this Department proposes to sell at Deerpark, Blessington, amounts to 58.68 hectares (145 acres approximately). The area for sale will be the surface area including the trees thereon.

"A copy of the map outlining the area to be retained by the Office of Public Works is attached for your information."

Now, judging from that letter, by that stage the Department had quantified more or less precisely the area they were going to sell. You were no longer dealing with the whole big area of Blessington, and they sent you a map outlining the area to be retained. Now, you hadn't by that stage I think I am right; according to the file, in any case received a map of the area to be sold. You were told what was being retained, but you didn't have a precise map of the area being sold; isn't that right?

A. Yeah.

Q. Judging from the file.

I now want you to go to Tab 86, which is a pink tab. Have you got that letter?

A. Yeah.

Q. Now, you can see that that document is headed "Reconstituted Copy". Do you see that?

A. This is 86, you said?

Q. Number 86, yes.

A. Well, the one I have is "Reconstituted Copy", yeah.

Q. And is it dated 2nd November 1990?

A. That's it, yeah.

Q. Now, you will remember that the story up to this stage was that you had sent in your expressions of interest.

Eventually you had a meeting. You put your proposals. You were trying to obviously do the best you could, get just the sand and gravel and have no other problems. And the Department said, "No, no, no, no, you are going to have to buy surface area from us". And you also want to do a joint venture. They said, "No, we want to sell this place lock, stock and barrel, and we are not interested in selling subject to planning permission", and so on.

So then you wrote at this stage, on the 2nd November, 1990, saying: "Further to my previous 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 planning consent.

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

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

your Department provides to me.

"I will need this information to enable me to make a speedy decision as to my best offer. For me to carry out a complete site investigation would cost approximately \$1/250,000 and be time-consuming and cause further delay in my making an offer to you."

Now, in that letter you took on board, I suppose, some of the things that the civil servants, the officials, had stated to you in their meeting with you on the 20th July, but you were still trying to get borehole information so as to avoid having to conduct your own survey; isn't that right?

A. Yeah, well, that's very important, because the borehole information provides you with samples at metre intervals, and you can do grading analysis and cement absorption tests and everything from that information.

Q. You can form a more accurate impression of how much actual sand and gravel and what quality it is and so on?

A. And grading analysis and so on.

Q. At the same time, I suppose, from the point of view of the Department, we know they didn't give you the borehole information. Looking at it from their point of view, they were trying to keep their cards close to their chest as well, weren't they?

A. Exactly.

Q. Now, the next document is in Tab 89; it's another letter from you to Mr. Carroll, dated just a few days after the

one we have been discussing. It's dated the 5th November, 1990. Have you got that?

A. I have, yeah. This is the one I have is a reconstituted copy.

Q. It is

A. 15th November.

Q. No, no, the 5th. I am sorry, 89 is the 15th; I have confused you. I want you to go back to 87.

A. Yeah.

Q. Have you got that letter?

A. I have this, the 5th November.

Q. Yes. A reconstituted copy. And perhaps I should just say to you that these had to be reconstituted because the copies on the Department's file were unfortunately so fragile they couldn't be photocopied; do you understand?

So instead of photocopying them

A. Yeah, I understand.

Q. the Tribunal simply had somebody go over them line by line to reproduce them.

Now, in that letter you say, again to Mr. Carroll, "Re:

Department's land at Deerpark, Blessington, County Wicklow, approximately 148 acres.

"Further to my letter of the 2nd November 1990, could you please provide me with a complete Ordnance Survey plan of the subject land that you have for sale.

"The site plan which I have received from your Department only shows the land in the Department's ownership that is

not included in the sale. As soon as I receive the site plan from you, I will then arrange with you an appointment to view the property.

"The sooner you can provide me with this information, the sooner I will be able to make you an unconditional bid."

Now, that deals with, to some extent, the point I was making earlier, that you had received a map from the Department showing what they were holding back from the sale as opposed to what they were actually selling.

A. Yeah, that's correct.

Q. Now, you had already viewed the land in general; isn't that right?

A. Yeah, I had a look at it.

Q. Yes. You said you wanted to view the site again.

A. Yeah, I looked at it a couple of times, because I could never get anybody to show it to me, like, until the end.

Q. Until I am sorry, I didn't catch

A. Until the appointment. But do you see, everyone was roaming around there. There was a lot of people had access to it. Whether they were legally entitled to it or not I have come across this in England, where there is commoners' rights. And I mentioned that in one of my letters as well. But basically I had a good look around at it myself.

Q. But could it be suggested that in looking for the site plan and an appointment to view the land, could it be suggested you were carrying the long day, wasting time a little?

A. No, it never was my intention to waste their time. My intention was always to try and get them the best deal possible, which I thought was a joint venture.

Q. I appreciate that, but they didn't want that; they wanted to sell the thing lock, stock and barrel. But could it be suggested that by asking the Department for a site plan, and in addition I can well understand you wanted a site plan, but asking them, in addition, for an opportunity to view the land again, could it be suggested you were wasting time, or not showing a real interest; that you were just sort of, you know, messing around the edges or something?

A. I am not a messer, number one, and most people take me serious. But in this case, I have to say in this public inquiry is that as far as I am genuinely concerned, I never was taken seriously, and the file will prove that.

Q. Well, can we go on to your next letter, which is in Tab 89, and it is the letter of the 15th November 1990.

A. Yeah.

Q. Now, it's very similar to your previous letter. It's essentially a reminder, and it says: "Further to my letter of the 2nd November, can I please have the information which I requested from you as soon as possible.

"As soon as I get your reply, it is my intention to be in a position to make a bid for the subject land early December 1990.

"I would be grateful if you could also make an appointment for me next week with one of your staff to show me over the

land, as I have been unable to contact your staff at the Blessington telephone numbers provided to me by your Mr. Smart."

That was following on from the letters you had sent on the 2nd and the 5th November.

A. That's right.

Q. Now, can I ask you to turn to Tab 91.

A. Yeah.

Q. Now, what you have here is a photocopy of the last letter of which we were, at a reconstituted copy of which we were looking, the letter of the 15th November 1990; but as you can see, it just doesn't photocopy. But a number of handwritten notes on it do photocopy, and I want to refer to them because they are part of the sequence of events following the letter of the 15th November. Do you understand me?

A. Yeah.

Q. If you go to the note on the bottom right-hand side?

A. Yeah.

Q. You see it says "Mr. Smart" it's sort of in a little square section; do you see that?

"In Mr. Johnston's absence I told his Secretary that we would not give him that we could not give him our internal confidential report. He will ring you on Tuesday to arrange X" I presume that means to arrange an appointment. And the X probably refers to an X he would have put on a part of the letter where you asked for an

appointment; do you understand?

A. Yeah.

Q. And it's signed "Philip Carroll", dated 16/11/1990. So there was a response and in fairness, a fairly immediate response to that letter, telling you that the Department wouldn't give you their internal confidential report, but that they would ring you on the following Tuesday to arrange for you to visit the site.

And if you look at the following if you look at the top of the document, there is a reference to "Cancelled arrangement to meet Mr. Johnston with Mr. Cunningham"?

A. That's right.

Q. We'll just read the handwritten note underneath that, and then you can comment on both the notes. The handwritten note underneath that is dated 20th November 1990 and it's I think as follows: "Rang Mr. Johnston. Not available. Spoke with his sister who said that he was in hospital for a few days. I told her that I had arranged for the FIC" that's the forester in charge "to show Mr. Johnston around the Deerpark property but in the circumstances would cancel the appointment. I told her to ask Mr. Johnston to ring me when he came out of hospital, and I said I would make a further appointment." Do you see that?

A. Yeah.

Q. So, it would seem that an appointment had been made for you to meet Mr. Cunningham. You had to go into hospital. That appointment was cancelled, and an arrangement was made for

you to ring again to make a further appointment. Does that seem correct?

A. Yeah, that seems correct.

Q. That last note is dated the 20th November.

A. That's right.

Q. And if we now go to Tab 94, you'll see another reconstituted copy of your letter to the Department of the 28th November, 1990.

A. That's right.

Q. Sent by fax. Addressed to Mr. Carroll.

"Re Department's land at Deerpark, approximately 148 acres.

"Dear Mr. Carroll,

"I will be available to view the site at Blessington as from Monday, 3rd December 1990, if you can please confirm a time and place. If I may suggest that we meet outside the Downshire Hotel in Blessington and go from there to the site at approximately 11am any day of that week.

"I would require the gates open so that we can drive around the site in the Range Rover, as I have damaged my leg and I am restricted from walking for at least another week.

"1. Can you please confirm the classification of the land?

And confirm if the land is subject to commoners' rights, bridal pathways, ancient monuments or rights of way?

"2. Are there any preservation orders affecting any part of the subject land, or are there any pending?

"3. Has any planning permission been sought for the subject land in the past? And has the land been subjected

to a planning refusal for mineral extraction? If so,
please give details.

"As soon as I have this information and following our site visit, it is my intention to make you an unconditional offer for the purchase of the land freehold."

Now, the Department have just asked me to draw to your attention two further documents, or two further aspects of the letters of which reconstituted copies are in the book.

And could I ask you for a moment to turn back to Tab 86

A. 86?

Q. Yes.

A. Okay. I have it. 2nd November?

Q. Yes. Now, I have you don't, unfortunately, have this, but I have a copy of the actual letter from which the printed words have not been photocopied, because they couldn't be photocopied, but which contain a photocopy of a handwritten note made by Mr. Smart on the 2/11, which is the day he got your letter. And I'll read out to you what Mr. Smart noted.

It says "Re X above". And that's a reference, I think, to your request for borehole information. "Mr. Johnston was already informed by me over telephone that the only information I could (underlined) give him was that the reserve contained a net deposit of 7 to 8 million tonnes approximately."

Do you remember receiving a phone call to that effect?

I'll hand you over this so you can have a look at it.

A. I would believe that if Mr. Smart said that, that is the case.

Q. Now, if I can ask you again to turn to Document Tab 87, which is on the next page.

A. Yeah, reconstituted copy.

Q. Yes, but I have the, if you like, an unreconstituted copy, and on mine it says "6/11/90 copy of map". Presumably means a copy of the map was sent. And I'll send that over to you.

So, as of that date Mr. Carroll or Mr. Carroll's assistant, Mr. Smart, had sent you a copy of the proper site plan, which is one that showed not the land the Department were retaining but the land that they were going to put on the market. And earlier he had spoken to you saying, "Look, the best I can do for you is to tell you there is 7 to 8 million tonnes of sand and gravel."

So if we go back up now to your letter of the 15th November of 1990

A. The 5th November

Q. The 15th. We jump on again to that letter we were looking at a moment ago; it's in Tab 89.

A. Yes.

Q. You are saying: "Further to my letter of the 2nd, can I please have the information which I requested from you as soon as possible." But you see, by that time, you had already been told by the Department that they wouldn't give you that information; that they would only tell you that

there was between 7 to 8 million tonnes, approximately, by way of a net deposit in the lands. So if that's the case, wouldn't it be reasonable for the Department to say, "Look, Mr. Johnston is wasting our time. He asked us for information. We rang him up immediately. We told him that 'Look, we can't give you our confidential report; we'll tell you it's 7 to 8 million tonnes.'"

And then you send them a letter saying, "Can I have the information?" Can you imagine their response: "Sure, we told him on the phone we weren't going to give him the information". Do you understand?

A. I do, I understand. Unless the letters got crossed in the post; I don't know.

Q. Well, I suppose your letters went by fax?

A. Yeah.

Q. And your letter of the 2nd November went in to the Department, and Mr. Smart rang you up in response to your letter. You were looking for information, and Mr. Smart said, "I can't give it to you". And then, 13 days later, you write again looking for the same information, saying, "Please, please, please can I get this information? If you give it to me, I'll be in a position to make a bid."

But the Department might well have come to the conclusion that "Look, you are not serious about the bid; you got the information, and you are still writing us letters looking for the information that we have already given to you, or we told you we couldn't give you but we gave you

something else instead."

A. Well, it wouldn't be unreasonable, I suppose, if you bear it in mind, it wouldn't be unreasonable.

Q. Well, I am just suggesting to you that you know, that's a view that may have been crystallising in their minds.

If we go on to Document the document contained in Tab 96 mentioned a moment ago, again just so that we can pick up the train of events. This, again, is your indication that you'd be available as from Monday to see the site.

A. Yeah, I have got that.

Q. If you go over the page, then, on to the document in Tab 95. This is a letter from Mr. Smart to you.

It says: "Dear Mr. Johnston,

"Your fax letter of the 28th November about the above matter refers.

"I have arranged for you to view the site at 10am on Wednesday 5th December. You should call to Mr. Cunningham or Mr. Farrington at Coillte Teoranta office, Credit Union Buildings, Blessington, opposite the Downshire Hotel, who will show you the site. The gates to the site will be open.

"The following are the replies to your queries:

"1. The area under which there is a large gravel and sand deposit is at present planted with a variety of trees ranging from 9 to 46 years in age. The land for sale is not subject to commoners' rights, bridal pathways, ancient monuments or rights of way.

"2. There are no preservation orders affecting any part of the area for sale, and we are not aware of any pending.

"3. No planning permission has been sought for the area for sale in the past, and the land has not been subjected to a planning refusal for mineral extraction."

So, now, in response to your letter of the previous day, Mr. Johnston (sic) wrote back to you Mr. Smart wrote back to you, and it's not clear whether he communicated by fax or by letter; can you recall, used you get faxes from the Department, or letters?

A. I think mostly letters, as far as I can remember.

Q. Well, in this case this must have been a fax, because if you go to the next document, Document Number 96 have you got that? It's just on the next page.

A. It's the 29th November, is it?

Q. 30th, a reconstituted copy of your letter. Document 95 was the letter I just read out of the 29th November.

A. Is this the 28/11? This is Tab Number 94?

Q. No, 96.

A. Yes, I have got it now.

Q. Do you remember, I was inquiring whether the Department's letters to you were by fax or hard copy. This one, in any case, seems to have the one we just mentioned seems to have been sent to you by fax, because you say: "Dear Mr. Smart" you are writing on the 30th November "Re land at Deerpark, Blessington, County Wicklow, approximately 145 acres.

"I confirm receipt of your fax letter dated 29th November 1990. It is my intention to go ahead with the site meeting as arranged by you on Wednesday 5th December next, 1990, at 10am.

"I confirm Mr. Carroll's telephone conversation with my secretary on Friday, 16th November 1990, in my absence, stating the sand and gravel content of this land being approximately 8 to 10 million cubic metres."

Then you have heading "Classification of the land:

"What category does the subject land come under?

"1. Is it forestry land?

"2. Is it Grade A agricultural land?

"3. Is it Grade B agricultural land?

"4. Is it Grade C agricultural land?

"I wish to thank yourself and Mr. Carroll and your Department for the courtesy you've extended to me during our negotiations in this matter, and I hope it will have a successful outcome."

A. Well that, again, doesn't there was no way I was looking for this information to slow things down, because I was in a hurry to get things done. When you apply for planning permission in England, you have to give the classification. The Ministry of Agriculture is one of the departments that the planning committee will ask them, because at that particular time, during the eighties and the nineties, they didn't necessarily let you dig up good land to extract gravel from it; that's why I wanted the classification.

Q. I see.

A. It wasn't for delaying anything. It was to give me a better picture.

Q. And this was based on your experience in England. I think you were told, as we know, there isn't a system of classification in Ireland; but if you look at the next document in the book, in Tab 97, Mr. Carroll responded

A. 97, yeah, the 30th November.

Q. The 30th November, yes, saying: "Dear Mr. Johnston, "Your fax letter of the 30th November 1990 refers. I should say at the outset, lest there should be any confusion that in mentioning a deposit of 8-10 million cubic metres of sand and gravel I indicated quite clearly to your secretary that this was the result of a sample survey undertaken on behalf of this Department. It is a matter entirely for you to independently evaluate the potential volume of sand and gravel existing at the site, and you should not use the indicative figures I quoted as representing the actual level of the deposit. Indeed I had indicated to you at our meeting of the 20th July that the Department would facilitate you in any proposals you might have to undertake such an evaluation.

"As regards the question of land classifications, we have outlined the present status of the land in our letter of the 29th November 1990. The land was originally acquired by the Department as agricultural land. We are not aware of any grading system as you suggest for agricultural land,

but in any event, the land in question is now afforested.

As a potential purchaser for this property, it is a matter for you satisfy yourself as to the quality of the land, and of course, as I mentioned earlier, the volume of its sand and gravel deposits and its consequent value.

"I have noted your intention to visit the site on Wednesday, 5th December, at 10am, and I have informed the forester accordingly."

And at the bottom of that document, in a handwritten note, it says: "Sent by fax on the 30/11/90." So you were more or less in instantaneous communications day by day.

I think the other handwritten note I found it hard to decipher it, but I think it refers simply to arrangements that Mr. Smart put in train to enable to you meet the forester in charge, Mr. Cunningham.

A. If I can just point out one thing there, where it says 8 to 10 million cubic metres, well, the conversion factor that we use in this industry for converting into metric tonnes is 2.2 metric tonnes to a cubic metre, so that would mean to say there is up to 22 million tonnes of gravel. Whereas in one of the previous letters he says 8 to 10 million tonnes. So, it's a hundred percent

Q. Well, there are different conversion factors, I suppose. I'm told that there are other conversion factors that are applied, or are appropriate in this case. I understand that the appropriate conversion factors in this case are between 1.6 and 1.75; in other words, 1.6 at the lower

range and 1.75 at the higher range.

A. It depends, but it's as dug out of the ground, you can you can easily do it yourself.

Q. I appreciate that, but I am just I am just telling you in fairness to the people who gave you the indications. I am just saying two things to you: that my information is that an appropriate conversion factor from cubic metres, which we have here, to metric tonnes, is as low as 1.6.

And that wouldn't give you the figure you are talking about; do you understand? You are using a higher conversion factor.

You may be right. The expert who has given me this number may be right. I'll certainly be asking him about your number of 2.2.

A. But I am just quoting what SAGA means, Sand and Gravel Association of Great Britain. That's the method of measurement. Like, if you buy a pile of sand and gravel in the ground and it's subject to remeasurement, the conversion factor, that's what they use. But I am not saying that that's a hundred percent accurate, because the moisture content can vary the if it's a dry deposit, naturally enough it will weigh less.

Q. After you have extracted the moisture, yes?

A. So I'd say perhaps somewhere in between what you are saying and what I am saying might be a better

Q. In any case, we can explore it when we have a person who is experienced both in England and Ireland to tell us

something about it.

And I should say, Mr. Johnston, I am not for one moment suggesting that you have got to be a technical expert in a particular field to be able to offer an opinion on it.

Experience in a field can be just as valuable, and I can well understand that people in this business can look at something, and they might be 5 million tonnes out, but they are still prepared to take an overall view of what a bit of land might contain. So I want you understand I am not saying that. All I am saying is I have been given some other figures, and in due course we can examine the differences between them and where, perhaps, the more reliable in-between figure might be.

A. That's fine.

Q. I want you to turn now, and I know you have very little space there, to Book 76?

A. Yeah, I have got it now.

Q. Now, the next document I want to bring to your attention is contained at Tab 104 in Book 76?

A. Yeah, I have got it.

Q. Now, I am going to read this document, and then I am going to pass back to your statement, and we can come back to the document again.

This is a telephone note headed "Message for the Minister" from Brendan Johnston, and it gives telephone numbers. The date is the 12th December 1990, and the time is five to eleven in the morning.

"Subject: Deerpark, Blessington.

"Message: The above gentleman wishes to speak urgently to the Minister about the sale of Deerpark to another party (Roadstone).

"He had been negotiating with the Forest Service himself for the land, had visited the site with Forestry staff and had arranged a meeting with Philip Carroll (Assistant Principal Forestry) on Thursday of this week to formally table his offer.

"Dismayed that he cannot now bid if the Minister has approved the other offer.

"Feels wool was pulled over his eyes and wishes to appeal to the Minister.

"Philip Carroll had earlier advised me that Mr. Johnston would ring, and his advice is that the Minister should talk first to Sean Fitzgerald or himself before talking to Brendan Johnston."

Signed "Ciaran Byrne, 12th December."

Underneath that and this is the Minister's hand "Ask Sean Fitzgerald to discuss today. Has letter issued to Roadstone".

Now, in your statement at page 5, paragraph 18 and you needn't pull out the book; I'll read it all out to you you say: "On Wednesday, 12th December, 1990 you spoke to Mr. Carroll on the telephone. You recall that Mr. Carroll had the following words to say to you: "Sorry, Mr. Johnston, the land in question was sold by the

Minister."

You disagreed in strong terms with Mr. Carroll on the telephone and indicated that you still had until Friday, the 14th, to put in your offer. You also inquired as to how Mr. Carroll would know that the Minister had sold the land given that he, Mr. Carroll, had been on holidays for the previous while."

Now, can you tell me what prompted your telephone call to Mr. Carroll that day?

A. Well, for the previous week I was given the runaround, you know, when like you'd know if somebody was trying to avoid you. Now, whether Mr. Carroll was on holiday or not, I don't know, but that's what Mr. Smart told me. And every time I rang, it was just like if he was ordered, "If Johnston rings, take the call", because I was told that Mr. Carroll was on holiday. So I finally kept ringing every day, because I knew at this stage that they were definitely giving me the runaround, and I wanted to know why. So eventually Mr. Carroll answered the phone and he said to me, like I said in my letter, "The land is sold; end of story."

Well, my view of that was that I'm just not an ordinary fella that takes somebody telling me a tale. I wouldn't accept it. I said, "It can't be sold, because it's public land, and I have to put my bid in2.

And I left it at that. And then I got Dr. Murphy, who I knew knew Bobby Molloy, to ring Bobby Molloy to ask him if

the land was sold or not, and he said, "Certainly not; I wasn't even in Dublin", he said.

But if, like, if I may just make a statement here. On me reviewing this total file, it would appear to me that the Department dealt in preference to Roadstone all along.

Because the fact that I put in the highest conditional bid, it was 15,000 more than Roadstone; normally if you are selling land, or if anyone is selling land, they deal with the highest bidder. They never gave me the opportunity to or asked me, like they asked Roadstone, which you can see from the file, "Would you make your bid unconditional?"

Q. We'll come to that meeting in a minute. I just want to stick with the 12th for a moment.

A. Sorry, okay.

Q. That's why you say you rang up, and you were told the land has been sold?

A. Mmm.

Q. Right. So you then got your friend to ring the Minister; you were told the land was not sold?

A. Yeah.

Q. And is it then you rang back to Mr. Byrne saying you wanted to speak to the Minister?

A. That's right.

Q. Just to clarify one or two matters. You did go and visit the land on the 5th December; is that right?

A. Yeah.

Q. Did you meet the forester in charge at Blessington?

A. I did; Mr. Fitzgerald, yeah.

Q. And you went around the area?

A. Yeah, we went around, we looked at the whole thing, yeah.

Q. How long did that trip take, do you think?

A. Oh, it must have taken I don't know. I wasn't time-conscious about it.

Q. I appreciate that.

A. About an hour or so, I'd say, at least.

Q. And after that, I think, did you try to set up a meeting?

I think that's what the file suggests, that you made telephone calls after that.

A. Yeah.

Q. And those are the telephone calls you referred to a moment ago?

A. Yeah.

Q. So you went out to Blessington. You went around the site this is 11 o'clock in the morning, or 10.30, I think; I have forgotten the precise 10 o'clock.

A. I think, as far as I can remember, we must have been out there till around I know it was gone one o'clock by the time I dropped Mr. Fitzgerald off again, to the best of my memory. So we were out there, you know, the best part of an hour and three-quarters, I suppose.

Q. So, following that, it was following that visit that you then made these phone calls you referred to a moment ago, to which you feel you didn't get a proper response; is that right?

A. That

Q. Was it following that site visit that you made the phone calls

A. Yeah, it must have been, because I wasn't told that the land was sold until later on, but I never was explained why I was told that the land was sold when it wasn't sold.

Q. If you just bear with me for one minute, Mr. Johnston. I am just trying to get the precise sequence of events at this stage.

Now, I just want to jump forward for a moment to a document which may be of some assistance in endeavouring to establish the sequence of events following your meeting on the site with Mr. Fitzgerald, who I take it is a Forestry official and not the Assistant Secretary of the Department that you met subsequently?

A. Yeah, he was the forester.

Q. He was on the ground?

A. He was on the ground, yeah.

Q. So, if you could just go to Leaf 107 for a moment, please.

A. 13th December?

Q. Correct. It's the letter that you wrote to the Minister the day after the telephone calls we were discussing a moment ago that you had on the 12th with Mr. Carroll and that you had with Mr. Byrne.

A. That's right.

Q. Now, there are some aspects of the letter that aren't of particular interest at this moment, though we'll come back

to them, but I just want to get the sequence of events as you see it, in any event.

It says: "Re: Land at Deerpark, Blessington, County Wicklow, approximately 145 acres", addressed to Mr. Bobby Molloy, Minister for Energy.

"Dear Minister,

"Further to my conversations with your Ciaran Byrne on the above matter.

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

"I explained in detail to Mr. Tom Smart, assistant to Mr. Philip Carroll, who told me that he was taking Mr. Carroll's telephone calls as Mr. Carroll was away and would not be back until the following week. I also explained to Mr. Tom Smart in detail that I would be bringing my solicitor with me to the meeting and that I would be making a substantial unconditional offer for the freehold of the said land, and I would also be making a conditional offer separately and that my second offer would be subject to planning permission.

"Mr. Smart's remarks were that the Department was not interested in a conditional offer that were subject to planning permission. I requested that he would have

Mr. Philip Carroll and any other senior persons necessary present at the meeting in order for them to tell us if our offer was acceptable or not.

"After giving Mr. Tom Smart all these details, he said that the earliest date he could arrange a meeting was Thursday 13th December 1990 at 11.30am. I accepted that date, and Mr. T. Smart said he would confirm this date as soon as Mr. P. Carroll returned, which he expected to be either Monday, 10th December, or Tuesday, 11th December, 1990.

"On Monday, 10th December, 1990, I phoned Mr. Philip Carroll's office three times, and my calls were intercepted each time by Mr. Tom Smart, who informed me that Mr. Philip Carroll was still away, and he would get Philip Carroll to call me as soon as he got back.

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

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

And you give your telephone numbers.

Now, if we go back to the first page of that letter again.

You say: "Given the events of last week in relation to dealing with your staff at the Department of Energy, Forest Service, Leeson Lane, Dublin 2, when I requested an early

meeting with Mr. Philip Carroll, Assistant Principal Officer, and his staff for Friday, 7th December, 1990, or Monday, 10th December, 1990."

Now, you visited the lands on Wednesday, the 5th December.

A. Mmm.

Q. Sometime subsequent to that, presumably, according to this document, but prior to the 7th December, you must have made a telephone call to the Department to try to make an appointment?

A. What did you say the last piece?

Q. Sometime following your visit on the 5th, but before Friday the 7th, you must have telephoned the Department; and I'll tell you why I say that. If you look at the last line of that paragraph, that begins: "Given the events of last week". Do you see that?

A. Yeah.

Q. It goes on to say that you requested an early meeting with Mr. Philip Carroll and his senior staff for Friday the 7th December or Monday the 10th. If you were looking for a meeting for Friday the 7th, then presumably you had to ring well, possibly on that day, but more likely prior to that day; isn't that right?

A. That's right.

Q. And it seems reasonable to assume that you must have made that request following your visit on Wednesday the 5th?

A. Certainly, yeah.

Q. So you rang up either on Wednesday the 5th, I suppose, or

Thursday the 6th.

Now, according to your note here, Mr. Carroll said to you that sorry, I beg your pardon, Mr. Smart said to you that Mr. Carroll was away and that the earliest he could arrange a meeting was for Thursday the 13th. And that you accepted this date, but Mr. Carroll said to you, "Look, I can't confirm it to you until Mr. Philip Carroll returns, which will either be Monday or Tuesday the 10th or the 11th."

A. Yes.

Q. So you had a provisional date, subject to confirmation, on the 10th or the 11th?

A. That's right.

Q. Now, it was on the 10th or the 11th that you seemed to have your difficulties in contacting the Department, is that right, to judge by the next page of your letter, page 2?

If you just read the first paragraph: "On Monday, 10th December 1990, I phoned Mr. Philip Carroll's office three times, and my calls were intercepted each time by Mr. Tom Smart, who informed me that Mr. Philip Carroll was still away and that he would get Philip Carroll to call me as soon as he got back."

A. Yeah.

Q. You see that?

A. Yeah.

Q. So presumably your phoning on the 10th was on foot of the arrangement you made with Mr. Smart the previous week that

everything would be firmed up on the 10th or the 11th?

A. That's correct.

Q. Mr. Carroll was not available on the 10th. Now, you seem to have been aggrieved about that, but it does seem fairly reasonable, doesn't it, surely, if you were told the agreement to meet couldn't be firmed up until Mr. Carroll came back, that it wouldn't be firmed up until the 10th or the 11th? Doesn't that seem reasonable?

A. Oh, it does, yeah.

Q. Now, just one other point about this letter. You say in the third paragraph, which begins, "I explained in detail," you say you explained to Mr. Tom Smart that you would be bringing your solicitor with you to the meeting to make a substantial unconditional offer, and that you'd also be making a conditional offer separately. And the Department said to you, at that stage, "We're not interested in a conditional offer that's subject to planning permission".

Do you see that?

A. Yeah.

Q. Now, we'll come back to these documents in detail later, but I just want to deal with that simple point for a moment. We know that you did bring in two offers: one conditional, one unconditional. Why did you persist with the conditional offer in view of the fact that Mr. Smart had said to you, "Look, we are not interested in offers that are conditional on planning permission"?

A. Well, I know under corporate governance of a plc,

especially a plc as big as CRH, that they are not allowed to buy land unless as far as I was concerned, I put myself in their position: What would I do if and I didn't think this they would buy land unless it was conditional. So I had made the decision that they'd be putting in a conditional bid. But when they put in the conditional bid, even though they haven't received mine, they started negotiating with them. They said, "Would you make it unconditional? The minimum we will take is €1.3 million". I was never given them privileges. If he said to me, "I'll take €1.3 million", I'd say, "Well, use the 80,000 draft you have there as a deposit", and the deal would have been done. But they dealt in preference with Roadstone

Q. Sorry, at this stage, I want you to forget for a moment the knowledge you subsequently acquired from reading the papers, okay, and try to put yourself back to the position you were in when you spoke to Mr. Smart saying you'd be making two offers. At this stage you seem to have thought that you were involved in a tender process, or something akin to a tender process; is that right?

A. Well, I was a bit mesmerized about what I was involved in, because if I was selling land, I wouldn't have sold it I would have appointed people to act on my behalf.

Q. I appreciate that, but forget about what you might have done for a moment. You mentioned earlier in your evidence that your experience of dealing with public authorities was

that they had to sell land by tender.

A. Yeah.

Q. So, based on your experience, would I be right in thinking that your approach to this was that you felt you were in something akin to a tender competition?

A. Yes, I did, because if it was an open tender in front of a committee, there was only Roadstone's offer and my offer, and they were both conditional. Mine would have been the winner because I was 50,000 more than Roadstone. So if it was by tender, and if it was opened in front of a panel and it was in for sale twelve o'clock or one o'clock, and they date stamp receipted, I would have been the winner anyway.

Q. I appreciate that, but you believed at this stage, the impression I have is that you thought you were involved in such a competition?

A. I knew who was involved in a competition.

Q. I appreciate that. Can I just ask you: In the ordinary way, from your experience in England, if you are involved in a tender competition, isn't your tender usually based on a formal invitation to tender, a formal document?

A. Yeah.

Q. Which usually sets out all the terms and conditions under which the land is to be sold?

A. Exactly.

Q. And when you send in your tender, you send it in on the invitation to tender documentation; isn't that right?

A. Exactly, and it would come from a selected team of who they

had sent the tender out to.

Q. I appreciate that. But you'd get the tender document; we'll say a bunch of documents?

A. It's got all the details.

Q. Yes. You put down your money at the bottom of it; you sign it; more often than not, you are obliged to put your deposit cheque with it?

A. Exactly.

Q. And you send that in. And if the local authority accept the highest tender, then there is a contract between you, there and then?

A. Of course there is.

Q. No different to an auctioneer bringing the hammer down?

A. It's an offer and acceptance.

Q. Yes. But in this case those formalities weren't part of the arrangements or the dealings you had with the Department at all; isn't that right?

A. There was

Q. There was no such formality?

A. There was no formalities like that at all.

Q. And was it not much more like the type of dealing you'd have with a private person who was trying to sell land, or a private person from whom you were trying to buy land, where there is no formalities, and usually the first stage is not getting involved in much by way of legal formalities, but trying to agree the price?

A. Well, Day 1 I asked them a price, and they said no.

Q. I know, but isn't that just to distinguish a tender process, which is formal, from the private process, where in the private process all you do is you agree the price?

A. Exactly.

Q. Now, people are always trying to gazump one another. Presuming both parties are honourable, once you have agreed the price, the solicitors exchange the contracts, and the legalities can take time, and so on. But the first step is to agree the price. In fact, as you probably know quite well, having agreed the price, the parties aren't usually bound at all legally; all they have done is they have agreed on a price. But in the case of a formal tender, once you sign up and once your tender is accepted, the deal is done; isn't that right?

A. Exactly, yeah.

MR. HEALY: I think, sir, I am going to pass on to the meeting of the 13th now, and it might be better

CHAIRMAN: And that will take more than ten minutes.

MR. HEALY: Oh, it certainly will.

CHAIRMAN: I am anxious to keep things moving, so we'll say five to two.

Thanks very much; we'll take up the rest of your evidence at five to two, if that's convenient.

A. Thanks very much.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. HEALY: Sorry for the delay, sir. It was due to some

additional documents that were made available to the Tribunal solicitor not connected precisely with the matters that we are taking up with Mr. Johnston now.

Q. MR. HEALY: We were dealing with your letter, Mr. Johnston, of the 13th December, 1990, for the purpose of trying to establish the sequence of events following your visit to the Blessington site on the 5th December. And I think you agreed with me that I was probably right in concluding that you must have rung the Department sometime after you conducted your site visit, either on the Wednesday or the Thursday, to try to arrange a meeting for the following Friday, or failing that, the following Monday.

A. That's right, yes.

Q. And then on the following Monday, you rang, and you were to ring back on the Tuesday, presumably.

Now, would I be right in thinking that the view you have formed, that you weren't being taken seriously and you were being given the runaround

A. Exactly.

Q. am I right in saying that you only formed that view after you learned what you learned on the 12th December, 1990? That up until then, you simply accepted what you were being told, that people weren't available and that everything would be sorted out, but it was only subsequently, when you learned that the land was sold, that you were possibly being given the runaround; would that be right?

A. Well, I had assumed it before that, because it's just like if you are dealing with somebody and every time you ring if you personalise it, you'd understand it better; so if you were trying to get a hold of me, and every time you tried to ring me I told my Secretary, "Look, if he rings, tell him I'm not here; I won't be back till Monday or whatever; just get rid of him" I knew that they were at it long before they told me it wasn't that they had it sold.

Q. I am just wondering, is that fair. Because, you see, you rang trying to make your appointment for the 7th or the 10th. Mr. Smart seemed to respond to that very reasonably. He told you, "Look, I can't arrange a meeting until Thursday the 13th; but that date is a tentative date, and I'll confirm it to you on the 10th or the 11th".

Now, at that stage, why would you have been concerned at all? Somebody says to you, "You have a meeting for the 13th; the man involved is away; I'll confirm it to you when he comes back on the Monday or the Tuesday, which is the 10th or the 11th"?

A. I wasn't concerned until at that particular point until he came back and told me he had it sold.

Q. That's what I am trying to say.

A. That's when I

Q. Am I right in thinking it was then that you said "I was being given the runaround"?

A. Yes, exactly.

Q. Right, okay. So you then approached the Minister, as we have already discussed, and eventually an instruction was given by the Minister that you were to be given an opportunity to meet with the Department to put in your offer; isn't that right?

A. That's correct.

Q. On the 12th, presumably sometime after you received this information, your solicitors wrote to Mr. Philip Carroll in the Department this was by a letter from your solicitors of which a reconstituted copy is contained in Tab 105 of Book 76.

A. Yeah, I have got it.

Q. Your solicitors say: "Dear Mr. Carroll, we have just learned from our client Brendan Johnston that had meeting that had been arranged with you for Thursday morning at 11:30 a.m. for the purpose of putting to you his unconditional offer for the purchase of the above land has been cancelled due to an apparent decision by the Minister yesterday afternoon to sell the land to a third party. We wish on behalf of Mr. Johnston to protest in the strongest possible terms regarding what can only be described as this extraordinary turn of events.

"As you are aware, our client only inspected the land in question last Wednesday, the 5th instant, with your official, Mr. Cunningham, and when he pressed for an early meeting, he was told that the earliest possible date for a meeting was Thursday the 13th instant due to your absence.

Both you and your officials were fully aware that our client was coming to the meeting tomorrow with his solicitor to make an offer for the land. Our client is clearly entitled to the fullest possible explanation as to how and why the above lands have been sold without sight of his offer when everyone concerned was fully aware that he was intending to make his offer on Thursday morning.

"Our client feels most aggrieved with the treatment he has received in this matter and fully intends to pursue his grievances until he receives a full and satisfactory explanation of this week's events. We too are quite dismayed by these events which clearly raise very serious questions, and we are examining all the possible legal remedies open to our client in the circumstances."

Now, that was on the 12th. We know that the following day you had a meeting with the officials.

A. That's correct.

Q. When was that meeting confirmed for that day?

A. Well, it must have been confirmed the answer is I don't know exactly I can't tell you the exact date because I can't remember it.

Q. I see. Well, in any case, it must have been sometime following your discussion with Mr. Carroll on the 12th, when he told you that the land had been sold?

A. Yeah, because I rang my solicitors immediately to see what was the best course. So, these letters it's all within a day or two.

Q. So, the arrangement was made for the meeting on the following day. Now, on the 13th, you had a meeting with the officials, and you gave them your two offers.

A. That's right.

Q. When you went to the meeting, you would have met somebody that you hadn't met prior to that: Mr. Fitzgerald?

A. I met Mr. Fitzgerald.

Q. Yes. He was the Assistant Secretary?

A. Yeah.

Q. And was it he was running the meeting?

A. It was a job to say. They were both trying to run it, but he was the fellow that I gave my bid to.

Q. Mr. Fitzgerald?

A. Yeah.

Q. Now, in your statement you say that you were informed by the Department officials that there was only one other buyer?

A. Yeah. I think it was Mr. Carroll that made that statement.

Q. Right.

A. It was either/or.

Q. At what stage of the meeting was that statement made, before or after you had handed over your envelopes? Can you recall?

A. It was before.

Q. Right. And so you handed your

A. I assumed, naturally enough, that the biggest player, that it was only Roadstone had submitted a bid for the lands. I

assumed that, and I was correct in assuming that.

Q. Why do you think Roadstone would be the only other bidder?

A. Well, they were processing gravel adjacent to it, and they were running out of gravel, so they are not that stupid.

They tried to buy my gravel pit off of me. They only bid

me a quarter for what I got for it. You know, they came

and walked it, and Seamus Breathnach, he made an

indication, not a firm order in writing, but he says

"That's the sort of figure they'd have in mind", which was

a quarter of what I got for it, so I knew that they

wouldn't they'd be trying to get it, like, naturally

enough, like I was myself, trying to get it as cheap as

possible.

Q. Of course, yes. But when you were told there was another

bidder, you didn't think it was anybody else in the area?

A. No.

Q. They were the people who sprang to mind?

A. Oh, yeah, without any doubt, because they had access onto

the main Dublin Road for if you were I was looking at

the overall picture, the pitfalls of getting planning

permission, the upsides and the downsides. But I had also

got access to the main Dublin Road, without coming

throughout the village, but I didn't tell them that at the

time.

Q. You didn't tell the Department that?

A. No.

Q. Because you thought they might be look for more money off

you, I suppose?

A. Well, I mean, you know, I was the best bidder all around anyway, in my own opinion. They could have got 20 times the price off of me than what they ended up getting, plus 800,000 up front. And they are all talking about private/public partnerships; there wasn't much of a private/public partnership as far as they were concerned.

Q. Well, they had indicated to you they wanted out of Blessington; isn't that right? They didn't want to be involved in the place any more?

A. Yeah, but in my view

Q. But you were offering them that you'd give them so much and you'd enter into a joint venture whereby they'd get 20 pence or something out of every tonne?

A. Every tonne, yeah.

Q. But that would depend on you getting every tonne out of it, it wouldn't just to stick with that point for a moment that would depend on you getting planning permission to extract every tonne out of it, wouldn't it?

A. I would have got planning permission. I am quite confident that it wouldn't have ended up in the mess that it's in now, because I would write the statements of reasons myself why planning should have been granted. Like, if I took like, tens of millions of tonnes in England from nothing, starting from nothing, from SAGA, the Sand and Gravel Association of Great Britain. I had no problem taking on any size company, because at the end of the day the

planners are only public servants; they are there to make a decision based on fact, reasonable facts. So I didn't I didn't see a problem. Like, they were all saying, "Oh, well, Roadstone" it was like the view that Roadstone was the only ones that would get planning permission, which was a total nonsense as far as I was concerned.

Q. Did somebody say that to you at the time?

A. No, but it was implied. I knew that that would have been the case.

Q. Who implied that to you at the time?

A. I have seen it when I read the files now.

Q. No, I didn't mean that. I am concerned with what you thought at the time. Did somebody say that to you at the time?

A. No, but I knew myself. I could reason it out for myself.

Q. Could reason what out?

A. I could reason out they had direct access to the main Dublin Road.

Q. I appreciate that.

A. And that they would be most likely if I didn't have access to the main Dublin Road without going through the village, they would have been in a much more privileged position. But I had. And also, the other factor that's never been mentioned is that there was as much rock again lying underneath where the gravel was as there was gravel, and no one ever I had my eyes on that rock as well.

Q. I see.

A. So that was all for nothing.

Q. We'll just come back to that. Where was your access out onto the public road?

A. I was very friendly with Hudson Brothers, and I have no doubt whatsoever I didn't ask Hudsons at the time, because I didn't want any competition, naturally enough; but I would have done a deal with Hudsons to come out through their land.

Q. But you didn't have a deal with them at the time?

A. No.

Q. And you hadn't mentioned it to them?

A. No, not at the time.

Q. It's just that a moment ago you said to me that you had access onto the Dublin Road. And I suppose, in fairness

A. I didn't mean it in that terms. I mean

Q. You will appreciate that I am anxious to try to establish, you know, the precise facts at the time.

A. The truth, yeah.

Q. But you didn't have any access at the time, but you had a plan that you thought might get you access?

A. That's what I meant by saying

Q. But that depended on you doing a deal with a competitor?

A. Also I meant to come out through Roadstone, because I had done that in England with Perrants(?)who were one of the biggest quarrying people in England.

Q. You felt you could do a deal with them as much as with Hudson?

A. I'd have bought shares in their company, so I technically I would be part owner of Roadstone.

Q. You bought shares in Roadstone?

A. I would have bought. That was my plan.

Q. I see.

A. And I would have told them that I was part owner of the company and I was their new neighbour, and I would give them 10% discount to market price for coming through the land.

Q. That would depend again on doing a deal with them, wouldn't it?

A. Excuse me?

Q. It would depend on their being willing to do the deal with you?

A. I have never seen anyone yet who wouldn't deal with me, in all my experience in the business. Or they'd have to give good reason at the next AGM to the shareholders why they turned it down, turned down revenue.

Q. I suppose from the other point of view, if you look at it from Roadstone's point of view or from Hudson's point of view, just while you are on that point, if you had bought that land, they could see you as a prisoner in there as much as you might see them as a potential partner; is that right?

A. Well, I wasn't dependent on that particular rock, or the sand and gravel. I could have sat on that until now. I had you know what I mean, I had myself well covered; I

could have syndicated it, like I did in a lot of other deals, bring in five or six more people with lots of money.

Q. Where was the Hudsons' access?

A. Hudsons has two accesses onto the road not far from where Roadstone comes out.

Q. Where is their access onto the pit?

A. They own the adjoining land.

Q. They own it now, but they didn't own it then.

A. Well, as far as I was concerned, they owned it then.

Q. How did you know they owned it then?

A. Well, I never made any inquiries, but I assumed it.

Q. Was that a somewhat extravagant assumption to make if you didn't know the facts?

A. Not in my game. I play big games for big losses and big wins.

Q. I appreciate that, Mr. Johnston. But if you didn't know whether Hudson owned that land or not, how were you going to carry out your plan into the future if they didn't own the land?

A. That was a matter of negotiation between Roadstone and Hudsons. It was a matter of negotiation, and it makes sense. These people are all after one thing, and it's to make money.

Q. Could you point out on the map that's on the screen at the moment, that's on the monitor in front of you, where Hudsons had this access?

A. This screen here?

Q. Yes.

A. Which is the main Dublin Road?

Q. It's the access they had onto the Glen Ding lands.

A. Well, I can't show you on the map, but I could show you if we went out to the site.

Q. Could you? Alright.

A. Mmm. I believe there is a builders merchants on the side of the road now where one of their access is into.

Q. It's not access onto the Dublin Road. I am talking about their access onto the lands in sale.

A. I know what you are talking about.

Q. Do you think you could point that out easily?

A. I could point it out.

Q. Could you point out where Hudsons have access to the lands that the Department were selling?

A. I can't point it out here because I am not a hundred percent sure where I am.

Q. You see, the reason I am asking you these questions

A. Oh, I understand well why you are asking

Q. You claim to have quite a firm grasp of the lie of the land, and it's obviously important for me to establish how firm your grasp of the lie of the land is.

A. Exactly.

Q. If you think that you could have got access out onto Hudsons' land by doing a deal with Hudson or out onto the Roadstone land by doing a deal with Roadstone, we'll come back to it, if you want, later on. You can show it to me

later on.

If we now go back to what you say happened at the meeting.

You say that at the meeting, you recall asking the

Department officials what sort of money was being sought by

the Department for the site, and it's your recollection

that the Department's response to this question was an

indication to you that this would be a matter for the

parties bidding for the site.

Now, you say that you were never given an asking price by

the Department officials at the meeting?

A. No, I never was given. They said it was up to the bidders,

as much to say, "I am not a market maker; make your own

market".

Q. Right. We'll just clarify the wording, just in case

anything turns on the wording. You say you were never

given an asking price by the officials at the meeting. You

are not suggesting you were given an asking price anywhere

else?

A. Correct.

Q. You were never given an asking price?

A. Correct. And I asked them the first day I ever met them,

in Leeson Lane, I asked them, "What sort of money have you

got in mind for this land?" They says

Q. All right. So going into the meeting, you knew that they

hadn't given you any asking price, and you had made out

your two offers and you were going to hand them over?

A. That's right.

Q. And you did hand them over?

A. I did, yeah.

Q. But if your two offers were already made out in your envelope, why would you bother asking for an asking price?

A. But it wasn't it wasn't at that meeting where I gave the two bids that I asked for the price; it was at the previous meeting, which was early on in the day. And they says "No".

Q. Maybe we'd just better clarify that, then, because I have a different impression from your statement. Could you just open Book 74, Tab 6?

A. Yeah, I have got that.

Q. I am just going to read through what you are saying here.

On the 13th December 1990, you met Mr. Carroll and Mr. Sean Fitzgerald of the Department. At this meeting you recall that you were informed by the Department officials that there was only one other buyer. Then the statement goes on; I'll just read the exact words:

"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 Department 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."

Now, you have just confirmed in evidence that that is an

answer you got to a question you asked about what was being sought; but if you look at the way the words are set out here, it would appear to suggest that it was at the meeting on the 13th December that you asked the Department what sort of money was being sought for the site.

A. Well, that's a mistake on my part, because I know I never asked them at the meeting.

Q. You never asked them at the meeting?

A. No. Because I previously asked them, and they wouldn't give it to me, so there would have been no point in me making another request.

Q. Now, there are various accounts of this meeting on either side of this transaction; there is your account, and there is the officials' accounts, and there is some additional information given in the course of the evidence.

Mr. Fitzgerald, when he gave evidence, and also in a statement which he made which I think you would have received just recently, because it only arrived last Tuesday, I think last Friday. Mr. Fitzgerald, in his statement do you remember reading it, do you?

A. Yeah. I think I have a copy of it with me.

Q. Yes, it's in that black book, Number 74. It's at Tab 1.

And if you go to page 5, I think.

Are you at page 5?

A. Yes, I am going that way now. Yeah, I am on page 5.

Q. Now, the top of that page is Mr. Johnston or

Mr. Fitzgerald has just finished describing how you made

two offers at the meeting: your conditional offer and your unconditional offer.

And then he says, if you look at the first full sentence on page 5: "Mr. Johnston also attached a bank draft of \$80,000 as a deposit with this offer. Mr. Fitzgerald recalls telling Mr. Johnston that his offer was 'way off the mark.' Mr. Fitzgerald 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."

A. I don't ever remember Mr. Fitzgerald making any such statement as that.

Q. Did anybody else at the meeting make any similar any statement like that, or to that effect?

A. No.

Q. Do you remember your two letters being opened?

A. I do, yeah.

Q. And do you remember the offers being taken out

A. Yeah.

Q. and read?

A. Yeah. Then he gave it to Philip Carroll, and he read them and handed them back to him. And he says, "I will make sure that the Minister gets these offers." But he didn't give me the opportunity like he gave, according to the file, to Roadstone, to alter my offer, to make it unconditional or to say the minimum amount of money that the Department would have accepted for the land. So I

wasn't dealt a fair deal.

Q. Mr. Fitzgerald made a note of this conversation. It's contained at Tab it's contained in various places; one of the places is Tab 108. I don't want to confuse you with too many documents. I am going to read it out to you.

"Mr. Johnston tabled two offers as attached and a bank draft for $\frac{1}{2}$ 80,000. He refused to take back the bank draft. I told him I would place the offers before the Minister for his decision."

So far, is that note correct?

A. Pardon?

Q. Is the note correct?

A. So far, yeah.

Q. "Mr. Johnston said he wanted to be able to put his offer on the table. He had made his 'best shot' and would like an early decision." Is that correct?

A. He did say that.

Q. "If he is unsuccessful, he accepts the situation."

A. I never said that.

Q. Would you have said words to that effect?

A. I don't think I made any point on it. It wasn't up for me to prejudge what the decision was going to be.

Q. No, but if you weren't if you say, "This is my best shot", what Mr. Fitzgerald is saying in his note is that you say, "This is my best shot. I'd like an early decision. If I am not the highest, well, so be it." Could you have said something like that?

A. I could have, yes.

Q. Now, he also says that on the 14th, which was the following day, you phoned him inquiring about a decision.

A. Yeah, I rang him, yeah, in the morning.

Q. And can you recall much about the conversation?

A. As far as I can remember, I just said to him, "Was any decision made?" And there wasn't very much of a decision to be made, either; I was the highest or the lowest, or and you know, he had $\frac{1}{2}$ 80,000 of my money.

Q. There was only two offers in?

A. There was only two offers, and it was make your mind up time anyway.

Q. And are you saying to this inquiry that at that point you had no idea

A. No idea. He says, "Your offer is still with the Minister awaiting his decision"; but now, when I read the file, I see that Bobby Molloy had a handwritten letter of consent made to Roadstone. That's why he asked has the letter been sent to Roadstone. They had already done the deal.

Q. Well, in fairness to him, what he had done was he had approved the price, and then when you intervened, if you like, through Mr. Murphy, or Dr. Murphy, the Minister said, "Well, have we got a legal deal with Roadstone?" And he was informed, as far as I can see from the file, that he hadn't. And, therefore, it would appear that he felt that he could consider your offer.

But what the officials say is that at the meeting on the

13th, you were left in no doubt that you weren't at the races and that you were shocked?

A. That was not the case at all.

Q. You were flabbergasted?

A. I don't get flabbergasted anyway; it's not my nature. I mean, I am used to all sorts of situations.

Q. I appreciate that. But that you were left in no doubt whatever language was used, you were left in no doubt but that your offer was a dead duck.

A. Well, I was left in no doubt at that particular point that in my own gut feeling that I never was at the races in the first place. I was never given the same

Q. I am not asking about what you think now. We'll just go back to then, when you left that meeting. Do you agree with me when I summarise the thrust of the civil servants' evidence, which is that you knew you were not at the races; you were way off the mark by a long shot?

A. I never was of that view.

Q. Right, okay. That's all I want to know.

A. I never was of that view, because I knew about the additional rock that was going for nothing. It was a steal at that money.

Q. Let's just leave that aside for the moment. Let's leave that aside, and we'll come back to that. We'll come back to that in a moment.

I want to know what your state of mind was when you left that meeting, and that's all I am asking you about now. I

am asking you about the 13th December, when you left that meeting, the officials say you were left in no doubt from what was said to you, and that it was clear that you gave the impression from the way you behaved that you knew your offer was way off the mark.

A. That was not the case. Because I never thought my offer was off the mark anyway. I mightn't be right, but I never had a feeling like that. I know very well that you are trying to get exactly the truth; that's all I want you to get.

Q. What I want to get is this, I want to establish is this: that we are talking about the same language. When I say to you that the civil servants said that they had no doubt that you knew that your offer was way off the mark, what they mean is that you were told by them, that words were used to the effect that you're not at the races

A. No such word was ever mentioned.

Q. Words to the effect that you were way off the mark mean, to me, and I think to everybody else here in this room, that words were used to the effect that your offer was not next or near the other competing offer. Do you understand me?

A. I do, yeah.

Q. That, in other words, your offer was much, much lower than the competing offer, and that you knew that when you left the meeting from the way you behaved after what the civil servants told you. That's what they are saying.

A. Well, you can't stop anyone from saying, but that's not the

way I read it.

Q. I see.

CHAIRMAN: Did you leave the meeting, in fact,

Mr. Johnston, on that day feeling it was still an open race

between you and the other company, Roadstone?

A. Of course I did, because I was being hoodwinked all the time.

CHAIRMAN: I know, but the important point is what was in your mind after that meeting.

A. Well, I just took it that they were that they were putting it in front of the Minister and that the Minister could well accept my offer.

CHAIRMAN: Right.

A. Because as far as I was concerned, it was 20 pence a tonne was five times more than what they paid for the whole thing anyway. But I thought that it was the duty that they had a duty of care to the citizens of the State, selling State-owned land, to get the best price. Not about planning or anything else. They weren't selling with planning or without planning. I thought it was in their best interest, and if they were looking for their best interest, my offers were far substantially greater than Roadstone's.

Q. MR. HEALY: That's looking at it from now

CHAIRMAN: I think we have got the point, though,

Mr. Healy.

MR. HEALY: I am just concerned that the witness seems to

think that what he now knows makes his offer better than the Roadstone offer. And that may be a perfectly acceptable rationalisation, but I'm not sure that he was aware of that. He couldn't have been aware of that at the time, and therefore I want, in fairness to the officials, I want him to describe what happened at the meeting.

Q. So, when you left the meeting, you didn't know what the situation was?

A. Certainly not.

Q. You didn't know whether you had won or lost?

A. I didn't. I didn't know. And I didn't know whether they'd have changed their mind or what they'd have done.

Q. Right.

You wrote a letter on the following day or maybe not the following day; I'll get the precise date you wrote a letter some days later, on the 17th December. It's contained at Tab 113.

A. 113. From McGreevys.

Q. Yes. It's a reconstituted copy.

A. Yeah.

Q. Have you got it?

A. Yeah.

Q. There is a fax cover sheet, and then there is the letter dated 17th December: "Re our client, Brendan Johnston, Department lands at Deerpark, Blessington, County Wicklow."

A. What date did you say?

Q. 17th December.

A. The one I have is the 6th

Q. All right. Would you just look to see that the one you have is Tab 113; it's a red tab.

A. Yeah, I have got that. 17th December?

Q. Yes.

"We refer to the above and also to previous correspondence between this firm and Mr. Philip Carroll, Assistant Principal Officer of the Department, and further also to telephone conversations which your representatives have had with our client.

"Firstly, our client wishes to express his gratitude and appreciation for your actions in making possible a meeting between our client and a Mr. Carroll and a Mr. Fitzgerald which took place on Thursday afternoon last. As you will be aware, this enabled our client to make an offer to purchase the above-mentioned lands.

"Our client informs us that he furnished the offer letter to Mr. Carroll and Mr. Fitzgerald together with a bank draft representing a deposit in the sum of $i\frac{1}{2}$ 80,000.

"Apparently Mr. Fitzgerald stated at the meeting that the Department had received one other offer for the lands in question, and our client naturally presumes that the acceptance by Mr. Fitzgerald of his offer and deposit is indicative of the fact that our client's offer was indeed the larger.

"Our client is grateful for the opportunity afforded to him and acknowledges that the acceptance by your Department of

his offer shows your commitment to healthy competition in private enterprise and minimises the risks of a monopoly in this particular industry.

"We look forward to receipt of formal contracts from your Department in early course."

You see that letter?

A. Yeah.

Q. Now, in that letter your solicitors say that, "As far as we are concerned, you have accepted our offer, and therefore we assume that you have no higher offer".

A. Well, I was of the view that if they took it, that it would have been futile them taking it if it wasn't the highest offer. But my assumptions were proved to be wrong.

Q. The reason I draw that to your attention, Mr. Johnston, is that a moment ago you told me, and also Mr. Justice Moriarty, that when you left the meeting you had no idea whether you had won the competition or not, or whether you were the highest bidder or not. Well, if that's the case, how could you have written this letter?

A. Pardon?

Q. If that were the case, how could you have written this letter?

A. Well, I mean, I wrote this letter to try and move the thing forward.

Q. But do you understand that this letter is completely inconsistent with what you said to me and to Mr. Justice Moriarty a moment ago when you said that as far as you were

concerned, you didn't know how your offer was being treated; you didn't know whether it was the biggest offer or not?

A. And I didn't know.

Q. Well, why did you write a letter saying that you assumed it was the highest offer?

A. Well, to try and get results, to try and get answers from them; for no other reason.

CHAIRMAN: There was that element in it, but I suppose you did instruct your solicitor to express gratitude for the Minister's intervention.

A. Yes, for permitting me to put my bid in, yeah. Because I was disappointed when I was told it was sold, and I was glad to get the opportunity of submitting my offer.

Q. MR. HEALY: We'll pass from it for a moment to Tab 103. This is a letter written in 1997. Do you have that?

A. The letter I have is the 6th November, '97.

Q. Correct. That's from O'Sullivan & Associates, Solicitors, to the then Minister, Mr. Joseph Walsh, TD, then Minister for Agriculture, Food and Forestry. And in that letter your solicitors are writing on your behalf in connection with the purchase of Glen Ding Wood. And they say:

"Dear Sirs,

"We refer to the above and confirm that we act on behalf of Mr. Brendan Johnston, The Maltings, Bray, County Wicklow.

"You are probably aware our client, Mr. Brendan Johnston, was dealing with the Department of Energy, Forest Service,

in respect of the purchase of the above-mentioned lands back in December, 1990, whereupon he put various offers to the Department in order to purchase the above-mentioned land.

"We write to you in connection with this matter as our client has been contacted by Radio Telefis Eireann and the Prime Time programme to outline his position in respect of the above-mentioned matter on Friday next, the 7th November.

"There are a number of questions which our client requires clarification of and to be answered, and if it would be at all possible, we would be most obliged if you could reply to these questions prior to the planned interview with the Prime Time programme on Friday next. And if the replies received were to the complete satisfaction of our client and removed all doubt in relation to this precarious scenario, he will deem it unnecessary to give such an interview.

"The questions are as follows:

"1. Why did Philip Carroll, Assistant Principal Officer of the Department of Energy, Forest Service, on the Wednesday, 12th December 1990, mislead our client and in his own words told our client that "You are too late, the Minister has sold the lands." On whose instructions did Mr. Carroll act?

"2. Only through the intervention of a professional third party in respect of this matter was it possible for our

client to once again have a meeting in respect of his offer to be rearranged for the 13th December 1990 as originally planned, and indeed same was arranged with Mr. Sean Fitzgerald, Assistant Secretary to the Department of Energy, Forest Service, and the aforementioned Mr. Philip Carroll. Why was this the case if Mr. Philip Carroll had already informed our client that the land was now sold?

"3. At this meeting our client addressed the issues of a joint venture with the aforementioned Department officials, and Mr. Sean Fitzgerald indicated his knowledge of the file and said that an internal decision had been made that the Department of Energy, Forest Service, would not be interested in competing against private enterprises in 'sand and gravel activity' and therefore would not entertain any offer for the purchase of the land other than an open offer to purchase without any conditions whatsoever attached to the offer. Our client then made his unconditional offer in the sum of i₆½800,000. He also made a conditional offer with the only condition attaching being planning permission. Mr. Fitzgerald opened the sealed envelope in the presence of our client and Mr. Philip Carroll, who at this point appeared nervous and uneasy. Mr. Sean Fitzgerald told our clients prior to opening the envelopes that there was only one other bidder for the purchase of the lands. It was our client's understanding at this point that Mr. Philip Carroll, who had lied to our client in saying that the land was sold previously, would

have known what the other bid was, and similarly, as Mr. Sean Fitzgerald had indicated his familiarity with the file, he would also have been aware of what the other bidder had offered for the property. Both would have been aware at this point as to who held the highest bid. Why then did Mr. Sean Fitzgerald take both our client's conditional and unconditional offers for the purchase of the land if our client's bid was not the highest?

"4. Why was our client's conditional offer totally rejected on the basis that the Department were only interested in unconditional offers, but then subsequently sold the land as part of a conditional offer, as can be seen in the conditions of sale?

"5. Why was our client informed by the Chief State Solicitor, by letter dated 7th January 1991, that the property in question was sold when the sale of the land was not completed until July 1991?

"We consider that our client was the only entity to comply with the conditions laid down by the Minister and his staff in respect of this sale, and why, therefore, was his open unconditional offer to purchase the land unsuccessful, and furthermore, why was his offer accepted by the Department officials if it was not the largest offer in at that time, as to accept his offer, if there was an offer larger than his, would be a futile exercise and indeed would be creating a false sense of success from our client's point of view.

"Our client requires a full and complete explanation of the events in relation to this matter and a full and complete reply to the queries raised in this letter."

Now, I want to start by referring to the last few lines of that letter, Mr. Johnston, where you say that to accept your offer, "if there was an offer larger than his, would be a futile exercise and indeed would be creating a false sense of success from our client's point of view."

Doesn't that seem to suggest that you felt at that stage that you had succeeded?

A. No, that wasn't what I meant. Maybe you are looking at it with different eyes than what I am. From once he took my two offers and said that he would put them before the Minister, I thought, "Well, I must be in with a chance; otherwise, why would he take them?"

Q. There is a difference, I suppose, between being in with a chance and stating, as your solicitors said four days later, that "Our client naturally presumes that the acceptance by Mr. Fitzgerald of his offer and deposit is indicative of the fact that our client's offer was indeed the larger."

A. Well, that was the opinion of the solicitor as well as my opinion. I was being coddled along all the time, because they had already the deal done. I mean, all I am trying to do is to tell you the truth as I see it myself, and that's what this Tribunal is about, is to establish the true facts of whether anyone has been wronged or if it was equal

competition. But I felt, if I may say so, that I would have been entitled, if I was buying land by private treaty or not by public tender, that I should have been allowed to bid on the basis that 300,000 i.e. 1.3 million was the lowest possible price the Department would accept. They gave that privilege to Roadstone. They gave them the privilege to alter their conditional, but it's still conditional, because they had to get a felling licence; it was part of their offer as well. So they didn't sell it without conditions. It was sold, with conditions, to Roadstone.

Q. I suppose, to be fair to the officials, would you not agree with me that what they were saying is, "We won't accept conditions to do with planning"?

A. "No conditions", they said. It wasn't just about planning.

Q. I see.

A. An unconditional open offer to purchase; that was the way they worded it.

Q. Nobody, in any case, said to you, "We want i.e. 1.5 million for it"?

A. No. If they did, I would have bought it. Because I knew that there was a lot more materials there than what they had estimated. I am dealing with millions of tonnes it's like a cattle dealer can look at cattle in a pen and he can tell within a few pounds what weight each of them cattle are before they go on the weighbridge.

Q. Why would you not assume, though, that your competitors

would be taking the same view?

A. Because they bid me a quarter of what I got for my own land, with the benefit of full planning permission. I knew that they weren't aggressive bidders because they just thought they had it to themselves and there is nothing wrong with that. I have to think if I am bidding for something and you are a competitor, I have to put myself in your position, knowing as much as I can about you, and then decide what you are going to put in for a price and try and beat you, which I did do.

Q. When you left the meeting, which of your offers did you think the Department were considering?

A. I didn't know, to be quite honest, which one. But the fact that they took the one with the $\frac{1}{2}$ 80,000 banker's draft, I thought that they might be considering that.

Q. Well, I suppose, in fairness to them, now, they did ask you to take the banker's draft back, didn't they?

A. They did, but I wanted to show I had the money. I could demonstrate to them that I had the funds to do the deal. I wasn't there for

Q. But hadn't you demonstrated that by giving it to them? Was there some reason why you wouldn't take it back?

A. Well, I wanted that decision to be left to the Minister, because if you are selling land to me, a bird in the hand is worth two in the bush. So if you have a deposit of 80,000 and you want rid of something, you know, it was another way of trying to beat Roadstone, or whoever was the

other bidder.

Q. Thanks very much, Mr. Johnston.

A. Thank you.

CHAIRMAN: Just on that last point of the letters, Mr. Johnston, could it be said that your solicitor might have been putting the very best face on things by saying that by taking the letters of offer, it signified that you had actually won; but that what you perhaps say more clearly than that is by taking the offers and having the meeting, you were still at the race?

A. Exactly.

CHAIRMAN: And the Minister was going to decide.

A. Well, I didn't know, Justice, in respect to you, is that I didn't really know what after being lied to, I didn't know, is the Principal Officer telling me it was sold?

They wanted rid of me. They wanted rid of me. I was just a pain in their backside.

CHAIRMAN: I think I have your point.

A. They had already made that decision to sell that land to Roadstone. And nobody they never gave me an opportunity to compete. If Roadstone paid them the full $\frac{1}{2}$ 1.3 million that they said it's in the file the minimum we'll take is 1.3, they still wouldn't give them the 1.3. Well, they should have notified Charlie McCreevy, or whoever was the Minister for Finance, we have another offer here, and we have to give it we have another person, the prices are very close to each other, we have a banker's draft, we

have to give Mr. Johnston an opportunity to see if he will meet us.

I would have paid them, no problem whatsoever. I wasn't

CHAIRMAN: There might be two other lawyers who might have a couple of questions for you, Mr. Johnston, I think probably mainly Mr. Regan, who is the barrister for the Department. Just Mr. Strahan, do you want to ask anything?

MR. STRAHAN: I have no questions.

MS. LEYDEN: I have no questions, sir.

CHAIRMAN: Very good.

Mr. Regan.

THE WITNESS WAS EXAMINED BY MR. REGAN AS FOLLOWS:

Q. MR. REGAN: Mr. Johnston, can I just ask, in the meeting of the 20th July with the officials, that was the first meeting that Mr. Carroll had invited you to, and it refers to that you had completed a lot of contracts for road building with London County Council, etc. Did you ever operate a quarry in the UK, a sand and gravel quarry?

A. I had gravel, I had Hurst's farm I bought from the Apostolic Church; I had Child's Charitable Trust, I bought a farm from them in Gilford; I had Great Oak(?) Farm that I bought from Phelen Properties; I had Fairview Farm that I bought from Mrs. Deliu; and I had Twynerish Farm that I bought from Phelen Properties. Every one of them was big. One of them had a 60,000-tonne-a-day output. Never less than 40,000 tonne, but on good days up to 60,000 tonne a

day. I took millions of tonnes from SAGA during them ten-year period.

Q. And when you returned to Ireland, what was your involvement?

A. My involvement, I was just having a look around, looking for opportunities, and I decided I would write to each of the Departments of Government telling them who I was dealing with in England, and that if they had any similar positions here, I'd be delighted to enter into a joint venture with no cost to them, that I would put in all my expertise, all the machinery and dispose of it and pay them a royalty.

Q. And in this note also there is a reference to the purchase of a quarry at Donard?

A. Yeah, well, whoever used the word "quarry" there, I don't use those words. I bought land containing sand and gravel, and I got refused planning consent. And then I applied to the An Bord Pleanala and I got it sanctioned.

Q. They said you purchased a quarry at Donard but sold it to Kells Mineral Resources because it was too small to operate?

A. You might call it a quarry; I don't. A quarry is when you get stone, sand, crush it up. Aggregates is a different thing. It's a sand pit. It's the wrong terminology.

Q. Now, can I just in terms of your relationship with the Department, can I just split it up into certain phases, because you had expressed an interest going back to you

wrote one or two letters, and then you did receive a reply from Philip Carroll, who said, "Come in and see us and we'll discuss the matter". And that was the meeting of the 20th July?

A. Yes.

Q. You felt that was an open meeting?

A. Yeah.

Q. And you are now one of the few who were in discussions with the Department on this land.

Now, I think at the end of the report it says, "The meeting concluded by Mr. Johnston thanking the Department for affording him the opportunity to discuss the matter."

A. That's right.

Q. So there is no problems at this stage.

Now, that was the 20th July, and then you had the situation the next stage was that you indicated on the 2nd November that you were prepared to make an unconditional offer, because it had been made clear to you the Department wasn't interested in conditional offers; that is, conditional on planning. Is that correct, now?

A. Yeah, but this is why I made the reference to it, that it was sold with conditions. It wasn't sold on unconditional. It was sold with conditions that

Q. We'll come to that, but just let's say it was clear that planning permission was a very big stumbling block, a fundamental stumbling block to operating this quarry this land and realising value for it?

A. Well, if I can just explain to you my experience. I bought Hurst Farm from the Apostolic Church, and the Council, the local authority, which was Runnymede, they didn't want to be seen politically to be obstructing the construction of Her Majesty's highways, and they granted me planning permission, but I couldn't use any of the local roads. So it was a joke. They thought, "Well, stuff Johnston; he has had enough, so let him take it out by helicopter".

When I went to Redland, they owned a lake between myself and the M25 section that we were building over there, Hurst farm was here [indicating], and there was a big lake in between us where the motorway was going. I done a deal with Redland's for 10 pence a tonne, a royalty, and I pumped the lake dry into the River Bourne and built a haul road right across where the lake was, and I had trucks, 100-tonne trucks running out of there within two weeks.

So I overcome problems. Problems helps me in a lot of cases because so many people can't see resolutions to them. So I don't have any problem with planning permission as far as Glen Ding was concerned. It wasn't a major headache to me. It's a matter of sitting down with the planners, doing proper statements of reasons why planning should be given. Because materials are needed for the construction industry, and if I had my way, I would get the Department of the Environment to take the development of quarries, sand and gravel or rock quarries out of planning altogether and let the Government grant a licence to operate them like they do

if you are exploring around for other minerals, like clay or zinc or ore, then you wouldn't have a problem like this.

Q. But you had a problem in Donard; you just said that you didn't get planning permission.

A. I didn't.

Q. These things happen.

A. But the reason for me not getting planning permission was the same as getting it. They said that my land was of scenic importance and an asset to the State. And my architect said to me, "Johnston, you are finished; put it in the bin". I said, "Are you sure?"

He says, "Yeah". I said, "You don't know what you are talking about". I says, "This is as good as getting planning permission for me".

And he says, "How do you mean?" I said, "I'm not telling you. How much do I owe you?"

He said, "You owe me ten grand". I said, "You can have five, because you are really paid you have done nothing".

So he took his five, and I appealed to Wicklow County Council on the basis that I, as a citizen of the Irish Republic, am not entitled under the Constitution to hold land of scenic importance and an asset to the State to the detriment of myself and my wife and my family, and

Q. Can I just say that Mr. Healy brought you through

A. Then can you please refer me to such a page where the IIRS, which is a semi-state Government body, who were my

subcontractors, had quantified it, done the mineral wealth, and I said, "Please compensate me in the sum of 379 million, and you can keep it for the State".

And they sent me a letter back, saying, "You have planning permission; it's consented with no conditions at all attached to it".

So, if I had taken notice of my architect, I would have got nothing. But I don't take no for an answer. It's not my

Q. Okay. We have got that point. Can I just move on.

Mr. Healy went through different documentation with you, your letters to the Department, their phone calls, their letters, and I think that there were fairly prompt replies from the Department; there was no issue at the earlier stages?

A. Exactly.

Q. And I think in a letter on the 30th November that's at Tab 96. You don't necessarily have to open it; I'll just read it out.

But the last sentence in that letter and this is now 30th November you say, "I wish to thank yourself" this is directed to Mr. Smart "I wish to thank yourself and your Mr. Carroll and your Department for the courtesy you have extended to me during our negotiations in this matter, and I hope it will have a successful outcome."

So at that point there were no problems. You had a good relationship with the Department and the officials. They

gave you the information you wanted, and we'll move on.

Then we move into the phase where the problem arose, and I am just drifting over this quickly just to split up the stages of the problem.

Now, we had a situation where you viewed the property on the 5th. We know your phone call to Mr. Carroll, you have gone through that, and that's when you realised well, you were informed at that stage that there was a deal done.

Now, whether it was a deal or an agreement that was legally enforceable or not, but that was your information?

A. He told me it was sold, not a deal was done. The Minister had sold the land.

Q. Sold.

A. Which was lies.

Q. Well

A. Because it wasn't sold. It wasn't sold until 1991. The time a place is sold is when you have got the money in the bank. It's not sold until you have your money in the bank.

Q. Well, we won't ask you to interpret the legality or the legal niceties of when a transaction is legally done.

A. I am only just making a point.

Q. No, but it is an important point, because you are accusing an official of lying, when in fact let me finish the question you can take your time on the answer, but let me finish the question.

He asked you you had a discussion with him, and he was very frank with you, because he told you that the lands

were sold, if they are the words, or an agreement was reached with another party; something to that effect. You say he said emphatically the lands were sold. Now, people use those terms when a deal is done, but if there are formalities to be gone through, there are contracts to be signed, etc., and you can we can all have our view as to when it's signed, sealed and delivered. But was he not telling you the truth, in a sense, informing you in a very forthright way that this property had that you were too late and that the property had been sold to another party?

A. Yeah, well, I mean, I took it that if somebody tells if an auctioneer is selling land and he told you that it's sold, the majority of people would accept that; but this was a different matter. This was people selling State land. They were just citizens of the State; they were just civil servants that was making decisions on behalf of the people of Ireland.

Q. Well, we don't have to get dramatic about it.

A. I am not dramatic at all. I am telling you the facts as they are.

Q. Sorry, you are a businessman; these people were officials, and they were acting in a business-like manner in a business transaction. Now, perhaps that was not something that you actually appreciated. They told you straight and Mr. Carroll told you straight on that day, the lands were sold, or some words to that effect; is that not correct?

A. Yeah, he told me they were sold. In other words, get lost.

Q. He told you the facts of life at that point in time. Okay, that's when your upset came in and your annoyance with the Department?

A. Yeah.

Q. We'll go behind how that came about, but the next stage was, you took a further step and you got a friend to contact the Minister; isn't that correct?

A. Yeah.

Q. Because you wanted the opportunity to make a bid. Mr. Molloy, the Minister, intervened. You had a meeting on the 13th December, and you got your opportunity to make a bid, by your own admission, your best shot. Now isn't that what you asked for and isn't that what the Ministerial intervention delivered for you, the opportunity to make a bid?

A. Yeah, exactly.

Q. So, you had no complaint at that point; you had got your opportunity to make the bid?

A. Well, I most certainly did have a complaint, and I still have it: Why was I told this in the first place?

Q. But you had no complaint that you hadn't the opportunity to make the bid, which was the complaint at that point in time. And in fact, there was a letter from your solicitor thanking the Minister, at 113 I appreciate that you have a complaint of a different kind, but the reconstituted letter there from Mr. McGreevy on your behalf, where you wrote to the Minister and it was read out, so I don't

need to.

"Our client is grateful for the opportunity afforded to him and acknowledges that the acceptance by your Department of his offers", etc., etc.; we go into a different interpretation, but you actually thanked him for the opportunity that you got to make the bid?

A. I did, yeah.

Q. Now, the situation is, is it not, that there were parallel tracks here; both yourself and Roadstone were being dealt with on a private treaty basis?

A. That's right, yeah.

Q. Roadstone pushed very hard and pressed at different times for this land, and you were assisted in this matter, because Mr. Carroll actually called you in; you didn't seek a meeting on the matter, it was Roadstone did. That's the papers show that. You were actually asked to come in to discuss the matter. And that was a fair opportunity you got, would you say?

A. Yeah, but that was way that was way earlier on.

Q. Yeah, in July. And at that meeting they also marked your card, because they told you there was another interested party. Now, as a business person, when you are given when you get an opportunity of coming in and discussing the prospect of a deal and you are told the second-last paragraph of that letter, you'll be familiar with: "He was informed that there were others interested in the property, which might still be offered for sale by public tender."

But you were told there were others interested. So you really needed to move it along and advance it if you were going to secure this property. Isn't that fair to say?

A. Yeah.

Q. Now, I appreciate that you have been engaged in a lot of other business transactions, but your experience will tell you to move on with this, wouldn't it?

A. Yeah, well, I was moving on with it.

Q. Well, I mean, at the July meeting, we have already established that and you had indicated that you had walked the lands. Now, you say that you can tell a lot from just viewing the property. I am not sure I accept your comparison with valuing cattle and valuing what's under the ground by simply walking the lands

A. Well, this was all above the ground; it wasn't underneath the ground.

Q. Now, if we take it from July there were these series of letters where you walked the land, you asked the Department for Ordnance Survey maps, etc., etc., what investigation did you do in terms of bore holes and all of that to examine the property?

A. Well, there was no need for me doing bore hole information, because there was about an 80-foot or 100 foot of a face.

It was a big hill of gravel; it wasn't underneath the ground. I didn't do any site investigation because I knew, by taking in the rock that was underneath, that there was double the amount of materials. I could have won at least

double what the Department were saying was there.

Q. You see, between July and not until the 2nd November, and it was only on a letter of the 2nd November that you indicated you would make an unconditional offer. I mean, that's quite a gap, for you to come to a decision that you would actually make an offer. Is that not undue delay, knowing there are other interested parties, knowing the Department is anxious to do a deal?

A. Well, they never pushed me. I was the man that done the pushing. In actual fact, I think they would have been delighted if they never seen the sight of me. That's my own opinion.

Q. But if we look at the correspondence that Mr. Healy took you through this morning, there is no hint of that. There is no hint of annoyance; there is no hint of

A. When you look at people man to man, and when you are used to dealing with people, it's not just like looking at a pile of letters. You get body language, chemistry, chemical reactions, all sorts of things. But I felt that myself, personally, that they would have preferred if I wasn't even there.

Q. Why were you thanking them in these different letters?

A. Well, I thanked them because that's the sort of a fella I am. Somebody comes around to my way of thinking, I'll thank them for affording me the opportunity to tender.

Q. So they came around

A. But I wasn't being told I wasn't tendering on the same

basis as the other, as Roadstone, because I never was given an opportunity.

Q. Well

A. That's what I am saying. The purpose of this Tribunal, as far as I am concerned, is to establish the facts.

Q. Can we just stick to the elements of that, and we'll let the Chairman decide, and

A. Oh certainly, in his wisdom, certainly, I have no problem at all with Justice Moriarty making his decision. But I am just trying to make the point that if I had been told things that are not right, and not given the same opportunity to meet if they said to me, "Look, the bare minimum we'll take for this land is $\frac{1}{2}$ 1.3 million", I'd say "You got it; get the contract out; keep that 80 grand draft; you got a deal".

But I wasn't given them opportunities. That's why I wanted that, along with the lies, that's got my back up.

Q. Let's just deal with just this period where you know, between July and November, you had an exchange; you had telephone discussions; there are records of Mr. Carroll ringing. You were in hospital for a short time, I appreciate, but it was clear meetings could be arranged, site visits would be assisted. There was no issue then.

There is no indication in all of that period that the Department were giving you the runaround. Why would he call you in on the 20th July to have a meeting?

A. I said it was my view. I didn't say I am not saying it

was right, but it was my instinctive I have instinctive nature about doing business with people. I have been dealing with thousands of people all my life, and I know how to react to people and how people reacts to me. And I don't be far wrong.

Q. But isn't it true we'll just stick to the records we have and the evidence that the other officials, who you dealt with at the time 20th July meeting. 2nd November, you are still looking for information but you have indicated you'll make an unconditional offer. You want another site visit. And I think the question was already asked, what that would add to your knowledge of a second site visit, or I think you said you were there many times. It seemed to me that that is further unnecessary delay, and you could have put your unconditional offer in writing, save time. Why did you need a meeting to actually formally present that unconditional offer?

A. Well, if you are tendering for stuff of this nature, and because of the potential revenue that would come out it was, I don't trust anybody to put in prices in advance. In actual fact, the way this should have been done was by sealed tender, and there wouldn't be the problem that there is now.

Q. Well, I suppose we have to look at it as it is now. It was a decision, and I think it was explained in evidence that it evolved in this way. Roadstone put in a very substantial offer, and Mr. Fitzgerald indicated that and

I think it was confirmed by Mr. Carroll and Loughrey that things moved on apace after that. And I think that's the situation we're in.

A. But I don't have any problem with Roadstone at all. They are a very good company. But what I am saying was that I was they were treated in preference at all times to the way I was treated, and they were offered things that I wasn't offered, which I expect that I was entitled to be offered, because it was sale by private treaty. That's all I am saying.

Q. I appreciate that point. We'll come to that point in a moment. I am just concluding on this issue of the information you got. The exchange of correspondence up to the time that you were going to put in your offer, it took quite some time for you to come to the position that you were going to make an unconditional offer. And further time elapsed; you required further site visits before you actually were in a position to make that offer. There was a lot of delay there.

A. Well, the stuff has been there since the Ice Age, so I didn't think that there was any great rush in it. Because if they weren't prepared to do a joint venture, as they do with the national toll roads or anybody else, to maximise the full recovery of the asset

Q. No, they weren't inclined to do the business the way you wanted to do it; they did not want a joint venture, and they disabused you of that notion very early on, so there

is no point in revisiting that.

A. But I mean yeah

Q. It was their property, and they wanted to sell it lock, stock and barrel, and they told that you on the 20th July?

A. Exactly.

Q. So there was no ambiguity about it. In any event, the reality is you didn't expect the Department to move this transaction along so fast, and in one sense, you were caught out by that. They were doing this in a very business-like way; isn't that part of the problem we have? You didn't expect things to move along so fast?

A. Well, you are telling me. I am not saying that at all.

Q. I am just asking you if I am correct in that. You can agree or disagree; it's a question.

A. I mean, I didn't understand the reasons. They didn't make clear to me, economical sense, the way they were going about the disposal of the land. But that's only, again, my view, like your view. I am only telling you the way I felt about it.

Q. But they had a view, and they had formed a view, lock, stock and barrel, and they were waiting for you. They were facilitating you with information. And you were happy about that, because on the 30th November, you say "Thank you for all the assistance", etc., etc.

Okay. Can I ask you, how did you price the property?

A. How did I price it?

Q. Yeah. How did you come up with the price?

A. I priced it on the basis that the sort of offer that Roadstone indicated to me for my own land, and I knew very well that they would have been reasoning out that they stood the best chance that anybody had of getting planning permission and that they wouldn't be bidding against themselves. I didn't expect that the land would make a lot of money, which it didn't make; it made 1.3 million for about 40 million tonne

Q. What offer did Roadstone make to you about what land? Can you explain that?

A. They made a conditional offer of 1.3, subject to planning permission.

Q. So you knew their offer?

A. I didn't know their offer. How could I know their offer?

Q. That's what I am asking. I don't understand how you could

A. How I know their offer? I guessed, because they were so mean with the offer they made me that they'd be mean again.

And I knew they'd be clapping their hands, saying, "Oh, we" it's a consent to an existing working." They're working the face of the Department's land is there and they are here [indicating], they are within two foot of the face. So their chances were much greater.

Q. This offer they made to you, was it on the basis of a conditional or unconditional offer, with planning or without planning?

A. Roadstone?

Q. Yeah.

A. I had planning permission, I had full planning permission for my land. And also the mineral geologist, John Barnett, had done a valuation; he valued my land at a quarter of what I got for it.

Q. In the meeting of the 20th July, I think you indicated that the land was worthless without planning permission.

A. Well, this is why I wanted the grading of the land. I mean, what is the land? They are trying to sell it with the gravel, they are trying to sell it without planning permission. And what is it classified as? I mean, it's no good to a farmer. The Forestry Commission had already attacked it and taken out a large portion of the big trees out of it. It was more like a bomb site when I went to look at it. They had pulled all the good trees out and smashed a lot of the others that was standing up at the same time. So, you know, that was the position.

Q. Now, you had sought from the Department the GSI survey; is that correct?

A. That's right.

Q. And I think you had a discussion this morning with Mr. Healy about conversion factors and conversion rates, and I think that's a report that didn't go to any party; it was considered confidential by the Department. But I think we can understand, and I think perhaps you can understand why

A. It was just I was trying to get all the information I had.

It didn't necessarily make any difference to me, because I know, through my experience with gravel, it was there. A blind man could see it. It was there, 30, 40, 100 foot high, standing all above the ground with a big rock base underneath it.

Q. But you didn't do any bore holing or surveys yourself?

A. No.

Q. Because it would cost $\frac{1}{2}$ 50,000, I think you indicated at one point?

A. I think I'd say a fair estimation. I employed the IIRS, the Institute for Industrial Research and Standards, to shell or bore my land and to log it. Every metre there was a sample taken, and it was logged. So it cost me to do it properly, and you need to do that before you apply for the planning permission, I submitted a book this thick with my planning application. And they done cement absorption tests and everything on it. So to get that sort of a job done on Glen Ding would have cost you minimum 50 grand, I'd say.

Q. I mean, it was valuable, as you said. It was very valuable land, and it was a reasonably sizable transaction. Would it not if you were serious about it, would it not have been appropriate to do, spend the 50,000 and do a proper survey so you knew where you were going?

A. It wasn't necessary. It wasn't necessary. I wouldn't have waited for planning permission at all. I would have syndicated I'd have brought in ten of the richest men in

Ireland and sold them the rights to take out a million tonne each. And the fact that the Department of Forestry had used it for the previous 30 or 40 years taking away gravel to build haul roads within their own forests around Wicklow, that I would be of the opinion that they couldn't stop somebody that had the right to take the gravel away, because of the way the Government they took it away themselves without planning permission, and also the fact that Roadstone was digging right up tight to it. I had my own ways of reasoning everything out.

Q. So you felt that you'd have got the gravel out one way or the other?

A. I'd have got the gravel out; I have no doubt about that.

Q. On the issue of planning permission, how would you have overcome the problems there? You are saying that you would have overcome them ultimately. We know that Roadstone didn't.

A. Yeah, but I mean, the thing is that there is people have different ways of doing things. Big plcs, there is books this thick of corporate governance that they have to adhere to; otherwise they'd be taken off the stock market. I would have spoken with the planners in depth. I would have written all the statements of reasons why this was an asset to the State, and there was a requirement for that, and they would have seen the good sense in it. Otherwise I would ask the Government to issue a licence, an exploration licence for it, which sidesteps planning altogether. You

can get that from the Department of Energy, I think. They grant exploration licence to explore Glen Ding in its entirety, and then I'd apply for planning permission, and if they refused me they'd have to compensate me for the mineral content. They don't have to compensate you now, but they used to, about maybe 20 years before that, for the mineral content. But if you get an exploration licence on it, you supersede planning; that was my way of getting planning permission for it, and especially if I had the Government taking a 20% stake on a free ride.

Q. And the issue of excess, I think you touched on that this morning, and the traffic: You had your own way of resolving that?

A. I'd go to my stockbrokers, ring up Davys Stockbrokers, buy out 200,000 quid worth of Roadstone shares and go into them and say, "Look, gentlemen, I am after buying Glen Ding; I am your neighbour; I am here to do business with you; I'll give you 10 pence a tonne, or whatever, 20 pence a tonne, if you let me out through your land, and I'll give you security of supplies for the lifetime of the pit".

They would have jumped at it. They'd have no other choice.

Q. So you were hoping, essentially, to purchase this for the purpose of divesting it to Roadstone ultimately; essentially, that was the strategy you had in mind?

A. I had in mind to I had a whole lot of different schemes in mind, and I knew, I was confident. I have never lost yet. It would have been the first one I have ever lost on.

If you put up a case if you put up a case that stands up, planners have to be awful careful to object against you because you can sue them for obstruction. You know, they are only public servants, at the end of the day.

Q. Well, you know, public servants were involved in dealing with you on this matter, and they carried out their business very efficiently and very effectively, and they got value for that land. And I think we have established that. So I think perhaps you might have a somewhat higher regard for civil servants who carry out these official duties.

A. Oh, I have the utmost respect for public servants; I don't mean it on them terms. I am just saying that it's not their duty to prejudge anything. They are there to give planning permission on its merits, not because my name is Brendan Johnston or because my name is Roadstone or anything else. All I want is fair play.

Q. Now, if we move to the position where there was an intervention by the Minister and move to this meeting of the 13th briefly. And I think we have established that you were approaching this as a tender-type situation. And in paragraph 18 of your evidence, you refer to you had until the 14th December, that would have been the Friday of that week, to put in your bid. Where does that 14th December come from? Do you recall?

A. They must have given me the 14th. They must have given me before Philip Carroll told me it was sold.

Q. When would he have told you that?

A. Pardon?

Q. When would he have told you that? There is no record of any such meeting or any of having informed you.

A. Well, I had the meeting arranged for the day, the Friday the 13th, was it?

Q. Yeah, that was the Thursday.

A. That was arranged long before Philip Carroll told me that he had sold.

Q. It was to be confirmed, that meeting; isn't that correct?

It was to be confirmed by Philip Carroll on his return; isn't that right?

A. Yeah.

Q. Mr. Smart had indicated that.

A. But instead of confirming it, he told me "The Minister has sold the land; you are too late".

Q. Events had moved along, and the Department, in their private treaty negotiations, had got their price with Roadstone?

A. That's a question that's never been answered to me, is: Why did Philip Carroll tell me the land was sold when it wasn't sold?

Q. Because

A. It's a funny way of doing business.

Q. Because the papers show that at the 5th December meeting with Roadstone, there was an agreement reached on the sale of the land subject to approval of the Minister and

Roadstone.

A. And the Minister of Finance.

Q. That's correct.

A. Plus the fact, was the Minister of Finance ever told about me being in there and that I wasn't given the opportunity to bid against Roadstone?

Q. Yes, they were. They were told, yes. Can I just

MR. HEALY: With respect, sir, I think we have been through all the documents. I am just concerned about that statement. I don't think the Minister of Finance was ever told about Mr. Johnston.

MR. REGAN: Sorry, I think the Department of Finance the final report of the 14th December that went to Finance.

That's what I was referring to, I apologise.

Q. If we move to the meeting, the actual meeting on the 13th, you got the opportunity, the Minister intervened, you had your meeting, Sean Fitzgerald, Philip Carroll. How long did the meeting last for? Half an hour, 40 minutes?

A. Not even that. Just very, very short.

Q. What's "very short"?

A. Maybe I'd say no more than fifteen minutes.

Q. I understood it was a half an hour, forty minutes. But even for fifteen or twenty minutes, you came with two envelopes. They were opened. What did you talk about for fifteen or twenty minutes, if it was simply hand in these envelopes?

A. Well, there was very little said. It's just exactly what's

on the file is what was said.

Q. You said yourself the file doesn't necessarily reflect everything. So what give us a flavour of the discussion. Was it a friendly discussion?

A. It was it wasn't any ways friendly as such, because Philip Carroll was shaking, because he knew he had told me lies and that I was there whether he liked it or not, submitting my bid. Because the reality of the matter is, you may not say it's lies, but what else is it only lies?

I was told lies by a Principal Officer who was selling the people's land without giving me the full facts. So, I mean, he came in, and Philip Carroll sat beside me on my left-hand side and Philip Carroll said in front of me

CHAIRMAN: Well, Mr. Johnston, there has been a lot of water under the bridge on this issue, and it's obvious you still feel very strongly about it. But I suggest to you the main issue that I'll have to consider carefully and report on and make certain findings on it, whether, looking at the whole transaction, you got the same opportunity to compete fairly for this land as Roadstone did; and if you didn't, did that contribute to them winning and you losing?

I suggest to you, it's not going to be the most prudent way for me to approach it by deciding whether or not an actual lie was told by an individual.

A. Oh, yeah, I appreciate that. Maybe "lie" is the wrong word, but I am just an ordinary person, and that's the only way I have of explaining it. But all I want is the truth.

All I want is fair play, is that if the Finance Minister wasn't told, "Hey, we have a higher bid here than Roadstone, the conditional bid. We gave Roadstone an opportunity to alter their bid to make it unconditional, which they did do, and then we have told them that the bare minimum we'll sell the land for is $\frac{1}{2}$ 1.3 million".

And I should have been given the same opportunity. That's what I am saying. That's what I am complaining about.

Nothing more and nothing less.

Q. MR. REGAN: If we take this was a private treaty sale, albeit by public servants and involving public land; if it was purely private parties and you were trying to buy a property and the auctioneer or otherwise told you, "You are too late; we have got the price we are looking for", would you have any comeback?

A. If it was well, it depends, if there was conditions, forward conditions in writing how I should have submitted my bid. There was no such conditions in writing. At the end of the day, the land was sold to Roadstone.

Q. I am asking

A. With conditions attached.

Q. I am just asking a simple question. If this was purely between if you are doing business, and you have done a lot of business to purchase private property, and you are dealing with the estate agent or the seller or whatever, and he tells you "No, you are too late, I have got my price and I am closing the deal", what comeback would you have on

that?

A. Well

Q. You'd have none, wouldn't you?

A. If I had an appointment with them the following Friday to submit my bid, I would have come back on them, the same come back as I came back to the Department on.

Q. If you had no appointment to put in a bid or otherwise, you'd have no come back; but in this case, you did get the opportunity, because the Minister you intervened with the Minister, and he did rectify the situation by giving you that opportunity on the 13th?

A. Not on the same conditions. I wasn't given the same privileges as Roadstone to buy the land. If I was, I would have been the buyer of it.

Q. But you got your opportunity to put in your bid on that occasion?

A. Oh, I did.

Q. And we have established that.

A. Yeah.

Q. Now, this issue of putting in a conditional offer at that late stage. You were told yonks ago that they didn't want conditional offers. Now, you explained this morning that you had this view, and you had done your thinking and calculations, and you reckon that CRH, being a public company, would not ultimately approve an unconditional offer for this property; isn't that correct?

A. I was thinking along them lines, yeah.

Q. So you reckon the battle was going to be on the conditional offer, ultimately?

A. I mean, you are saying that

Q. I am asking I am trying to understand why you put in a conditional offer when you had been told

A. I put it in because the ultimate decision it's like the ultimate decision about this Tribunal is going to be decided by Mr. Justice Michael Moriarty at the end of the day that Bobby Molloy was the man that would either do the deal or not do the deal. It wasn't they were just his people he had working in his Department. It was up to the Minister to make his decision. If he was given all the facts, if Charlie McCreevy or whoever was the Finance Minister was told that there was no other bid, or was told that I wasn't there, but I wasn't given an equal opportunity. That's the point I am making, and I want to know why.

Q. If I just stick to this point about the conditional offer. You put in a conditional offer on this occasion, and you had known, or I suspect you had suspected that Roadstone had put in a conditional offer and that any unconditional offer, if they did put in a bid, wouldn't be approved by their Board; that was your calculation?

A. Yeah.

Q. So Sean Fitzgerald has given evidence that when the envelopes were opened at this meeting, he felt it only fair to tell you that you were way off and weren't at the races,

as it were. Now, he also indicated that you insisted that the offers go to the Minister; is that correct?

A. Well, what you said about him insisting that I was way off, I don't ever remember him

Q. I accept you say that.

A. He is entitled to his view; I have no problem with that.

Q. I would say that he is not just saying that now. I mean, this is in the report, reports at the time of what happened at these meetings, where he uses the exact same language.

So it's not he is not making anything up at this stage.

A. Oh, I am not saying he is.

Q. It's actually in the record of those meetings.

A. I mean, all I am coming back to is why wasn't I afforded the same opportunity as Roadstone? Why didn't they say it to me, "The minimum we will take for this land is

1.3 million"? And I would have said to them at the meeting, "You have got it. Use that draft as a deposit."

Q. I just want to refer you to a document, 117, Tab 117, Book 76. And this is Sean Fitzgerald's

A. 117?

Q. 76, 117, yes?

A. This is the letter of the 18th December?

CHAIRMAN: Well, I think it will be sufficient if you read the portion that you intend to remind Mr. Johnston of.

A. I have it now.

Q. MR. REGAN: It's just the third paragraph. I mean, this is his note at the time. "Mr. Johnston stated at a meeting on

the 13th that his offer represented his best shot. On the telephone to me on the 14th he didn't change his position, even though I left it open to him, saying that if his offer was not the best, he would accept that position."

And I think perhaps I am going too far in saying that his report records the that he told you that it wasn't that you were way off.

A. No, he did not tell me.

Q. But if he told you that, you would have still insisted that it went to the Minister, because you had indicated in your letter that you didn't trust the officials, isn't that correct, at this point?

A. How can you trust people if they start telling you lies?

Q. So whatever Sean Fitzgerald or Philip Carroll said to you at that meeting, you would have insisted the offer goes to the Minister?

A. Yes, I would.

Q. Isn't that correct?

A. Certainly, yeah.

Q. Even if he told you you were way off, you wouldn't actually have been inclined to believe him at that juncture?

A. No, I mean, I wouldn't how can you? Somebody tells you land is sold and it's not sold, how could you take any notice after that? And it was sold, because the consent note by Bobby Molloy was signed. Only waiting they held on to my banker's draft. Don't forget the Gulf War was starting at that time as well. There was a lot of

uncertainty around. So there was a lot of things at play that if you look at the bigger picture, which I do, and as far as I was concerned, I wasn't given the same terms and conditions. And eventually the land was sold to Roadstone with the condition that they had to get a feller's licence from the Forestry Department. So it was still sold with conditions.

Q. Did you ever say to Mr. Fitzgerald or Mr. Carroll, either at that meeting or the next day on the phone to Mr. Fitzgerald I think you accept you had a telephone discussion with him on the 14th "If that's not the best offer, if, having given it my best shot, I want to be able to put in another offer"? Or did you ask for that opportunity?

A. If I could put another offer in?

Q. Yes.

A. No, I didn't, no.

Q. Because you reckon this was your best shot and this would do the business; this would succeed?

A. Yeah, I mean, I had left it in because the fact that he took it, he must have been considering it, I thought.

There was no point in me bidding against myself at that point. But he knew, he had a duty of care to me that time, as a public servant, and me being a citizen of the Irish Republic, he had a duty of care to offer me the same rights as he did to Roadstone. "We have a price here; you are very close to the price"

Q. But you weren't?

A. I wasn't given the opportunity.

Q. In reality, you weren't close to the price?

A. Of course I was.

Q. How?

A. I was offering them Roadstone's price adds up to 5 pence a tonne. That's without

Q. Let's stick to the figures in the offers. What are you comparing?

A. I mean, we know what the figures, they are all down there in writing. I was offering them 800,000 upfront and 20 pence a tonne. Which I thought was a very good offer, because I was going to quarry twice as much stuff out as they had estimated, because there is 80 foot of rock underneath the sand.

Q. I'll just have to find the offer.

A. If they were commercial, they would have accepted my offer, or at least given me the opportunity to tell me that they were selling it for $\frac{1}{2}$ 1.3 million, and Roadstone still didn't bid them $\frac{1}{2}$ 1.3 million, I would have bought it off them, a thousand times over at that money.

Q. Well, it is, in fairness easy to say that now, so many years after

A. Well, I am telling the truth. I am under oath.

Q. Where does 20 pence per tonne come in?

Isn't it the case that the offer that you made was 800,000 unconditional? The unconditional offer was 800,000?

A. Yeah.

Q. And the conditional offer was 715,000 and 435,000 if planning subject to planning permission?

A. Yes.

Q. So where does this 20 pence per tonne come in? That doesn't feature in the letters of offer.

A. Yeah, well, they knew about that all along, from Day One.

I offered them a consortium from Day One.

Q. But are you saying that your offer, as delivered, was better than the Roadstone offer?

A. Yeah, I am genuinely, as a businessman, I am talking as a businessman. My offer, my unconditional offer, was better than Roadstone's. So therefore, they should have

Q. Your unconditional offer of 800,000

A. No, my conditional offer was more than Roadstone's. They should have started talking to me then. I was the highest bidder. You always speak to the highest bidder, not the lowest bidder. They should have at least offered me the opportunity of "Will you take the conditions off, and our bare minimum price that we will dispose of this land is 3 hundred grand", I'd have done the deal with them in two minutes.

Q. But the offer you referred to is history at that stage. It was made on the 4th October. It was taken off the table because the Department had insisted they did not want any unconditional offers. So why are you comparing

A. Because they sold it with conditions. At the end of the

day you see, as far as I am concerned, they never wanted regardless of what the paperwork says, instinctively I know when somebody is cooperating with me or not. It's my intention that no one was going to get this land; only Roadstone. I am not saying I am right or I am wrong, but I am going to leave it up to the wise judgement of Michael Moriarty that's in charge, for him to make a determination what he thinks is right and whether he thinks that I was treated fairly and correctly. It's up to him; it's not up to me.

Q. You are saying you got an opportunity by the Minister to bid. You asked for an opportunity to bid. You got an opportunity to bid. And now you are saying that the unconditional offer, which you were never asked for because it was the conditional offer, you were never asked for it, you are basing on that conditional offer that you had the best price, and that that should have been the basis of

A. If it was open for tender at the time

Q. It wasn't a tender; we have established it wasn't a tender.

A. I know, but what I am saying is I was the best price. But it didn't matter what price I was. That's what I am trying to say. It wouldn't be acceptable unless it was Roadstone's price. I might be wrong, but that's what that's the assumption I make, that there was no way that they were going to sell that land to me.

Q. But the reality is, and would you not accept that they were

seeking unconditional offers. They had now an unconditional offer of $\text{€}1.25$ million from Roadstone as compared to your 800,000 unconditional offer, and that is the basis they wanted to do business. They told you that. They told both parties, and that was the situation on the 13th/14th, leading up to the ultimate decision by the Minister to sign-off on this on the 20th. You bid 800,000. They had a bid/deal for $\text{€}1.25$ million. And you weren't within an ass's roar of Roadstone's offer and price. That's the reality. And as a businessman, can you not accept that?

A. I mean, that's the way it ended up. But what I am saying, like, I'll repeat it again, is that I wasn't bidding I wasn't given the same opportunity to buy the land as Roadstone. When they got my bid, conditional bid, they had worked with Roadstone to sell them the land before they even got my bid in at all, but they should have said to the Minister for Finance, "We have another man bidding for this land; the bids are very close to each other, and what's the bottom line?"

And they should have said the same to Bobby Molloy, the Minister at the time, but they didn't. And I don't know why not. There is a question there that needs to be answered.

Q. But you are basing this judgement on your own preconceived ideas. You are not basing it on the facts of an offer of 800,000 compared to $\text{€}1.25$ million. An unconditional offer.

That was the comparison which the officials and the Minister was making were making at that time, and you'll have to accept that their conclusion that they had, they could close off the deal at $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}1.25$ million giving them value for the land?

A. When we had that meeting on the 13th December, whatever it was, they had a duty of care then to tell me, before I made my offer, they had a duty of care to tell me that they were only going to accept offers without conditions, Number One, and that the bare minimum that they would take was $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}1.3$ million.

Q. Well, the Secretary General of the Department who was here at the time, was here yesterday, and he said, "I do not believe it was incumbent on us to prompt an experienced businessman how to negotiate."

A. He should have given me the same opportunity. He would have got $\dot{\imath}_{\dot{\imath}}^{\dot{\imath}}50,000$ more, so he was throwing away taxpayers' money.

Q. But didn't you get every opportunity? You had the information you sought?

A. Because he was duty bound to tell me that, because he had already asked Bobby Molloy to sign a consent note to sell it to Roadstone.

Q. They said if you had offered a higher price, you'd have got the property. They have a duty they have a duty to get value for money for the property, and that was I think it's fairly well

A. If they bought it from me, they wouldn't have got it either, because the pits was worth an awful lot more money than that.

Q. Well, the Chairman will decide on that issue as well. But their overriding

A. I am only giving you my opinion.

Q. Their overriding duty, and this was the evidence, was to get value for money. And given these two offers, and this enormous gap in the two offers

A. I never cry about lost, spilt milk. All I want in life is an even playing field. In this case I didn't get it, and this was selling State land. It wasn't selling some private land that was owned by a person or a family. This was State property, and that's what I am saying.

Q. But you are convinced now you had the best price?

A. I am convinced all along, nobody could convince me otherwise, that I was the best bidder, except if they treated me the same way as Roadstone, they would have got more money.

Q. So whatever I say to you, that would be your position, that you had the best price; whatever Sean Fitzgerald told you at meetings, you are convinced you had the best price?

A. My offer to the Department was the best if they had gone for it.

Q. Because CRH would not have approved any unconditional, or conditional unconditional offer, and you felt you would secure this property on that basis?

A. What I am saying is that if I was given the opportunity, like Roadstone was given the opportunity, to alter my bid. All Fitzgerald said to me was, "We won't accept that as it is; if you are prepared to take out the conditions" and Number Two, "The least the Ministry will take for this land is 1.3", which he told Roadstone.

That's all I am cribbing about. I am not cribbing about anything else, because people I know what people are like; I am dealing with hundreds of them every day of the week. You have to humour them. Some days they have a good day; some days they don't have such a good day.

Q. Just in conclusion, Mr. Johnston, you had no complaint, and you were complimentary to the Department on the 20th July, that you got an opportunity to meet. You had no complaint in your letter of the 30th November, that they were being courteous and helpful to you. And you did have a complaint when you found that a deal had been done with Roadstone, but you got an opportunity by the Minister to make your bid. And the reality is you are making up new complaints now, and isn't that the reality of the situation?

A. No, that is not the reality. The reality of the case speaks for itself. It's not up for me. I am not the Judge. It's up to Justice Moriarty to decide in his wisdom and knowledge, he is the best man. Whatever he adopts, it's good enough for me. If he judges in favour of me, fine; if he doesn't, fine. The facts are there. I can't alter them. But what I am complaining is I haven't been

given this preferential treatment like Roadstone was given.

CHAIRMAN: Nothing in conclusion, Mr. Healy?

MR. HEALY: No, sir.

CHAIRMAN: Thanks very much for your attendance today.

I wonder, since we have assembled, should we make the start of just having the witness's evidence?

MR. COUGHLAN: If that suits you, sir.

CHAIRMAN: Just to ensure perhaps that we keep to schedule as far as possible.

Mr. Barniville, you are instructed by Mr. Strahan in relation to the couple of Roadstone witnesses.

MR. BARNIVILLE: We are entirely in your hands. If you are happy to proceed now, we are perfectly happy to proceed.

Mr. Dempsey is here.

MR. COUGHLAN: Mr. Dempsey is available in the morning and

I don't think we have discussed the matter I don't think it will present any logistical difficulties tomorrow.

I have discussed it with Mr. Barniville.

CHAIRMAN: If you are all agreeable that you will get through the evidence as projected tomorrow, it's probably quite late to be taking it up. I am sorry people have been kept waiting.

Should we start at half ten or will eleven suffice?

MR. COUGHLAN: We could start at half past ten, sir.

chairman: Half past ten might be the best compromise.

Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE 5TH MAY, 2006.

