

THE TRIBUNAL RESUMED ON THE 10TH MAY, 2006 AS FOLLOWS:

MR. HEALY: The delay that we have just had has been occasioned by some last-minute information that's been made available to the Tribunal. I am now going to call a witness with particular expertise in the both in the valuing and the marketing of sand and gravel deposits.

Now, before doing so, there are two things I should mention. I have been asked by Roadstone to refer to one matter which arose in the course of Mr. Barnett's evidence, where Mr. Barnett indicated that it was his belief that 5 million tonnes had been extracted from the Glen Ding area since the land was sold, and that stretched over the 16-or-so years since then. This equated with his predicted annual extraction rate, there or thereabouts.

Roadstone have indicated, and there will be a witness to deal with this this afternoon, and if necessary some further clarifying documentary material later on, have indicated to the Tribunal that in fact, of that tonnage, no more than in or about 500,000 tonnes came from the Glen Ding lands, to include both sand and gravel extracted from the old Department pit and subsequent extraction under a planning permission, because I think the extractions from the old Department pit were and I'll be corrected if I am wrong on this were halted by a planning enforcement initiative.

Now, I don't think it's necessary to bring Mr. Barnett back in relation to that because it doesn't in any way weaken

the force of the point that he was making, if you like, in defence of his own predictions.

Before I call Mr. Lockwood of GVA Grimley, there is one other thing I should say, and it's this: that in trying to find a witness that could throw some light on the approach adopted by the Department to the marketing of this sand and gravel deposit and the approach, in particular, to the valuation of the deposit, the Tribunal had considerable difficulty finding anybody with specific experience in or knowledge of the Irish situation. And in fact, as I mentioned yesterday, when the Tribunal's solicitor contacted the usual agencies in relation to these matters and the Tribunal was pointed in every case in the direction of Mr. Barnett as the person who was the respected authority, the Tribunal also endeavoured to obtain the assistance of the Valuation Office, but they indicated that this was not their area. Ultimately, the Tribunal obtained a report from an English consultant, from a firm with considerable expertise in this area. Obviously a number of limitations are going to apply to that evidence, in that the period in respect of which or the time in respect of which the expert has been asked to evaluate the approaches is long passed. The amount of available information is limited, and more importantly, the amount of comparable information is particularly limited.

In recent times the Tribunal has learnt of a number of sales of land containing sand and gravel deposits related

to the Blessington sand and gravel deposit, but unfortunately the information available to the Tribunal concerning those sales in other words, the details concerning those sales and the amount of sand and gravel is so limited that if they were to be, as it were, included in the computations and calculations, they would give a distorted effect or a distorted impression of the transaction carried through by the Department. And I hasten to add that I am not suggesting that they would have given the impression that the Department's transaction was conducted at a poor value. Rather, they would have suggested that it was conducted or carried through at an outstanding valuing, but unfortunately the basis upon which that impression could be created would be a very limited one and there would be no point in pursuing it.

I simply mention those points so that the limitations on the evidence of the next witness will be understood before he comes into the witness box.

Mr. Christopher Lockwood, please.

CHRISTOPHER LOCKWOOD, HAVING BEEN SWORN, WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

CHAIRMAN: Good morning, Mr. Lockwood. Thank you for your attendance.

Q. MR. HEALY: Mr. Lockwood, you are a member, or a partner in fact, of the firm of VGA Grimley; isn't that right?

A. Correct.

Q. Where does your firm operate from?

A. It has nine regional offices in England and associated offices throughout the world.

Q. Does that include Ireland?

A. Yes. We have an associated practice in Dublin, Donal O'Buachala, and we have just started out a practice in Belfast in the last six months.

Q. What range of work does your firm what range of services does it provide?

A. GVA Grimley provides property advice to all aspects apart from selling residential dwellings and agricultural land.

That would include building surveying, planning, selling industrial land, minerals, waste, any other type of property, car dealerships, full range. Anything to do with property, compensation, investment.

Q. So you provide a service to property owners wishing to sell their lands, develop their lands, get planning permission for their lands, get compensation for compulsory purchase of their lands, and you provide services to, presumably, developers wishing to buy land, assess land for valuation prior to purchase and so forth; would that be a fair description?

A. I specifically give specific advice to minerals and waste and recycling clients. That's all I specialise in.

Q. You are a partner in the firm with a particular role in the I think the minerals, waste and recycling department; is that right?

A. Correct.

Q. You have a Bachelor of Science, and I think you are a member of the Royal Institute of Chartered Surveyors; is that right?

A. I have a degree in minerals estate management, I am a chartered mineral surveyor, and I am a member of the Institute of Quarrying.

Q. I see.

Now, you were asked by the Tribunal to look at in general terms; we'll deal with the detail in a moment the sale process, the marketing process and the valuation process in relation to the disposal of the Glen Ding lands.

And what I propose to do is to go through your report, firstly, without much by way of comment, and then we'll come back and maybe you'll be able to answer a few questions I have about the report, and there may be one or two other matters arising from evidence we have heard to date.

You say, "Further to my instructions regarding the above property", meaning the sale of State lands at Glen Ding County Wicklow, "I set out below the scope of work required to assist the Tribunal in its inquiries into the circumstances of the disposal of the asset!

"1. To provide a view and comment upon the John Barnett valuation dated 25th April 1990, looking at mineral reserves, rate of projected output, average selling prices, mineral reserves held by adjacent owner (in particular the quality and quantity and the need to blend them with their

existing reserves), and the market.

"2. To comment upon the Geological Survey of Ireland report and the quality and quantity of mineral reserves available.

"3. Review and comment upon sale process and marketing of assets.

"4. Comments upon press speculation in respect of the value.

"I inspected the property with Pat Martin, the Roadstone director responsible for the Blessington sand and gravel pit, on the 16/9/05, and was shown all aspects of the property in question and the adjacent unit, which has been operated by Roadstone since the 1960s. We also viewed to the north, on Darkar's Lane, the Roadstone sand pit known as 'Red Bog' and the Hudson Brothers quarry and the Carnegie Quarry. I met John Barnett to discuss his valuation on the 19/1/06."

"Looking at each of the above in turn, I would comment as follows:

"1. In relation to Mr. Barnett, net valuation date of the 25th April 1990".

You say: "I have read the valuation and viewed plans JB1 and JB2 (3rd draft) and received a handwritten copy of his mineral reserve calculations and valuation.

"Mr. Barnett advised that plans JB1 and JB2 (3rd draft) were originally prepared in draft for submission as a planning allocation because Mr. O'Malley and himself were

of the view that they would generate more value if the site had planning permission for mineral extraction before it was sold. JB2 specifically shows an access out onto the public highway to the southwest, and the working scheme is independent of Roadstone's adjacent site.

"Having reviewed the planning position, Mr. O'Malley advised that obtaining planning permission would be troublesome and take some considerable time. At or about that time the Department of Energy requested Mr. Barnett to undertake a valuation of the property, after which an offer was received from Roadstone.

"The working scheme in JB2 (3rd draft) is in my view sympathetic to the environmental and geological issues on the site. It provides for a well screened and phased operation using a dry screening plant because of a perceived shortage of water on the site and access out onto the public highway to the southwest.

The plan JB2 is a plan we have in fact been looking at on the monitors over the last few days, and you should see it on what I call the vanilla, what some of my colleagues say should be called the sepia-coloured map on the right of the screen; do you see that? Can you see that, Mr. Lockwood?

A. Yes.

Q. You recognise that map?

A. I do.

Q. "Mr. Barnett used data provided by the Geological Survey of Ireland report on the whole land holding dated June 1988 by

P. McArdle, P. W. Warren, and I. M. Quinn. He utilised a net working area of 83 acres to generate a gross reserve of 8.43 million tonnes, from which he deducted 20% for fines, to provide a net workable reserve of 6.744 million tonnes."

"The reserve assessment is in my opinion acceptable, my only concerns being: 1) that a 20% allowance for fines appears excessive when the adjacent Roadstone pit has averaged 10% to 13% since the 1960s. Mr. Barnett advised that he adopted 15% and then added 5% to be on the safe side. 2) the application area is perhaps too close to the rath, with only a 10-metre stand-off. I believe the Planning Authority would have sought a greater distance, of perhaps 30 metres. This could therefore have reduced the reserve figure by circa 43,000 tonnes, to 6.7 million tonnes.

"Mr. Barnett's scheme relates to a stand-alone reserve, whereas Roadstone would, subject to planning, be able to work through the eastern boundary and increase the reserve. By my calculations, this would have added a further 535,000 tonnes of sand and gravel. So in summary, the net saleable reserve is probably somewhere between 6.7 and 7.235 million tonnes, after deducting a 20% allowance for fines.

"There are five key factors listed below which influenced the valuation which I will comment upon:

" projected sales per annum

" royalty per tonne

" deferment to gain planning permission

" valuation yield

" residual value.

"Projected sales per annum.

"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.

"Generally a net present value 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.

"In 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 the norm. 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 $\frac{1}{2}$ 860,000 without planning to IR $\frac{1}{2}$ 1.3 million with planning.

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

"1) Roadstone as an extension to the adjacent site, and

"2) stand-alone site in the value range above of

IR $\frac{1}{2}$ 860,000 to $\frac{1}{2}$ 1,300,000.

"We have been provided by Roadstone with sales from

Blessington pit between 1995 to 2004. No data exists

before this 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 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 upon Mr. Barnett's

valuation of IR $\frac{1}{2}$ 1,160,000 to IR $\frac{1}{2}$ 1,680,000 for an

unplanned and planned reserve.

"Royalty per tonne payable:

"The royalty adopted at 50p per tonne was, Mr. Barnett

advised, at the top of the range when a more normal royalty

of 30p per tonne would have been reasonable. He advised

that a 10 to 15% royalty range based on the average selling

price was a commonly adopted market royalty, in his

opinion. Evidence of selling prices from the television

documentary and press article" and this is a reference to, I think, a Magill article which I mentioned in the opening, and to an RTE Prime Time programme which examined aspects of the transaction, and we'll come to that in detail with evidence of selling prices from the television documentary and press article of 1982 to 1983.35 provides for a royalty range of 20p to 30p, and 32.5p to 48.7p per tonne, which supports his approach that 50p per tonne was at the top end of his royalty range.

"We have been unable to unearth any royalty evidence at this time, as we understand most acquisitions were based on a multiple of agricultural value. A royalty based upon 10-15% of average selling price would not, in my experience, have been unreasonable, based upon evidence in England.

"We have been unable to find any average selling price information at the time and have therefore had to rely on the information in the press article and the television broadcast.

"Deferment to gain planning permission.

"Mr. Barnett has not deferred the royalty stream to reflect the time-frame to obtain planning permission but has increased his yield from 12% to 20% which, in effect, provides for an allowance of 33% to reflect the hope value of obtaining permission of IR 1986,000.

"This is a valuer's judgement and reflects the risks involved, and in particular the comments of Mr. O'Malley

that obtaining permission would be troublesome and take a considerable time.

"Valuation Yield.

"The all-risk yield represents the valuer's evaluation of the risk and return attached to the property. The yield quoted is calculated by dividing the annual rent received by the capital value or sale price of the property. A lower yield is a more attractive and secure investment, whilst a higher yield reflects the greater risk.

"In my experience in England at the valuation date a yield of 10% -12% reflected a high-quality mineral deposit with planning permission and 15-20% for one of poorer quality and higher risk.

"In my opinion, therefore, the yields adopted are not unreasonable for the time of the valuation.

"Residual Value.

"The residual value rights applied at IR $\frac{1}{2}$ 500 per acre are in Mr. Barnett's opinion a standard rate to reflect the quality of restoration undertaken by mineral companies at the time. The restoration proposed on Plan JB2 is to amenity woodland with glades.

"I have been unable to find any comparable evidence at the time to check this figure. The rate per acre adopted in my experience are not, however, unreasonable in the overall scheme of things and represents only a small level of value. In addition, I would have reduced this value further because there is no deferment to reflect when the

land would become available once restored.

"Way Leave and Water Right.

"Mr. Barnett advised that a discount should apply 20% to reflect the need for a right of access if this was not available. I assume this applies specifically to Roadstone although they are not mentioned by name. The previous valuations assumed a stand-alone site with its own right of access.

"In my view, Roadstone would gain significant benefits from acquiring the site, namely:

" it would be an extension to their own site, and obtaining planning permission would theoretically be easier than on a green field site.

" they could work at a higher rate than the projected 337,000 tonnes per annum.

" they already had a depreciated plant and infrastructure on site and so theoretically could pay more.

" they had an established market.

" they had no access issues.

" additional reserves would be secured from working through the eastern boundary.

" they had water for processing.

" they had most to lose in the market if a competitor came in.

"This would have enabled them to pay more than the market because they are a special purchaser and would have generated what is called "marriage value"; i.e., an

enhanced value from merging two sites. Against this, however, is the issue of access, which Mr. Barnett has made a discount of 20% for to arrive at a market value of IR £1,040,000. This discount is, however, from the value with planning permission, when Roadstone purchased the site without planning consent. A range of values with and without planning permission would therefore have applied to IR £690,000 and IR £1,040,000 to reflect the access issue from Roadstone's viewpoint.

"The discount is from the value of the site operating at 337,000 tonnes per annum and not from what I believe Roadstone might have achieved. I would not have recommended the vendor to accept anything less than full market value because the benefits to Roadstone cancel out the way leave issue. This point, however, is down to negotiation and the strength of each party's bargaining position.

"In my view there were two scenarios, the first which Mr. Barnett has undertaken assuming the site was to be worked on its own, and secondly on the basis that Roadstone were to acquire the site. This may, I believe, have justified a higher output of, say, 500,000 tonnes per annum and a reserve of 7.235 million tonnes. I would have made no discount for access, on the basis that the benefits to Roadstone meant they could afford to pay more. These assumptions would have generated a value range of between IR £1.687 million with planning permission and

IR 1.212 million without planning permission".

"2. Comment upon the Geological Survey of Ireland report and the quality and quantity of mineral reserves available.

"I have looked at the report dated June 1988. In summary, the property extends to 72.9 hectares (180 acres) and is underlain by a significant quantity of potentially saleable sand and gravel. A mixture of techniques were used to assess the deposit, including 25 boreholes using different drilling methods over a heavily wooded area with severe topography changes.

"Two main categories of sand and gravel were identified, with the better quality category consisting of material containing probably less than 20% fines, while the lower quality category contains in excess of 20% fines, but probably less than 40%. The better quality category corresponds to the quality of sand and gravel being currently extracted from pits in the Dublin area.

"They advise that a number of factors will undoubtedly limit the proportion of sand and gravel which can be economically extracted. These include the position of the access road, the presence of a rath, and practical limits to the amount of sand and gravel which can be extracted adjacent to the property limits. However, although recognised, these factors have not been included in the quantitative assessment of the sand and gravel resources present.

"The report therefore concluded that a reserve of sand and

gravel over the whole" and you emphasise that word "property of 7.4 million cubic metres exists, or 11.86 million tonnes if we use a conversion factor of 1.6 tonnes to the cubic metre. After deducting 20% for fines, they arrive at a net workable tonnage of 9.47 million tonnes for the whole site, including the rath. We do not believe this assessment at the time to have been unreasonable. It did not, however, take account of what realistically could have been worked.

"Mr. Barnett's reserve assessment uses the above report and concludes a net saleable tonnage of 6.744 million tonnes from 83 acres. If we pro rata the 9.47 million tonnes to a workable area of 180/83 acres, this provides for a net tonnage of 4.37 million tonnes, which is somewhat less than Mr. Barnett's 6.744 million tonnes. We do not therefore believe the net reserve adopted by Mr. Barnett in his valuation to be an unreasonable interpretation of the Geological Survey of Ireland report.

"The latest planning application by Roadstone in 2004, which was recently refused, covered an area of 23.9 acres and assessed a gross reserve of 2.329 million tonnes. This was based upon a geophysical survey undertaken by BMA" that's a private geological or geophysical consultancy.

"If you deduct 13% for fines loss (worst recorded by Roadstone plant since 1960), this reduces to 2.206 million tonnes or 84,780 tonnes per acre. This figure again compares favourably with Mr. Barnett's assessment of

6.744 million tonnes over 83 acres, or 81,253 tonnes per acre.

"3. View and comment upon the sale process and marketability of the asset.

"We understand that 58.6 hectares (144.8 acres) was sold to Roadstone as part of a private treaty and was not advertised on the open market to generate a best-bid situation. We don't have any specific details on the marketing campaign. However, we have set out below a process which we feel would have been a more appropriate way of generating the most interest and therefore the highest price in the open market."

You have a number headings under which you describe the matter and on the basis of which the marketing might have been approached.

"Indication of value.

"When providing a market strategy, it is imperative to establish a marketing value, and therefore we would recommend that a desktop valuation is carried out of the property based on the information available and from this provide a range of values so when indicative offers are made, guidance is provided. This stage of the process was undertaken by John Barnett.

"Strategy:

"Our strategy for disposal would involve seeking indicative offers for the property. The offers would then be discussed with the client, and a list of selected parties

would be invited to provide best and final offers.

"Marketing:

"In order to fully expose the property to the market, the following steps would be recommended:

"Information sheet:

"An information sheet would be prepared which would include location and site plans together with a full description of the asset. In addition, other information would be provided, including title plans, rights of access, forestry, planning documents, geological surveys and mineral reserve calculations.

"Advertising:

"We would recommend that an advert be placed in the appropriate trade magazines in Ireland and the UK to expose the property to the market.

"Mailing:

"An extensive mailing of the information sheets to an agreed list of those companies operating in the minerals sector together with local landowners.

"Data room:

"Preparation of a comprehensive data room providing details for the property for those who express an interest.

"Following receipt of indicative offers from those parties that have expressed an interest, we would then discuss these with the owner, and from this list we would narrow down to two or three and request best and final bids.

Following this process, the highest bidder would be

informed and heads of terms subject to contract drawn up setting out the appropriate information and the agreed price.

"This process allows for everyone" and you emphasise that word "available in the market to have an opportunity to submit bids. Roadstone were always going to be the favourite, but the value of the sale will usually increase when you have more than one bidder. It is essential, therefore, that other operators were encouraged to bid in the knowledge that Roadstone would have had to have approached them, or to push the Roadstone bid up".

And you emphasise this point: Without this process you can not guarantee market value.

"I discussed the market position with Mr. Barnett, who emphasised the market was taking off at the time, but no one knew whether it would be sustained. He believed the following operators with outputs shown into the Dublin market would have been interested, with Roadstone showing the most interest, for obvious reasons.

Treacy Enterprises: 1,000,000 tonnes p.a.

Hudson Brothers: 200,000 tonnes p.a.

Carnegie: 200,000 tonnes p.a.

Kilsaran: 200,000 tonnes p.a.

Readymix: 1,000,000 tonnes p.a.

Roadstone: Less than 1,000,000 tones p.a. (ex Blessington pit)

"At that time Mr. Barnett had worked for most of the

operators, who tended to buy minerals freehold at between 1.5 and 2 times agricultural value. He was of the view that Roadstone were not short of reserves and imported material for processing into Blessington from surrounding reserves and even from other operators. He also believed that an alternative access based upon his Plans JB1 and JB2 could have been achieved for what was one of the closest green field mineral sites to Dublin.

"Overall, there would, we believe, have been interest from the market for the deposit, although Mr. Barnett is of the view that only Kilsaran, Readymix Ireland and Treacy Enterprises could have met the price that Roadstone paid.

"The question we have therefore is, 'Was it the right course of action to deal solely with Roadstone?' The simple answer to this is no, because you won't be sure you have achieved market value.

"There is no doubt this was a sensitive site which would have attracted a lot of attention if it had gone to public tender, and no doubt some searching questions for the vendor on the effect on the rath. It may even have had the effect of putting some prospective purchasers off or reducing the sale area. It should not be forgotten, though, that all minerals and waste sites are sensitive, and the "Not in my back yard" syndrome is a popular stance from the public.

"Going down the Roadstone route avoided this situation.

The only realistic alternative would have been to have gone

to a selected group of interested parties and quarrying companies on a private and confidential basis by way of a sealed-bid scenario whereby Roadstone would have had to bid on the basis of some competition.

"The argument that Roadstone may have gone away is not one I would agree with because it was too valuable to them.

Finally, because of the sensitive nature of the site, it would have been prudent to have instructed an independent auctioneer/estate agency with experience in this process to handle the sale and maintain an arm's-length transaction.

Then you comment about some initial mentions in the media concerning the value of the size of the deposit.

"With regard to press coverage" in fact, I gather there have been more, but at the time you were asked, in any case, your attention was only directed to two "Media reports, including a written article in Magill, date and source unknown; and secondly, a Prime Time television programme dated 5th November 1996, for which I have been provided with a video.

"The article focused on the sale process to Roadstone. It states that Roadstone was the highest offer received.

However, the sale of the site was not advertised. It makes reference to 24 million tonnes of sand and gravel being available. There is in my opinion no foundation to use this tonnage. Using a workable area of 83 acres used by Mr. Barnett, this would provide for a mineral reserve of 289,156 tonnes per acre at an average depth of 71.4 metres,

which is clearly unrealistic, and over 3 times greater than actually exists.

"It also makes reference to the amount paid, which has been quoted at IR£1.26 million, which suggests a capital value of only 2p per tonne from the 24 million tonnes of sand and gravel identified. From my calculations, this actually breaks back to 5.25p per tonne and not the 2p per tonne stated. In addition, the market price for the sand and gravel was quoted at between IR£2 and IR£3 a tonne, thus generating revenue for Roadstone of between 38 million and IR£57.6 million, allowing for extraction costs of IR£1 per tonne.

"I can find no logic for the range of revenues quoted above. Using the 24 million tonnes would provide for a range of revenue between 24 million and £48,000,000.

"In conclusion, I believe the article to be misleading in terms of not providing proven facts or calculations, and paints a picture of the site being sold at a price far less than its true commercial value.

"The television broadcasts main focus is on the quantity of mineral reserves, the sale price and the issues regarding planning permission.

"It incorporates an interview with Dr. Peter Coxin of Trinity College Dublin who sets out his calculation of the mineral reserves. He made specific comments in terms of quality and quantity during this interview. A summary of his assessment is set out below.

"40-41% of the land is good quality mineral with an average depth of 20 metres, estimated reserves of 7.5 million tonnes.

"29-30% is of poor quality mineral reserves with a depth in the order of 10m providing a reserve calculation of 2.6 million tonnes.

"30% of the land has no conclusive details, and he estimated a usable depth of 3m, thereby providing 0.8 million tonnes.

"This provides for a gross mineral reserve of 11 million tonnes or a net tonnage of 8.72 million tonnes assuming a 20% deduction for fines. By my calculations, and using a conversion ratio of 1.6 tonnes per cubic metre, the area of good quality mineral extends to 57.91 acres, the poor quality mineral to 40.15 acres, and the inconclusive area to 41.18 acres, thereby giving a total surface area of mineral deposit of 139.24 acres. The video stated the working area to be circa 90 acres, which leads me to believe the 11,000,000 tonnes is therefore overstated.

"The programme spoke to Stephen J. Kee, an aggregate manager at Omar, who passed comment upon the average gate price in production costs. He quoted the average selling price in Dublin at the time of IR £3.25 per tonne with a production cost in the order of IR £2.25 per tonne therefore providing a profit of IR £1 per tonne, which is similar to the prices quoted in the article of £2 to £3 per tonne for the sale of material.

"We have requested from Roadstone their gate prices over the last 15 years, in particular at the date of the sale of the property; however, they were unable to provide this material.

"Planning permission.

"In 1994 the property was zoned for forestry and amenity only" I don't think we need concern ourselves with the planning issues in 1994 so far as they were dealt with in the programme.

You go on in your overall conclusion to say sorry, you say "In conclusion, the programme provides a balanced examination from all sides, regardless of how these views conflict.

"Overall conclusion:

"In my opinion the price achieved for the asset was in the right order.

"I would not, however, recommend dealing solely with Roadstone, because you cannot be sure you will achieve market value. There were, however, sensitive issues on the site which led to this course of action. A sealed-bid process from selected interested parties and the quarrying sector would under the circumstances have been more appropriate. It should also have been handled by an auctioneer/estate agency with experience of such work at the time in order to maintain an arm's-length transaction."

Now, that's the end of your report.

Now, the first, I think, point you make in relation to the

approach adopted by the Department and by Mr. Barnett is in relation to the allowance for fines. You note, on the second page of your report, that he made a 20% allowance for fines. And I think that am I right in thinking that follows from the Geological Survey of Ireland report, does it?

A. Yes.

Q. Now, you obviously have the benefit of additional information obtained to enable you to report, and also I think you take a view on this matter, having regard to Roadstone's interest in the asset, you suggest that a lower allowance for fines would have been more appropriate; isn't that right?

A. Yes, based on the information I had subsequent to that, but I could see with the way he had estimated it from the Geological Survey and from the fact that there may be a shortage of water and dry screening, he was taking a conservative approach to be on the safe side.

Q. The second point you make is that the application area he chose, or the extraction area that he identified, the extraction area which is outlined in red on the sepia-coloured map on the right-hand side of the map monitor, you feel that that didn't provide for a sufficient stand-off at the rath and that there would, in fact, have been a small overestimate by him of the extractable material at 43,000 tonnes; is that right?

A. Yes, the boundary on that plan comes right up to the edge

of the rath, and I think the Planning Authority would have wanted more of a stand-off for that.

Q. I think, if we can jump to another part of your report immediately. If you look at the boundary to which I have now drawn the cursor do you see that boundary?

A. Yes.

Q. That's the boundary with the Roadstone site; do you recognise it, in general terms?

A. Yes.

Q. You say that and this is of relevance to your overall point in relation to the overall approach you say that had that in circumstances where Roadstone were the purchaser, they were able to drive straight through that boundary so there was no need for a stand-off on that side?

A. No. That would have generated more tonnage for them.

Q. I mentioned this point to Mr. Barnett, and his response to me was well, I don't think he disputed that point, but what he did say was that the depths of sand and gravel at that point is not as high as in the best parts of the area reserved for extraction, so that the losses, he felt, might have been less than you calculated.

A. The mineral to the top of the screen is thinner; it thins to the north and it gets thicker to the south. So there is more savings more extra mineral on the southern end. It's an estimate. It's less than 10% of the total reserve he estimated. So it's not significant, but it would have been an additional benefit to Roadstone which nobody else

would have had.

Q. Now, I think the without going into each and every detail of each and every point at which you might differ from the valuation in details, and all valuations can be, if you like, on the high side, might be on the high side one valuer's valuation might be on the high side of another valuer's valuation in relation to one point and on the low side in relation to another point, and yet, taking one thing with another, all the swings and roundabouts, the valuations can come out at roughly the same figure; isn't that right?

A. They are in the same order, yes.

Q. But you make a more fundamental criticism in this case, I think, of what you regard as the failure to distinguish at a certain point in the process between the need to have a stand-alone valuation, on the assumption that you are going to put this on the open market, and a more specific valuation focused on Roadstone, where you were going to sell to them only, or where you were going to negotiate, at least, with them exclusively?

A. When they started off on the process with Mr. O'Malley, they were looking at getting planning permission for the sites and were looking at a stand-alone site, which was a reasonable approach to take. The response from the Planning Authority was obviously negative in certain areas, and they decided that obviously if they got a planning refusal, that it could potentially cause them severe

problems. So the advice then was to go to tender or to market the site. Now, standing back from that, the object of the exercise is to generate as much value from the site as you can. And in my view, there were two purchasers here: There was a purchaser who would have worked the site on their own, and there is Roadstone; and there are significant differences between each of those two angles as to what they potentially might have paid for the property.

Q. The evidence the Tribunal has heard from the officials is that at a certain point in the process, they effectively targeted Roadstone as the purchaser from whom they were going to extract the most money.

A. Well, certainly Roadstone would have been favourite to buy the property, because they had most to lose. They wouldn't have wanted someone else coming in next door and competing with them directly into the Dublin market. So, yes, they were favourites; there is no doubt about that.

Q. But what I'm saying to you is that the evidence that we have heard is that the officials and we weren't aware of these matters when you were instructed to look at this because the officials actually, in their own minds, were targeting Roadstone. And do I understand you to say that in those circumstances, a more formal process of building up or generating a different valuation approach should have been adopted where you decided to target a particular purchaser?

A. Yes, I think you could have gone for a wide range of values

if you were specifically looking at the Roadstone.

Q. Mr. Barnett, in his valuation, alluded to the discount that might be appropriate in the context of the additional costs of obtaining an independent access, and you have made some comments on that. But I suppose, in fairness to

Mr. Barnett, he did suggest that if the Department were to negotiate with Roadstone, there was a sort of a round-table discussion about it, he'd have suggested to them that while a discount might be appropriate for somebody who didn't have access problems, Roadstone should be approached on the basis that no discount should be allowed; they should be approached on the basis of what he believed to be the full market value. And in terms of approach, that's consistent with your opinion; isn't that right?

A. It is.

Q. But you go one step further, I think, in suggesting that you could have squeezed even more money out of Roadstone; isn't that right?

A. The benefits to Roadstone, in my opinion, would have been significant. And they would have generated more value from the property and as such, could afford to pay more than anybody else.

Q. Now, these negotiations were conducted by experienced and highly trained officials in the Department of Energy, but they were dealing, obviously, with presumably also experienced executives of Roadstone, but individuals who had one huge advantage: namely, that they were sand and

mineral or sand and gravel experts themselves, although perhaps not formally qualified in those fields, like you.

Have you any comment to make on allowing the negotiations in this case to be conducted by officials rather than the type of trader that your firm might have used to do the haggling?

A. I wouldn't expect an official to have a detailed knowledge of how a site operates, and the arguments for and against prices going up, and what an operator could afford to pay, and what the beneficial arguments would have been like. They have already got a plant on site; it's already been depreciated, and therefore if they are going to use that plant for another 20 years, for the life of the Glen Ding reserves, then obviously their costs are going to be substantially lower. So there is arguments there that could I feel benefited someone with minerals expertise who was at an arm's length from Roadstone and the Department

Q. Can I just take you up by "arm's length", do you mean across the table?

A. Across the table, but to be able to negotiate directly. If you are instructing an agent, the objective of the agent is to obtain the best value for your client. His objective is to get the highest value out of that. I'm not saying that the officials weren't, but obviously it would be their objective to squeeze Roadstone on every avenue they could generate as to the angles whereby Roadstone could afford to pay more.

Q. Well, if I can just tease that out a little bit. I take it you are not, of course, suggesting the officials didn't have the same objective: "Let's squeeze as much as we can out of Roadstone". What I am asking you is what additional benefit would there be in having an expert like you across the negotiating table as against an official who had the benefit of Mr. O'Malley's and Mr. Barnett's reports?

A. You'd have the benefit of the negotiation skills in dealing with minerals companies on a regular basis and the sort of arguments they will put forward for keeping the price as low as they could.

CHAIRMAN: Well, you would have envisaged that some firm, never mind your association with them in recent times, such as O'Buachalas, who specialised in valuation of agricultural and industrial properties might have had some of these marketing skills?

A. Well, they would certainly have had the marketing skills to sell as an agency. How much skills they have got in selling minerals, specifically, I don't think they do a great deal of that.

CHAIRMAN: But the debating process and the focusing upon matters such as the negative point that you made, in other words, that apart from the pluses to Roadstone of getting the property, there was a significant minus if a competitor was right cheek by jowl with them. These matters that might have been

A. Yes, Roadstone, there was a significant advantage to

Roadstone preserving their market, and it's important to have understood that, from the negotiation point of view, as to how much benefit it would be to them.

Q. MR. HEALY: While I appreciate that you have concluded that the price achieved was in the right order, nevertheless, in your report you do suggest that in a situation where you were focusing exclusively on Roadstone, you would have been looking at a different set of parameters, with a lower figure of 1.2-odd million and a higher figure of 1.68 million?

A. Yes. That's based on Mr. Barnett's valuation and my assessment that they may have extracted 500,000 tonnes per annum; i.e., a higher rate.

Q. Even for I'm not saying or suggesting that you are stating that 1.68 million was achievable, but do I understand you to mean that you could have gone in with that sort of figure in your mind, 1.68, 1.7?

A. I think so, yes.

Q. The civil servants in this case went in with 1.5, which was 200,000 over Mr. Barnett's top valuation of in or about 1.3. I note your suggestion that Roadstone would not have gone away. If you were putting a top value of 1.687, or even we'll say 1.6, for argument's sake, one assumes that you would have been going in with a higher figure, would you?

A. Normally you'd have started at a higher figure, yes.

Q. Would there not have been a risk, if you went in at a

higher figure than that, that you might have driven

Roadstone away altogether?

A. Well, I have seen comment on that, but my view is the site

was so valuable to Roadstone this is one of their best

sites, close to the Dublin market you know, they

wouldn't want anybody else to get their hands on that

reserve. I can't see I couldn't see Roadstone walking

away.

Q. The other one of the other major points, the other major

thrust of your report is that in the case of an asset like

this and we need to orientate ourselves in time and

place in the context of the 1990s, when a million

pounds-plus was an enormous sum of money compared to what

it might seem today, in the context of today's property

values but you suggest quite an extensive quite a

comprehensive pre-planning stage to marketing this asset,

including advertising it nationally, internationally even,

and so on. One of the issues that's been canvassed in the

evidence is that this was a potentially controversial site

with a number of amenity issues, and indeed other issues,

both with respect to the site itself and the surrounding

area, and there was an apprehension on the part of

officials, and I think this was alluded to in evidence,

that if you allowed the this controversy, or a

controversy of this kind to be ignited, you ran the risk of

sterilising the site completely, either because you would

make it impossible or very difficult for anyone to get

planning or because community pressure might preclude a government department from disposing of the site. Do you understand my point?

A. Yes.

Q. Have you any comment to make on those two latter points?

A. Well, I would agree that it's a sensitive site. Without a doubt there would have been a public outcry. Having said that, most minerals and waste planning applications do generate that type of response. They are sensitive sites always. So, the fact that it may have ended up and there would have been pressure, obviously, to preserve the rath and the environment around the rath, the public footpaths through the glades up to the rath; and as I have said, there could have been pressure to reduce the sale area, and it could well have put prospective purchasers off by the scale of the objection and the media interest. So you have that.

However, it is a valuable mineral asset. A very valuable mineral asset, potentially, subject to getting planning permission, in close proximity to Dublin. And obviously I would have expected all the main operators to be interested in that size of deposit, in which case the object would have been to try and get a bidding situation to achieve best market value.

Having said that, it was a sensitive site, and the owners would have had some searching questions to answer as to why they were going to be digging up, you know, very close to

an ancient monument. So I can see that you know, that would have been a difficult position for them, as to whether to go out to tender or as to whether to say, "Well, Roadstone are favourites", and they will get the best price from them, and they can afford to pay the most, and to go down that route.

Q. One of the documents that you have had access to and I am not going to go into it in detail; we can, if necessary, produce it is a survey, a geophysical survey produced or presented by Roadstone in support of one of their planning applications on this site. You have called it the BMA survey; isn't that right?

A. Yes.

Q. Now, that survey was in respect of an application made by Roadstone in 2004 for 23.9 acres, and it assessed a gross reserve of 2.329 million tonnes.

Now, I suppose, speaking as a layman, my first comment on that is that the that survey only applies to 23.9 million tonnes or 23.9 acres, sorry, of the deposit, and therefore how reliable is it for you to try to extrapolate from that over the full extent of the deposit?

A. Well, certainly that is the most detailed survey that's been undertaken on the site. In the previous applications by Roadstone in 1997 and 1999, there were no detailed information on actually what the reserve was they were actually applying for in the area. They applied for a certain rate of output over a certain number of years. So

that tonnage that was additional information that the Planning Authority asked for it wasn't supplied originally by Roadstone; it was asked for additionally by the local Planning Authority does support the levels of tonnage that were adopted by Mr. Barnett in his valuation.

Q. But what do you say to my suggestion, speaking as a layman, that you have extrapolated from that, isn't that right, from that information which applies to 23.9 acres, you have extrapolated from that, if you like, a figure per acre for the effectively for the entire acreage. How reliable is that as an exercise?

A. Well, obviously it's only roughly a quarter of the site that Mr. Barnett was looking at originally, but it does give a good indication of the level of tonnage, in my opinion, that covers the whole site. The site does vary from the top end, the mineral reserves are thinner, and they come to the bottom end.

Q. Right. What area of the site do you know what area of the site that 23.9 acres applies to?

A. It was mainly towards the lower end of the site, which would have the heavier reserve, if I recall. But I don't have that plan in front of me.

Q. Is that this area where I am now putting the cursor over, where you have as the deepest?

A. I am pretty sure it was the deepest end of the site.

Q. If necessary we can clarify that later on, if anybody has any question of it.

I think you alluded to some other planning applications made by Roadstone in which, as you say, there was no assessment given by Roadstone of the overall tonnage of the sand and gravel, or the overall quantum of the sand and gravel deposit they wished to mine or extract; isn't that right?

A. Correct.

Q. You have, I think, had an opportunity of examining a number of environmental impact statements accompanying those applications in which reference is made to extraction rates; isn't that right?

A. Yes.

Q. Now, I mention one of these EISs or perhaps we may need to refer to all of them. I can hand them out, and if necessary, people can look at them after lunch.

MR. HEALY: What I would suggest at this stage, sir, rather than hopefully, in any case, generate a situation in which Mr. Lockwood would have to stay too long, is that I would hand those documents out. I want to say that they have been available to the Tribunal, but it's only in recent days that the Tribunal has examined aspects of them in the context of some of the questions being pursued in the Inquiry regarding the quantum of the resource.

I am going to I am suggesting that I ask Mr. Barnett to make some comments on them or Mr. Lockwood to make some comments on them, and that you would then rise and maybe resume earlier after lunch, so as to give people who

haven't examined these before now an opportunity of digesting the information.

CHAIRMAN: It seems sensible.

Mr. Strahan?

MR. STRAHAN: I have no objection.

MR. HEALY: Now, I haven't handed out the entire environmental impact statements in the cases of these applications, because they run to hundreds and hundreds of pages, most of which throw no light whatsoever on the matters in issue, sir.

And what have been handed round are selected extracts from the EISs that appear to relate to the questions I want to take up with Mr. Lockwood, and in the afternoon, we hope, with a witness from Roadstone.

Q. MR. HEALY: Now, as you said, Mr. Lockwood, the earlier applications, rather than giving an estimate of or a detailed report on the quantum of the reserve in respect of which application the application was being made, gave instead an extraction rate, or applied for, if you like, an extraction rate.

And if you could if you have got a copy of it, if you could look at the 1997 EIS, Tab 138 in Book 76, and if you could go to page 6 of the Environmental Impact Statement, to para 212, you'll find the statement that "It is proposed to extract not more than 800,000 tonnes per annum from the proposed pit extension over a period of up to 15 years.

Now, on the face of it, obviously, if you could extract

800,000 tonnes from the proposed pit over a period of up to 15 years, that would suggest that the applicant had the impression that he had quite a substantial reserve; isn't that right?

A. Yes, if you multiply it up, the maximum he was proposing to take out was 12 million tonnes.

Q. Now, the application was in respect of a pit extension, and the Tribunal has been informed by Roadstone that what was sought was permission to extract not more than 800,000 tonnes, which Roadstone interpret as up to 800,000 tonnes per annum. And Roadstone had informed the Tribunal that this was to allow them to blend the material from the pit extension with material in the pit that they were already operating; and they, I think, suggest that they estimate the total reserve at 5 to 6 million tonnes.

Have you any comment to make on that statement, either in the context of this EIS or the other EISs to which I think you want to refer to in a moment?

A. The first application theoretically could have taken 12 million tonnes out, but the application area is similar to Mr. Barnett's planning application area, 80 acres against 83, and his assessment of the reserve there is obviously six and three-quarter million tonnes. So by my reckoning it's unlikely there would have been 12 million tonnes actually in that area if they had extracted at 800,000 tonnes per annum. There was somewhere near a half that tonnage.

Q. The reason I am asking you this question and pursuing this matter is not because I am suggesting that in any way Roadstone are endeavouring to misstate the tonnage. If there is billions of tonnes in there, that's their affair, obviously. I am merely trying to see whether any of this information throws any light or any different light on the quantum of the reserve. I think you have looked at some of their other EIS statements as well in respect of other applications made since 1997; isn't that right?

A. I have. The application in 1999 was for 4.2 hectares 10 acres. And again they suggested 300,000 tonnes per annum over ten years, which theoretically would have given them 3 million tonnes if extracted at the maximum rate. If you equate that, it works out at about 290,000 tonnes per acre, which is obviously excessive, when it's nearer probably to 800,000 tonnes.

Q. When compared with the GSI report?

A. Yes.

Q. Or when compared with the subsequent BMA report?

A. Those support more the reduced figure, but again it does say up to, and they do emphasise, and have done on all occasions, that they will blend from other areas of the pit which they do, because the variability of the reserve. So it will vary, and obviously these are worst-case figures.

In 2004, the last application, the again, they were saying 250,000 tonnes maximum, and again, if you divided that by that output, you'd be looking at about

75,000 tonnes per acre, which again supports the tonnage adopted by Mr. Barnett, in that order.

Q. While I have alluded to the 1997 application, where if you make the assumption I am not suggesting one should but if you made the assumption that there was 800,000 tonnes to be extracted over 15 years, you could arrive at a figure of 12 million for the quantum of the reserve; by the same token, I suppose I should point out that in the 2004 application, the area in respect of which the application was made, which is contained at Tab 140, page 11, was 13.36 hectares you will find it at page 1, para 1.3.

This was an application where initially I think extraction rates were given, but ultimately a report was requested, as you have already indicated; isn't that right? Am I right in that, Mr. Lockwood?

A. Sorry, could you repeat that.

Q. I was saying this was the report in which initially extraction rates were proposed but where the local authority insisted on a mining survey or a geophysical survey?

A. Yes, they wished to know what tonnage was in the ground rather than indication of what tonnage might be extracted per annum.

Q. And the extraction rates which are contained at para 3.17, which can be found on page 3-2, the pages are divided by reference to the headings, the extraction rate proposed in that application was 250,000 tonnes per annum from the pit

extension. And I think I am right in saying that is consistent with the geophysical survey, isn't it?

A. I'm trying to look at what the timetable was, ten years, yes.

MR. HEALY: Well, those are the only issues that I am flagging in the EISs, sir, and I think it might be appropriate, as there is very little else to ask

Mr. Lockwood

A. I think I made a slight error in one of the tonnage calculations, and I have used the wrong acreage, but it doesn't make a material difference.

Q. Do you want to correct it in any case?

A. I think the figure, the acreage I have used is less; it should have been a greater acreage on the Roadstone 2004. I think the numbers have been typed down wrongly, but they could well be slightly different, I think, about 5,000 tonnes per acre. I have said it should be about 84 or 81 84,000; I think it should be about 75,000 tonnes, I think. But it's not material.

Q. If necessary, you can be more precise about that once we resume after the break.

CHAIRMAN: All right, we'll take lunch a little early in those circumstances and resume at a quarter to two. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CHAIRMAN: We are sitting a little late to facilitate

Mr. Strahan having instructions from his client. I trust you are in a position to proceed.

MR. STRAHAN: Yes, sir.

CHAIRMAN: Very good.

CONTINUATION OF EXAMINATION OF CHRISTOPHER LOCKWOOD BY MR.

HEALY AS FOLLOWS:

Q. MR. HEALY: There are two outstanding matters, Mr. Lockwood. I was just looking at your calculations, and one thing I want to ask you about is the calculations that are contained on the fourth and fifth pages of your report. You will recall that in those at the end of the fourth page and the top of the fifth page, you have carried out a calculation to generate a value range for the lands at between 1.68 million with planning and 1.212 without planning, based on as I understand it, looking at the fourth page based on reading back into Mr. Barnett's figures an extractive rate of 500,000 tonnes per annum; is that right?

A. Mr. Barnett used 338.

Q. Yes, but your figures are based on simply adjusting his figures by incorporating or relying on an extractive rate of 500,000 tonnes?

A. Correct.

Q. And that's based on information that you have obtained since this sale took place and since Mr. Barnett conducted his calculations?

A. It's based on the overall output of Roadstone of circa a

million tonnes per annum.

Q. I suppose, just to be fair to Mr. Barnett, when he was doing his calculations, there are two things I suppose we should bear in mind. Firstly, as I am sure you will understand, he was initially preparing calculations with a view to valuing a stand-alone site.

A. Correct.

Q. And subsequently he was involved in discussions in the context of what has now proved to be effectively a targeting of Roadstone, but without the benefit of the information you obtained regarding Roadstone's extraction rates. You believe a higher extractive rate may be justified in the light of the information you have obtained; I am right in that, aren't I?

A. Yes.

Q. But if you were to put yourself in the position of the vendor, the Department, the officials or Mr. Barnett in 1990, and looking forward, would it be fair to say that you mightn't necessarily have come up with an extractive rate of 500,000?

A. There is an argument to take a lesser figure, potentially. It's a valuer's judgement, at the end of the day.

Q. Well, whenever lawyers are faced with valuers' judgements, one of the things they do and one of the things judges certainly always do is they look at the figures produced by two different valuers, and they try to get them to do their calculations using an in-between figure.

A. Right.

Q. So if you could do your the output of your figures is 1.68 million and 1.212 million. If you were to do that calculation at, we'll say, 400,000, or the difference between Mr. Barnett's figure of 340 and your figure of 500 is a difference of 160, isn't it: So 420, say; the halfway figure?

A. Yes.

Q. At an extractive rate of 420,000 tonnes per annum, what value would you put on the

A. The range of figures without planning would be 1,010,000, and with planning, 1.470 million.

Q. And obviously if you went up to 450, the range would be higher than that, and if you went down to 400, the range would be lower than that?

A. Yes, pro rata, roughly.

Q. There is one other thing I wanted to ask you about.

Earlier in the week Mr. Johnston gave evidence that when he looked at this site, he looked not just last week, in fact he looked not just at sand and gravel, but what he believed was the valuable deposit underlying that, of stone; and that when he was putting a value on the site, he'd have taken into account the stone underneath the sand and gravel.

Now, when I inquired of Mr. Barnett as to why he didn't take the sand and gravel (sic) into account the stone into account, his response was twofold: Firstly, he says,

or he said in evidence, that in making an application for planning permission, which is how his initial paper was put together, he would not have wished to aggravate the planners by introducing something that might excite a lot of controversy drilling, explosives, you name it, and so on nor, I suppose, although I am not sure he mentioned this specifically in this context, the length of time the operations would be going on.

But the second point he mentioned was that he figured there was about 20 years sand and gravel at an extractive rate of 320, maybe 15 years at an extractive rate of 500, we'll say, or thereabouts, in 16 or 17 years; and that looking that far down the line, certainly looking beyond 20 years down the line, you aren't going to be able to come up with numbers that would add much to your net present value. It wouldn't add a big positive to your net present value?

A. No, I would agree with that. Obviously you could start quarrying not with all of the sand and gravel, you could do it in phases; but yes, it would be post ten years in the future, so that income stream, assuming you could get planning permission, would be discounted significantly.

Q. Right. Thanks very much.

CHAIRMAN: I'll just see if some of the other legal advisers may have a few questions for you, Mr. Lockwood. Nothing arises, Mr. Barniville?

MR. BARNIVILLE: No, sir. Thank you.

CHAIRMAN: Mr. Regan, of course.

THE WITNESS WAS EXAMINED BY MR. REGAN AS FOLLOWS:

Q. MR. REGAN: Just on the issue of extraction rate and the valuation that follows from that, Mr. Lockwood, could I ask, is it based essentially on the adjoining nature of the site, or is it based on the market at the time, the possibility

A. You are talking about Roadstone's enhanced output?

Q. Yes.

A. Well, Roadstone at that time, as I understand it, were doing 1 million tonnes per annum, and obviously blending materials. Potentially they could have extracted a higher volume than the 340,000 tonnes which Mr. Barnett evaluated as a stand-alone site. They already had an existing market in sales of 1 million tonnes. So theoretically, they could have worked at a higher output.

Q. The reality is that Mr. Barnett, when he was asked about the Irish economy and the situation then, when he was doing his calculations, he stated that you were referring to the previous ten years; they weren't the happiest ten years in the last 50 years of the Irish economy. And in making his calculations, he also pointed out that figures that he was relying on would be 1988 figures, etc. So this was the information available to him then as distinct from information that is available to you now.

A. It is. I agree, the economy was poor in those earlier times. As I understand it, Roadstone were selling over 1 million tonnes in 1989, and in 1990 they were projected

to do 1,250,000 tonnes. So things were moving. And I think, if I recall, the average of the last seven years for Roadstone's output was 805,000 tonnes. That was through the depression.

Q. It was also put to you about the eastern boundary and the question of whether the advantage of the adjoining site; Mr. Barnett had said that the deposit thins out over that area. Now, I think you acknowledge that that is the case, but did you know that when you were preparing your report?

A. Yes, I saw the boreholes from the that Mr. Barnett had adopted, and my reserves used those boreholes, different depths throughout the length of the boundary.

Q. That's not referred to, though, in your report, that that end is thinning out?

A. I have calculated the reserve along the boundary at 500,000 tonnes.

Q. I just want to ask you one question, if I may, on the on your commentary on the sales procedure. Can I ask you, before you prepared this commentary, what material did you have in relation to the sales procedure that was followed?

A. I was given various letters about the history of the site, which, as I understood it, related to the direct negotiations with Roadstone, but no detail.

Q. But no detail. So what you have here is a pro forma procedure for an open or restricted tender; isn't that what you have set out in your report?

A. It's a suggestion for how you would proceed with the

marketing of an asset.

Q. And you are qualified in the area of the sales of sand and gravel quarries?

A. I have been involved with the sales of sand and gravel quarries, hard rock quarries, yes.

Q. And would any of those sales procedures, would they always follow this procedure?

A. They don't always follow the procedure. The procedure is directed with the client. The key factor will obviously be the number of people you think are going to be interested in the property and what the objective is.

Q. But are you aware of the basis upon which the procedure that has been followed in this case

A. The initial procedure, i.e. the sensitivity of the site, I wasn't aware of the direct issues when I set out that procedure.

Q. I just want to say the issue is alluded to in the report, the issue of the public tender, or the open tender procedure, the issue of planning permission is fundamental, and I think you acknowledge that had that been if there was public awareness of a sale of this land, it could create an effect on the value, the potential value of the site and on the issue of objection in terms of planning permission?

A. It would certainly raise a lot of objection. It could certainly have influenced the actual sale area, and it could potentially have persuaded some bidders that it was

too sensitive.

Q. And were you aware that Roadstone, in the negotiations, it had been indicated to them that this may be sold by public tender, during those negotiations?

A. I am aware that the idea was that it would be sold by public tender.

Q. In the negotiations with Roadstone, were you aware that

A. I don't recall that, no.

Q. So that the threat of a public tender, the threat that it may go out in the open market and be publicly advertised, was an element in those negotiations; you weren't aware of that?

A. That certainly that would certainly have influenced Roadstone, potentially, on what they were offering as part of a negotiated position.

Q. A negotiation that was an element that was important?

A. Yes.

Q. The other question that I want to ask you: You mention in your report that if not a public tender, a restricted tender, but this was effectively a restricted tender?

A. It was to one party.

Q. It wasn't just Roadstone that the Department were negotiating with?

A. Yes, as I understand it, it wasn't a tender, whereby everybody knew that selected parties were bidding on the same time-frame and the same deadline, and that they were competing, and that the best and final bid would be

submitted at a certain time and a certain day, and that if they didn't get the highest price, then they lost.

Q. I appreciate that, but the point is that this was not a pure negotiation with one party; there were two parties who were bidding on this and negotiating on this sale. And were you aware of the bids and the offers from Mr. Johnston?

A. I have seen some text, but I have not gone through that in any detail.

Q. So you weren't aware of Mr. Johnston's involvement in this?

A. I have heard the name

Q. When you prepared your report?

A. some of the background, but I have not gone into it.

Q. So what we have here is a theoretical pro forma expose of how you might carry out a sale, but actually it doesn't relate to what actually happened in this instance?

A. It doesn't relate to what happened in this instance, but you have got a high-quality mineral deposit very close to the centre of Dublin which, from my analysis, would have attracted interest from all the major operators in the market.

Q. Can I just ask you, when you talk about an arm's-length transaction, that an auctioneer or estate agent should have been employed in order to maintain an arm's-length transaction. How do you define an arm's-length transaction?

A. It's a negotiation by a third party who is acting on behalf

of the vendor.

Q. But is there any suggestion that arm's length my understanding of "arm's length", and I would put it to you is that it is a straightforward commercial transaction where one is trying to extract the highest price and the buyer is trying to pay the lowest price.

A. Yes.

Q. That is an arm's-length transaction, in simple terms. Now, are you suggesting in your report, when you use the term "Arm's-length transaction", that there is any what is meant by

A. I am not suggesting that there is any relationship or untoward issues with the between the vendor and the purchaser.

Q. So that the purpose for which you have said you would need an independent or might it might have been important to have an independent auctioneer or estate agent, the purpose for which you think that might be appropriate doesn't arise in this instance, because there is no question about it not being an arm's-length transaction?

A. No

MR. HEALY: Sir, that's not fair. I think the witness has said this morning what he meant by "arm's length". He literally meant experts across a table. I don't think he ever suggested, and I certainly made it clear this morning, there is no suggestion that "arm's length" was intended to indicate a proper as opposed to an improper thing. That's

not a fair thing to put to an expert.

CHAIRMAN: It's a somewhat subjective notion, Mr. Regan. I won't stop you exploring it.

MR. REGAN: I am merely asking the question because there are terms used in this report, there are information included in this report and is structured in a way which professes to comment on the matters which are before this Tribunal, and I am trying to find out the relationship between and the relevance of this report to the material and matters that are before the Tribunal. And I think, when a term like that is used, I am merely seeking to have it clarified. And I take the point that has been raised by Mr. Healy.

Q. MR. REGAN: There is one last point. You make the point that Roadstone had so many advantages that one could have pursued negotiations in a particular way to extract a higher value or maximum value. Can I ask you if you are aware, from the material that you had before you, that the Department officials were very much aware and had been advised of those advantages?

A. I am not aware of any of the arguments for or against.

Q. No are you aware that the Department was advised that Roadstone had advantages? The advantages, some of which you have outlined in your report?

A. I am sure they would have, but no.

Q. I put it to you the Department were aware of those advantages because they had been advised of those

advantages, and they had been advised of the likelihood that Roadstone would be the main bidder and the one who could pay a premium for this site; but you are not aware of the knowledge of the Department in that regard?

A. No.

Q. Because the evidence is that they were fully aware of that, and they maximized the value based on their knowledge of those advantages, and that on that basis, they achieved top dollar for the price they

A. As I said, the price is in the right order.

Q. Very good. Thank you.

CHAIRMAN: Allowing, Mr. Lockwood, for what now seem comparatively limited divergences on figures between yourself and Mr. Barnett, and for the fact that, as you have agreed, you have had access to more recent data that was not available to him, would you accept that I am justified in concluding that you are not taking serious issue with either his methodology or his substantive conclusions on the work then done?

A. Correct.

CHAIRMAN: As regards the hypothetical situation of some person with marketing skills being involved in the process, you were not of course here when the Roadstone evidence was given on an earlier day, and I think there was mention made of Roadstone having then had a period of economic difficulties that had occasioned quite a percentage of their staff being laid off.

A. No.

CHAIRMAN: Matters such as this would have been things that had to be approached on the hoof by any person who was there?

A. Yes.

CHAIRMAN: You can't, obviously, speculate as to all the circumstances going either way?

A. No.

CHAIRMAN: It would have had to be balanced by anybody advising a client?

A. Yes, that's correct.

CHAIRMAN: Very good.

Anything in conclusion, Mr. Healy?

MR. HEALY: Just one thing, sir. It doesn't pertain to the witness at all. I just want to make one thing clear.

Prior to this witness giving evidence, the Department sought or the Tribunal sought the comments of the Department or of any official for whom the Department solicitors acted in relation to this report and were told there were no comments. If there had been any, or any queries, they would have been addressed forthwith of the kind ventilated by Mr. Regan a moment ago.

CHAIRMAN: All right.

I am obliged for your attendance and preparation. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Dempsey, please.

DONAL DEMPSEY, HAVING PREVIOUSLY BEEN SWORN, WAS EXAMINED

BY MR. HEALY AS FOLLOWS:

CHAIRMAN: Thanks for coming back, Mr. Dempsey. You are of course already sworn.

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

As you will be aware, the reason you have been asked to return to the witness stand is to assist the Tribunal in its efforts to establish whether there is any other light that can be thrown on the quantum of the reserve of sand and gravel in the Glen Ding site. You will be aware that evidence has been given by Mr. Barnett, you will be aware of the contents now of the GSI report, and you will of course be familiar with the report commissioned by Roadstone itself in relation to its most recent application by the BMA consultancy; isn't that right?

A. That's right.

Q. But one of the queries which I think the Tribunal addressed your attention at one point arose from a statement in a 1997 Environmental Impact Statement which related to an application in respect of 32.4 hectares; in other words, roughly the whole of the John Barnett defined extractive area, something similar, 80 acres. And in that application there was a statement to the effect that it was proposed to extract not more than 800,000 tonnes per annum from the proposed pit over a period of up to 15 years. And certainly, on the face of it, one might be inclined to conclude that that meant that you had the impression that

there was 12 million tonnes of sand and gravel in that area, which would be much more than GSI or Mr. Barnett thought was in there. And while since then other EIS reports have come to hand which do give different figures, and figures which, in the most recent case in any event, are closer to or more consistent with the GSI figures, I'd just be interested in your comment on the suggestion that this could indicate that there was a 12 million tonne deposit in the site.

A. Yes, Mr. Healy. I think it's very important, in looking at the 1997 EIS, that one does not take that comment about extracting not more than 800,000 tonnes out of context. I believe it's very important that one reads section 3.16, 3.17 and 3.18 together, because I think they explain clearly what's going on.

Q. Right.

A. And if I might read those now, if that's acceptable.

Q. Yes, and if you just take your time, and we'll put them on the overhead projector at the same time.

A. Okay.

Q. They are on page 11 of the EIS that has been circulated. Go right ahead.

A. Section 3.16: "It is proposed to extract not more than" and that's the key word "not more than 800,000 tonnes per year from the proposed pit extension, which, as part of the company's conservation measures, is less than the existing extraction rate of approximately 1 million tonnes

of sand and gravel per year."

"3.17: "It is the company's intention to blend sands and gravels from the pit extension with the material from the lands from which extraction is currently taking place to produce sands and aggregates to the required grading for use in concrete products."

I might interject there and say the pit extension is the Deerpark Glen Ding lands, the subject of this inquiry.

Going on: "This will involve using a combination of sand and gravel aggregates from various sources. It may therefore be necessary to extract sand and gravel from both the existing pit area and from the extension area at the same time, and also to extract material from more than one pit face in the extension simultaneously.

"3.18: To reflect the reduced rate of extraction over existing levels (to conserve aggregate reserves), to allow for variations in market demand for aggregates and to develop other aggregate sources to supplement the Blessington reserves, permission is being sought for extraction of sands and gravels from the proposed pit extension over a period of 15 years."

Now, if I might just go on to comment on that. On an annual basis, it's rather obvious, but I'll state it, that our business copes with two unpredictable factors: One being the market demand and the other being the variation in the composition of the extractive area that one is working during that year. So, in making a planning

application, therefore, one would have been conscious of including sufficient flexibility to deal with those varying factors.

Additionally, we had working deposits in our preexisting land holdings, and it was our intention to continue extracting from those areas simultaneously to the new pit.

Therefore, a permission was sought to extract up to and

I emphasise again, "up to" 800,000 tonnes per annum from

the new area. This made provision for fluctuations in

market demand; that is, we could extract up to

800,000 tonnes from the new area in addition to the

tonnages being extracted from our existing lands. It also

provided for the need to blend from different parts of the

pit to achieve the target gradings. In other words, if the

pit area being worked was overfine, it could be blended

with material from an area which yielded coarse material to

achieve a medium grading. That's as simply as I can put

it.

And finally, to use some working assumptions, and bearing

in mind these were projections at the time and based upon

assumptions, but to use some working assumptions simply for

the purpose of illustration.

If one took the view that 800,000 tonnes per annum was the

projected market demand and that blending was going to be

50/50 from the application area or new pit and the old pit,

then one could project that the total extraction from the

application area to be 800,000 tonnes divided by 2 and

multiplied by 15 years, which would be 6 million tonnes.

Now, that's simply for illustration, and it's based on the assumption that blending would occur 50/50 from preexisting reserves and the new reserves.

Q. I presume that those maths were purely coincidental.

A. Absolutely.

Q. If you look at it the other way around, and you said it's 800,000 tonnes from one and 800,000 tonnes from the other, you'd be taking 1.6 million per annum out?

A. There is no doubt we saw the potential that in any one year the 800,000 tonnes could have come from the new pit or from the old, and we were making provision for that unlikely, but, you know, potential event.

Q. All right. I think I understand that.

This morning I, at the request of Mr. Strahan, your solicitor, referred to the evidence of Mr. Barnett yesterday when, I suppose, using some coincidental mathematics like you are using now, he suggested that his actual extractive rate predictions of 300,000 tonnes per annum applied over a 16-year period, worked out at around 5 million tonnes, which was the total tonnage extracted from Glen Ding over the period since you bought the land, and Mr. Strahan asked me to point out that you haven't taken 5 million tonnes out of the pit extension; we'll call it that. So we are all clear about what we are talking about, over the 16 years, and that you have in fact taken something in the order of 500,000 tonnes out of the pit

extension, the lands the subject of the inquiry, over that period of time. Is that right?

A. I saw that in the transcript this morning, and I don't understand Mr. Barnett's figures. It's absolutely clear, we have a planning permit over 15 acres, and we have begun working that area. We have taken less than a half a million tonnes from that area at this stage. I don't have records, but that can be confirmed by engineering survey if that's deemed necessary.

Q. I understand that you are prepared to do that.

A. But certainly to state that 5 million tonnes has been extracted from the new pit is not correct.

Q. I am not seeking to in any way undermine what Mr. Barnett said. If it's 500,000 tonnes, then it gives more force to his original predictions, in that his figures would have produced a sum which would have been far higher than the actual value of the site if you used a 500,000 tonnes over 16 years extractive rate; do you follow me? But the fact is that the facts over the last 16 years couldn't have been predicted by anyone in 1990.

I am simply anxious to establish the facts, and the fact you are saying the facts are that in or about a half million tonnes were extracted?

A. Yes.

Q. Am I right in thinking that that half million tonnes includes sand and gravel extracted from the original, what I call, Department pit, which got you into trouble with the

planning authorities when you started using it initially?

A. Yes, it includes that, yeah.

Q. Right. Thank you very much.

CHAIRMAN: Thank you very much for coming back and for your further assistance, Mr. Dempsey.

MR. HEALY: Those are the witnesses for today, sir.

CHAIRMAN: Eleven o'clock in the morning.

MR. HEALY: Yes.

CHAIRMAN: Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 11TH MAY, 2006.