

THE TRIBUNAL RESUMED ON THE 11TH MAY 2006 AS FOLLOWS:

MR. HEALY: There are just two very short witnesses this morning, sir, and one this afternoon. It's unlikely that any of them will take very long in total; they won't take very long between them. But it won't be possible to fill up the available time in the morning because the afternoon's witness is not available until two o'clock 2.15.

CHAIRMAN: Yes, I thought 2.15 might be more sensible.

MR. HEALY: Mr. Peadar McArdle, please.

DR. PEADAR MCARDLE, HAVING BEEN SWORN, WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Should it be Dr. McArdle?

A. It should be Dr. McArdle.

Q. Sorry, Dr. McArdle.

A. It rests lightly on my shoulders, though.

Q. In your in the papers that have already been served in this aspect of the Tribunal's inquiry, the full GSI report has been circulated, but the queries that were addressed to you and to GSI, the specific queries that were addressed to you arose out of the work that was carried out by Mr. Barnett in which, relying on your report, he provided a calculation of the mineral reserves within an area which he believed the planning authorities would give planning permission for mining to be carried out on.

If you look at the monitor just in front of you, in fact, the computer monitor directly in front of you, can you see

two maps?

A. Yes.

Q. The map on the left is a map of the area in sale. The map on the right is a map on Mr. Barnett's a map prepared by Mr. Barnett in which the area bounded in red is, in shorthand, the extractive area. Now, when you examined this site, you would have examined the entire area bounded in black on Mr. Barnett's map; do you see that?

A. Yes.

Q. The area that was actually sold to Roadstone is the area shown bounded in red on the other map, on the left-hand map.

A. Right.

Q. So you understand the distinctions between the three areas?

A. Yes, I do indeed, yeah.

Q. Okay. Now, just to deal with one small matter. The 1988 report was prepared was really one of the first steps that the Department took at that time to arm themselves with the relevant information they'd need to progress a sale and valuation of this site. If you were selling land with a mineral deposit, there was no point, obviously, in trying to put a value on it unless you had a geological or similar scientific study. And your agency was contracted to do that; isn't that right?

A. That's right.

Q. And you provided that to the Department, of course, on a strictly confidential basis?

A. That's correct.

Q. And in fact, requests were made by various people to obtain that report. I think it may only have come into the public domain at this point, although it's possible it was open to the public domain at the time of the Public Accounts Committee report. Or do you remember that?

A. I'm not too sure. I know there was a long history of media requests for the report that were denied.

Q. Now, the Tribunal's queries to you related, as I said, to Mr. Barnett's calculations, which were based essentially on your figures. And the Tribunal received a letter from the Chief State Solicitor, acting for GSI, dated 9th May 2006, dealing with the Tribunal's queries. And that is, essentially that letter, I think with which I am sure you are familiar?

A. Yes.

Q. Essentially contains your response to the basic query addressed by the Tribunal. I'll just read it out; I'll read out the substance of the letter.

It says: "I am instructed that GSI has concluded that Mr. Barnett's estimate is a reasonable one based on the existing information, and that there is a close comparison between his and its own" meaning between Mr. Barnett's and the GSI's calculations. "The two tonnages lie within 8% of each other, and I am instructed this is acceptable in this type of estimate. Accordingly I am further instructed there is no marked difference between the Barnett and GSI

estimates."

And at that time Mr. Shaw, the State Solicitor, enclosed then a set of detailed sort of workings or a detailed account of how you set about comparing what Mr. Barnett had done with the work that you had done earlier. I am not going to go into it because it's all far too complex, but you took his plan, you examined the area that he, if you like, abstracted from your much, much larger survey, and you came up with a figure. I think your figure was slightly lower than his.

A. That's correct, yeah.

Q. You came up with a figure of

A. 6.3 as against 6.7.

Q. 6.3 as against 6.7.

Thank you very much, Dr. McArdle.

CHAIRMAN: Gentlemen, anything?

MR. STRAHAN: I have no questions.

MR. REGAN: I have no questions.

CHAIRMAN: Thank you very much indeed, Dr. McArdle, for your assistance.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Behan, please.

JOE BEHAN, HAVING BEEN SWORN, WAS EXAMINED BY MR. HEALY AS FOLLOWS:

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

You are a civil engineer, and I think you are a member of a

firm of civil engineers with the name J. P. Behan & Associates, and at the Tribunal's request, you carried out certain exercises, and you examined parts of the Glen Ding lands in a very, very limited context, which I will try to summarise for a moment.

The Tribunal was anxious to establish to what extent the boundary between what I'll call the Glen Ding lands and lands now occupied by, and owned, indeed, by Hudsons, a quarrying concern, adjoining or adjacent to the Glen Ding lands, with a view to establishing whether there was a clear and obvious access between the Glen Ding lands and the Hudson lands.

Now, you may not be aware of all these details, but it's perhaps important that I should say that in 1990 these lands, although being used by Messrs Hudsons, were not owned by Hudsons but by another landowner at that point.

But in any case, you examined the Land Registry maps and the boundaries shown on the Land Registry maps between the various lands, and you also examined the you examined the ground itself; isn't that right?

A. Yes, indeed.

Q. Now, you have provided the Tribunal with a report, and I'll just take you through it briefly, and then there may be one or two questions I'll want to ask you about it. But I think for the moment I'll just I just want to refer to one thing on the map monitor in front of you.

The map monitor shows a map of the entire Blessington area.

You recognise that, obviously?

A. Yes, indeed.

Q. Where I have now put the cursor, can you see where I have put the cursor? Can you see where I have the cursor at the moment, in any case?

A. Yes.

Q. That is the boundary of what was once the Glen Ding lands; do you recognise that?

A. Yes.

Q. And the cursor is now at a point where those lands adjoin lands which, to the left and the right of the cursor, belong to different landowners. I think you are aware of that?

A. I am, yes.

Q. And it's at that point that you were asked to examine what the Land Registry maps showed about the adjoining boundaries and what the situation on the ground was; isn't that right?

A. I think perhaps it's to the left of that.

Q. It's to the left of that?

A. It's about well, on my screen, an inch to the left of that, further to the left.

Q. This point, is it?

A. No. The next one.

Q. I see. I beg your pardon. Well, just so there is no confusion about it, the point where the cursor is now is the point well, approximately where I now have the

cursor, the point between the two separate lands on the northern side of the main Glen Ding boundary?

A. Yes.

Q. Which is the heavy line which is the heavy line just above where the cursor is. And that is not just the Glen Ding boundary at that point; it's also the County boundary.

Isn't that right?

A. It's the County boundary between Wicklow and Kildare.

Q. And that may have some implications for the extent to which one can be certain about boundaries at this point, and I think we may come to that in a moment.

In any case, in your report you say: "Further to your letter of the 15th inst. we enclose our two reports as requested together with our fee in relation to same.

"The boundary between the lands occupied by Messrs. Hudson Brothers Limited and those occupied by CRH is the County boundary between Counties Wicklow and Kildare. This County boundary was in the form of a stone wall, which has now fallen almost completely into disrepair along this boundary line but is still evident. The boundary between Hudson Brothers Limited land and the land belonging to Mr. Eager" that is the land to the left of where the cursor is at the moment; isn't that right?

A. Yes, indeed.

Q. And therefore we are referring to the boundary that I am not moving the cursor along; isn't that right?

A. Yes.

Q. "The boundary between the Hudson Brothers Limited land and the land belonging to Thomas Eager is constructed in a similar stone wall. There is no evidence of any original boundary as between the different folios of the CRH lands."

You are now referring to the lands which were owned by CRH in 1990 prior to the purchase of the Glen Ding lands and the lands which they acquired as a result of that purchase.

A. Yes.

Q. You are saying: "There is no evidence of any original boundary as between the different folios of the CRH lands.

There now exist as timber post and wire fence, constructed in a haphazard manner, primarily to ensure that animals are

kept from the lands. It is therefore not possible to state at present as to whether there would have been access

directly from Hudson Brothers Limited lands into the southwestern lands of CRH, i.e. those contained in folio

WW15578F".

Then you go on to say: "From the original Ordnance Survey maps and Land Registry maps we have prepared a map showing

the situation as pertained in 1909, when the original

Ordnance Survey maps were prepared. Unfortunately these

Ordnance Survey maps only went to County boundaries, and therefore the accuracy of the combined map is doubtful."

In other words, when two counties come together and you

want to look at how the boundaries of landowners on one

side of the County bounds relate to those of a landowner on

the other side of a County bounds, you are trying to match

two sets of Land Registry boundaries drawn up entirely within self-sufficient County maps; is that right?

A. Yes, indeed.

Q. And as I understand it, that's not a very exact science?

A. No.

Q. Today, Land Registry maps are made in a different way; is that right?

A. They are.

Q. They are made across boundaries?

A. They are. They are across County boundaries.

Q. "There does appear to be a 4-metre gap to enable Hudson

Brothers Limited to enter on the lands owned by CRH in

folio WW15578F. It is also highly probable, given the

layout of the lands at present, that at this point there

had been a gate, known as a hunting gate, giving access

from the Hudson Brothers Limited lands into the CRH lands.

This gate would have been approximately 1.8 metres in

width, as evidenced by other gates that we looked at on the

CRH lands."

Now, you then produced a number of maps setting out the

position. Now, the map that's on the screen in front of

you shows, where I now have the cursor, the Hudson lands;

isn't that right?

A. Yes.

Q. Where the cursor is now, the Eager lands?

A. Yes.

Q. And then below here, the lands which are now all in the

ownership of Roadstone, where I now have the cursor, we appear to have the lands purchased by Roadstone in 1990, and where I am I right in that?

Where I have the cursor now is within what would appear to have been the Glen Ding lands purchased in 1990.

Where I now have the cursor, we moved it across, is in the lands that CRH owned in 1990 prior to purchasing the Glen Ding lands.

A. Yes.

Q. Now, I just want to be clear about one thing: The Tribunal is not seeking to establish what the boundaries are between these lands and wouldn't wish to, in any way, comment on the boundaries between Messrs Hudsons lands and CRH's lands; that's a matter for courts, and it's certainly not a matter for an inquiry such as this. What the Tribunal is seeking to establish, and has already heard evidence from some officials, is the extent to which access between these lands would have been patently obvious to anyone at the time, and in retaining your services, the Tribunal has been anxious to see what light can now be thrown on what might have been obvious to somebody walking around the State lands in 1990.

On the map that we are now looking at, you show, along the line that I am now moving the cursor, the boundary between the Eager lands and the lands now owned by Hudson, owned by a different landowner at the time, but nevertheless now owned by Hudson. You see where I have now put the cursor

on the dotted line?

A. Yes.

Q. In what is now all CRH lands. Is that a boundary?

A. No. That's a notional tree line.

Q. A notional tree line, I see.

A. It's not a boundary.

Q. And it's at that spot that you were unable to identify any features which would have provided you with information to give a positive or a clear opinion on the boundary in 1990; is that right?

A. I saw no features whatsoever there to give me any indication.

Q. This map, which I am not going to go into in any detail, is a map of the physical features that you found at the point where the two where the three sets of lands, I suppose, join up. Again, on the left, we have the Eager lands; on the right, the lands now owned by Hudson Brothers; and below that, the lands owned by CRH.

A. Yes indeed.

Q. The lands broadly to the right being the original CRH lands, and the lands broadly to the left being the Glen Ding lands that they bought?

A. Yes.

Q. But you do show what appears to be some class of a gap ; isn't that right?

A. It's simply a suggestion that there may have been a hunting gate there. Given the nature of the configuration of the

wall to the north of that as between Eager and Hudson, it's a shaped wall with an actual curve on it. It's still in existence; it's like a refuge.

Q. Right. If the boundary on the southern side of that County bounds wall, which is the one I am now moving the cursor along, if the boundary on the southern side of that, dividing the old Glen Ding lands from the old CRH lands, was to the right of that gate, there would have been access; if it was to the left of that gate, there wouldn't have been. Isn't that right?

A. Correct, yes.

Q. But there is nothing at the moment to assist you in arriving at a conclusion?

A. Absolutely nothing.

Q. Now, the examination that you carried out on the Land Registry maps did show, as you have indicated, a 4-metre gap; isn't that right?

A. In or around, yes.

Q. But perhaps you just again clarify the difficulties that would be encountered in endeavouring to establish whether, and if so, how much of a gap existed between two boundaries in a situation where you are trying to compare maps on two sides of a County bounds.

A. Chairman, the maps on which the Land Registry maps were based on the Ordnance Survey maps, and the Ordnance Survey maps were prepared in 1909 and 1910, and it's on foot of those maps that the Land Registry maps were prepared.

Those Ordnance Survey maps simply went to County boundaries. And if you take the Kildare map as such on that side, it simply showed the matching in boundaries on the Wicklow side as little small ticks, or you can actually just about make one out where I have the circle on that map.

Q. I see. Unfortunately you are pointing to that map doesn't show up on the big screen, but if I put the cursor, is that where you are pointing to?

A. Just there. There is a little tick there.

Q. Precisely, yes.

A. And that's how they mapped the joining points on the opposite side of the County line. And they did similarly from the opposite side, when they had the Wicklow map, they showed these little ticks indicating positions of the joints in land on the other side, or boundary points. But when you actually combine the two maps together, they don't line up.

Q. So that do I understand that if in fact a boundary on one side of the County bounds physically lined up with a boundary on the other side of the County lines, the two maps mightn't line up?

A. Correct. And that's evident from all the mapping and the correlation that we tried to do along that boundary line. We had the two maps for that entire area, not simply for that section, and there are inconsistencies right along on the joint.

Q. I mean, I don't think Mr. Justice Moriarty wants to be involved in trying to settle a boundary dispute in this inquiry anyway, so that's as far as you can put it, anyway.

Thanks very much.

A. You are welcome.

CHAIRMAN: Thanks very much, Mr. Behan. And again without committing myself to how material this aspect may be, I take it, Mr. Strahan, if it seemed to me that it might be useful to see for myself, of course I'll be guided by Mr. Behan, your clients would have no objection of my having a glance at the situation?

MR. STRAHAN: We'd be delighted, and that can easily be arranged.

CHAIRMAN: If that arises, and I take it at your end, Mr. Hudson, that would be the same position? Thank you very much.

2.15 for the remaining witness. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AT AFTER LUNCH AS FOLLOWS:

MR. COUGHLAN: Mr. Tony Barry.

MR. SREENAN: Chairman, I appear with David Barniville, instructed by Arthur Cox, on behalf of Mr. Barry, and I am applying for representation.

CHAIRMAN: I suppose, Mr. Sreenan, even though I think Mr. Barry has retired, I don't try to unnecessarily extend orders for representation, so I think, as he has testified qua his officerships with CRH, it's probably covered by the

general or by the limited order that I made in relation to CRH.

MR. SREENAN: The only matter, Chairman, is you will remember that the Tribunal raised an additional query with Mr. Barry in relation to the holding of certain bank accounts which affect him personally, and it was for that reason that personal representation was obtained on his behalf, although the same firm of solicitors acts. And it's in that context that I apply for representation on behalf of Mr. Barry. If he was purely testifying in relation to the Glen Ding matter in itself, I accept it would be covered by the general order in relation to CRH, but it's because of the additional query which affects him personally that

CHAIRMAN: There is that, Mr. Sreenan, but it seems to me that not a great deal turns on it. At the moment it seems a personal addendum to matters that relate to his former officerships within CRH. If it becomes necessary to canvass it again, of course I'll seek to facilitate you; but I think at the moment I'll regard it as falling within the overall rubric of CRH-related business, albeit with a personal slant.

MR. SREENAN: May it please you, Chairman.

CHAIRMAN: Thank you very much for coming back, Mr. Barry. You are of course already sworn from earlier evidence.

TONY BARRY, PREVIOUSLY SWORN, WAS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Thank you, Mr. Barry. I think you prepared a Memorandum of Evidence for this afternoon?

A. Correct.

Q. Do you have it with you?

A. It's in my briefcase.

Q. We have one here.

(Document handed to witness.)

Now, I think you inform the Tribunal that you became Chief Executive Officer of CRH on the 1st January 1988. You held the position until the 31st October 1994 when you retired from the post of Chief Executive Officer. You continued thereafter as non-executive Chairman having been appointed to the chair in May 1994 following Mr. Traynor's death; is that correct?

A. Correct.

Q. Now, dealing with the purchase of Glen Ding; I think you have informed the Tribunal that in 1990 you were informed that the management of Roadstone (Dublin) Limited had negotiated the purchase of lands at Glen Ding in Blessington which was in State ownership. It is your recollection that the only time you were involved in the matter directly was after an agreement had been reached by Roadstone to acquire lands subject to the approval of the CRH Board. Your involvement was to submit the proposal-to-purchase to the Acquisitions Committee of the Board of CRH for approval. You introduced that proposal by way of a document which is dated 13th December 1990 and

which was prepared by Mr. Dempsey of Roadstone for that purpose. The Acquisition Committee unanimously approved the proposed purchase. You never discussed this matter with Mr. Traynor, other than when the matter came before the Acquisition Committee for consideration, and to your knowledge, Mr. Traynor had no involvement in the transaction other than in his capacity as Chairman of the Acquisition Committee.

A. Correct.

Q. Now, just to deal with that point first, if I may, Mr. Barry. Did Roadstone ever ask you or, to your knowledge, Mr. Traynor for any assistance in relation to the purchase of the Glen Ding lands?

A. Never.

Q. And did you ever give any unsolicited assistance or, to your knowledge, did Mr. Traynor to Roadstone in relation to the purchase of the Glen Ding lands?

A. Never.

Q. Now, turning to the issue of the operation of accounts. You inform the Tribunal that by letter dated 2nd May, 2006 to your solicitor, you have been requested to address the issue of the knowledge of the Board and members of the Board of the activities of Mr. Traynor in connection with the operation of the accounts of Ansbacher Cayman Limited and Hamilton Ross & Co limited conducted by him from CRH's registered office at Fitzwilliam Square.

And you have informed the Tribunal that as the Tribunal is

aware, and indeed this is public knowledge, you were an account holder with Ansbacher. This arose in the following circumstances: in or about 1989 you wanted to use foreign currency income which you were in receipt of in respect of dividends and expenses for the purpose of assisting two of your children who were living abroad. You asked Desmond Traynor, whom you knew had a background in banking, for advice. Desmond Traynor offered to arrange matters for you. This conversation probably took place in 42 Fitzwilliam Square but you can not be certain. It was something that you raised with him casually. Thereafter, from time to time, you gave Mr. Traynor a number of cheques arising from these foreign currency earnings for lodgement to the account. You wish to emphasise that all foreign currency income that consisted of earnings was included in your tax returns at the time.

A. Yes.

Q. The total amount lodged between 1989 and Desmond Traynor's death in 1994 would have been approximately STG $\frac{1}{2}$ 50,000 to STG $\frac{1}{2}$ 55,000; is that correct?

A. Correct.

Q. Those lodgements were either given to Mr. Traynor personally or sent to him through internal mail to the Chairman's office at 42 Fitzwilliam Square. You also asked Mr. Traynor to arrange a small number of withdrawals. From time to time you did receive a note from Desmond Traynor indicating the balance of the money in the account. Those

notes were on unheaded paper and were sent to you from his office as Chairman in 42 Fitzwilliam Square to your office which was in Belgard Road.

A. Yes.

Q. Now, you have informed the Tribunal that as far as you were concerned at the time, Desmond Traynor was simply doing you a favour in facilitating you in a personal and informal way. It never occurred to you that any other executive or director of CRH had a banking relationship with Desmond Traynor, and you were not aware of this until the revelation of subsequent inquiries. Neither were you aware of the use that Des Traynor was making of CRH's premises to conduct a banking business generally until the evidence emerged after Desmond Traynor's death; is that correct?

A. Correct.

Q. You have informed the Tribunal that naturally, in the light of the evidence before the Ansbacher Inquiry and the findings of that report, you asked yourself in hindsight how it was that matters did not come to your attention.

The only explanation that you can give is that people treat their banking affairs as private matters and do not discuss them with others. You did not discuss your banking relationship with Des Traynor with anyone else in CRH.

Furthermore, it was then and still is now not unusual for an non-executive chairman to use the facilities of a chairman's office for personal and social communications and some business communications in relation to other

non-executive directorships. Thus, you saw nothing unusual in the receipt from the Chairman's office of the personal notes in relation to the balances on your account.

A. Correct.

Q. You have informed the Tribunal that you are not aware of any other executive or director of CRH having an account with Desmond Traynor, nor were you aware of any use being made of the chairman's office for banking business by Des Traynor other than to the extent to which he was facilitating you as a personal favour. It was never drawn to your attention, nor had you any reason to believe or suspect that he was doing it. You have already expressed the view both to the Ansbacher Inquiry (sic) and privately to this Tribunal that the use that we now know Des Traynor did make of CRH premises to conduct an executive banking business was entirely inappropriate sorry, Mr. Healy just corrects me there, it's the Ansbacher Inspectors.

You would have regarded Des Traynor at the time as a very proper person and a man of high repute and integrity and it would never have occurred to you that he would have been using the CRH premises in the way you now know he was using it.

A. Correct.

Q. Now, I just want to ask you one or two questions, Mr. Barry, if I may.

Could I ask you this: were you aware or, to your knowledge, was any other executive or director of CRH aware

of Mr. Traynor's relationship with Mr. Haughey? Now, I do not mean in the sense that people might have known that he was a friend or a supporter of Mr. Haughey, but the relationship which we now know existed between Mr. Traynor and Mr. Haughey, had you any awareness

A. I was never aware of it.

Q. And to your knowledge had anyone ever mentioned it to you?

A. To my knowledge, no one ever mentioned that connection in that connection.

Q. Now, if I might ask you this then: if we bear in mind the finding of the Ansbacher Report, or the Inspectors; that not all at the same time, but at sometime or another there were eight directors/executives of CRH who had a banking relationship with Mr. Traynor, and what I suppose I am seeking is your response to this: To suggest that this was often departmentalised and that there was no collective knowledge within CRH is incredible in the true legal sense of that word. What would your response to that be?

A. My response is, I can understand that a third party looking in might wonder at that but, in my experience, and certainly I had no awareness of the relationships in private matters that any of the other board had with Mr. Traynor, and indeed in my experience of boards going a way beyond the reach of CRH, I have never once discussed with any other board director what their personal banking arrangements were.

Q. Thank you, Mr. Barry.

CHAIRMAN: Nothing arises, Mr. Sreenan?

MR. SREENAN: No, I have no questions, Chairman.

CHAIRMAN: Very good. Thank you for your attendance,

Mr. Barry.

THE WITNESS THEN WITHDREW.

CHAIRMAN: I think, Mr. Healy, that concludes the immediate

witnesses who are listed in relation to the Glen Ding

matter, but it is the case that certain matters were

mentioned this morning which may require further

exploration, and I think I am aware that the Tribunal, in

its private business, is continuing to conduct

correspondence and to receive submissions from interested

persons, so it may be necessary that some aspect will have

to be canvassed again in public session. If so, I will

alert interested persons in the usual manner. Otherwise,

the remaining passage of Tribunal public sittings is that,

as I have already indicated, that is related to the

Mr. Lowry side of the Terms of Reference and the GSM

inquiry in its broadest sense, and as I have indicated,

some pending litigation in the Supreme Court will be of

importance in determining the limited scope of what remains

to be undertaken and, obviously, I am most anxious that

this be finalised at the very earliest opportunity and

similarly, I will, again, as soon as a final position has

emerged, I will notify interested persons as to such

limited sessions as remain to be heard on that. Is there

anything else that arises at this juncture? Very good.

Thank you.

THE TRIBUNAL ADJOURNED UNTIL FURTHER NOTICE.