



Wicklow County Council
COMHAIRLE CHONTAE CHILL MHANTAIN

**Transcript of the County Council Special Meeting
Held on 27 July 2015
In the County Council Chamber, Wicklow**



Text streamed live to the web on www.seewritenow.ie



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7 Monday, 27th of July 2015. Wicklow County Council Special Meeting

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9 CATHAOIRLEACH: Councillors, at the request of the Councillors in the west, we will delay
10 the meeting for ten minutes if that's okay, because they've had an earlier meeting this morning.
11 Here's one of them coming in actually, he must have come by helicopter. It will be a few
12 minutes anyway.

13 Cllr BEHAN: Chairman, sorry, could I just ask for five minutes at the start. If it was a sub area
14 meeting, they could have finished it up a bit earlier, this is a meeting of the full Council.

15 Cllr WINTERS: I can't hear any of this.

16 Cllr BEHAN: I am proposing a five minutes delay rather than ten or 15 minutes.

17 Cllr WINTERS: Yeah, yeah.

18
19 (Short break)

20
21 CATHAOIRLEACH: Members, I think ten minutes has elapsed and I think we should go ahead.
22 We have apologies -- Lorraine first.

23 MS GALLAGHER: Pat Kennedy, Jennifer Whitmore, Pat Vance --

24 Cllr WINTERS: Can we use the mikes?

25 MS GALLAGHER: Apologies from Councillors Pat Kennedy, Jennifer Whitmore, Pat Vance.

26 Cllr WINTERS: Cllr Timmins asked to give apologies.

27 CATHAOIRLEACH: And of course the Cathaoirleach. Councillor Miriam Murphy. Just can I
28 say at the outset that Councillor Ryan indicated to me back four weeks ago that he would be
29 absent so there is nothing difficult, like he is - the motion is in the name of Councillor Ryan that
30 we discuss the assignment by Wicklow County Council of its freehold interest in the Barracuda
31 in Bray. So what I propose is I am not totally au fait, as are a lot of other members that are not
32 in the Bray area with the situation. So I am proposing that Mr David Forde will give us an
33 in-sight into the situation. And we did get a document there, maybe people want to read it, the
34 Bray members would have got that previously. I have just read that there. So maybe David you

1 could just give us an in-sight into the situation there please.

2 Cllr FORTUNE: We have all been given -- I would take this as an overview of what the
3 background is. As you correctly say none of us are totally familiar with all the background. So I
4 am just wondering would it make sense for us to be properly informed today of everything
5 surrounding it and maybe have a -- call a meeting then when we are all properly informed to be
6 able to reflect on it to have a proper discussion on it. We are asked to come in here today, look
7 at information put before us as the meeting starts, and be all inspired then to be able to discuss it
8 in a proper manner. I just want to put that on record.

9 CATHAOIRLEACH: That's up to the members to decide that. If we maybe listen to David
10 Forde at the start and then David will go through the situation for us there. Cllr Matthews, do
11 you want to say something there?

12 Cllr MATTHEWS: No, I am getting prepared to say something after.

13 CATHAOIRLEACH: So if we could just listen to Mr Forde and then we will take it from there.
14 There is a number of requests for speaking. We will get into that when we listen to David, all
15 right.

16 Mr FORDE: Thanks Cathaoirleach, the background as my email was sent to the members of
17 Bray on the 17th: "The property was held on a lease for 65 years from the first of July 1991...
18 (Reading) being provided in the Barracuda Restaurant itself."

19
20 And then, "On 14th July, an application by the lessee to purchase ... (Reading) as a body
21 corporate or risk contempt of proceedings."

22
23 That's basically the background and the bit of history there Cathaoirleach.

24 Cllr BEHAN: Cathaoirleach?

25 CATHAOIRLEACH: I am coming to you Joe. Okay Joe, Cllr Behan.

26 Cllr BEHAN: Cathaoirleach, first of all could I put on record my thanks to the Cathaoirleach,
27 Councillor Ryan, and indeed yourself for agreeing so quickly to my request to have this Special
28 Meeting. I made the request when I received the report that members have got here this
29 afternoon, and part of which the -- Mr Forde has read out, because I was very deeply concerned
30 at the information conveyed in that report and also the implications of it for the rest of the
31 Council's property, right across Co Wicklow. So thank you Cathaoirleach, Leas Cathaoirleach
32 for being here today, for chairing the meeting and I thank the members who could make it.
33 Because I believe this is a very fundamental issue for this Council. And you will see why now
34 in a minute.

1
2 First of all, I want to ask a number of questions: I would like the management of the Council,
3 whether it's Mr Forde or preferably Mr Doyle as the Chief Executive, to set out the full sequence
4 of events that lead to a situation on the 14th of July for this Council through its -- presumably the
5 law agent agreeing to cease the freehold of a public property without reference to the elected
6 members of the Council.

7
8 Members, I am sure are aware, and I certainly know the officials are aware, we have very few
9 actual reserved powers left in Local Authority life. One of the powers we most certainly do have
10 is the power to decide whether to dispose of publicly owned property or not. And in this
11 particular case, although it was only the - I suppose the ceding of a freehold, it still to my mind is
12 a transfer of the last part of the ownership of a public property. The fact that the property is
13 located on the seafront in Bray, and the fact that the property has certainly been the subject of
14 much speculation about its possible future use makes it all the more astounding that no member
15 of the management of this Council thought it necessary to consult with the elected body of
16 Wicklow County Council before agreeing to dispose of the freehold on the 14th of July last.

17
18 So I think we all -- but the people of Wicklow are certainly entitled to a full account, and I want
19 to know what meetings took place, what phone calls were made, by whom, what emails were
20 sent, by whom, received by whom, etcetera, that lead to this decision being made.

21
22 The second question I have is what are the planning and licensing implications of the fact that
23 there is no public ownership now vested in this property from now on? There have been, as I
24 say, rumours circulating in Bray for sometime, that there are other developments planned,
25 including possibly, and I say possibly because I don't have any evidence of this, possibly some
26 kind of a super pub being located on the promenade in Bray. While the present building is a
27 huge improvement on what it replaced many many years ago before the aquarium and the
28 restaurant were built, certainly many people in Bray and indeed in Co Wicklow would question
29 the wisdom of turning that property into some type of a public -- a super pub. Now, as I say, that
30 may not happen, but I would certainly like to know and I see there is a planning expert here from
31 the Council. I would certainly like to know are there implications for the possible future change
32 of use of that property as a result of that decision?

33
34 Thirdly, what are the possible implications for other properties that this Council owns in the rest

1 of the county? Members representing the five areas will I am sure be aware - I am not aware - of
2 what properties the Council is actually leasing to what bodies. And as a result of this decision,
3 are some of these properties in danger of going the same route?
4

5 In particular I want to refer to the Carlisle Grounds in Bray. As people will know there has
6 certainly been a lot of activity in the ownership/management of Bray Wanderers in the last few
7 months. An interesting article in the Irish Times on Friday, which states I think there are new
8 owners there again, but this is relevant, this is written by Colm Keena, one of the correspondents
9 from the Irish Times, "the Carlisle Grounds belongs to Wicklow County Council. The club has a
10 lease up to 2036 at a minimal annual rent which requires that the grounds are used for soccer
11 games. In a guarantee given to the former shareholders, the new owners say they'll seek to
12 develop a three pitch football centre of excellence in Bray and not seek in any way to acquire the
13 Carlisle Grounds until such a facility has been delivered to the club. Any deal would require the
14 consent of the Council."
15

16 So there is already in the public realm, there is speculation about what may or may not happen
17 with the Carlisle Grounds. And again I think that's a matter that - of huge importance the people
18 of Bray and Co Wicklow and beyond and certainly a matter that's important to the public
19 representatives here.
20

21 Fifthly, what legal option does the Council have at this point and time to stop this particular
22 ceding of a freehold going ahead? I would have thought that at a very minimum, if things had
23 been done properly, we would have been notified at a Council meeting that this was possibly
24 going to happen, and we would have had the opportunity to request legal advice as to whether
25 we as the publicly elected representatives of the people of this county would have any right to
26 make a different decision. That doesn't seem to have been done and maybe the stable door has
27 been bolted at this stage, but again I see the law agent is here, well he was here, I don't know if
28 he is here at the moment. I would certainly like to know what are the legal options open to us as
29 public representatives to deal with the situation we are landed in.
30

31 The last point I make is a general one Chairman, and I said it at the start, we have very, very few
32 powers, but this is one we do have. And I think we have a responsibility to the people who
33 elected us to make sure that we ensure that our powers are not taken from us by an unelected
34 management of this Council. Thanks Cathaoirleach.

1 CATHAOIRLEACH: I'll have the points from the different Councillors and come back at the
2 end of the meeting with the appropriate people. Cllr Matthews?

3 Cllr MATTHEWS: Thank you Chairman, I would like to thank Cllr Behan for calling this
4 meeting, it's a very, very serious issue and has implications I think for all the Councillors and all
5 the districts and to you, Chairman, for granting this Special Meeting.

6
7 My understanding on this, I have done a bit of research into it, this is more or less a done deal at
8 this stage. That under the law it wasn't required to come to us for disposal as it normally would
9 because of the type of lease that we entered into there in 1991. It was a building lease. And
10 effectively we didn't own the building, but we permitted the development of the building on land
11 that we owned and it was a building lease.

12
13 Now I have huge objections to this on the principle, I understand the legal implications here, but
14 the principle that we would sell prime land, zoned as open space primarily for amenity on the
15 seafront in Bray to private development, I can't believe it's happened. But in looking at that act
16 there, I think it's referred to in that the Landlord and Tenant Act, it does appear that the lessee
17 has the right to purchase that land. But again as Cllr Behan said, we should have been informed
18 that this was happening. We may not have to dispose of it. It may not come under the Act,
19 the -- I don't know what Act it is for disposal of land, the Planning Act is it? But it does have
20 serious implications for every lease we have entered into. Now I think in 1991, we lost control
21 of that land effectively because of the lease that we entered into. All we ever really had then was
22 development control. Over the past - since 1991, that building has gone from being an
23 aquarium, there was a change then of the - I think it was a theatre that was in it that was there for
24 educational purposes for people visiting the aquarium. It became a café. Then it became a
25 restaurant. And then in 2004, it went -- it got the lease to be a restaurant serving alcohol. Now
26 one of the most serious things that happened there to my mind under planning is that in 2013,
27 there was a grant of permission for a change of use to a pub, to go from a restaurant to a pub. So
28 over the last 25 years, we have seen that piece of land, and that building develop from something
29 that was complimentary to the seafront in terms of it was an aquarium on a seafront. We have
30 had a couple of bits of developments like ice cream parlours and coffee shops and to my mind
31 they're complimentary to the zoning down there, public recreation amenity open space. I don't
32 have a huge objection to that. But this is like planning by stealth where it became a restaurant
33 with a drinks license, and then was permitted change of use to a pub. It's - you can see exactly
34 where it's heading. I know all the rumours that have been around and I don't want to comment

1 on that, I don't see it's fit for us to comment on potential commercial interests that may be
2 looking at it down there, but most of us can see which way it's heading. I am just looking for - I
3 suppose - that we still retain development control on that piece of land regardless of who has it.
4 The fact that it's developed as it has done over the years to now being permitted for a pub, and
5 now the land is sold, we seem to have very little control over it. So to my mind we lost control
6 of this in 1991. And again in 2004 we lost whatever small bit of control, and now it's completely
7 gone.

8
9 The only authority we still have there is development control, and like Cllr Behan has asked, I
10 would like to know what are the legal options open to us to retain our interests in that land.

11 Thank you Chairman.

12 CATHAOIRLEACH: Thank you. Cllr Fortune?

13 Cllr FORTUNE: I repeat what I said at the - before you clicked off Chairman, that I feel a lot of
14 this information as outlined by Cllr Behan and Cllr Matthews is new to most of us, and I just
15 think - I don't think it's good business to feel that you can make a proper decision in that kind of
16 context. I want to put that out before I ask a few questions.

17
18 I agree with what's been said. In principle, this situation is absolutely wrong. And there is a
19 very simple question, a very simple word: Why? Why has this been allowed happen? Why has
20 it been allowed to get to this situation? Why wouldn't we have better control over the like of this
21 happening? Did the Local Authority contest this when it was being - when the procedure or the
22 process was in place to try and buy out the freehold? And if they didn't, why not? Why did the
23 Council give such a long lease on public property in the first place? Surely when any leases
24 were being done in this scenario, surely a serious context would have been to make sure that the
25 public good, the public interest was protected and we didn't end up in a situation whether it be
26 through incompetence or whatever, in a situation where we basically it would seem had no
27 control. I think that needs to be answered and I think it needs to be answered fully and properly
28 and not just a quick glib answer to what's being asked from the floor.

29
30 What other properties are in this situation? Can we as members get a list of other properties that
31 the Council have interest in? What legal status is on them, whether they be leases or whatever
32 they be? Can we also get a record of disposals that have been done in the past, that we perhaps
33 were not informed about, and could we get the background to that? I think there has been at
34 least one if not two in Bray, perhaps done already. Rumours are rumours, but at the end of the

1 day, when something is out there, you can't just totally dismiss it. And there are a number of
2 leases it would appear involved in this particular property, and there is a -- it's been in the public
3 domain, in the media of a commercial entity interest in coming and buying it out at very serious
4 money.

5
6 So have we as a Local Authority at a time when we have no money to build houses, no money to
7 pay for local services, no money to look after our constituents, have we allowed through
8 whatever means a situation to develop where somebody is going to make a serious cash killing
9 on this?

10
11 And again I would ask the question that's been asked by the previous speakers: At this stage can
12 the Council not legally ensure that this doesn't happen? I think by any stretch of the imagination
13 this is absolutely crazy what's been allowed happen here. And there needs to be a full
14 explanation and I think the overview that David gave us at the beginning was very short, very
15 bitty. And again, as I say, we got this overview at the beginning of the meeting for people who
16 are not sitting on the District Council in Bray, that's grossly unfair as well. We haven't had a
17 chance to take it all in.

18
19 Equally, I have read like Cllr Behan, I have read all the stuff in the media about the Carlisle
20 Grounds, and I would have to say looking at it from a business perspective, that that would
21 seriously worry me. I think Chairman we can't just talk about while we are talking about the
22 Barracuda; we can't ignore other situations, and we do need to get some kind of - not some kind
23 of, we need to get absolute insurance that the Carlisle Grounds is not being teed up for the same
24 kind of scenario. I think that's very, very important and again it's in the public interest. We as
25 public reps, that's our core job. Our core job is to act in the interests of the public, of the public
26 interest. And I think there has been a serious cock-up here on someone's part. And that needs to
27 be explained.

28
29 Now also in the same vain, when I ask about things that have been done in the past, I have had -
30 obviously because of this, it's got media attention. I have been asked the question by a
31 constituent in connection with Charlesland, and in particular the roadway, and again I would
32 need some clarification on this as well, that my understanding is that when Charlesland was
33 originally granted its permission, it was basically land locked. And there had to be land CPO'd
34 to put a roadway into it.

1
2 So the question I have been asked by a constituent that I wasn't able to answer when I was asked,
3 I said I would check it out because we had an appropriate meeting today. How can you secretly
4 contract with a developer to CPO land? Was that brought before the members of the Council,
5 was it approved by the members of the Council, I think it happened prior to most of us that's in
6 the Chamber today. These are the kind of things we need to know. I think what the situation is
7 the Barracuda raises and there has been lots of questions over the last number of years and
8 Councillors have been basically castigated for asking them, but I think when you see what's
9 happening now, most of those questions that were being asked by Councillors in the public
10 interest are well founded and well meant. And we do need to be told. And are we getting to a
11 situation where we, as we are often told here, and we were at least by the previous manager, that
12 we were the board of directors. A board of directors obviously has final say in what goes on, so
13 we again need to clarify that particular comment that keeps getting passed. Are we as a board,
14 are we as members of the Council coming to a situation where we have to tell the executive you
15 cannot do anything like this unless you discuss it fully and properly with the members and if
16 need be, we put a special group together from the members to make sure that doesn't happen. It
17 would appear on the mess that this appears to be, unless someone can explain it in great detail,
18 that really as members we can't let you do this. Because we have no funding. We sit here
19 budget time every year and play games with a miserly amount of discretionary money. There is
20 never any money to do anything. We are now charging water tax and property tax and we still
21 can't do anything. Here's a situation where this property could be worth 4 million euro and it's
22 been given away for whatever the original lease price was, 70 now, and an additional 10,000,
23 wham, someone is going to make a killing. We can't stand over that, as members we have to
24 object to it and I object to it and I think this thing is wrong and there needs to be a full
25 investigation into T I would think that today is not appropriate to make any final decision on it. I
26 think we should have another meeting if needs be next week if that's what it takes to get this all
27 sorted. I think it's an absolute disgrace. I really do, I think it's a disgrace.

28 CATHAOIRLEACH: Thanks Councillor. Cllr Mitchell.

29 Cllr MITCHELL: Thank you Cathaoirleach. This was interesting. From looking at what's been
30 said, I had very little previous knowledge of this, but it would seem some 25 years ago it was
31 decided to get the aquarium to Bray and replace another building there which wasn't great. And
32 this deal was done at the time. And you know, maybe that was a good idea at the time in order
33 to get a major tourist attraction into Bray, whether it was good value or not at the time, it's not
34 really possible to tell this far on.

1
2 It does concern me had though that having done that that somebody is able to buy out the
3 freehold and I don't know if there are conditions in the lease about the quality of the operation
4 there or those sorts of things, which would maybe be fairly normal if somebody was given
5 something at a discount in order that they'd produce a public or semi-public facility, so I would
6 just be curious whether there was. One of my concerns would be that when somebody buys the
7 freehold of a place, it's very difficult to impose user conditions or any conditions on the fee
8 simple owner of a property as I understand it in land law. So it would seem to be very difficult
9 to have any conditions in the title of it as to what it would be used for. Obviously this Council or
10 the Bray members are free in their plan to impose whatever planning conditions are required on
11 this site, which maybe that could be a substitute for what might or should have been or maybe is
12 in the lease which has now been bought out. Just in relation to the Carlisle Grounds, there have
13 been a couple of references to that, there is a plan and hopefully it's not going to be too far away
14 that the Luas will come to Bray and that will be the interchange of the Luas with the Dart, about
15 the only one on the whole of the Dublin transport system. And it's very important that there is
16 enough land around there in order to provide a proper interchange between the train service from
17 the South of Wicklow and the Luas to Sandyford/Cherrywood where new towns are going to be
18 built in both of these places. And a lot of people from Wicklow are going to want to commute to
19 them. And I would like to see that there is - I would like to know first of all are there conditions
20 that there is enough space in the Carlisle ground for park and ride - for an interchange, and also
21 for a park and ride site. In Greystones, the Council built what is by far the largest park and ride
22 site near a Dart station and I think there should be some provision in Bray with the Council
23 providing parking for what is a very excellent public transport system, the Dart, and the Luas
24 when it comes there.

25
26 So I would like to see that there is some work done just to see that there is a provision in the
27 planning regulations for the Carlisle Grounds which provides for an interchange and provide for
28 a park and ride site for the major transport operation. If there is a suggestion of a change of use
29 of that site and I would ask - I am Chairman of the Transport and Environment Committee, I
30 would like certainly the next meeting of that committee to consider what are the planning
31 regulations there and do they have adequate provision to ensure that if something changes in the
32 Carlisle Grounds, that there is going to be an adequate interchange and park and ride site there in
33 Bray.

34 CATHAOIRLEACH: Thank you. Cllr Kavanagh, then Cllr Winters?

1 Cllr KAVANAGH: It says here the County Registrar's record is an order of the court and must
2 be complied with by the Council. But I would think and with the agreement of the other
3 Councillors if they saw fit that we would actually appeal that decision through the courts, that we
4 go down the legal route and actually challenge that decision, because that would have other
5 implications for every Council throughout the country as well and it needs to be nipped in the
6 bud I think at a higher level. Maybe at the time people didn't realise the implications that this
7 could have. So I think it's relevant to the whole country actually and to state assets throughout
8 the country, that we would - so I would propose that Wicklow County Council would order
9 Wicklow County Council to take legal challenge against that and secondly I would concur with
10 the proposal by Councillor Behan and probably seconded by Cllr Fortune that we would have a
11 full and detailed report into all correspondence relating to this case, phone calls, emails,
12 meetings, etcetera, pause this needs to be opened up for transparency to see what exactly - it is of
13 national importance that we look at these things thoroughly.

14 CATHAOIRLEACH: Thank you. Cllr Winters.

15 Cllr WINTERS: Thanks Cathaoirleach. I suppose - well I agree with what Cllr Behan said
16 much earlier. I had always thought that members were to be consulted on the disposal of an
17 asset and I suppose it's quite concerning that the officials have disposed of an asset by deciding
18 that they didn't need to bring it to us. And I suppose what I would like is I would actually like a
19 full list of the disposal of all assets by the Local Authority in the last eleven years since I became
20 an elected member that were not decided by the members; that weren't brought to the members.
21 I had genuinely always understood that we weren't consulted on the purchase of an asset, but that
22 we were consulted on the disposal of an asset, so I would like to see what other assets since I
23 became a Councillor have been disposed of by the Council without reference to me. If any.

24
25 I also want to know when the lease was written. Did anybody see this as an envisaged outcome?
26 Did the Council, and that's the Councillors, and the officials, expect this to happen? Or when the
27 lease was changed in 2004 were the terms of the original lease changed in any way that now
28 made this outcome permissible when maybe in 1991 it wasn't?

29
30 And the email that we received today is dated the 17th of July. Like we were only sent notice of
31 the Special Meeting last week. It would have been far more helpful if we had actually received a
32 copy of this email along with the notice of the meeting, rather than walking in five minutes
33 before the meeting, which was delayed by ten minutes, and that's the 15 minutes that we got to
34 consult this. It was in the County Buildings, it would have been much better for the members to

1 have been given the information required for us to ourselves to have a proper debate. Here we
2 are just asking questions, most of which we will be told we will come back to you in September.
3 It's not an effective system.

4
5 I want to know when did the officials become aware that the lessees had applied to the County
6 Registrar and why were the members not made aware that that application was going to court
7 and to see what our views were on it as it might actually have resulted in the disposal of this
8 asset? And did we seek legal opinion to fight that opinion of the lessee? Did we - and what
9 action was taken by the officials to protect our asset? And if we are not able to get those answers
10 today, I would like them in write withing, thanks.

11 CATHAOIRLEACH: Councillor Lawless.

12 Cllr LAWLESS: I am kind of in agreement with a lot of the Council here today and I would like
13 to thank Cllr Behan for arranging this meeting. Like much of the Councillors here, I was quite
14 surprised and very concerned about this, and also the lack of information. I mean it was a two
15 line email sent to us for a Special Meeting and that was it. My concerns is public - I don't know
16 an awful lot about property and property sales, I'll be quite honest here, but it's public property,
17 and my concern is now is this setting a precedent for other public property in Wicklow County
18 Council, that this can happen again? And to me it just, it smells a bit fishy, there is something
19 else going on in the background about this, and I want more information. I am not happy, I am
20 not satisfied. I want to know what we can do. apparently the deal is done and dusted. So why is
21 it only coming to us now. Again the email was in July. So I mean, it's just the whole lot of it is
22 just -- it just doesn't sit very well with myself and I want answers. I have to agree with Cllr
23 Winters, I would like to see a full list of the disposal of all property that hasn't come under our
24 noses here. I know I am only here a year, but I would still like to see it. And just, I feel that yes
25 we should have another meeting and have another meeting soon and we need answers. And we
26 need proper answers. We don't want stuff in bits and pieces. We want full, clear, transparency.
27 Thank you.

28 CATHAOIRLEACH: Thanks Councillor. You are sitting in a different seat Cllr Cullen, but I
29 presume it's you. You haven't slimmed down that much.

30 Cllr Tommy CULLEN:

31 Cllr FORTUNE: That's because my seat was moved around three times.

32 CATHAOIRLEACH: A lot of lads looking for your seat.

33 Cllr Tommy CULLEN: Councillor thanks. Chairman, the regards to - I have noticed this
34 document we have here from Lorraine, subject to Lorraine Gallagher from Teresa O'Brien dated

1 the 17th of July and the County Registrar order is an order of court and must be complied, "it
2 will not be necessary to bring this matter to the full Council under section 183 of the Local
3 Government Act." (Quoted). I am not sure if Teresa O'Brien has got her law degree since I last
4 talked to her but I wasn't aware she was a qualified solicitor or barrister or anything like that.
5 But she did say therefore it will not be a necessary to bring the matter to the full Council under
6 section 183. Under section 183 any interest, it includes any lands or interests, it includes the
7 interest that the Council would have and certainly the Council has a huge interest in this
8 particular property. And what I would like to know first and foremost was an application made
9 to get an order of stay on the judgment? Because the County Registrar, was it made clear to the
10 County Registrar that this decision had not been - was it - had not been brought before the
11 Council under section 183 of the Local Government Act that a no vote had taken place, no notice
12 of disposal had been brought forward before the Council which I think the Council have to get a
13 lease to get eleven days notice of notice of disposal and must be accompanied by a full report
14 and map of the building or property going to be disposed of which clearly didn't happen or we
15 wouldn't be here today. Was the County Registrar made aware that section 183 had not been
16 complied with by the executive?

17
18 And subsequently, did the Council look and seek an order of stay on the judgment until the
19 matter could be dealt with at this Special Meeting? I think there is 14 or 21 days after that the
20 Local Authority can go in and put a stay on the judgment subject to an appeal. And because the
21 count registrar must uphold the law with regards section 183. That's there to protect the public
22 interest. It's a reserved function of the elected Councillors that the disposal of public property
23 can only, only be done with the authority of a vote in this Chamber after due notice. And so
24 Chairman, I would be quite concerned about that, because I do have - I have also come across a
25 document where I think it's a document where up to 50 million euro worth of public property has
26 been disposed of at Charlesland that never came before a notice of disposal of the Council.
27 Incredibly part of the contract has not - 13, 14 years on has not been fulfilled. And I also now
28 note that one of the beneficiaries of this contract has now at the Oireachtas banking inquiry the
29 other day, would appear, would appear to have, to deny any knowledge of the said document.
30 And I think his quote was when he was asked do you know about this document, he said "no,
31 absolutely not, no." And that's under evidence under oath. That's last Thursday. Now that's
32 what he appears to have referred to in this document when he was asked. So Chairman, I would
33 be very concerned. I don't know much about this. I didn't know that the Council owned
34 restaurants or hotels or anything like this. this is the first I have ever heard of this. And credit to

1 Cllr Behan for bringing it to the Council's attention. I do think it's - if this is allowed to stand, it
2 means effectively that the reserve function of this Council and every other Local Authority in the
3 State is gone, and I do think that we do need, probably do need some form of independent legal
4 advice on this, but whether or not that means that the Council should put a stay, look for a stay,
5 an order of stay, pending the outcome of some other advice or not, I don't know. Thank you
6 Chairman.

7 CATHAOIRLEACH: Thanks Councillor. I don't think there is anyone else with their lights on.
8 There is many issues there, so maybe Mr Doyle might...

9 Cllr FORTUNE: Can I make a proposal before you pass it over to the Manager. Basically what
10 we should do, I am propose be we look for an order of stay on what's happened, and that we
11 write to the Minister and look for a legal opinion from the Attorney General on the matter and
12 that we should put a stay on everything until that's received, but I think this is so fundamental not
13 alone for our county but lots of counties, the very least we need to do that. So I would propose
14 that's what we do.

15 CATHAOIRLEACH: My opinion at this stage we just should listen...

16 Cllr FORTUNE: I put the proposal, I hope someone might...

17 CATHAOIRLEACH: It will do no harm whether that's the proposal or not to listen to Mr Doyle
18 and Mr Sweetman, we should do that, they're here to answer questions and there is been a lot of
19 questions that Mr Doyle could possibly answer and it's my view that we should listen to him.

20 Cllr FORTUNE: I put the proposal and I am hoping some member would support it.

21 Cllr CASEY: I think we should hear him.

22 Cllr LAWLESS: I would second it.

23 CATHAOIRLEACH: If you could put the proposal in writing.

24 Cllr LAWLESS: I'll second that.

25 MS GALLAGHER: Under Standing Orders you put the proposal in writing.

26 CATHAOIRLEACH: We should get it up here.

27 Cllr FORTUNE: It's very simple, I shall write it out. It has been seconded.

28 MS GALLAGHER: Any other proposals being made by the respective Councillors, be put in
29 writing to the Cathaoirleach.

30 CATHAOIRLEACH: I think the Director should go ahead, Chief Executive.

31 ACTING CEO: There are quite a number of issues, Cllr Behan generally has been made five
32 points and I think most of the points were again reiterated by most of the members. Certainly we
33 will have a full detailed report on the sequence of events and interactions with meetings, emails
34 and various, any interactions we have for the members. That's reasonable.

1
2 Mr Keogh might give some information with regard to the planning implications if there is any,
3 with regard to the freehold interests being disposed of.
4

5 What are the possible implications for all Council property? Naturally enough if there is any
6 similar leases, the same outcome could happen. It's my understanding that's not the situation in
7 the Carlisle Grounds, but again that's a matter that can be discussed by the Bray Municipal
8 District at their meeting and that information can be obtained and given to them, to the meeting.
9

10 The law agent will give his account of the interaction he dealt for the County Council in this
11 matter. He liaised with the purchaser's legal team using his own legal advice, and he will deal
12 with that. He will also outline the possible legal options, which I have discussed with him, and
13 it's not a slam dunk as they say, but the legal advice and the strong legal advice that I have
14 received from him is that the Council had no option but to proceed as we proceeded. I think the
15 Councillors are looking for a list of all disposals where the management didn't revert to the
16 members is a fair question. It will take a certain amount of time to gather that information
17 because we do operate on lease, we do give deeds of transfer of property to allow development
18 to happen, which Cllr Cullen refers to. That refers to quite an amount and I am looking forward
19 to the day when there will be a full clear explanation given to that, it's gathered a bit of legs,
20 unfortunately it's gathering too much legs for my understanding of the facts of the situation.
21

22 The power of the Council is there to dispose of property. Property. That is the rule of law. In
23 this particular case, we had a lease that under the legislation Landlord and Tenant Act required
24 us as found by the County Registrar that the purchasers had a right to purchase the Fee Simple.
25 I'll let the law agent deal with the issues. He might also deal with the fact that it wasn't not
26 necessary to bring the matter to the full Council. I think that was something referred to as well,
27 he might deal with that.
28

29 We had a discussion as well as to why this type of lease was used. We would have to do a
30 certain amount of more digging for that on the basis that we are not sure what other leases are of
31 a similar nature until such time as they're brought to the attention of two people wanting to
32 acquire that Fee Simple. I think the undertaking that I can give as Chief Executive is that this
33 information does need to be brought to the members in a more prompt fashion. All disposal
34 notices are brought to the members of the Council and are disposed of by the members. That

1 was raised, so the members do propose and second it and I from my time sitting in this Chair
2 have always interacted with regard to and sought information with regard to disposal notices.
3 And that information is available.

4
5 Perhaps I'll ask Fergal maybe to talk about the planning issues and bring in the law agent and
6 indeed if David Forde wishes to add any comment to my comments.

7 FERGAL: In relation to the implication from planning, per se the actual transfer of the land
8 doesn't have a direct impact on the decision of the planning authority. If it was to receive a
9 planning application. There may be a legal implication as we know to develop lands you have to
10 have a sufficient interest in it. Maybe the law agent might comment on if there is an actual
11 impact in terms of the transfer in whether one can go ahead and implement a condition. Section
12 34 of the Planning Act says that someone can't develop land on foot of a permission if they don't
13 have sufficient interest. I am not sure if there is a direct implication on the transfer of the
14 freehold in this particular instance. I do know the suggested rumour about a different use; that
15 type of use would be a material change of use, which is development, which would need
16 planning permission. And any applicant would have to go through the full planning process
17 which not only includes Wicklow County Council but also An Bord Pleanala.

18 Cllr Tommy CULLEN: Just one brief question, can we have copies of the notices of disposals, I
19 am sure you have them there with you for 1991 and 2004 for the leasehold. Can we have copies
20 of those two notices.

21 CATHAOIRLEACH: I certainly haven't got them. I don't know.

22 ACTING CEO: We will arrange to have them circulated if they're in existence.

23 CATHAOIRLEACH: Maybe Mr Sweet man could come up here as the issues has been raised.

24 MR SWEETMAN: Thank you Cathaoirleach. The members raised a number of issues in
25 relation to this matter. It first surfaced in connection with a licensing application that was
26 brought by an occupant in February, and - well it was actually notified to us in February, the
27 application I think was brought to the court in November, but that's incidental. At that time, I
28 took up the papers which had been prepared several years before I became law agent, and I
29 considered and advised how the matter might reasonably be approached taking into account the
30 history of the premises. As Mr Forde has said, the lease was granted back in 1991 for a payment
31 of the then sum of 75,000 Irish pounds and the construction of what is now generally known as
32 the Barracuda on the esplanade in Bray. The rent reserved was 100 pounds per annum. And - as
33 David Forde has said, the term was changed slightly in 2004, and again that was done by the
34 then Bray Town Council Councillors, and as my recall was the subject of some discussion. The

1 situation was that the present tenant applied, sent a notice of application in March of this year
2 through his solicitors intending to apply for the freehold, and in June, a formal application was
3 made to the County Registrar. And having looked at the matter, I was of the view, and so was a
4 junior counsel I had asked in connection with the licensing matter, and I was of the view and so
5 was my barrister that the tenant had an entitlement to purchase the Fee Simple under the relevant
6 landlord and tenant legislation. The reason is that there were a number of conditions to be
7 complied with, and the premises complied with those conditions. The conditions, and I'll just
8 mention them very briefly are that they were permanent buildings on the land, the permanent
9 buildings are not an improvement which has a slightly special meaning but is not relevant; and
10 that any land not covered by the buildings is subsidiary and ancillary. That as I understand it, no
11 application in this case because the entire plot is covered by buildings and that the prominent
12 buildings were not erected in contravention of a term of the lease, and one of a number of other
13 optional conditions. And the first of these is that the permanent buildings were erected by the
14 person who at the time of their erection was entitled to the lessee or the tenant's interest. On that
15 basis, my view, and it has been confirmed to me by counsel back in February was that the
16 present tenant had a statutory right of purchase of the freehold. When the matter came to the
17 County Registrar, sorry I should say that I advised the Chief Executive both Mr Sheehy before
18 he left and currently Bryan Doyle of this, and with his authority, with Bryan Doyle's authority, I
19 engaged valuers and we extracted some 80 years purchase for the freehold which was slightly
20 more than all things being equal the County Registrar would have awarded from the precedence
21 available in Dublin and Cork cities where these matters are dealt with by County Registrars on
22 an on-going basis.

23
24 The matter was dealt with by the County Registrar on the 14th of July, and because of the advice
25 I had received, I did not contest the application, because quite simply it could not be contested.

26 Cllr Tommy CULLEN: You didn't contest it.

27 Mr SWEETMAN: I did not contest the application, I'll explain why in a moment Councillor.
28 Because it was clear the lease entitled the lessee to purchase the Fee Simple. Full stop. I had
29 been so advised by Council and as it happens the valuer I engaged in the matter and he is not a
30 lawyer, Councillor, also formed the same view, but that's just by the by. The County Registrar
31 indicated that she had read the application and she had formed the same view and had the parties
32 not, in other words had I contested it, she would have made the same award that she ultimately
33 made in any event. And there the matter rests. The county registrar on the 14th of July has
34 made her order, and that is where we are.

1
2 I appreciate that it creates some disquiet among members. By the Landlord and Tenant Acts
3 provide that where a person has an entitlement, his landlord, whether it be a Local Authority or
4 otherwise is obliged to convey the freehold to that person, and given the situation and be the
5 terms of the lease and the facts, any competition, sorry any disputing of the matter before the
6 County Registrar could have resulted in an award of costs as against the Council. And on that
7 basis, I recommended that the County Registrar recommended that we do not contest the matter,
8 though I have to say I did not consent to it, but we didn't contest it because quite simply the law
9 was in favour of the tenant. Now that deals with that.

10
11 The situation then is can you appeal the matter and the answer is you can appeal the matter to the
12 Circuit Court if you wish. But in view of the clear entitlement of the tenant, I would strongly
13 urge against it, because it is highly likely that a Circuit Judge hearing the matter would award the
14 costs of the proceedings as against the Council, and we would be - we would lose a considerable
15 amount of money were the matter to go before the Circuit Court.

16
17 With regard to the question of the section 183 resolution, members are quite correct when you
18 say that most matters come before the Council by way of disposal resolution. There is of course
19 a well known exception and that's tenant purchase disposals do not require a disposal under
20 Section 90 of the Housing Act of 1966, which as you know proceeds by way of a transfer order.
21 The relevant legislation that covers this is Section 6, the Landlord and Tenant Ground Rents Act
22 of 1967 which is the basic legislation that grounds the right of a tenant to purchase the Fee
23 Simple from his ground landlord, and Section 6(1) says that, "Where in relation to the relevant
24 land, and I'll paraphrase it very slightly, a notice is served by a person seeking to purchase the
25 Fee Simple. The person by whom it is served and the person upon whom it is served shall
26 without unreasonable delay take all necessary steps to effect a conveyance free from
27 encumbrances ... Fee Simple". (Quoted). Nowhere does it say subject to section as it would
28 have been 183 of the 1946 Local Government Act. It seems to me where a person has an
29 entitlement to purchase the Fee Simple, that's a statutory entitlement and every public body,
30 including County Councils are obliged to comply with that particular provision. Do you want
31 me to cover any other matters for the moment? It will probably raise a few questions.

32 CATHAOIRLEACH: Any questions, yeah, Cllr Behan, sorry there yeah.

33 Cllr BEHAN: First of all, can I thank Mr Doyle for his indication that we will get a detailed
34 report on the sequence of events leading to this situation. And for the frankness of his reply,

1 which I appreciate and it is in character with the way he normally does his business and I am
2 grateful for that. I am not saying there is any hidden agenda by any official in this. This is a
3 matter of principle for me. It's a matter of principle that publicly elected representatives are
4 given a legal power to dispose of property, which is owned by the people. And in this case we
5 were bypassed. I thank Mr Keogh as well, because it certainly would appear that any suggestion
6 of a radical change of use, for example as I think - he didn't specify, but I am paraphrasing him
7 and I am hoping I am right in what I am saying here, that if it was to change from a restaurant to
8 a pub, or a super pub or something like that, it will have to go before the development control
9 process, the planning process, and I certainly would welcome that, if that is the case, because
10 that at least means the Local Authority will continue to have some say over what might happen
11 and I certainly hope he is right in that.

12
13 Also I want to thank the law agent for his account, I suppose in summary form of what
14 happened. But there are a couple of further questions, first of all I didn't quite catch what Mr
15 Sweetman said about the amount of money he extracted, I think was the word he used, from the
16 other side in terms of this. So perhaps he might repeat that. I didn't quite catch it.

17
18 Secondly he appeared to say that the County Registrar suggested to him that he not object to it.
19 Now is that the role of a County Registrar or somebody who is acting quasi-judicially to suggest
20 to someone that they should accept what's being proposed rather than help them make up their
21 own minds? I find that a strange development. And again I would just like to probe that a little
22 bit further as to exactly what the County Registrar said to him. Now he said his own opinion and
23 the advice of a junior counsel was that he had no alternative, but not to object I suppose. Did
24 any of you ever consider that there might be rights for public representatives in this process?
25 Did the thought ever enter into any of your minds from Mr Doyle, Mr Sheehy, who is now gone,
26 yourself or the junior counsel or indeed the County Registrar that normally public
27 representatives dispose of property?

28
29 Now you mentioned the Tenant Purchase Act, which my understanding is that's for Council
30 housing. You didn't say that when it came to other Council property that it wasn't necessary for
31 Councillors to make the decision. So I want to probe that a little bit further with you Mr
32 Sweetman? Is it are you saying that there certainly is an arguable case that we at the very least
33 we should have been informed that this was possibly going to happen; that we were entitled to
34 seek legal advice on it and that we were entitled to maybe offer an alternative course of action to

1 you, because I think that's very important.

2
3 I also want to say Cllr Fortune has put in a motion there now and some of us have been around
4 long enough in this Council to know that you don't sail into taking legal action as public
5 representatives here unless we know we have the right to do it. And certain members of this
6 Council know to their own personal cost, you know it's a very difficult process for public
7 representatives to act outside of the Council. And any decision we might make, I want to make
8 it very clear Chairman, that any decision we might make as a body to either seek alternative legal
9 advice or to appeal this or in whatever we might decide to do, it's essential that we do it in
10 accordance with the law and in accordance with our rights as Councillors. Because certain
11 Councillors in the past tried to vindicate the public's right and it cost them financially a lot of
12 money.

13
14 The system is very unbalanced in the sense that the management are entitled to all the legal
15 advice they want to back up their decisions, and their actions. We as public representatives have
16 to fight tooth and nail to get the same sort of legal protection. So I would say to Cllr Fortune, I
17 am not jumping in immediate to say we are going off down to the court next week, as
18 Councillors, and we are going to appeal this. We want to be very, very careful. I would like to
19 work, compromise a situation where we do this in co-operation with the officials, that we
20 establish have we got the right to - as public representatives, to at least make the decision? Now
21 maybe the advice will be we have no option but to agree to it. Well if we have no option, we
22 will have to decide that. We were never given the chance. That is the point. I welcome Mr
23 Sweetman's views on that particular aspect as well. Thanks Cathaoirleach.

24 CATHAOIRLEACH: We will just go ahead for the moment. Cllr Casey there has been looking
25 to get in. I am disappointed in the position we are in here today, this would have been all what's
26 known as a valuable asset to the Council to find out that it can be simply disposed of like this is
27 disappointing to us as public representatives. Can I equally have clarification of any other
28 similar leases that are in place out there, because this could open up the flood gates to other
29 claims being made. But equally, is the lease restricted to the buildings and the buildings only?
30 And does it - is any other land outside of the buildings and - I suppose I am thinking about
31 further down the line, if this person was to seek planning permission, they would have to provide
32 a certain amount of car parking facilities, etcetera, and other ancillary services that might be
33 required. That might stymie it a bit. Because I think it's a huge valuable asset to this Council
34 that we have just lost overnight and we as public reps, one of the few rights we had, was

1 disposing of assets. Now we find out we have no right in the Barracuda restaurant to dispose of
2 it, and we had no right to dispose of any of our water assets. Irish Water just took them over
3 overnight. As our roles as Councillors, it's been diminished more and more. But I am concerned
4 is this restricted to the building and the building only and no public space outside of the building
5 or no on street parking that is provided by that facility?

6 CATHAOIRLEACH: Thanks Councillor. Cllr Winters.

7 Cllr WINTERS: Thanks Cathaoirleach. Just one of the questions I asked was when the lease
8 was written, was this an envisaged outcome. Nobody responded to that. I also asked why we
9 haven't received the email we were handed at five to two, why we didn't get that along with the
10 notice of meeting last week, who decided what went into that notice and why was it excluded?
11 The other thing is we hire this company here beside me here and behind me to provide the
12 seewritenow service and for the second meeting in a row there is no Wi-fi to enable them to
13 actually allow the public or those who are hard of hearing to partake in this and I am just
14 wondering why are we spending all this money if it's a service we are not actually providing and
15 can we ensure if we are providing this service and paying for it that we can provide them with
16 the Wi-Fi so they can actually do the job. Thank you.

17 CATHAOIRLEACH: Councillor Matthews.

18 Cllr MATTHEWS: Thank you Chairman, just a question there, does the 2004 lease, does that
19 supercede the '91 lease and the terms of the '91 lease? And is the 2004 lease still currently valid,
20 are we still the landlord of that piece of land? And is non compliance with the terms of the lease
21 reasonable grounds to revisit that lease? Thank you Chairman.

22 CATHAOIRLEACH: Cllr Fortune.

23 Cllr FORTUNE: Thanks Cathaoirleach. Quickly, just a comment on what Cllr Behan said. The
24 motion I put forward was basically for us to - to be informed legally of our position and that the
25 motion is pretty clear on that. I am not advocating going down be in the first instance spending a
26 lot of money. I have said we will talk to the Minister and look for the AG's opinion on it.

27
28 Can I just, and again I thank everybody for their responses but I think the responses while they're
29 fair enough, they do leave a lot of questions. Like Mr Sweetman, for example, the difference
30 between a lessee and a tenant. I think there is a distinct difference in those two entities. You
31 might just comment on that in this case.

32
33 I also think that I don't think members and I have said this before and I suppose people see me at
34 this stage as always going on and cranking about it, but at the end of the day I look at the system

1 and say what the hell is going on here, the emperor just doesn't have any clothes on. Because
2 when you were answering Mr Sweetman, you talked about having to inform us under certain
3 things in section 183. In saying it the way you did, are we being told that you only actually tell
4 us what you have to tell us, while that was laid down by statute, you just tell us enough. I think
5 that's the case a lot of the time and I think it's not right. I think it's unfair.

6
7 Then the other point, how can the County Registrar, when you reflect on what's being said, I am
8 just reacting to what I have heard, the County Registrar couldn't act much differently when it
9 doesn't appear to have been contested and it doesn't appear to take full account of section 183.
10 Cllr Cullen asked a very relevant question on that. Also when I put my initial input, I asked
11 about the Charlesland situation and the roadway and I put a specific question in on that on behalf
12 of a constituent, and I would like to get some kind of a response back on that.

13
14 Also with we get some kind of clarity when we are going to get the information in regards to
15 history and these various things that have happened in the past and the detail of them and various
16 properties that are out there in danger of maybe the same thing happening. It might be no harm
17 either to hear what is the Council going to do in regards to the threat that's coming up in regards
18 to the Carlisle Grounds. I think - I said at the outset that I felt today because of the way the
19 information was given to us, and Cllr Winters' point is very, very relevant that we get the Notice
20 of Motion at the meeting and we don't get the breakdown of the detail. We do that all the time. I
21 just think that's not good business and it's not fair to us, so I think it's about time now we were
22 treated a bit differently. I would be - I would be hoping that Mr Doyle would take that on board.
23 I think he will. Because I think things need to change. If the business of the Council is going to
24 be done like this and we end up having to call special meetings to discuss things in hindsight and
25 trying to revisit them when the horse has bolted, I think there has to be a case made as I said in
26 my words earlier that there has to be a case made or something put in place where members have
27 a right and have a proper say at the early stages of all this. In other words if decisions are being
28 made that are fundamentally not in the public interest, then we have to be involved to make sure
29 that doesn't happen.

30 CATHAOIRLEACH: Thanks. Cllr Lawless.

31 Cllr LAWLESS: I'll be quite brief, the question has more or less been asked. I would just like to
32 thank Mr Doyle for saying that we will get a full detailed report. I do appreciate that. You do
33 mention that we have similar other leases and there is a possibility we could have this outcome
34 again on properties. I would really appreciate if we could get some kind of a list, after all it is

1 public assets and I think maybe we should be looking at that we don't want to be in this situation
2 again and putting some kind of prevention in or maybe these kind of leases, we shouldn't
3 actually be operating them if we are going to end up losing our public assets. I don't know
4 legally how we can do that or not but I think maybe that's something we should be looking at.
5 We don't want to be sitting here again and find out that more land or property is gone. We all
6 know land and property is very valuable and we don't want to be losing that. That's my question,
7 is there something we can do to prevent this from happening again. Obviously this is done now
8 and there is not much we can do unless we do appeal it, again it's another cost, but maybe it can
9 be looked at that we don't go into lease agreements that we end up in a situation where we are
10 actually losing prime property and prime public assets for the Council. Thank you.

11 CATHAOIRLEACH: Thanks Councillor. Cllr Mitchell.

12 Cllr MITCHELL: Thank you, just it should have been explained at least to the Bray Councillors
13 that the issue which was at stake here. It was always going to be contentious and if nothing
14 could be done about it at least the facts which have been outlined now.

15
16 Secondly the fact that we have been circulated, as we come into the meeting with a complex
17 enough document about the land title and things, that should have been sent out before the
18 meeting. So that at least we had some idea of what we were facing. Just a couple of Councillors
19 have raised the issue of Charlesland and I would certainly appreciate just an explanation from
20 Council staff in due course. My understanding is that in - a long time ago I was on the Town
21 Council and not on this Council, and at that stage maybe 20 years ago, the plan for an access
22 road to Greystones was to come down the Delgany valley with the single carriageway road, do a
23 zig-zag and then come into the centre of Greystones. Now somebody, be it the developer or the
24 Council official then spotted the chance when Charlesland was coming up for development, and
25 the IDA had owned its site for maybe 35 years for just growing grass on, and they spotted the
26 fact that it would be much better to build a road from the N11 going into the centre of
27 Greystones and we now have a dual carriageway which goes most of the way from the motorway
28 to the centre of Greystones. The alternative which has come about is a much better solution. My
29 understanding is that the majority of this road, the vast majority of it was actually is on land
30 which was owned by the developer of Charlesland and also by the IDA. There was a section of
31 land which was owned by the Council which was needed to complete the dual carriageway from
32 the Kilcoole road through to Mill Road. And as far as I understand, that was given to the
33 developer with the condition that he build the dual carriageway and without cost or without very
34 minimal cost and this was a key part in getting that dual carriageway built. That's my

1 understanding of why that was done. I would certainly appreciate that this would be maybe
2 explained by a Council official. But the end result of doing that was that we now have a dual
3 carriageway from the motorway into the centre of Greystones whereas the previous zig-zag route
4 down the rather pretty Delgany valley, which would have been quite contentious, particularly for
5 those who live there, would have been much inferior as a road. I would just appreciate
6 confirmation from Council officials that that's the basis of the Council donating land for a small
7 amount of money or whatever to the developer on the condition that he builds this dual
8 carriageway.

9 CATHAOIRLEACH: Thanks Councillor. Cllr McLoughlin.

10 Cllr McLOUGHLIN: I would be particularly concerned over the situation that we weren't told
11 because it was a legal issue. I cannot see why just because it was okay, it was legal, it was a
12 legal situation, you were doing within be the law, you were doing what you were doing within
13 the law, therefore the Councillors don't have to be told about it. If that was the situation, I am
14 not sure why we bother to meet on a monthly basis, are we only hearing things that are not
15 relevant. It's relevant to the county and therefore it is relevant to us. And I would agree 100%
16 with my colleagues, most of the statements said around this table here today. But as
17 Cathaoirleach of the Greystones Municipal District, I would be absolutely appalled if something
18 like this was happening within the Greystones district and it wasn't brought to our attention. I
19 find it slightly contemptuous that anybody would say sure we are within our rights, it is within
20 the law so we don't need to tell them. I would like to think that our Council would be a little bit
21 more open with all the Councillors, and indeed within the management, and from now on, if
22 nothing else comes out of this, that anything like this that has any impact on any of our buildings
23 in any of our land that we are informed about it, not because it's legal or not legal, but because it
24 is the right of the people of Wicklow to know what's going on so we can learn from mistakes and
25 make sure they don't happen in the future.

26 CATHAOIRLEACH: Thanks Councillor. Just there is a few issues there.

27 MR SWEETMAN: In answer to Councillors, my valuer's advice was that there where a County
28 Registrar determines the price of the Fee Simple, it's done with a multiplier of the ground rate.
29 The going rate for Dublin and Cork city for which there are a number of precedents available,
30 between 50 or 60 years purchase, in other words 50 times the ground rent. We got 80 times the
31 ground rent.

32 Cllr WINTERS: Can you put on his microphone.

33 Cllr BEHAN: What was the figure?

34 Mr SWEETMAN: 10,000. The second point you mentioned was the County Registrar's

1 comments and what I had said, Cllr Behan, actually was that at the end of the proceedings, the
2 County Registrar indicated that she had read the papers and had there been a competition, had
3 we contested it, she would have come up with the same answer. She would have determined the
4 tenant or lessee and there is no difference between them, incidentally, the tenant is the lessee, a
5 lessee is a tenant, it's just a different word. She would have made a similar award, but she would
6 have determined the statutory right to purchase the Fee Simple. That I hope deals with those.

7
8 With regard to Cllr Casey, as I look at the maps and understand the history of the Barracuda, the
9 - there may be a very small area of space literally around the building, like a pathway or an
10 apron, but there are no car parking spaces, there is no space other than what is covered by
11 buildings, give or take a very small measure as I understand it. It maybe only a matter of a
12 couple of feet. I don't think there is anybody here from Bray who would be able to confirm or
13 deny that. But effectively, the footprint of the building is the only item in issue.

14
15 With regard to Cllr Matthews', the 2004 document was a variation to the existing lease, so the
16 1991 lease remained, but with a variation doing two things: Extending the term for which the
17 lease was in effect, and providing permission for the then tenants to operate a restaurant with a
18 special restaurant license which I understand it is a drinks license, which allows you to serve
19 drink when it is with a meal as well. That's the change brought in in 2004.

20
21 Cllr Lawless asked for a list of other possible leases, that's something we will have to look at. I
22 can say that a format we now use is probably a good deal safer. The landlord and tenant law
23 seems to change from time to time. In terms of prevention, certainly the format that we now use
24 for any letting and there are a number of different categories of letting and I won't detain the
25 meeting unless you want me to, with those, but in terms of a letting of a premises in similar
26 circumstances, the format that we had settled back in the year 2000 is a good deal safer. I can't
27 say it will never happen again. But I would be pretty confident that a lessee under the terms of
28 that lease would have a very different outcome.

29
30 In terms of prevention there is a provision that you cannot contract out of a statutory right to
31 purchase the Fee Simple. There was an amendment in 2008 whereby a right to an extension to
32 your lease or to a renewal of your lease, that right could be contracted out of, but there is - for
33 existing leases, it's not possible to contract out of your rights, such a contract is stated to be void.
34 Into the future, any application for a lease of any kind would receive I think considerably more

1 consideration than may have been the case in the past.

2
3 One question I didn't deal with was the question of a legal interest Fergal Keogh mentioned the
4 question, and left it uncertain, or wasn't certain, as to whether or not the - a lessee or a freeholder
5 had a different interest for planning purposes. I would be of the view that a lessee who holds for
6 more than about five to ten years would have standing to make a planning application, and a
7 freeholder obviously would. I hope that clarifies that. I am not sure if I have anything much else
8 to say.

9 CATHAOIRLEACH: Do you want to come in again Brian?

10 ACTING CEO: No.

11 CATHAOIRLEACH: Cllr Cullen.

12 Cllr Tommy CULLEN: Thank you Chairman, Mr Sweetman did you make aware to the
13 registrar, obviously once you didn't contest it, the registrar whether she may not have said to you
14 after the hearing, she only could ever only make one decision and that was to grant the
15 application, once you didn't contest it, so it was a forgone conclusion. There was only ever
16 going to be one outcome to that hearing because you had decided you were not going to
17 challenge her to contest it.

18
19 Did you inform the registrar that the disposal of public property was a reserved function of the
20 elected Council. Did you make the registrar aware that you had not consulted your - the Council
21 that employs you, the elected Council?

22
23 And you know, you have said that there is no difference between a lease and a tenant?

24 Mr SWEETMAN: Lessee, yes.

25 Cllr Tommy CULLEN: I am not aware that this Council gives tenancies agreements for anyone
26 in a Council house for 250 years, I actually haven't seen that, but what I have seen here is three
27 months ago a lease by the Greystones soccer club at Charlesland, they had to renew a lease under
28 section 183 only three months ago here from a lease that they had been granted 15 years ago, and
29 this lease was - now you say about the 2004 lease, the lease. Can you just clarify for me now
30 was that a continuum of the 1991 lease, and so the 1991 lease would have had a notice of
31 disposal, is that right? Mr Doyle has said it is. There was a notice of disposal for the 1991 lease,
32 would that be right?

33 Mr SWEETMAN: I presume there was, I wasn't a law agent then.

34 ACTING CEO: What I said was I would get copies if there was disposal notices.

1 Cllr Tommy CULLEN: You said there was.

2 ACTING CEO: No, I did not.

3 Cllr Tommy CULLEN: I presume there was because you do need a notice of disposal for a
4 lease. Then you say there was another lease issued for 250 years in 2004. You are aware of that
5 because you handled this...

6 Mr SWEETMAN: No, it was a continuum, that was an extension.

7 Cllr Tommy CULLEN: Was there a notice of disposal on that lease?

8 Mr SWEETMAN: To the best of my recollection there was, but I don't have a copy on my file.

9 Cllr Tommy CULLEN: The best of your recollection...

10 ACTING CEO: We have been through this, I have indicated that we are going to give a full
11 detailed note of the comings and goings on this particular file and in particular the interaction
12 since last November...

13 Cllr Tommy CULLEN: I am asking a very important question, Mr Doyle, if you don't mind Mr
14 Sweetman answering it. You were handling this case, so you would have read the complete file.

15 Mr SWEETMAN: Yes.

16 Cllr Tommy CULLEN: This was four million pounds worth of public asset. When you read the
17 file, you would have seen a copy of the 1991 Notice of Disposal for the lease.

18 Mr SWEETMAN: I don't have it on the file.

19 Cllr Tommy CULLEN: You don't have it on the file? Do you have a Notice of Disposal for the
20 2004 lease?

21 Mr SWEETMAN: No, but I have references to Council meetings and so on.

22 Cllr Tommy CULLEN: Do you have a copy of the Notice of Disposal?

23 Mr SWEETMAN: No, but Mr Doyle has said he will get it.

24 Cllr Tommy CULLEN: Could we have them issued tomorrow?

25 ACTING CEO: No, but this week.

26 Cllr Tommy CULLEN: This week, so we will -- this is a Special Meeting, I would have thought
27 you would have had the complete file here today. It is referenced in the document we got here
28 the 1991 lease and the 2004 lease, so obviously research has been done so those two documents
29 would have been at your disposal. They're very important documents in all of this. But I'll take
30 it Mr Doyle will get out the two Notice of Disposals. I am disappointed that Mr Sweetman did
31 not have those Notice of Disposals when he was handling this case so as to read, because I am
32 sure the reading of those Notice of Disposals would clarify what the wording of the lease was.
33 How therefore if you were not aware of the contents of the lease that - of the Notice of
34 Disposals, what conditions the Notice of Disposals attached to those two particular leases. I am

1 surprised you went into court without that knowledge did not therefore contest it without the
2 knowledge what the notice of -- documents which are very substantial, two substantial
3 documents contained.

4 Mr SWEETMAN: The notices were disposal notices, the lease in 1991 was the document that
5 governed the matter. Not the notices of disposal.

6 Cllr Tommy CULLEN: Through the Chair, the Notices of Disposal, we have often had Notices
7 of Disposal here that were amended. The Notice of Disposal make the leases legal. Without the
8 Notices of Disposal, the leases have no legality. That's why the reserved function is with the
9 elected members of '91 and 2004. I am surprised you went in and basically surrendered without
10 having copies of the Notice of Disposals in your possession or that information contained therein
11 in your possession. But Mr Doyle has, will now give us this information.

12 Mr SWEETMAN: So it's academic.

13 CATHAOIRLEACH: Cllr Matthews.

14 Cllr MATTHEWS: One question I asked there, is the 2004, 1991 lease, is it still currently valid
15 as we sit here or has this order been signed, are we still the landlord today, at the moment?

16 Mr SWEETMAN: The County Registrar made her decision on the 14th of July. I do not know
17 whether she has actually signed the formal order, but as I understand the order, it would be dated
18 the 14th of July, and like a court order, it will then say the order was perfected, in other words it
19 was typed up and signed by the County Registrar on whatever date she signs it. That I have to
20 say is my understanding, so that as I understand it is the position.

21 CATHAOIRLEACH: All right. Cllr Behan.

22 Cllr BEHAN: We still haven't really grappled and you haven't given an opinion at all yet about
23 whether we have rights to be consulted or a right of decision making with regard to this process.
24 So can we have your answer to that one?

25 Mr SWEETMAN: My view as I said when I started talking is that Section 67 Act provides that
26 when a notice is served the freeholder must effect a conveyance of the Fee Simple and it's
27 governed by that Act, and it seems to me that in those circumstances, a Section 183 is not
28 required, because a specific Act dealing with landlord and tenant legislation provides that where
29 a person has the entitlement and he serves the appropriate notice, he is entitled to get a
30 conveyance of the Fee Simple.

31 Cllr BEHAN: So effectively we as representatives have no (INAUDIBLE).

32 SPEAKER: In this thankfully very rare situation, that it seems to me is the law.

33 Cllr BEHAN: Would it be, through the Chair, possible it would be good if the Chief Executive
34 answered this, to facilitate an alternative legal advice on the situation?

1 CATHAOIRLEACH: I think we should get the independent advice.

2 Cllr BEHAN: As members of the Council are there rights - are our rights being trampled on
3 here? Is it possible to do that?

4 ACTING CEO: Cathaoirleach, it is open to the Council to get independent legal advice on this
5 particular matter, certainly, yes, and if the members wish to nominate counsel, which is the usual
6 format we have adopted here previously, we can again, from the minute what's been proposed,
7 the verbiage that you have mentioned Cllr Behan, we can pass that on through the law agent to
8 get counsel advice.

9 CATHAOIRLEACH: I certainly think, I see Cllr Fortune has a proposal that Wicklow County
10 Council look for an order of stay by way of legal challenge and write to the Minister and look for
11 legal opinion from the Attorney General. Clear Behan alluded to it. People look for legal advice
12 in the past and ended up in difficult situations and I certainly won't be looking for legal advice
13 myself, but I do agree with what Cllr Behan is saying that we get independent legal advice, that
14 we ask the Council to get independent legal advice and get it to us as quickly as possible. At this
15 stage, I'll ask the law agent, we are talking here today for an hour and three quarters and so we
16 should be, but is there anything at this stage we could do to change that even if we wanted to?

17 MR SWEETMAN: In my view no, because unfortunately the lease falls within the provisions of
18 the relevant landlord and tenant legislation. I regret it's not what you want to hear but I think
19 there is no point in expressing a contrary view. The terms of the lease are what govern the
20 matter. And the terms of the lease are unfortunately clear. And the terms of the relevant section
21 in the relevant legislation, and I can read it out into the record if you want, I can certainly
22 circulate copies, it's in the statute are unfortunately quite clear.

23 CATHAOIRLEACH: Cllr Matthews.

24 Cllr MATTHEWS: On a point of information would non-compliance with the terms of the lease
25 be grounds for revisiting the lease if there was a break in the contract in terms of this lease?
26 That's why it's very relevant, is the lease still valid? Is the lease still active, because I believe
27 there is non-compliance with that lease and I would like to investigate that further Chairman.

28 CATHAOIRLEACH: Okay.

29 MR SWEETMAN: As I understand it the County Registrar has made her order on the 14th of
30 July. However if there was non-compliance with the lease, it would have to be substantial
31 non-compliance before any substantial steps could be taken. A minor non-compliance which
32 could be remedied or easily would not result in a forfeiture or a revisit of the lease, it would have
33 to be very, very substantial non-compliance.

34 Cllr MATTHEWS: I believe it to be substantial non-compliance with the terms of the 2004

1 lease. So that's why it's relevant, is the lease still valid at the moment?

2 MR SWEETMAN: My view it isn't.

3 CATHAOIRLEACH: In what respect Councillor?

4 Cllr MATTHEWS: The main clauses of - user clauses of the lease of 2004, I think for a
5 substantial period of time were non-compliant, there was non-compliance with it, I don't know
6 what the situation is at the moment. I would rather not say in detail.

7 CATHAOIRLEACH: I understand that yeah.

8 Cllr MATTHEWS: I would like clarification on it, but I believe it to be quite substantial.

9 CATHAOIRLEACH: Cllr Casey.

10 Cllr CASEY: I am probably clutching at straws here and I am going to go back to the Planning
11 and Development Act, is there anything we can dig in in relation to this. It would have required
12 planning permission in 1990 when it got it I assume. And at that point of time, there should have
13 been ancillary facilities like car parking, etcetera, had to be provided for the operation of this
14 facility. And it has been confirmed that the lease only relates to the building and literally the
15 building only. And from the operation of that building into the future might no longer have car
16 parking spaces if they're belonging to the County Council. And we are not willing to hand them
17 over to the operation of the Barracuda restaurant. Is there any angle we can take under the
18 Planning Act that we could stymie this some way?

19 MR KEOGH: I suppose as I said earlier, maybe just to come back to the clarification that Cllr
20 Behan might have been seeking about what I said. Just to maybe quote the 2006 section 5
21 reference by An Bord Pleanala which refers to not exactly the same case, but something similar
22 where one of the questions asked of the board was the use of the first floor as a bar function
23 room, as opposed to the authorised restaurant and there was a bar downstairs, was that exempted
24 development and the board clearly came back and said that they said use of the first floor as
25 public bar constitutes an intensification of use, which has material consequences in terms of
26 proper planning sustainable development. They went on to say therefore it was development and
27 not exempted development. So there is planning cases there which quite clearly say changes of
28 use as might have been indicated would require planning permission.

29
30 In terms of the actual is there any restriction that could be placed, as with any planning
31 application, it would be assessed in accordance with the normal planning things, parking would
32 be one of them. It is a town centre location. Developments of that type have been granted in the
33 past without parking based on the fact that there is existing public parking in place; that maybe
34 paid parking and so forth. But it would be something that would be considered, and if it was a

1 material intensification it would be something that would be taken into account.

2
3 However there is a Development Plan as well which we have to have regard to where the
4 members have set out what they want to see happen on the seafront. While the land might be
5 specifically zoned open space, there is an actual existing building on it which is a
6 non-conforming use. Therefore the actual zoning in terms of the building itself is a bit moot.
7 But there is -- our policies that the members have laid down for the seafront which mainly relate
8 to tourism, leisure facilities and so forth, they talk about not impacting on residential amenities
9 and the types of development that would be allowed should increase economic activity, should
10 increase leisure, should attract tourists and so forth. All those things will be taken into account
11 in assessing a planning application. As I said earlier, the planning authority in the first instance
12 would be Wicklow County Council and if appealed would be An Bord Pleanala.

13 CATHAOIRLEACH: Cllr Winters.

14 Cllr WINTERS: Thanks Cathaoirleach, just to say, is this on? Now it is thanks. One,
15 unfortunately the Wicklow Municipal District meeting was due to start at 3.30 so I am going to
16 have to leave now to go to that. Secondly, what I can't understand from what Mr Sweetman is
17 saying, the statute he is saying is as clear as day, he could read it into us that this is the lessee's
18 right. Why did we enter into a lease if the law was that clear that would ultimately give away
19 our property for what might be considered a knock down sum? The question I asked earlier, was
20 this an envisaged outcome from what Mr Sweetman is saying and reading into the minutes of the
21 meeting, it apparently was as clear as day that this would eventually be a possible outcome. So,
22 you know, was that explained to the members of Bray when they agreed to this back in 1991
23 when they redid the lease in 2004, was that put to them that that was a possible option? Did the
24 officials realise, well obviously they sought legal opinion and the people who wrote up the lease,
25 because if it's as clear as day now, how come it wasn't as clear as day in 2004? You are saying
26 the Act is the 1983 Act. So it was there. How did we not know? How did we miss it? Thanks.

27 CATHAOIRLEACH: Cllr Fortune.

28 Cllr FORTUNE: I am still unclear as to why we didn't believe it to be prudent to make the
29 challenge on it. That bit I am still unclear on. And just three other things. Could we get a copy
30 of the legal opinion and a copy of the valuation and a copy of the site map of the property in
31 addition to the stuff we looked for earlier?

32 CATHAOIRLEACH: Any more? I think there is -- Cllr Behan, you were the first person to
33 raise this.

34 Cllr BEHAN: I would be happy if the Chief Executive has offered to facilitate the seeking of

1 alternative independent legal advice based on -- which would be a minute of this meeting and the
2 issues that were raised, and in particular the question of whether the rights of members of the
3 Council to be consulted and to give approval to this, that that would be examined. And I am
4 happy at this stage for that to proceed, plus that we receive all of the information that has been
5 requested. If that can be done Chairman, I think that would be a good outcome, as good as we
6 could have hoped for at this stage. We will have to actually return to it again.

7 CATHAOIRLEACH: Cllr Cullen.

8 Cllr Tommy CULLEN: The documents Cllr Fortune read out there, he was looking for a copy
9 of the legal opinion that Mr Sweetman got from a junior counsel saying he had to agree to this, a
10 copy of the valuation of the property that Mr Sweetman would have had, and a copy of the site, a
11 copy of the title documents of the property, the freehold title documents of the Council, Land
12 Registry documents of the Council on this, along with the two Notice of Disposal, the 1991
13 Notice of Disposal, the full Notice of Disposal, both the 1991 Notice of Disposal and the 2004
14 Notice of Disposal and copies of the 1991 lease and copies of the 2004 lease. I think I would be
15 happy enough to go along with Cllr Behan on that Chairman.

16 CATHAOIRLEACH: I would too. Is everyone else happy to go ahead with that? You are
17 happy enough to go ahead with that.

18 Cllr FORTUNE: I think we should be writing to the Minister and asking for the AG to give us
19 opinion.

20 CATHAOIRLEACH: Maybe if we got them documents first just to see and you will have them
21 in the next week or so.

22 ACTING CEO: At the end of this week.

23 Cllr FORTUNE: If you are going to get the documents at the end of this week and send them in,
24 I am happy with that.

25 ACTING CEO: That's the timescale I operate on.

26 CATHAOIRLEACH: All right.

27
28 The meeting concluded at 3.50pm
29

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