

THE TRIBUNAL RESUMED ON THE 9TH MAY, 2006 AS FOLLOWS:

MR. HEALY: Mr. John Barnett, please.

JOHN BARNETT, HAVING BEEN SWORN, WAS EXAMINED BY MR. HEALY
AS FOLLOWS:

CHAIRMAN: Morning, Mr. Barnett. Please sit down.

Q. MR. HEALY: Thank you, Mr. Barnett. Do you have a copy of
your Memorandum of Intended Evidence?

A. Yes, I should have.

Q. We can provide you with another one.

A. Yes, I have.

Q. What I propose to do is just very briefly to go through
that Memorandum of Intended Evidence, then to take you
through a number of documents that are either alluded to in
that memorandum or which are relevant to some of the
matters referred to in that memorandum, and I'll have some
more questions for you about those documents.

You say that you are a minerals consultant holding the
qualifications of MSC, FRICS; is that Fellow of the Royal
Institute of Chartered Surveyors? Is that right?

A. Yes.

Q. C. Engineer; is that "Chartered Engineer"?

A. Yes.

Q. FIQ; Fellow of the

A. Institute of Quarrying.

Q. And FIME; is that Fellow of the Institute of Mining
Engineers?

A. It is, yes.

Q. Your final professional examination, you took the first place and were awarded the Minerals Surveyor Prize of the Institute of Chartered Surveyors. You set up a mineral consultancy practice which sold to CSA Mineral Consultancy in or around 1994. You fully retired from the mineral consultancy business in 1999, but in effect, you still remain as Chairman of that consultancy, and you work approximately one day every month.

You recall that your involvement in the Glen Ding sale was brought about by your acquaintance with Mr. Kiaran O'Malley in or about March of 1990. Mr. O'Malley brought you in as a subconsultant to survey the minerals present in the site, to draw up a scheme of working for the site and to put a value thereon. You recall that it was Mr. O'Malley who led the project, as it was he who had been briefed by the Department in the first instance.

You and Mr. O'Malley submitted a joint report to the Department on the 30th April. The report itself, however, was dated the 25th April. The part of the report authored by you primarily dealt with the quantities of sand and gravel in the site, and you included in the report a valuation appraisal of this material. You relied partly on an earlier report of the Geological Survey of Ireland in reaching your conclusions. The report also identified the size of the workable area of land as being 83 acres, and it set out your calculations which arrived at this area. In coming to an assessment of the value of the extractable

minerals, you also set out in your report the calculations and factors used by you in arriving at that figure.

On the 18th October, 1990, Mr. O'Malley and yourself met with officials from the Department. At this meeting you recall that after initial discussions, the officials indicated that a conditional offer of $\frac{1}{2}$ 1.1 million had been received by the Department for the Glen Ding property. You recall that the crucial issue to be decided at the meeting thereafter was whether Roadstone's offer could be bettered. You do not recall any Department official ever asking you of your awareness of any other holdings which, like that of Roadstone, had access to the Glen Ding site.

You provided assistance to Mr. Christopher Lockwood of GVA Grimley in the preparation of Mr. Lockwood's report dated the 25th March. You met Mr. Lockwood to discuss your own valuation on the 19th January 2006. At your meeting with Mr. Lockwood you advised that in 1990, Roadstone was producing less than 1 million tonnes per annum into the Dublin market from its Blessington pit which adjoined the Glen Ding property. The survey scheme and valuation has more or less stood the test of time and reflected on-site realisations.

Can you tell me, Mr. Barnett, how long you were working in Ireland as a minerals consultant.

A. Since 1970.

Q. 1970.

A. And I set up my practice officially in 1975.

Q. And were you the only person in that practice initially?

It was just you yourself, a one-man practice?

A. It was a one-man practice initially, but as things developed, I had assistants working with me who were training to be in my discipline as a minerals surveyor. So I had up to two about two assistants working at any one time after the initial years, up to about 1980.

Q. And in that time do I understand that you would have worked in estimating the value of, or otherwise in providing your expertise in connection with the development of or getting planning permission for sand and gravel pits all over the country?

A. Yes. And other minerals as well.

Q. And other minerals as well; I see.

A. Yes.

Q. And you would have worked for most of would you have worked for most of the major sand and gravel operators in this country during that time?

A. I would have worked for most of them, yes. And ironically I did not at that time do any work for Roadstone; I was always on the opposite side of the fence to Roadstone.

Q. I see. But so by the time that you came to give your input into this process, you had been in practice for around 20 years?

A. Yes.

Q. And apart from working directly for landowners, quarry owners, or the owners of mineral deposits or people who

hoped to become the owners of mineral deposits, do you work
were you bought in by other experts to provide advice
related to your own specialist area of expertise?

A. Yes, I was. I would say that many estate agents in town,
when they had clients who had rock or sand and gravel or
mineral deposits wanted a valuation or an assessment of
their lands, I did that sort of work. Also, another of my
particular expertises at the time was planning and mineral
planning, because before I came to Ireland in 1970, I was,
for four years, County Minerals Officer for Staffordshire;
that's between Birmingham and Stoke, so that was quite a
hectic place with respect to minerals and dereliction and
restorations. And I was dealing with something like 30 to
35 planning applications for minerals each year, plus many
schemes for development of those resources.

So, with that background, of having worked for a local
authority, having worked as a specialist in the minerals
area, I was able to apply that knowledge to my practice
here in Ireland. So I was called in on planning as well as
valuations, and Kiaran O'Malley was one instance.

Q. You had been working on one side of the fence, then, in
England, and when you came here you were working well,
both on that side but also on the other side of the fence;
is that right?

A. Yes, I worked on many sides of the fence, I have to say,
because it was my intention, from qualifying, to have my
own business. I wanted to go into private practice, and

before doing that, I endeavoured to get as much experience as I could by different jobs. And when I came here in 1970, those first few years, I lectured at Bolton Street, College of Technology in minerals mining surveying.

Q. It may gratify you to know that when the Tribunal sought to identify an expert in this case, Mr. Barnett, all the agencies consulted only referred to you. But in any case, in this instance, were you aware of this site before you were first contacted by Mr. O'Malley to provide expert advice in connection with the extent or value of the mineral deposit?

A. Yes, I was aware of the site. In other words, I had an awareness of the sand and gravel deposits in and around Blessington.

Q. I suppose that was something even a layman might have been aware of at that time?

A. Absolutely.

Q. Now, when you were first asked to advise on this, it was in connection with Mr. O'Malley's brief to examine the potential, or to examine the land in question, or the area in question with a view to identifying, or with a view to ascertaining whether planning permission could be obtained for it; and initially, in fact, I think he was advised simply to prepare a planning application for it. Those were his initial instructions, as I understand it?

A. Yes.

Q. So you were initially instructed, therefore, by another

expert who had been briefed to make a planning application in relation to the Glen Ding lands, in a very general way, to see whether permission could be or would be obtained to extract sand and gravel from the Glen Ding site?

A. Yes.

Q. With a view, ultimately, to enabling the land to be sold on with the benefit of that planning permission?

A. Yes.

Q. At some stage in the course of your work, you must have been asked to approach the lands, not only on the basis that planning permission could be obtained for it and on the basis that it would be sold with the benefit of planning permission, but also on the basis that it would be sold without the benefit of planning permission because your report deals with both scenarios; isn't that right?

A. My report deals with both scenarios, yes, but initially I looked at it, what could we get planning permission for.

Q. Can you remember I'm not asking to you remember the time but can you remember how soon after you were initially instructed to approach this on the basis that you were going to get planning application was it before you were told, "We also want to you value it without planning application without planning permission"?

A. I think about a month, because I started in March on the project, and then in April I was putting in my submission. So it was quite a short timetable.

Q. So, in March you were looking at this on the basis you'd be

advising someone who would be applying for planning permission, but by the time you came to write your report, you had received an addendum or a supplement to your instructions to consider also

A. Yes, the valuation.

Q. Now, you produced an evaluation it's contained at page 69 of or Tab 69 of Book 75. I'm just going to give it to you in case you need to refer to it to answer any of my questions.

I'm just going to go through your evaluation just to ask you some questions about the approach you adopted. You say it's addressed to Mr. Philip Carroll, dated 25th April, 1990. Re lands at Deerpark townland, Blessington, County Wicklow.

"Dear Mr. Carroll,

"I refer to the meeting, along with Mr. Kiaran O'Malley, that we had at your office on the 19th April. We have now had an opportunity to assess the sand and gravel deposit in the lands at Deerpark and to carry out a valuation of the sand and gravel element within the lands.

Now, if I could just ask you for a moment to go back one tab, to Tab 68, there is a reference to that meeting.

A. Yes.

Q. And this is a memorandum with Mr. Philip Carroll of that meeting, which I think you won't have seen until you became involved in providing the Tribunal with information in response to its requests; isn't that right?

A. I was at that meeting.

Q. Yes, you were at it, but did you get this note of the meeting?

A. No, no, sorry.

Q. Not until the Tribunal brought it to your attention?

A. No.

Q. It says "Tom Smart and the undersigned" that's Mr. Carroll "Met Kiaran O'Malley and his associate John Barnett yesterday to discuss the prospects for planning permission for the Blessington sand and gravel site.

"Following detailed discussion it emerged that pending completion of the first-stage assessment, O'Malley will be concluding that planning permission will be difficult to achieve primarily due to access considerations. It seems the best option is likely to be for the Department to sell the site in total by public tender/auction. It appears that in such circumstances Roadstone, whose existing pit is adjacent to our site, would best be able to exploit the resource.

"Mr. O'Malley will finalise and submit his report by the end April with recommendations. He was asked also to include a value on the sand and gravel deposit as a sale price indicator."

And that seems to introduce the additional element that you mentioned a moment ago, that you were asked now to approach this on the basis both of planning permission and without planning permission?

A. Yes.

Q. You say "The initial impact is that" sorry, you say "We have considered the extent of the sand and gravel deposit"

I am going back to your letter of the 25th April "And the possible impact the working of these deposits may have on the environment.

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

Additionally there is a visual impact as the southern flank of the woodland is open to view from the town of

Blessington. A section of the Department's lands comprises a rath. The rath has been excluded from any assessment.

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

In this respect a margin has been left along the southern boundary to protect visual amenity. This southern woodland is also the more attractive as it contains a number of

deciduous trees, some very mature and pleasant glades. A

part of the woodland on the northern boundary is also

excluded. Here we have a beech wood that apparently been planted 10 to 15 years. It is in need of a little

thinning, but in time to come, it will certainly be a very

pleasant feature and is worthy of preservation.

"The working of the deposits within the scheme shown on the plan is phased on a progressive basis to allow for

restoration. In considering the restoration of these

lands, we envisage a greater part of the area could be

replanted as woodland. Where the rock is near to the base of the worked areas, glades and heath lands can be created. Where silty sands remain on the floor of the worked-out pit, the ground can be graded into undulations and planted with trees.

"The plan JB2 showing the area edged in red as mentioned above can be read in conjunction with JB1. Both plans are draft plans prepared for consultation purposes with respect to considering any planning application for these lands.

JB1 is the survey plan showing the details of the deposit, its profile and depth based on information provided by the geological survey. The second plan, JB 2, is the draft scheme of working and restoration and the one on which we have identified the possible working area after environmental and deposit considerations have been taken into account.

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

"Gross reserves: 8.430 million tonnes.

"Net reserves (after discounting 20% for excessive fines in the base of the deposit) 6.744 million tonnes.

"Mineral valuation:

"The mineral valuation consists of the capitalisation of the discounted royalties for the life of the deposit.

"If we consider a 20-year life for the working of this

deposit, we would then have an annual extraction rate of 337.198 tonnes. I do not consider this to be an unreasonable rate of working. With regard to royalty rate, I am considerate of this reflecting about 10 to 15% of the ex pit price for the area. I therefore elect to use a royalty of 50 pence per tonne.

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

"Potential royalty income, 337,198 tonnes per annum at 50p per tonne, i.e. £168,599 per annum.

"Years purchase at 15% for 20 years. 7.47.

"Present value sand and gravel element, i.e. £1,259,434.

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

"If you were considerate of selling the freehold, but were claiming the timber yourself, I would add an additional figure of, say, i.e. £500 per acre for the surface residual rights being 83 acres at i.e. £500 per acre giving i.e. £41,500.

"The freehold of the value of area edged red with access rights would then be i.e. £1.3 million.

"With respect to the value of all of your landholding at Deerpark, I am not competent to give you that value, as my specialisation is only with respect to minerals.

"We have been asked to differentiate between the value with and without planning permission.

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

"An operator may agree to a figure with which you are satisfied, but he may make it conditional on permission being granted. You then run the risk of losing all if he gets a planning refusal. The other major issue on this site, besides the environmental/visual one, is that of access and the introduction of a new access for trucks which will (for the greater volume of traffic) pass through Blessington. Any operator other than the one working the adjoining land would have to overcome this problem. The problem may well arise, if not from the planners, from third-party objection of the planning decision stage.

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

"Potential royalty income $\text{€}168,599$ per annum.

"Years purchase at 10% for 20 years, 4.87 is the multiplier. And the total is $\text{€}821,077$.

"Present value sand and gravel element surface rights at $\text{€}41,500$, giving a value freehold to the area edged red $\text{€}862,577$ ".

say ½860,000.

"Way Leave" is the next heading.

"This issue of way leave arises because an adjoining operator would not need to use your access road. Rights of access are important in mineral developments. They can reflect values up to one-third of the value of the deposit.

I would not be thinking in terms of one third but certainly 20% or 10p per tonne. To put this into perspective, a new operator using your land and your access should pay, theoretically, the full values as indicated. An adjoining operator, not requiring to use your access, should have a concession to the extent of 20% of the full value.

Therefore, with the benefit of planning, the value as a new operation is ½1,300,000. Value to adjoining operator as an extension to an existing pit could be ½1,040,000.

"In any negotiations with any party, I would reflect towards the higher value, but the issues of way leave, access and water rights are points to bear in mind in carrying out such negotiations.

"Water rights:

"Another benefit to the adjoining operator is that he would have his own water supply. Consequently he would not be concerned about rights to water. Your land is apparently devoid of water, i.e. surface water, water in the gravels or water within the strata. A new operator may have difficulty in finding sufficient water for washing.

Although one possibility exists, being the marshy area in

the northwest of the area edged red. Here the base rock is more level than elsewhere in the site and might well contain a mini-aquifer, which needs, however, to be tested.

The lack of water could appreciably devalue your interests in the lands for sand and gravel extraction purposes.

"We hope these notes are of assistance to you, and if we can be of any further help in this matter, we would be willing to oblige."

Now, when you were doing this work, Mr. Barnett, you were initially, as I said, looking at a planning application for the whole area, and you were trying to work out what was the, I suppose, extent of the how would you map the extent of the extractable gravel in such a way as to attract a favourable response from a planner?

A. Yes.

Q. If you put in too much, your planning application wouldn't be very credible; if you put in too little, you might end up giving away something, I suppose?

A. Sure.

Q. If you look at the monitor to your right not the television monitor, but the computer monitor you will probably recognise one of your maps on it?

A. Yes.

Q. Now, to the on the left of that monitor, you will see the area of land that was ultimately sold by the Department outlined in red; do you see that?

A. I do.

Q. That area I don't think you would ever have received that map; am I right?

A. That's correct.

Q. You were never actually provided with a sale map. You were

A. No.

Q. I think given a map of the overall area.

You were given the Geological Survey papers and their maps, I presume?

A. I was.

Q. And was it from their maps that you did your calculations, if I can put it that way?

A. It was from their results, from their boreholes that were shown on their map, yes.

Q. Yes, that's what I mean, yes. And the area outlined in red is the area that you calculate at 83 acres; is that right?

A. Yes.

Q. Can you just explain one thing for me that I haven't always understood. Do you see the serrated lines in the top sort of almost right-hand corner of the map? Do you see those?

A. I do, yes, that's the beech wood that I thought should be preserved.

Q. I see. It's where I have the cursor now?

A. Yeah.

Q. I see. Now, I think you produced another map, but I'm not going to weary you or anybody else with very detailed calculations showing how you ultimately arrived at your

figures for how much sand and gravel there was within that 83acre area. But those that other map, I think, is again based on the information contained in the Geological Survey of Ireland report; isn't that right?

A. Mmm.

Q. If I could just draw your attention to one thing in relation to that map. To my inexperienced eye, if you look at the boundary that is at the point where I have now moved the cursor, that boundary seems to be very close to the ultimate boundary of the land in sale to where I am now moving the cursor; do you see that?

A. Yes.

Q. And I am just wondering, again, from my own inexperienced knowledge in these things, if my land, or if private land was bounding a quarry at that point, would the quarry owner be obliged to step back rather more than you have shown in your plan? I appreciate that you couldn't have provided a view on that at the time; I am asking you to provide me with a view now. Do you understand me?

A. I think one would have to have a reservation, but it was all in the same landowner when I was

Q. I appreciate that; of course it was. But I am simply drawing your attention to something that I'm asking you give your opinion on now. I'm not asking you to you weren't asked to give an opinion on it at the time. You have provided a reservation there for a rath and so on, but if that rath were to be in separate ownership do you

understand me?

A. Mmm.

Q. Would the owner of the rath lands not require, and perhaps be entitled to insist on the quarry pushing back or staying further away from his own land?

A. Well, I might have adjusted the boundary in that area to allow for that.

Q. I see.

A. And so that the land with the reservation strip as well.

Because I wasn't saying that that's the land you should sell. I was saying that's the land that you should apply for working for extraction within the area edged red, and then the reservations and other considerations would have to be taken into account before finalising the detailed submission to the Planning Authority.

Q. I understand that. So ultimately what you are saying is if you had been asked to put a line around the land you thought that should have been offered for sale, you would have given a very wide berth to your 83 acres then?

A. Well, not too wide a berth, because it's not as though the land is going to go for any specific development; it's a reservation, and 5 metres or 10 metres, no more.

Q. 5 or 10 metres; I see.

A. No more.

Q. You weren't, in any case, consulted in relation to that aspect of the operation?

A. No, I wasn't. These were draft plans, and you see that

"Draft" is written all over, and I thought that when we went to the meeting with the Department, that they were going to discuss my plans and so I could finalise them, but they just accepted them as they were. So really I never got a chance to finalise. That was it.

Q. I see. Now, when you prepared your plan to dispose of these lands, whether and when you approached the question of valuation whether with or without planning, you were approaching this on the basis that the Department would be selling a stand-alone site?

A. Yes.

Q. At the meeting with Mr. Carroll, apparently, the question of how the land would be disposed of was alluded to, and it was suggested it would be disposed of probably by public auction or by tender.

A. Mm-hmm.

Q. Obviously, it seems that at the meeting, in any case, there was some discussion of one obvious potential buyer, who would be Roadstone; but at that point you were preparing a product for sale on the open market at a public auction or public tender?

A. Yes.

Q. A pure stand-alone product?

A. Yes.

Q. Now, your valuation was of course, as you have been at pains to point out, a valuation only of the mineral deposit. You added on top of that a figure for residual

value of the land, but you were valuing your 83 acres?

A. Mm-hmm.

Q. Not any other acreage; not 145 acres or 200 acres or anything like that?

A. No.

Q. And in arriving at your figure for sand and gravel, both in terms of price and in terms of quantum, you were concerned only with what could be quarried out of there as sand and gravel. You didn't devote any attention to whether you could quarry anything else out of there. It has been suggested, for instance, that I think Mr. Johnston suggested that he would have looked at this quarry on the basis that all the sand and gravel could be quarried out of it, and then you could take as much rock out of it after that?

A. Yes, I was aware of the rock, but the sand and gravel resources were considerable, and I was able to get a 20-year life out of it, and in our valuation formulas, anything beyond 20 years, discounted down to the present day, does not add too much on. So, looking that far in advance, anything that was going to happen into the future beyond 20 years would not reasonably reflect all that well, or push the valuation up.

But another thought that I had is that what I wanted to do, and did, was draw up a scheme which I thought would get planning permission for sand and gravel extraction, and I did not want to introduce any other factors other than

that.

With regard to the rock

Q. When you say "any other factors"

A. Such as, you know, also we wanted planning permission for extraction of rock, no, because although there is rock there, the rock is of Ordovician, Silurian age, and generally it's a mixed bag.

Q. Would you spell that first word you used before?

A. O-r-d-o-v-i-c-i-a-n the geological period is successions of shales and sandstones and slates. So you might not find sufficient economic rock at the end of the day anyway, and it had not been drilled or proved, so it was very conjectural. And I did not include it in my scheme because I was happy enough with what I was doing with the sand and gravel reserves.

Q. I appreciate that from a planning point of view you might well say, "Why should I introduce any other, what will we call it, aggravating factors, such as rock, into a planning application for an activity that is already going on in the area?" But looking at it on the other hand, from a valuation point of view, do you think it would have been appropriate to allude to the possible further value in the land from the rock underneath the sand and gravel?

A. No, no. No, the main issue is 20 years. The main issue is that could not top up on that length of time, that period, because that was that would be a sufficient length of time for amortisation. And also I put into my scheme a

proposal that it was going to be restored back to woodland, and that it would be an amenity; because in my mind at the time, it was an area worthy of conservation of amenity.

Q. Do I understand you to say, then, that what you're saying is that in alluding to the lands being restored as an amenity is something that would have been incorporated into the planning application? Is that what you are saying?

A. Yes.

Q. I see. And that this would have been a gain you'd be offering to the planners?

A. Yes.

Q. I see.

A. Absolutely.

Q. And was it your opinion that that's something that you might think it might be advisable to do to attract an approval?

A. Yes.

Q. I see. But on the other side of the coin, on the pure raw economics, the maybe hard cash element of it, are you saying that the method you used to arrive at a current value, which is to try to get the net present value of the stream of income going out 20 years into the future, that those exercises don't have any reality when you go beyond 20 years? Is that what you're saying?

A. Well, you could go up to 30 years, you know, but it's really the 20 years is sufficient.

Q. After 20 years you are adding very little in terms of

positive net present value; is that it?

A. Yeah, I was quite happy with what I had done.

Q. Now, I just have another question for you, because it's in light of some of the points made by Mr. Lockwood of GVA Grimley, and I'll have to come back to his report later.

In approaching the valuation of the reserve, and in putting a value of 1.259,434 on the sand and gravel, you used a risk rate at 12% on the basis, presumably, that this was, if you had planning permission, quite a secure investment?

A. Yes.

Q. In order to value the land, the 83 acres, without planning permission, am I right in thinking that the approach you adopted was to recognise, firstly, that without planning permission, of course, you had zero value?

A. Yeah.

Q. But at the same time, you were trying to put a value, or put some hope value on it?

A. Yes.

Q. And you applied a risk rate of 20% on the basis that it was an insecure investment and a venture capitalist or any investor would look for a much higher rate of return; is that the basis?

A. Yes, that's the basis.

Q. Now, I think you also took the view that selling this as a stand-alone site was going to entail an access out onto the Blessington/Naas Road, or Naas/Blessington Road, whichever way you want to look at it?

A. Mm-hmm.

Q. And that it was going to entail the need to construct access and haul roads and so on and so forth?

A. Well, there was already a forestry road there.

Q. I see. You say that not in relation to the question of access, you say that an adjoining operator any adjoining operator would not need to use the Blessington Road.

A. That's right.

Q. And you say that that theoretically could be reflected in up to one-third of the value of the lands?

A. Well, this is way leaves; it's been shown that the guy with the key to the door could buy up to a third of the value.

But that was something that I was informed about. I don't know the specific case. But I wouldn't reflect on something as high as that for way leave; 10%, or something like that.

Q. In this case, although you recognised that it might be appropriate to make an allowance or to discount the full value from the point of view of an adjoining operator by, say, 20% I think is the figure you used, you suggested that nevertheless, that concession shouldn't be made in negotiations?

A. Yes, yeah, because I considered that this was it was a lucrative deposit and that my higher value should be looked at.

Q. Now, your report was provided towards the end of April, and am I right in thinking that your next involvement, or next

major involvement with the Department was on the 18th October 1990 when you attended a meeting with Mr. Carroll, Mr. Smart and also Mr. Sean Fitzgerald, the Assistant Secretary of the Department, and Mr. Gillespie in the Department's offices in Clare Street?

A. Yes.

Q. If you turn to Tab 84 of that blue book, you'll find a note of that meeting?

Have you found that tab?

A. I have, yes.

Q. Now, if we can just go through the note of the meeting for a moment so that you can familiarise yourself with it.

It's headed: "Report of meeting between representatives of the Forest Service and Mr. Kiaran O'Malley, planning consultant, who was accompanied with his associate, John Barnett, Chartered Minerals Surveyor, at Clare Street at 3:00pm on Thursday, 18th October." Which we know to have been the 18th October 1990.

"Forest Service representatives present: Messrs. S. Fitzgerald, Assistant Secretary; J. Gillespie, Principal Officer; P. Carroll, Assistant Principal; and T. M. Smart.

"The meeting was arranged by the Forest Service to seek further information and advice from the consultant following receipt of an offer of $\text{€}1.1$ million for the Blessington site from Roadstone Limited. The following matters were discussed:

"1. Planning permission.

"Mr. O'Malley said that while we had an important deposit in Blessington, the new planning legislation made it more difficult to obtain planning permission. There was an access problem to the site and, while there was no suggestion that Kildare or Wicklow County Councils would not allow a way out, there was no way of finding out what An Bord Pleanála would do. From discussions he had with Kildare County Council, he got the impression that they would look favourably at the request.

"Landscaping was another matter which would have to be overcome. Mr. O'Malley envisaged objections on An Taisce in this case. However, the fact that part of the area was being given to OPW would help. After some discussion it was agreed that it would be an advantage if Roadstone planted the area already used by them. Mr. O'Malley advised that Roadstone were the most likely to get planning permission because they were working in the area at present and would probably seek planning permission to work the area on a phased basis.

"2. Roadstone residue.

"Mr. O'Malley indicated that he had no idea of what residue Roadstone had. However, they were now working pockets outside the main plant, which would suggest that the residue was getting low. He estimated that, apart from the cost of travel, it would cost Roadstone about €1,000,000 to relocate the plant elsewhere.

"3. Disposal of property.

"The question of how best to dispose of property was then discussed. Mr. O'Malley doubted if many would be interested if it was let out to public tender without planning permission. Apart from Roadstone, he could not see anyone bidding more than $\frac{1}{2}$ 400,000 for the area. Roadstone might offer $\frac{1}{2}$ 600,000. When told of the offer received from Roadstone he strongly advised negotiating sale of the reserve to that company. Roadstone had the optimum chance of getting planning permission. The property, without the timber, was valued at $\frac{1}{2}$ 1.25 million with planning permission, and if we were able to get that amount for it lock, stock, and barrel without planning permission, we should take it. The part of their offer would depended on planning permission could be long drawn out, and he advised that we should try and get Roadstone to drop this component. Acceptance of their offer on a two-installment basis might be an incentive to the company.

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

Now, I think you mentioned a moment ago that when you came to the Department, you understood you were going to discuss your plans; is that right?

A. Well, I wasn't told of an agenda, I wasn't given an agenda, so you know, I still had draft plans that had been sent with a report, so I thought that that was just going to be

discussed.

Q. That was your assumption?

A. Yeah, before the meeting.

Q. So, you say that at the meeting there were initial discussions, and I think that's borne out by the note, there were some initial discussions?

A. Yes.

Q. And then after those discussions, both yourself and Mr. O'Malley were informed that Roadstone had made an offer; is that right?

A. Yes.

Q. Now, if you just look at the note for a minute, because there are some slight differences as to what was or was not said, and as to who said what at the meeting. It may be that not a huge amount turns on it at the end of the day, but even so.

If you look at Item No. 2, headed "Roadstone Residue" do you see that?

A. Yes.

Q. Mr. O'Malley says that he doesn't recall, you know, using those words, or giving that advice; do you understand?

A. I do.

Q. And if you look at it, it refers to what I suppose might well be described as more sand and gravel issues than pure planning issues; do you see that?

A. Yes.

Q. Is it more likely that you would have made the major

contributions on that aspect of the meeting?

A. I think it would have been about 50/50 in the meeting.

Q. In any case, can you say whether you agree with what's stated here or that whether you would have agreed with it at the time?

A. Broadly, I agreed with it, and it was very difficult in those days to make estimates of who had what, because the industry tended to play its cards close to its chest, and there wasn't many statistics issued or anything like that.

So, on that basis, I go along with what was said in this report.

Q. Now, I think Mr. Fitzgerald has informed the Tribunal that the meeting was conducted more or less like a round-table discussion; would you agree with that?

A. Yes.

Q. People were contributing were all sides, as is usual at these meetings, maybe even at the one time?

A. Yes.

Q. But that neither you nor Mr. O'Malley were provided with any specific issues to address?

A. Well, the issue of how much did Roadstone have left and how much would it cost Roadstone to relocate, this issue here of, in the preambles, what do you think the question was asked of us, you know, "What do you think people would come up with, the operator would come up with?"

The valuation was on the table, though, but we maybe I reflected, well, you know, bearing in mind what had

happened over the past ten years, you know, looking back rather than forward, maybe, you know, Roadstone might come up with 600,000 than anybody else, because others would come up with 400,000, you know, so there was those sort of figures. Looking at it well taking a little bit of a jaundiced view

Q. A little bit of a?

A. Jaundiced view being pessimistic.

Q. Being pessimistic?

A. Mmm.

Q. So you were saying without planning permission, then, you agree that you might have said something along the lines of "I can't see anyone paying you more than 400,000 without planning?"

A. Making an offer, yeah.

Q. Well, making an offer, yes. And you felt that someone like Roadstone might offer you 600,000; and would you think Roadstone would offer you more?

A. Because of their proximity to the site and the fact that their workings were on the boundary, close to the boundary, so they could almost march in, I wouldn't say any day, but you know, they were very close by.

Q. I think we have had some evidence from Roadstone that in or around this time they were beginning to look down the road and beginning to wonder where they were going to find more sand and gravel, not quite immediately, but in the long term. And I think, as you were referring to the previous

ten years, they weren't the happiest ten years in the last 50 years of the Irish economy?

A. That's true. And also, any statistics or information which we were receiving was two years back from the date, so anything being issued by Central Statistics or anything like that was about 1988 figures, you know, to base any futuristic projections on.

Q. It was around that time, then, that you were told, after you had speculated that someone might offer you 400,000, Roadstone might offer you more, that you were told that Roadstone had in fact offered more; they had offered not 600,000 but 700,000, plus 400,000 with planning?

A. Yes.

Q. And can you recall what your reaction was to that?

A. Well, my reaction was I was very pleased, because it seemed as though my valuation had been matched by their suggestion, or their offer. So

Q. Well, I suppose if you add 7 and 4, you'd get 1.1, which is close to your figure; but 400,000 of that was, after all, contingent on planning permission?

A. Yes.

Q. So, you are saying that your estimate with planning permission was more or less matched by their offer; is that what you are saying?

A. Yes.

Q. At that stage were you aware that or were you informed of let me rephrase that were you informed of or were

you aware of any other individuals or entities interested in buying the property or making an offer for it?

A. No, I wasn't. I think Johnston was mentioned at the meeting.

Q. How was he mentioned at the meeting?

A. That I was asked if I knew of a Johnston, and I hadn't heard of him, and I was told you know, that he had made an offer. But I can't recollect what I was told, but they were asking me if I had heard of this guy. And also, you know, there was an awareness of the operators who were in the area as well, but the name "Johnston" stood out to me because I hadn't heard of him being in the game, of being an operator, of all the other names I knew of them very well.

Q. Can I just ask you this question, which is not a sand and gravel question, but it may be of some importance. Were you ever informed by the Department that a number of sand and gravel merchants had made inquiries and had been told that the land would only be sold by public tender?

A. No.

Q. Were you ever aware that there had been talk of offering 1 million for it?

A. From whom?

Q. From a Mr. Treacy, allied with a Mr. Kavanagh, a joint or two-pronged approach?

A. No, I don't, no it wasn't mentioned at the meeting, I don't think. It's just that they had made the offer,

Roadstone had made the offer, and it was then a discussion centred around that specific offer and how to deal with Roadstone.

Q. When you say "how to deal with Roadstone"

A. How to progress that offer further to sell, which is the last paragraph of the meeting, you know, ask them for 1.5 million and hopefully you might be able to settle for 1.25.

Q. Yes, try to get rid of the planning condition?

A. Yeah.

CHAIRMAN: Do you recall if the discussion that mentioned Mr. Johnston made any reference to the scale of his involvement or what his background was?

A. No, no, no. It wasn't discussed in detail.

CHAIRMAN: And it was a new name to you that was mentioned?

A. That's right.

Q. MR. HEALY: On that point, Mr. Johnston says he retained your services in relation to the valuation of another sand and gravel pit. Now, I must say I had the impression that it was a pit in Donard or somewhere like that.

A. Yes.

Q. And I don't know and perhaps we should find out whether that was before or after this, but

A. I don't know. But the point at issue is this: that I have or I did the survey and value the sand and gravel deposits in Donard, but as far as I was aware, I valued it for the landowner. So the landowner gets my report, and

then he passes that on to people who might be interested.

So they finish up with my report. So someone could be saying, "Well, you know, I saw your valuation", but not indicating as to whether they were the client or not. So he could have had my valuation and talked about that.

Q. But in any case, your memory now is at that time, in any case, you hadn't heard of Mr. Johnston?

A. No.

Q. And said so to the civil servants?

A. Mm-hmm.

Q. Can I just ask you to look at Book 76 for a moment please, Mr. Barnett, Tab 134.

A. Yes.

Q. Now, you have read the report of Mr. Lockwood of GVA Grimley?

A. I have.

Q. I just want to in a general way ask you about one matter he raises in which he seems to differ in his approach to the approach that you adopted. I think in general he doesn't seem to have any quibbles with your approach, but if you look at the red, the area outlined in fact if you ignore the area outlined in red and look at the area on your map, and instead look at the map for sale it's on the monitor as well the sale map, which is on the left-hand side?

A. Yes.

Q. And that shows the area in sale?

A. Yes.

Q. Now, because Mr. Lockwood is coming into this matter at this point, he has of course had that map and had that information which you may not have had, but he takes the view that when you are trying to value this site, and certainly if you were looking at the valuation of the site or what you might look for for the site in one-to-one negotiations with Roadstone do you follow me?

A. Yeah.

Q. You would take a different approach to valuing the sand and gravel on a stand-alone basis where you might be offering it to any number of people in a public auction or a tender situation. And he says that you might have one value, or you might approach valuation in one way if you were looking at this as a pure stand-alone situation, but that you would look at it in a slightly different way if you were in one-to-one negotiations with Roadstone. And he says that if you were negotiating with Roadstone, they'd have a number of advantages that, as a purchaser, you would be seeking to exploit. Is that a fair summary of what he is saying?

A. It is.

Q. And I think, just to take one example of the point, one of the points he makes. If you look at the area where I have now put the cursor on the sale map that's the left-hand map; do you see it there?

A. Yes.

Q. That area. If you take that entire boundary which goes

along there, that's a shared boundary with Roadstone as of the time of the sale?

A. Yes.

Q. Now, on your 64-acre plan, you have shown us a slight set-back, probably, and also, do you see that one and one gradient

A. Yes, I do.

Q. that I am running over with the cursor?

If Roadstone were purchasing, they wouldn't have that wouldn't be an issue for them, sure it wouldn't?

A. That boundary there?

Q. Well, it wouldn't, because they'd be going straight, right through that boundary if they wanted to, assuming they had planning permission?

A. They would, yes.

Q. So there would be no question of a gradient, no question of any sort of set-back from a neighbouring landowner's land or anything like that?

A. Yeah.

Q. So they would be able to exploit the site right up to the edge of the boundary, exhaust the last drop of lemon juice out of it on that side?

A. Yes.

Q. That's one point he makes. He suggests that once the focus shifted onto Roadstone, I think he says that an adjustment should have been made at that point. Have you any comment to make on that?

A. Well, I wasn't really consulted about that, I wasn't asked, you know, "Now we have a one-to-one situation with Roadstone; will you advise?" I wasn't asked that question.

Otherwise I might have looked at these issues. But

Q. Could I just stop you there for a minute and just put that a little more precisely to you. You weren't asked that, but you were part of a round-table discussion, as you said earlier, about how we'd advance things with Roadstone?

A. Yes, it was, but the round-table discussion came from a meeting, which was not a very long meeting, at which we had a preamble at which we were told about the offer and equating to my value, and then "Where do we go to next?" So there wasn't much time to discuss any fine adjustments.

I know what you are getting at. You are saying that, "Well, Roadstone are going to go in there; Roadstone don't have to bother about boundaries, so they can work the minerals along the boundary".

Q. Yes.

A. But I am aware of that fact, but there isn't a lot in it. Because especially if you look at this boundary, the eastern boundary, you see that my little squiggly lines aren't as long as they are elsewhere because the deposit thins out over in that area.

Q. I see.

A. And then, you know, I had the main bulk against Roadstone to the south, I really wanted to retain that as well.

Q. All right. And I appreciate the point you are making that there was no you weren't being asked formally to address this?

A. No.

Q. But there was nevertheless a discussion, as you put it earlier, of "How do we advance this with Roadstone? How do we get them up to"

A. "How do we get more money out of Roadstone", yeah.

Q. Could I ask you to look at perhaps a more significant point that Mr. Grimley (sic) makes, and if you look at page if you look at the second page of his opinion, or his report.

Now, Mr. Lockwood, in his report, is addressing the annual output in tonnes upon which you based your figures.

A. Mmm.

Q. And if I could ask you to look at the heading "Projected Sales per Annum". Do you see that heading?

A. Yes.

Q. Where it says "Mr. Barnett adopted 337,198 tonnes per annum, which provides for a life of 20 years. This, he said, was because it would have no net present value after this point." We discussed that earlier.

"Generally an NPV approaches zero at around 30 years.

Mr. Barnett's handwritten valuation note showed sales over 25 years which would have provided an output of 309,000 tonnes per annum. There was therefore some doubt at the time, but he adopted the higher output which enhanced the value of the site."

I'd just make one point here. I think you provided

Mr. Lockwood with your handwritten valuations as well, because you adjusted them as you began to think about them?

A. Yes.

Q. "My discussion with him, he believed at the time that 500,000 tonnes per annum was a big site and 250,000 tonnes per annum more than normal. He advised that he did not think the market could take any more, and I agree with that statement, based upon his comments, but only for a stand-alone site. If Roadstone had bought the site, then they could have worked it at a higher output.

"Mr. Barnett's valuation with and without planning permission follows a traditional valuation methodology which I support and provides for a range of open market values of IR 860,000 without planning to IR 1.3 million with planning.

"What I do not believe was considered, however, was that we had two prospective purchase scenarios, namely:

"(i) Roadstone as an extension to the adjacent site

and

(ii) Stand-alone site in the value range of IR 860,000 to IR 1.3 million.

"We have been provided by Roadstone with sales from Blessington pit between 1995 to 2004. No data existed before that date. In 1995 sales were 1 million tonnes, of which 51% was to internal outlets like concrete batching plants. In 1990 the economy was quickly coming out of

recession and a lot was happening in the market. The key question was, however, how long would the upturn last?

Mr. Barnett advised that in 1990 Roadstone were producing less than 1 million tonnes per annum into the Dublin market from the Blessington pit.

"Even with sales of less than 1 million tonnes per annum, it would not in my opinion have been unreasonable to consider a greater tonnage of, say, 500,000 tonnes per annum at the valuation date. This would have given a potentially higher value range based on Mr. Barnett's valuation of $\text{€}1,160,000$ to $\text{€}1,680,000$ for an unplanned and planned reserve".

I appreciate that Mr. Lockwood had the benefit of information that you wouldn't have of course, which was Roadstone's actual output, but can you make any comment on the approach he adopted there?

A. Yes, I can comment on that.

We are now 16 years down the road, and in my valuation, I gave the deposits a life of 20 years. And I put, as an average, production during that period of time, of 330,000 tonnes per annum. In actual fact, Roadstone have taken out about 5 million tonnes to date from that site. And if you divide

Q. You mean from the Glen Ding site?

A. Yes.

Q. That's the subject of the inquiry, or the entire site?

A. The Glen Ding site, something like 5 million, estimated.

And if I divide that by 16 years, it comes to about 310,000 tonnes per annum. So, in actual fact, the figure I used is a figure that has come out in reality over this 16-year period of time, so I can reflect back on that valuation.

Q. I think "point taken" is the answer to that.

Thank you, Mr. Barnett.

CHAIRMAN: Ms. Leyden,

MS. LEYDEN: No questions.

CHAIRMAN: Mr. Strahan?

MR. STRAHAN: No questions.

CHAIRMAN: Mr. Regan?

MR. REGAN: No questions.

CHAIRMAN: Very good.

MR. HEALY: The next witness, sir, is Mr. O'Malley, and he has been scheduled for I think two o'clock. So

CHAIRMAN: Well, might, since he is present, is it preferable that we take his statement now, or might you prefer that we make a somewhat earlier start, perhaps a quarter to two?

MR. HEALY: I don't think he is present.

CHAIRMAN: He is not? Well, then, we'd better adhere to what has been fixed.

That is the case, Mr. Barnett; Mr. O'Malley isn't here yet?

A. Yes.

CHAIRMAN: Very good. Two o'clock so. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. HEALY: Mr. Kiaran O'Malley, please.

KIARAN O'MALLEY, HAVING BEEN SWORN, WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Mr. O'Malley, you have provided the Tribunal with a Memorandum

A. Yes.

Q. You have provided the Tribunal with a Memorandum of Intended Evidence?

A. Yes.

Q. And do you have a copy of it there?

A. I have.

Q. What I propose to do is to go through it. There may be one or two matters arising as we are going through it, and afterwards I'll want to refer to a few documents relevant to some of the matters mentioned in the course of the Memorandum of Intended Evidence.

A. Thank you.

Q. And I'll have a few questions arising out of those.

You say that you are a chartered civil engineer and a planning consultant.

A. Yes.

Q. You recall that you were first approached by the Department of Energy, as it then was, in September or October of 1988 to assist it in the disposal of the Glen Ding lands?

A. Yes.

Q. You say that you recall that on the 5th October 1988, you

attended a meeting with officials from the Department and the Office of Public Works, as it then was. At this meeting the background to the proposed sale was explained to you, and it was indicated to you that your assistance was being sought because of your experience in making applications for planning permissions and your knowledge of the procedures and pitfalls?

A. Yes.

Q. The Department's view was that the value of the property would be enhanced by obtaining planning permission, whether outline or full permission, in advance of the sale. You recall that you were brought in to provide assistance on planning issues. The meeting ended with an agreement that you would visit the site that month and also write to the Department confirming that you were prepared to take on the work and state your charge. You were also given a copy of the GSI report, together with a map of the area outlining the piece of land which the OPW wanted to exclude from the site at the meeting

A. Yes.

Q. from the sale at the meeting.

You recall speaking with Mr. Carroll of the Department of Energy by telephone on the 22nd March, 1990. During this telephone conversation, it was agreed that the important consideration in the case was whether or not filing a planning application was the right option. Mr. Carroll asked you to address this fundamental issue in your report,

which would be assessed on the basis of three options:

A) excavation and removal of sand; B) screening; and
C) washing. In other words, that you would approach the
planning on the basis that there would be planning sought
either for excavation and removal of sand, or for both
those activities and screening, or for all of those
activities and washing, or a combination of any or one
or other of them?

A. Yes.

Q. You went on to state or Mr. Carroll went on to state
that the extent of planning permission sought would be
crucial to the prospects for the site. Mr. Carroll said
that washing would be extremely attractive because it would
raise the potential value of the site. You recall
indicating in passing that Roadstone would have less
difficulty with planning permission on the basis of an
application using their own network of roads, i.e. existing
direct access to the national secondary route N81, which
was the Dublin side of Blessington.

On the 19th April 1990, yourself and Mr. Smart or
Mr. Carroll and Mr. Smart met yourself and Mr. John Barnett
to discuss the prospects for planning permission in
relation to the Glen Ding lands. At the meeting you recall
concluding that planning permission would be difficult to
achieve, primarily because of access considerations. You
remember suggesting that the best option for the Department
would be to sell the site in total by public tender or

auction. You also stated that in such circumstances, it would appear that Roadstone, whose existing pit was adjacent to the Department site, would best be able to exploit the resources.

At the end of the meeting you were asked by the Department officials to include a value on the sand and gravel deposit as a sale price indicator in your final report to the Department.

You and Mr. Barnett submitted a joint report to the Department on the 30th April. The report, however, was dated the 25th April 1990. The report itself primarily dealt with the quantities of sand and gravel in the site, and you included in the report because I think Mr. Barnett's report is actually signed by both you; isn't that right?

A. It was on his notepaper, and I per pro-ed it on his behalf.

Q. The report itself dealt primarily with the quantities of sand and gravel in the site, and Mr. Barnett included in the report an estimate of the value of this material. Your portion of the report focused on access considerations and considerations relating to water on the site. You have, however, confirmed that water was not a headline issue but was only a factor in that it would not be difficult to find water on lands in Ireland in general.

You expanded upon your advice contained in the report in your covering letter of the 30th April 1990. In this letter you set out the principal planning and development

scenarios to be addressed in deciding on the optimum way forward. The content of this letter in particular addressed the issues canvassed at your meeting with Messrs Carroll, Smart and Barnett on the 19th April 1990, at which, it will be recalled, you concluded it would be difficult for the Department to obtain planning permission itself. You outlined the three central planning considerations as being:

1. Access and traffic considerations;
2. Amenity considerations; and
3. Environmental Impact Statement considerations.

In relation to access and traffic considerations, you stated that the planning authorities would be more likely to give planning permission to an operator on the Glen Ding site who already had a direct access onto the Blessington/Dublin Road through Roadstone's land rather than over the secondary Naas/Blessington Road.

In your letter, you reiterated that the risk of failure to obtain planning permission could not be entirely dismissed.

You further advised that it might be best for the Department in the first instance to invite offers by tender for the sale of the deposit, but that if the Department failed to attract a good offer, then it would have no option but to seek planning permission itself. You recall that up to this point, you were unaware of any offers received by the Department from any potential purchasers. You were also unaware of the fact that an offer was being

discussed with the Department at this particular time.

On the 18th October, 1990, together with Mr. Barnett, you met with officials from the Department. At this meeting you advised that Roadstone were more likely to get planning permission because they were working in the area and would probably seek planning permission to work the area on a phased basis, i.e. as an extension to its long-established workings. The report at this meeting, prepared by Mr. Smart and contained on the Department file, contains the following passages, and we'll be coming to these passages later on, but they are as follows:

Under the heading of "Roadstone Residue", the note says:

"Mr. O'Malley indicated that he had no idea of what residue Roadstone had. However, they were now working pockets outside the main plant, which would suggest that the residue was getting low. He estimated that apart from the cost of travel, it would cost Roadstone about $\text{£}1,000,000$ to relocate the plant elsewhere."

It goes on, under the heading "Disposal of Record": "The question of how best to dispose the property was then discussed. Mr. O'Malley doubted if many would be interested if it was let out to public tender without planning permission. Apart from Roadstone, he could not see anyone bidding more than $\text{£}400,000$ for the area. Roadstone might offer $\text{£}600,000$ ".

You do not recall making the above statements which were attributed to you by Mr. Smart at the meeting. You state

that these were not your advices, but you would have understood their sentiments at the time. And you confirm that these advices were made by given by Mr. Barnett.

You further state that Mr. Smart did not distinguish between yourself and Mr. Barnett in relation to the comments made.

In relation to the following sentences, and you quote:

"When told of the offer received from Roadstone, he strongly advised negotiating the sale of the reserve to that company. Roadstone had the optimum chance of getting planning permission".

You cannot say whether you made these comments or not, but would have agreed with their sentiments at that time.

Although you gave evidence at the public hearings at the Committee of Public Accounts inquiry into the Glen Ding sale, you did not correct the record as contained in Mr. Smart's minute of the 18th October 1990 because it was not shown to you, and furthermore no documents were given to you prior to the giving of your evidence.

Now, just in relation to your experience, Mr. O'Malley, you describe yourself as a chartered civil engineer and planning consultant. Would your practice in planning consultancy have covered all types of development, or did you have some particular interest in sand and gravel or quarries in general?

A. No, when I started work on my own account in 1973, I covered everything in sight, because there wasn't that much

stirring in the planning arena at the time. As time went on, I got some work in the minerals area. And in fact, over the years, over the decades, quite a lot of work in the extractive industry.

In response to a letter from the Tribunal solicitor of the 3rd May, I have just handed in a resume of what I have been doing for Roadstone and others over that period. I am sorry I couldn't get it to you before today

Q. Don't worry

A. But it will give you an indication of what I was at down the years.

Q. Well, my understanding is that you worked in relation to either planning applications, rezoning applications, resisting planning applications, resisting third-party objections to planning applications for various people in relation to various mineral deposits or quarry sites around the country, including a number of Roadstone sites or related sites, such as John A. Wood or whatever?

A. Correct.

Q. But you also operated acted for a number other quarry operators and landowners in relation to quarries?

A. Yes.

Q. So you had what I'm trying to get at is, am I right in thinking that while it mightn't have been an exclusive part of your practice, you had a good experience of how to cope with or deal with or present planning applications relating to the extractive industry?

A. Yes.

Q. You say that when you were initially contacted in relation to this application, you went out and you visited the site?

A. Yes.

Q. Now, at that stage, your initial brief, as I understand it, was to consider how you might get planning permission?

A. Well, I think I was retained to get permission.

Q. That's what I mean.

A. I raised the issue of whether or not that was the thing to follow or not.

Q. I appreciate that. And if I framed my question in that way, I didn't mean that. What I'm saying is you were initially instructed to get planning. What I mean by you were instructed to go out and see how you'd get planning was you were instructed to go out and see how you would make the application?

A. Yes.

Q. In other words, an application was going to be made, and you were being asked to frame it?

A. Yes.

Q. And to that end, you were asked to visit the site?

A. Yes.

Q. And do you know, was that your first visit to this site?

A. The first time I had ever been there was at the Department's

Q. Presumably you were aware, or were you aware that this was this area was, in general, an area where a lot of sand

and gravel was extracted for the Dublin market?

A. I did indeed. I grew up in County Kildare, so I was close to the sand and gravel areas.

Q. And were you familiar with the Roadstone site next door to this?

A. I had done work for Roadstone on it in 1973.

Q. In the same site?

A. In the Roadstone lands adjoining the Glen Ding lands.

Q. Dorans Pit, is it?

A. Dorans Pit, as they call it, yes.

Q. So when you visited it in 1988, or whenever it was you were first instructed, can you recall the extent of your visit?

Did you walk the entire lands, or what did you do?

A. I would have walked as far as I could. They were fairly densely vegetated. You had to stick to the pathways and driveways to get through it. You couldn't penetrate every last acre of it.

Q. I think at that stage you did have the GSI report; is that right?

A. Yes.

Q. And that would have given you an indication of where they had conducted borehole investigations and so forth?

A. It gave you an understanding of what was under the ground which you couldn't, obviously, see.

Q. Right.

When you went out to look at the site, you say that you were given a map outlining the piece of land which OPW

wanted to exclude from the site?

A. Yes.

Q. If you look at the two maps on the monitor, the computer monitor rather than the television monitor next to you, do you see that?

A. It's a long time since I looked at these maps. Yes, I am with you.

Q. The map on the right is Mr. Barnett's map that he prepared on your instructions, I suppose, for the purpose of delineating an area from which sand and gravel would be extracted. And if you look at the map on your right in the sort of more vanilla-coloured paper, whatever, you'll see that there is the overall outline is the outline of all of the State lands in the area?

A. Yes.

Q. Do you follow that?

A. Yes.

Q. And if you can follow the cursor now: Do you see where the cursor is moving?

A. Yes.

Q. Where the cursor now is is the road from Blessington to Naas; can you follow that?

A. Yes.

Q. Just so that you can again orientate yourself.

A. Yes, that's it.

Q. Then where the cursor now is is roughly where the rath is, Rath Turtle Moat?

A. Yes.

Q. And I have put it more or less in the centre of the area delineated in red by Mr. Barnett as capable of providing substantial deposit of sand and gravel?

A. Of being worked.

Q. Now, the other map, the map on the left, to which I have now moved the cursor do you see that?

A. Yes.

Q. The area outlined in red in that is the area that was actually sold to Roadstone at the conclusion of this process that you were involved in?

A. I see. I can make one comment on that.

Q. Yes.

A. That shows a long sliver of land west of the road to Naas. I don't think that ever was inside the maybe it was inside the boundary I was dealing with; it's so long since I looked at it, I can't be sure. Yes, okay, I understand what you are saying.

Q. But in any case, I am right in thinking, am I not, that you never got that map?

A. I have never seen that map before, no, correct.

Q. When you were looking at it, what you were looking at was the entire lands, in a very general way, owned by the State; and you were shown an area of land, presumably around the point where I have now put the cursor, that OPW wanted to exclude?

A. I remember the separateness of it. I can't recall the

boundaries of it. Its purpose, of course, was to do with an antiquity.

Q. Yes, it was; there was a national monument there.

Now, you got your brief in around 1988, but it was in fact sometime, I think, before sometime after that before you met Mr. Carroll, who was the official that ultimately was most actively involved in concluding this process?

A. Yes.

Q. That was in 1990. Do I understand that at one point you had some exploratory discussions with the County Council, Wicklow County Council and Kildare County Council

A. Yes.

Q. in relation to this project?

A. Yes.

Q. And you were exploring with them, presumably in a relatively tentative way, what sort of a reception an application for planning permission to extract sand and gravel from this area would receive?

A. Yes.

Q. And if could I refer you in that blue book of documents, if you have got it it may be black in your books Book 75, and if you could go to Tab 60. Do you have that book?

I'll get you a copy of it; it might be much easier.

A. I brought the ones the smaller ones.

Q. If you stay where you are, it's better we give you the documents, unless you have got some notes on your own documents that you want to refer to.

A. Yes.

Q. Now, you can see that at this point you were communicating with a Mr. Smart?

A. Yes.

Q. Rather than Mr. Carroll, who was the official to whom you ultimately submitted your report?

A. Yes.

Q. And this communication seems to have been after you had spoken to Mr. O'Gallachoir, who was the planning officer of Wicklow County Council at the time?

A. Yes.

Q. Now, the copy of this document to which I have referred you is not very good, but I don't think that the parts of the document that are fairly obscure are going to trouble us too much. You can see that it's dated it's on your headed notepaper; it's dated 8th September 1989, addressed to Mr. Tom Smart, Higher Executive Officer, Department of Energy, Forest Service, Leeson Lane, Dublin 2?

A. Yes.

Q. "Re Blessington sand and gravel deposit". Do you see that?

A. Yes.

Q. "Dear Mr. Smart,
"As arranged, I met Mr. O'Gallachoir, Planning Officer, who had been on holidays for some time" I don't know what's in there "And Mr." something else, who seems to have been the engineer for the Blessington area.

A. I could probably get I have my own file with me; I could

probably decipher that for you. But

Q. Please do. Maybe you'd read out your copy, then, and we can make corrections.

A. "Dear Mr. Smart,

"As arranged, I met Mr. Frank O'Gallachoir, Planning

Officer, who had been on holidays for many weeks, and

Mr. Frank Clarke, Executive Engineer, Blessington area, of

Wicklow County Council, in Blessington yesterday and

discussed the sand and gravel extraction with them. The

following points were discussed".

I'll read the first one for you: "I should discuss the

access question with Kildare County Council, the adjoining

authority." The land adjoined Kildare, and its access was

in County Kildare".

Q. If we just take that point first. What you were looking at

here was an application by the Department itself to get

planning for this piece of land. Now, at this stage the

question of the ultimate sale to Roadstone hadn't arisen,

so you were simply seeking to ascertain how this planning

application on a stand-alone basis would be viewed; isn't

that right?

A. Correct.

Q. And your access was going to have to be out onto the

Blessington Road that we discussed a moment ago?

A. The Blessington/Naas Road.

Q. The Blessington/Naas Road, of course, yes.

You go on, then; perhaps you'd read the second paragraph.

A. "2. There may be local objections due to pit traffic having to pass through Blessington Village en route to the city, which doesn't arise at Roadstone's adjoining deposit and wouldn't arise if Roadstone access was used to work your deposit."

I think you can probably read the rest of them, but I'll read the whole lot if you wish.

Q. No, that's fine. So, again, do I take it that this indicates that there was some discussion at that stage of what the

A. I can't be sure whether I talked to the engineer in Kildare at that stage or not, but without I certainly did talk to him afterwards, either before or afterwards. But I knew enough myself, from my experience, that access was something that well, central to most planning applications, and it was fundamental to this one.

Q. You went on to say: "They'll probably put a time limit on any permission that is granted. 10 years, 15 years were casually mentioned."

This now presumably is a reference to Wicklow County Council?

A. Yes. I had met Frank O'Gallachoir in Blessington by arrangement. It was a first meeting a first discussion with him, so this was early days.

Q. You go on to say: "The problem of after use was mentioned without a solution being evident." What does that refer to?

A. Well, one of the difficulties, or one of the matters to be resolved with an extractive application is, what's to become of the land when it becomes useless for the purpose, when it is disused and it's of no further obvious use? And the planning system that we have likes to see it put to a useful purpose. But, you know, this was my first meeting with the Planning Officer of the area; we are standing at the south end of Blessington looking across at it. So we were never going to resolve that issue standing on the side of the street.

Q. You were flagging it as an issue?

A. Yes. It would have been evident to me without it being recited here, but it would have been information central to the Department making decisions that something would have to be done about after use.

Q. Well, we know that Mr. Barnett, in his proposals, seems to have been alive to this issue, because he suggested an after use which would have entailed restoring the place to mainly amenity value in his report.

A. I see. I mean, there are many options which very often they try to restore them to some form of agricultural use. Anything other than walking away and leaving it like a lunar landscape.

Q. Again, I take it this is to make your application attractive to the planners?

A. Most authorities in those days they certainly expected that. Now they would insist on a full-life thing dealing

with what happens after the event.

Q. Right.

Paragraph 5: "Phasing was mentioned (I didn't on purpose advert to the question of subdividing the deposit into, say, three separate parcels)."

Why did you not, on purpose, advert to dividing it into three separate parcels?

A. I knew I could deal with that issue later. It wasn't a make-or-break issue when the time would come. The local authority, if they wanted it subdivided, they wouldn't need any invitation for me to do it; they'd impose a condition to that effect. And you'd understand the attraction of doing that: It means that when Phase 1 is done, you can do some form of restoration rather than having it waiting for everything else to happen after it.

Q. I see.

Paragraph 6: "Mr. O'Gallachoir would like the maximum use being made by retaining trees to screen the workings, especially when viewed from the Blessington Village direction." That's fairly self-evident.

A. Sorry to interrupt you; it's entirely obvious what it means. But it was it would be a difficult thing to achieve because a lot of the deposit was over the natural adjoining ground level.

Q. I see. Are you saying that where they would have most wanted trees, the extractive industry would have most wanted to remove sand and gravel?

A. Very much the case.

Q. So there was an immediate tension there?

A. Yes.

Q. "7. Apart from the antiquity identified by OPW for preservation, the area of which Mr. O'Gallachoir would in any event like included within the actual red line of the planning application site, he referred me to another antiquity, Item No. 11 on Ordnance Sheet No. 5 of OPW's record of sites and monuments. This appears to fall on your deposit as well. If it cannot be disturbed it will further reduce the yield from it. It appears to be centred in the vicinity of the first letter 'E' in the word 'Deerpark' on the Ordnance Survey plan of your deposit."

A. Yes.

Q. I'm looking at the maps on the screen.

A. Yes, indeed. I follow it.

Q. I think it's probably somewhere around

A. You had it

Q. It's around this area, is it?

A. If you go to the word "Deerpark" and go backwards the "D" of "Deerpark" is sort of lost on the "Antiquity"; that's why you can't see the start of the word.

Q. I follow.

A. It's the second letter, obviously. It's further south than where your arrow is now.

Q. You can see the "D", but my screen isn't big enough to show me now. In any case, that's the approximate area, isn't

it?

A. Yes.

Q. I am aware of that from another map.

Now, could we just take what you have written here piece by piece: "Apart from the antiquity identified by OPW for preservation, the area of which Mr. O'Gallachoir would in any event like included within the actual red line of the planning application site, you refer to another antiquity."

Do I take it from that that he wanted the existing Rath Turtle Moat within the planning application so as to give him control over it? Was that that

A. I have to say I can't recall, but that would ordinarily be his reason for it, yes. That's it will give him an opportunity to put in a condition looking after the

Q. Precisely; protecting it.

A. Mind you, I mean, it is debatable how much better off you are with that than having it outside the red line when it's intact anyway.

Q. I appreciate that, but I suppose from you can see, from a County Council planner's point of view, if he has got an important antiquity and it's within a planning application, he has control over it, because he can apply leverage, can't he?

A. That may be a convenient control, but he has plenty of other controls anyway.

Q. That's as likely

A. That's what he wanted. There was no reason why he couldn't

have it, all other things being equal.

Q. In any case, ultimately OPW wanted to control their own control over it?

A. Yes.

Q. And then he drew your attention to another antiquity which was in the area we mentioned a moment ago, and as you have pointed out to Mr. Smart, "If that can not be disturbed, it will further reduce the yield from the site."

A. Yes.

Q. "8. Mr. O'Gallachoir is going to consider whether an Environmental Impact Study is required. I hope he decides it is not."

Is that because it's another burden on an applicant, is it?

A. Yes.

Q. What sort of burden would that impose?

A. It would be a serious additional cost in the sense that it deals with the impact of the proposed scheme on the environment, and the environment is everything other than the scheme, from flora and fauna to ground waters to emissions to air. It would well, it's become a growth industry ever since it became the law of the land, and it would materially increase the quantity of work to be done and the cost of doing it, certainly by today's standards.

Q. Paragraph 9, you say: "I said we would apply for full and not outline permission."

A. Yes.

Q. "10. I said we only intended applying to extract and

transport the material, and that no washing or ancillary pit product manufacturing was intended."

Now, does that mean that in some way you had tested the ground and felt that you wouldn't get anywhere with a more comprehensive application?

A. No, I hadn't. I have to say that I can't recall the tripartite element that you referred to earlier between extraction, screening and washing.

Q. If I could just stop you there for a moment, Mr. O'Malley, because you are probably confused by a time sequence. I read out your Memorandum of Intended Evidence, which dealt with a period in 1990. This is in 1989, when you were dealing with Mr. Smart, and before Mr. Carroll became involved.

A. Right. My recollection, and it's not great after so many years, was my recollection was we just wanted to extract the material; we wanted permission to extract it. I thought that had been perhaps agreed, but I may be wrong.

Q. I see.

A. And therefore, since it would be easier, ordinarily, to get a consent to extract rather than part process, it was, if you like, an opportunity by me to say, "Well, I'm only doing this; therefore, there should be fewer reasons to refuse me".

Q. I see. And going on to Number 11 in the letter, you say:

"I said we'd use the existing access to the forestry.

Afterwards I inspected the access again, and I feel we may

have to relocate it somewhat further northwards to give better exiting traffic visibility values, especially towards the south, where the bad bend is rather too close to the existing forestry access. That relocated access could involve an application to Kildare County Council.

There is an old access to a disused quarry about 100 metres north of the forestry" I can't read the next bit.

A. "North of the forestry access which might" I can go back to my own one here.

"There is an old access to a disused quarry about 100 metres north of the forestry access which might suit fine."

Q. "I now propose to confer with officials in Kildare County Council, and I will report to you just as soon as I have done so."

A. Yes.

Q. If you pass on, in that Book of Documents you are on, to Tab 67.

A. Yes.

Q. This is Mr. Carroll's note of a meeting he had with you on the 22nd March of 1990.

A. Yes.

Q. It says: "I spoke to Kiaran O'Malley today concerning progress in his evaluation." This seems to be a telephone call you mentioned; that seems to be my impression.

"I spoke to Kiaran O'Malley today concerning progress in his evaluation and preparation of papers for planning

permission for the Blessington site." That would seem to suggest that as of that moment, he was under the impression that the planning was going ahead as a planning application.

A. Yes.

Q. Then he goes on in the memo. "He said" meaning you

"that in consultation with his two subcontractors,

Walsh Acoustics Associates

Barnett Minerals Consultants

"He expected to finalise his preparation and submit a report to the Department by mid-April. I stressed the importance of adhering to this deadline in view of the length of time involved so far."

Now, what would you have been using a firm of acoustics consultants for?

A. Well, one of the more even with or without an environmental impact assessment, the issue of noise would always be considered in relation to such a matter.

Q. I see.

"We agreed that the important consideration in this case was whether or not planning approval was the right option.

I asked him to address this fundamental issue in his report. This would be assessed on the basis of three options:

"(A) excavation and removal of sand

"(B) screen

"(C) washing". That's the point you made in your

memorandum.

"The extent of planning permission sought would be crucial to the prospects for the site. For example, (C) would be extremely attractive because it would raise the potential value of the site. However, the environmental hazards would render it difficult to secure permission. On the other hand, (A) would be a more realisable option because Roadstone are engaged in the same activity next door. It would of course nevertheless be none too easy to achieve because of the apparent damage already caused to the local environment. He indicated though in passing that Roadstone might have less difficulty with permission on the basis of an application using their own network of roads.

"In any event we agreed to meet and consider all matters following the submission of his report. We would at that stage arrange to meet Wicklow County Council officials to explore our options and chances of success."

So it would appear that at that stage Mr. Carroll was forming the impression that perhaps resulting from your earlier letter to Mr. Smart that the question of planning permission was one that was going to have to be decided itself; in other words, would we apply for planning permission or would we not? You were no longer simply in the application for planning permission mode.

A. No, the longer it went on, the more nervous I got about putting our feet in the planning waters. And that should be evident as the thing unfolds.

Q. Well, isn't that evident from this, to some extent?

A. Indeed.

Q. That you passed on from simply having an instruction to apply for planning; you are now being formally asked to consider whether this is a good idea?

A. I am sure I raised the question myself in the first instance.

Q. I see.

Now, if you go on to Tab 68, you'll see another memorandum of Mr. Carroll's, and this is a memorandum of a meeting that, according to Mr. Carroll, took place on the 19th April, 1990. Do you see that?

A. I have the document. I am looking for a date oh, I see it, the 20/4. I see that.

Q. It says "Tom Smart and the undersigned met Kiaran O'Malley and his associate John Barnett yesterday." Meaning, therefore, the 19th April; do you see that?

A. Yes.

Q. "To discuss the prospects for planning permission for the Blessington sand and gravel site."

Now, firstly, can you remember, yourself, that meeting?

A. No.

Q. I see. Well I'll go through the memo.

"Following detailed discussion it emerged that pending completion of the first stage assessment, O'Malley will be concluding that planning permission will be difficult to achieve, primarily due to access considerations. It seems

the best option is likely to be for the Department to sell the site in total by public tender/auction. It appears that in such circumstances Roadstone, whose existing pit is adjacent to our site, would best be able to exploit the resource.

"Mr. O'Malley will finalise and submit his report by end of April with recommendations. He was asked also to include a value on the sand and gravel deposit as a sale price indicator."

Now, about a month prior to that, as we noted a moment ago, you had a general discussion with Mr. O'Malley, and the idea was you'd put in your report, it would be considered, and the Department would meet with County Council officials. By the 19th April, 1990, you are clearly if this note is correct, and I am sure you have no reason to think it isn't you were beginning to express very serious reservations about planning?

A. Yes.

Q. And the note suggests that at that stage it seemed to Mr. Carroll that the best option was just to sell the site in total by public auction and tender and let the market decide what to do?

A. I suppose that was the sort of conclusion coming out it was. But I suppose the conclusion that I should have drawn was: Enter the planning arena at your peril and not perhaps dabble beyond that.

Q. I see.

So if we could just pass on to Tab 70, which contains your report to Mr. Carroll dated the 30th April 1990, and with to which you had attached Mr. Barnett's report and which, as you say, you had PP-ed on his behalf.

Mr. Barnett's report I think dated the 25th April, 1990.

In your own report, or letter to Mr. Carroll dated 30th April 1990, Re lands at Blessington, Blessington, Wicklow County Council. You say: "Dear Mr. Carroll, "I refer to our meeting at your offices with Mr. John Barnett, Minerals and Environmental Sciences Consultants Limited, on the 19th April 1990.

"This report sets out the principal planning and decision scenarios to be addressed in deciding on the optimum way forward.

"There are three central planning considerations, as follows:

"1. Access/traffic

"2: Amenity

"3: Environmental Impact Statement.

"1. Access/traffic.

"Obviously 95% or more of the minerals will go to the city via the Blessington/Baltinglass road. Operators of the deposit other than Roadstone, who own the adjoining road, would be obliged to travel on the Naas/Blessington Road and then pass through Blessington village to the city.

Obviously, given the option, the planning authorities (Kildare and Wicklow) would prefer access to the

Blessington/Baltinglass road through Roadstone's land rather than over the secondary road, Naas/Blessington and thence through the village to Dublin. Even if Kildare/Wicklow County Council agrees to the access at the existing forestry access point, Roadstone or third parties might elect to appeal those arrangements to An Bord Pleanála and argue that the optimum or logical or indeed only adequate access would be through Roadstone's property. If access to the existing Naas/Blessington Road is approved, a hefty financial contribution towards road improvements required to make it adequate for heavy truck traffic is likely to be imposed by way of condition.

"2. Amenities:

"The site viewed westwards from Blessington is a prominent visual feature. It is part of a longer hillside of gravel, much of it removed, mostly by Roadstone. For that reason its loss may be resisted all the more by the Planning Authority and third parties (e.g. An Taisce). Of course part (the rath) is being retained, and part of the other slopes, especially towards the east, could also be sterilised. While the rath and other slopes could be sterilised, obviously the passage of heavy trucks through them for 10, 20, 30 or more years would diminish their recreational amenity value whereas access through Roadstone would not. It follows therefore that Roadstone has an access and amenity implication for this development, so they are very special adjoining owners.

"3. Environmental Impact Statement.

"This is required by Wicklow County Council. I have suspended further work on it for the time being.

"To reduce uncertainty, one can make inquiries at both planning authorities. However, searching queries may only have the effect of underlining problems, so that it is not always wise to articulate particular problems with authorities. Until the 19th April I had never been refused permission, either by the local authority or by An Bord Pleanala, on appeal for a sand and gravel working until I received the refusal for amenity and traffic reasons from An Bord Pleanala confirming the refusal by Kildare County Council for a modest sand and gravel working near Sallins, County Kildare. Copies of the planning authorities and An Bord Pleanala's decisions in that case are attached.

"While the Blessington amenities issues are not canal related, it is still a potentially serious issue, as is the question of access.

"I am therefore obliged to inform you that the risk of failure to obtain permission cannot be entirely dismissed.

While a permission removes all uncertainty and presumably maximises value, the converse is also true, i.e. that a refusal is fatal. Roadstone have shown an interest already, and there may be others, with or without permission.

"It may indeed be that no one will make a serious bid, other than subject to planning permission. It occurs to me

that your Department might be best advised in the first instance to invite offers by tender for the sale of the deposit. If it transpires that you receive satisfactory offers, then a deal can be concluded with that interest. If, on the other hand, you fail to attract a good offer, you may then have no option but to seek permission yourself.

"In relation to the question of value, I enclose herewith a report and the maps to which it refers, prepared by Mr. John Barnett on this topic.

"I hope that these commentaries are useful to you in making your decision. In the meantime we will defer any further work until we hear from you."

Now, I think the summary of that letter is, as you say, that you were flagging the extent to which an application for planning permission was far from a foregone conclusion, or getting planning permission was far from a foregone conclusion, and you might never get it?

A. Yes.

Q. You said that this could have the effect of inhibiting any offers for the land, if you put it on the market without planning permission, which may entail you having to make an application from a very weak position at the end of the day?

A. Indeed. It would be worse than not having entered the arena at all.

Q. Now, just one point you make here in the fourth-last

paragraph on that page of your letter. You say: "I am therefore obliged to inform you that the risk of failure to obtain permission cannot be entirely dismissed. While a permission removes all uncertainty and presumably maximises the value, the converse is also true, i.e. that a refusal is fatal. Roadstone have shown an interest already, and there may be others, with or without permission."

How did you know at that stage that Roadstone had shown an interest?

A. I am sure I was told by the people in Leeson Lane.

Q. Did you know what did you know about others?

A. I don't think I knew about any others at that stage.

Q. All right. What you were saying was there may be others?

A. Yes. I mean, I suppose what I really I suppose what I really should have said, or meant, would have been that this is something that the Department is that the Department might not manage itself, and that there are others who were better off. Roadstone, for example, were obviously better off; there might have been others. I didn't know.

Q. Right. And what you were suggesting is, put it out there and see what happens?

A. Indeed.

Q. Or consider putting it out there and see what happens?

A. Indeed.

Q. You wrote to the Department in those terms, and you sent in Mr. Barnett's report, and you anticipated, from your

earlier meeting of the 19th, that there would be some further contact. And there was contact, but not in fact until much later, until October of 1990.

A. Yes.

Q. And if I can refer you to Tab 84.

A. Yes.

Q. You will see a note by the Department of a meeting between the Department on the one hand, and yourself and Mr. Barnett on the other hand, at Clare Street on the afternoon of Thursday, 18th October 1990.

A. Yes.

Q. This meeting was attended on behalf of the Department by Mr. Sean Fitzgerald, the Assistant Secretary; do you remember him?

A. No.

Q. Mr. Gillespie, the Principal Officer; and Mr. Carroll, the Assistant Principal; and Mr. Smart?

A. I can remember Mr. Smart. I don't think I'd know any of the other three, and I have to say that I would have forgotten it was in Clare Street I thought all the meetings were in Leeson Lane.

Q. I see.

CHAIRMAN: Would that be because Mr. Smart was the longest serving of the civil servants that you dealt with?

A. Yes, I can still picture him, funnily enough. He wasn't a tall man. I remember him, I suppose, because the early days of us were with him. I think I might stagger a

Mr. Carroll all right, but I can't I am sure I wouldn't recognise the other gentleman.

Q. MR. HEALY: And if you look at the note of the meeting, Mr. Smart, who made the note, says: "That the meeting was arranged by the Forest Service to seek further information and advice from the consultant following receipt of an offer of $\frac{1}{2}$ 1.1 million for the Blessington site from Roadstone Limited. The following matters were discussed".

It starts off by referring to planning permission.

"Mr. O'Malley said that while we had an important deposit in Blessington, the new planning legislation made it more difficult to obtain planning permission. There was an access problem to the site, and while there was no suggestion that Kildare or Wicklow County Council would not allow a way out, there was no way of finding out what An Bord Pleanála would do. From discussions you had had with Kildare County Council, you got the impression that they would look favourably at the request."

Now, just taking these points one by one.

I think, from other notes we have seen, or other evidence we have heard regarding this meeting, you were initially you were discussing various aspects of the planning and other issues before you came to discuss the offer; is that right?

A. To discuss the offer?

Q. Yes.

A. I never I was what did I do with the offer?

Q. Just the sequence of the meeting, now, just concentrate on that. You were coming to a meeting. Did you have an agenda for the meeting?

A. No.

Q. And when you got to the meeting, am I right in saying that there was some general discussion first about planning issues? That seems to be what the note suggests and what other witnesses suggest.

A. I can't confirm or deny it, but I have no reason to doubt what the note is here.

Q. You had indicated that you felt that you might get planning permission from the County Councils, but you couldn't say what happened at An Bord Pleanala?

A. I have said before, I think I said it before the Public Accounts Committee, that the response I got from the Planning Department in Wicklow was not unencouraging. And I happened to know the engineer in Kildare that I talked to about the road access question, and it was looking promising enough there too. The real issue was not either authority, in my mind; it was Bord Pleanala was a real issue.

Q. Right.

A. Because I felt it was going to end up there one way or the other.

Q. I see. You go on: "Landscaping was another matter which would have to be overcome. Mr. O'Malley envisaged objections by An Taisce in this case. However, the fact

that part of the area was being given to OPW would help.

After some discussion it was agreed that it would be an advantage if Roadstone planted the area already used by them. Mr. O'Malley advised that Roadstone were the most likely to get planning permission because they were working in the area at present and would probably seek planning permission to work the area on a phased basis."

Do you remember giving that advice, or advice to that effect?

A. Yes.

Q. Now, I think you have already indicated that the next passage, under the heading "Roadstone Residue", and part of the passage under "Disposal of Property", you feel were not, although recorded as having been based on comments made by you, you think are more likely been based on comments made by Mr. Barnett; and he, I think, agrees that that's more his area than your area.

A. When I talked in private session to the officers of the Tribunal, I said I doubted it. Now, I have no doubt. It's not me, because I wouldn't have known what it cost to shift anything.

Q. Right. But I think, in any case, by this point, was there more of a round-table discussion going on, rather than a debriefing of individual experts on their fields of expertise?

A. There was yes, indeed. There was a pooling of the issues and trying to make decisions.

Q. I see. But it goes on, and I think it's at this stage now appropriate to say that it was Mr. Barnett who indicated that he had no idea what residue Roadstone had. However, they were now working pockets outside the main plant, which would suggest that the residue was getting low. He estimated that apart from the cost of travel, it would cost Roadstone about 1 million to relocate the plant elsewhere. Then under "Disposal of Property", again the note goes on: "The question of how best to dispose of the property was then discussed. Mr. O'Malley doubted if many would be interested if it was let out to public tender without planning permission."

I think Mr. Barnett confirms it's more likely he said that.

A. I have no doubt he must have, because I didn't know then and I don't know now the value of sand and gravel.

Q. But, again, I think I am right in saying that you wouldn't demur from that, as a non-expert in that area but with some knowledge of the whole sand and gravel business?

A. One didn't require any qualifications to know that you can that, what can I say, it was obviously my remit started and finished with planning, and I suppose it might have been wiser if I didn't partake in the round-table discussion, which sort of ended up with a decision to do with how you sold it or to whom you sold it. But I mean, you obviously I was quite clear you did not go into planning other than at your peril.

Q. Yes. It goes on: "Apart from Roadstone, he could not see

anyone bidding more than $\text{£}400,000$ for the area. Roadstone might offer $\text{£}600,000$ ". And again, this is Mr. Barnett has confirmed that this was probably him saying that.

A. All right. Thank you.

Q. "When told of the offer received from Roadstone, he strongly advised negotiating the sale of the reserve to that company. Roadstone had the optimum chance of getting planning permission. The property without the timber was valued at $\text{£}1.25$ million with planning permission, and if we were able to get that amount for it, lock, stock, and barrel, without planning permission, we should take it.

The part of their offer which depended on planning permission could be long drawn out, and he advised that we should try and get Roadstone to drop this component.

Acceptance of their offer on a two-installment basis might be an incentive to the company.

"After some discussion it was agreed that we should supply Roadstone with a figure of 1.5 for the property with a view that they would increase their present offer to 1.25 without any planning component."

Now, I think that, judging from the evidence we have heard to date, these you and Mr. Barnett were certainly contributing to this part of the discussion, in any case?

A. Yes.

Q. You were now told that whatever view Mr. Barnett had about somebody offering $\text{£}400,000$, Roadstone possibly offering $\text{£}600,000$, that you were now told, Roadstone had offered

1.1 million, subject to a planning condition, admittedly,
as regards 400,000 of it.

A. Yes.

Q. And it seems that the sort of consensus of the meeting was,
"Well, if you have got 1.1 million from them with a
planning condition, attached, if you could get rid of that
planning condition, you'd probably be in business". Would
that be a fair way of putting

A. As you can see, my focus was totally on the planning issue.
And as far as I am concerned, any arrangement that my
clients had which removed them from the risk of planning
was a good one. Or to put it the opposite way: Don't go
near one that's subject to it.

Q. I just want to be clear about this. I think Mr. Fitzgerald
has given evidence I'm not trying to suggest that the
officials here were hanging on your every word, but there
was a round-table discussion, as frequently occurs when
experts in different fields are together, and people may
throw in their three-ha'pence worth into a decision where
they don't have any particular expertise; but they are
there, and they are present, and they are helping out with
their views. That seems to be what happens in this case,
is it?

A. Yes.

Q. Now, at that point, did you know anything about other
expressions and I don't mean did you have any
speculative knowledge; I mean did you have any actual

knowledge, either from the officials or from any other source of any other interest in these lands, anybody else having said having written to the Department or met the Department and said, "I'd like to buy these lands"?

A. At one of the meetings I can't remember which one, but it probably was in Leeson Lane; most of them were they mentioned a Mr. Johnston, Mr. Brendan Johnston. They asked me, did I know him? I said yes, I knew Brendan Johnston. They were I think it was Mr. Smart asked me that question, and something like, you know, "Did he look was he serious, or what was he?" So I said I knew him, and that so far as I could judge, he was familiar with that business, or that area of interest.

Q. And was that the only time Mr. Johnston was mentioned to you?

A. Yes, that I can recall. Certainly, having read the documents here, I learned more about what was actually going on, Mr. Johnston's document, but I would think that I knew nothing of his offer. I just knew that he had been in discussion with them.

Q. I see. Now, could you just, for a moment, again, look at the two maps, and if you look at the Ordnance Survey map as opposed to Mr. Barnett's map, which is the left-hand map.

A. The right-hand one?

Q. The left-hand one.

A. Yeah.

Q. The more vanilla-coloured one is Mr. Barnett's one. The

left-hand one is I would call the Ordnance Survey type map.

A. Right.

Q. Now, when the Department were canvassing how to approach this matter, the evidence they have given is that they from the consensus of all the views being expressed, the evidence they have given is that they targeted Roadstone as the people they could squeeze the most money out of for this property.

A. Okay.

Q. Because Roadstone had one advantage; that they didn't have an access problem.

A. Yes.

Q. Now, were you aware of any of the other sand and gravel operators in this area and what access they might have had onto it?

A. No.

Q. Thanks very much, Mr. Barnett Mr. O'Malley, I beg your pardon.

MS. LEYDEN: No questions.

MR. STRAHAN: No questions.

CHAIRMAN: Very well, I'll take you next, Mr. Regan.

THE WITNESS WAS EXAMINED BY MR. REGAN AS FOLLOWS:

Q. MR. REGAN: I just have one or two questions, Mr. O'Malley.

I represent the Department in the Tribunal.

Would you say that you have given impeccable advice on the planning issue, you identified you followed the possibilities of getting planning permission, you

identified that it could be a major stumbling block, and you advised that in fact it would be fatal to pursue and to be refused planning permission. Now, in all of this advice, this professional advice which you provided to the Department, is it correct that the Department followed your advice?

A. It would appear so.

Q. And this was the best professional advice available; it followed that advice on the planning permission. It also had the best available advice on valuation from

A. Well, I couldn't comment on that. I am not qualified to comment on that.

Q. Procured from Mr. Barnett and

A. Well, I understood that to be the case, but I can't comment on it other than I suggested him.

Q. And you were a witness at the meeting you were there at the meeting of the 18th October when the issue of the potential prices available in the market, the 400,000, 600,000 and I think we have established that was Mr. Barnett's advice?

A. Yes.

Q. But it also emerged from that meeting that the best mark was perhaps Roadstone, because of certain advantages it would have?

A. Yes.

Q. So in all of this, the Department was following the best professional advice; it had secured professional advice and

it followed that advice?

A. Yes.

Q. And in the negotiations, which I think were carried out in a very business-like manner, would you, in your view, would you consider that the Department officials acted in a professional manner and secured the best deal?

A. God, I wouldn't even dream to comment on that.

Q. Very good.

A. I got I dabbled enough on the edge of a valuation, more than I should have, perhaps.

Q. Yes, okay, well, we'll leave that. Can I just ask you one question which is perhaps more in the pure planning area.

Mr. Johnston, in his evidence last week, made a statement in relation to planning and ways around planning. And he stated that if I can read out that part of the transcript in relation to pursuing the planning option.

"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 of 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", etc.

So he was emphasising that one way or another, he would

have secured planning permission; but if he didn't secure planning permission, had he succeeded in acquiring Glen Ding, that he would have sought an exploration licence, and in this way would have ultimately been able to exploit the resource. Can you just comment on that possibility

A. I have no knowledge of that procedure at all. I am sorry.

Q. In your mind, that procedure wouldn't exist?

A. I can only guess that it is for the purpose of exploration that you can do some examination of what's under the ground to make a decision about what might be there. But I can't see in a million years how it could possibly be used as a substitute for planning permission, which is clearly required by the law of the State.

Q. Very good. Thank you very much.

CHAIRMAN: Very good. Thank you very much, Mr. O'Malley, for your assistance.

MR. HEALY: That's the end of the witnesses today.

CHAIRMAN: Eleven o'clock tomorrow morning.

The Tribunal adjourned until the 10th May 2006.