



Northern Ireland  
Assembly

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**PUBLIC ACCOUNTS  
COMMITTEE**

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**OFFICIAL REPORT**  
(Hansard)

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**NIAO Report: ‘Reducing Water Pollution  
from Agricultural Sources: The Farm  
Nutrient Management Scheme’**

28 September 2011

**NORTHERN IRELAND ASSEMBLY**

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**NIAO Report: ‘Reducing Water Pollution from Agricultural Sources: The Farm Nutrient Management Scheme’**

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28 September 2011

**Members present for all or part of the proceedings:**

Mr Paul Maskey (Chairperson)  
Mr Joe Byrne (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Michael Copeland  
Mr John Dallat  
Mr Alex Easton  
Mr Paul Frew  
Mr Paul Girvan  
Ms Jennifer McCann  
Mr Mitchel McLaughlin

**Witnesses:**

Mr Brian Ervine ) Department of Agriculture and Rural Development  
Mr Gerry Lavery )

Mr Michael Brennan ) Department of Finance and Personnel

Mr Stephen Fay ) Land and Property Services

**Also in attendance**

Mr Kieran Donnelly ) Comptroller and Auditor General  
Mr Richard Pengelly ) Acting Treasury Officer of Accounts

**The Chairperson:**

Mr Lavery, you are very welcome. I will allow you to introduce your colleagues.

**Mr Gerry Lavery (Department of Agriculture and Rural Development):**

Thank you very much. I am Gerry Lavery, the acting permanent secretary for the Department of Agriculture and Rural Development (DARD). I am joined by Brian Ervine, who is the principal officer charged with environmental policy in the Department; Mike Brennan, who is the head of the central expenditure division in the Department of Finance and Personnel (DFP); and Stephen Fay, who is the district valuer with Land and Property Services (LPS).

**The Chairperson:**

You are all welcome. This is the second evidence session in our inquiry. That is down to the fact that the Public Accounts Committee is not yet satisfied that it has got to the bottom of the issues surrounding the valuation and proposed sale of the site at Crossnacreevy.

Before we start, I want to make it clear to the witnesses that the Committee expects full and frank responses to questions. Normal procedure, as you will know from the previous evidence session, is that I will ask some questions, after which members will come into the discussion in order.

Who in DARD took the lead on the Crossnacreevy issue?

**Mr Lavery:**

The lead in the Department changed at different times, but essentially I was responsible as the then senior finance director. My finance director took the lead on the Crossnacreevy issues until March 2008.

**The Chairperson:**

March —

**Mr Lavery:**

March 2008.

**The Chairperson:**

That was your finance director?

**Mr Lavery:**

Yes.

**The Chairperson:**

What was the time frame of your being in charge of the issue, Mr Lavery?

**Mr Lavery:**

I would have been responsible throughout because John Smith, who gave evidence at the earlier session, reported to me throughout on the issue of Crossnacreevy and on all his other responsibilities.

**The Chairperson:**

Were you the lead person?

**Mr Lavery:**

Yes.

**The Chairperson:**

A copy of a letter from LPS dated 1 August 2007 provided DARD with a detailed valuation of Crossnacreevy amounting to £10 million. Did that not show at a very early stage that the £200 million valuation was entirely unrealistic?

**Mr Lavery:**

With respect, Mr Chairman, I do not think that it did. In our letter of 11 June 2007 to Land and Property Services, we asked a number of specific questions. One of those questions was whether the Department could sell the site based on its hope value, rather than waiting for planning approval and having to go through an entire process. The advice from Land and Property Services on 1 August 2007 was that if the holding were to be placed on the market, the market

value was considered to be in the region of £10 million. That was the amalgam of values for the plant testing station as it existed and the potential for redevelopment or sale of the dwellings as they were. Therefore, a judgement would have had to be made by a developer as to what he might be able to do with the site, and we did not see that as a limit if we continued to pursue planning approval and to try to get the best possible value for the asset.

**The Chairperson:**

I may want to go into planning issues later. You received a letter from LPS that stated that the value of the site was £10 million; that is the issue. Who in DARD's senior management was made aware of that valuation, and who was shown that letter?

**Mr Lavery:**

I was certainly aware of it. I cannot say who else had seen the letter, but it would have been widely known about in the Department. However, the important points in the letter were LPS's advice that we should proceed to appoint a planning consultant and that it would be premature to furnish values beyond the current market value that were not based on professional guidance. We followed that advice, and we went on to seek to appoint a planning consultant and to complete the exercise to determine the best value that the land could command.

**The Chairperson:**

Was that in 2007?

**Mr Lavery:**

Yes.

**The Chairperson:**

When did the Belfast metropolitan area plan (BMAP) close?

**Mr Lavery:**

In late 2007, it emerged that BMAP was still in draft form and that it was closed to new applicants — that is, those who had not lodged an objection prior to 2005.

**The Chairperson:**

Had you lodged an objection?

**Mr Lavery:**

We had not lodged an objection, because at that point there was no question of disposing of Crossnacreevy. As I said, we realised that BMAP was closed only around December 2007.

**The Chairperson:**

Were no phone calls made?

**Mr Lavery:**

I explained during the earlier evidence session that we were very scrupulous about contacting the Planning Service. However, we did contact it on 8 October 2007, and the advice that we received was that the BMAP process had a considerable time to run. We took that to mean that there was still an opportunity to raise issues within BMAP. In fact, what the person on the other end of the phone meant was that the process was dealing with the objections that were lodged prior to 2005, the Planning Appeals Commission would have to rule on those objections and that BMAP would have to be adopted before it could be opened to new objections. Several years later, the draft BMAP is still in draft and is still not open to objections. That is a source of regret to us.

**The Chairperson:**

It might be a source of regret, but the point is that BMAP had been closed since 2005. Mr Lavery, you said that the letter from LPS was widely known about in the Department. Was DFP notified of that letter?

**Mr Lavery:**

No, we did not notify DFP. The process with the project, as with many other issues, was for us to give undertakings to DFP on how we would progress a project and carry out those undertakings. We do not involve DFP at every stage of the process because that would simply be a waste of effort on both sides.

**The Chairperson:**

A waste of effort? The valuation that you put on the site was £200 million, and LPS then valued the land at £10 million. That is a difference of £190 million. Would it have been a waste of time to have notified DFP of that?

**Mr Lavery:**

As I said, the valuation was for the hope value. The valuation, therefore, had many constraints.

**The Chairperson:**

Let us talk about real value, which I assume would be represented by the LPS valuation. However, you did not show that to DFP. In hindsight, do you not think that it was a silly decision not to show that valuation to DFP?

**Mr Lavery:**

No. The important issue for us was that, in December 2007, when we knew that there was a strong possibility that we would not be able to achieve the original receipt, we notified DFP by my letter of 2 January 2008 that problems were emerging. We subsequently ensured that that was known within the Executive's Budget process.

**The Chairperson:**

The Executive's Budget process was discussed at an Executive meeting in September 2007. Were the Executive made aware of the letter?

**Mr Lavery:**

No, because the matter was not seen as a major setback. If anything, it simply encouraged us that we should appoint a planning consultant and make efforts to redeem our commitment to DFP. That commitment was to achieve the best possible value for the asset.

**The Chairperson:**

A letter dated January 2008 does not mention the £10 million at all.

**Mr Lavery:**

The key point that we were trying to get across at that time was that we were being made aware that if the land were to achieve residential development approval, there would be an obstacle if we could not find a way through the draft Belfast metropolitan area plan.

**The Chairperson:**

I will put it to you: were you hiding that letter?

**Mr Lavery:**

No, we were not hiding it. In fact, we disclosed the letter as early as 23 January 2008 to the Committee for Agriculture and Rural Development, which had asked to see all papers.

**The Chairperson:**

That was six months after the Executive had taken the decision and six months after you had discovered that the real value of the land was £10 million rather than £200 million. Why did it take you six months before you sent the letter to the Committee for Agriculture and Rural Development?

**Mr Lavery:**

With respect, the Committee for Agriculture and Rural Development was, at that point, scrutinising everything to do with the matter very closely. It was keen to see all the papers. I am simply making the point that there was no question of concealing the letter. We considered it a part of normal business. As I say, we disclosed it, in effect publicly, on 23 January 2008.

**The Chairperson:**

Yes, but that was six months after you received the letter. We had an evidence session a short while ago, but we were not told about the £10 million valuation in the letter.

**Mr Lavery:**

I certainly mentioned in oral evidence that we had received advice in August 2007 that we should employ a planning consultant. That is in my oral evidence. We took that as the main point of the letter. We saw the issue of putting land on the market without planning approval as being less



than achieving best value.

**The Chairperson:**

Other members may want to ask questions about that issue. However, the LPS letter of 1 August 2007 to DARD pointed out:

“All lands within the”

Crossnacreevy

“holding are designated in the Draft Belfast Metropolitan Area Plan 2015 as being within the Greenbelt ... The presumption therefore is that planning permission for an alternative use other than the existing use will not be given.”

Did that not make it clear, at a very early stage, that there was no prospect whatsoever of that situation changing?

**Mr Lavery:**

Let me put it like this: from my point of view, I could not take the recitation of the rules of the green belt as defining how far we could press the matter. I needed to press it to the point at which I had taken the best possible professional advice, including professional advice from outside the public sector — namely, from a planning consultant — otherwise, I would not have been pursuing to a conclusion my obligation to seek to achieve the best possible value.

**The Chairperson:**

Did you share that information with DFP?

**Mr Lavery:**

We certainly shared with DFP the fact that we were pursuing the appointment of a planning consultant.

**The Chairperson:**

The point that I am making — I think that you know the point that I am making — relates to the draft Belfast metropolitan area plan and the quote that I have just read out to you:

“All lands within the”

Crossnacreevy

“holding are designated ... within the Greenbelt.”

Did you point that out to DFP when the value was raised to £200 million?

**Mr Lavery:**

At that point, we did not know that it was within the green belt. What you have to bear in mind is that back in June —

**The Chairperson:**

There was a letter on 1 August 2007, so I suggest that you did know.

**Mr Lavery:**

In August 2007, we had that piece of advice that we then wanted to test; that is what we did. We tested that advice by further discussion and correspondence with the Planning Service, followed by the appointment of a planning consultant. All that eventually led to the LPS valuation in March 2008.

**The Chairperson:**

When you were looking at the massive gap between values, did alarm bells not ring in your head? You were the lead person. Did alarm bells not go off to indicate that something was wrong?

**Mr Lavery:**

No. In late 2007, some members may recall that there were concerns in government around realising assets. Indeed, the Executive appointed a capital realisation task force (CART). We were all becoming interested in how to get best value. It is also relevant that, in late 2007, the Public Accounts Committee was looking at the transfer of surplus land in private finance initiative (PFI) deals by the education sector. The Committee issued recommendations that we should seek to achieve best value. In early 2008, DFP accepted those recommendations. In early 2008, in the wider finance community, members may recall the QinetiQ and Ministry of Defence deals of that time and issues about the way in which QinetiQ was disposing of land and the clawback to the Ministry of Defence of land for which QinetiQ subsequently gained planning approval. In all that, my principal motivation was to ensure that we did not dispose of publicly owned land at less than the best price that a private sector developer could get for it. That was why I had to take the advice about the green belt and what might happen to residential planning approval. I had to put in somebody from the private sector to ensure that we would test that and be able to say that, if we did dispose of the land, nobody would have benefited more than they should. That was the background to our concern.

**The Chairperson:**

You do have concerns, and you do have to get the best value and the best price. There is no doubt about that. We would not expect anything less. You were going to employ someone to take you through it. You were the lead person. Could you not have made a quick phone call to the Planning Service to ask whether there was a chance, given that BMAP had closed for further correspondence or information two and a half years earlier?

**Mr Lavery:**

I attempted to do that in early October. As I said, the advice that we were given was that the BMAP process had some time to run. Our misapprehension was that we took out of that that it had some time to run and that objections could still be made. We are not very familiar with that process. It turned out that it meant that the BMAP process was still dealing with objections lodged prior to 2005.

Even around that time, we all expected the draft plan to be adopted in 2008, and we would have an opportunity to make further objections after 2008. It has not been adopted to this day, which is regrettable and disappointing.

**The Chairperson:**

However, it is still not open, as it was not open then. Did your Department submit any correspondence or feed into the BMAP process when it was going through?

**Mr Lavery:**

I would have to check back into 2005 for that. I am not aware that we did because it is not a process that would concern us directly.

**The Chairperson:**

It is not a process that would directly concern you, yet it is a considerable piece of land.

**Mr Lavery:**

Until we had a disposal, or a potential disposal, within scope.

**Mr McLaughlin:**

The hope value of the land is an interesting point. At what point did you consider that you had a

formal response to that on which you based further decisions?

**Mr Lavery:**

The professional valuation on which we have based our process is now the value placed on the land by LPS in March 2008. That was the outcome of the process within which it was able to draw on the advice of the Planning Service and the planning consultant, and on its own knowledge of the site, and carry out a professional investigation. Until that point, we were always proceeding on less than comprehensive information.

**Mr McLaughlin:**

In the meantime, you were processing a bid with the Department of Finance and Personnel for additional resources for the farm nutrient management scheme. We have the figure of £200 million, which DFP correspondence indicates was a significant and persuasive element in its decision. You asked Land and Property Services for the hope value. I presume that the reason for that question was that you recognised, from your own experience, that the site value as it stood was a long way short of £200 million and, indeed, a long way short of the quantum of the bid that you were making to DFP. Your query was about the hope value.

You received a response on 1 August 2007, less than two months after making that request or corresponding with personnel in Land and Property Services. LPS answered the question on hope value by giving you a definition of hope value — namely, the uplift between the existing value and the open market, which it estimated to be £10 million not £200 million. That in itself was important and formal advice about the value of the site and, I imagine, of interest to you and the Department of Finance and Personnel.

LPS explained the uplift between the existing value and the open market value that would arise from the market's view of potential development. I assume that the market, for anybody who was going to put anything remotely resembling £10 million on the table, let alone £200 million, would have included certain reassurances about the planning and development potential of the site. In other words, people were putting that sort of money on the table would have asked the questions that you appear not to have asked until you had secured commitments from DFP. Is that a fair reading of the short two-month period between 11 June 2007 and 1 August 2007?

**Mr Lavery:**

I will put it this way: our correspondence of 11 June 2007 was very open. We did our level best to find out what the site would be worth, and we raised the issue of hope value, on the basis that a strong, positive response would allow us to look at a disposal process that would be less fraught with difficulty.

**Mr McLaughlin:**

What if you had got less than a strong response? Would that not have caused you to go back and do your sums again on the back of whichever envelope you had used the first time?

**Mr Lavery:**

At that point, the letter raised two issues. First, it advised us to get professional advice. Secondly, it raised issues of title and tenure, about which a developer might have asked for reassurance. Planning was not an issue. Planning would be the risk that developers would take on, and one that would have depressed their assessment of the land's value. Therefore, I dealt with that risk by pursuing to a conclusion the planning advice issue. Keeping that risk in the Department's control should, in theory, have resulted in an increased valuation.

**Mr McLaughlin:**

I will get a further opportunity to ask questions, but, to finish for now, did you immediately share with DFP the letter that you had received?

**Mr Lavery:**

No, because we were on a clear path and had given an undertaking to seek to achieve the best possible value for that disposal, within the comprehensive spending review (CSR) period; that is, by 2010-11. We did not have a view from DFP that we needed to bring in the receipt in the first year of the Budget. We did not have a requirement from DFP to complete a valuation process by a particular date. In fact, we completed the professional valuation within 10 months of the issue arising, which, I think, is a very prompt response.

**Mr McLaughlin:**

Yes, but you received £10 million of a reallocation and a further award of £79 million, although you had a letter from Land and Property Services telling you that the site value stood at £10 million.

**Mr Lavery:**

To deal with the reallocation issue first, that was a reallocation from resources in the Department.

**Mr McLaughlin:**

It was in your budget, yes.

**Mr Lavery:**

Therefore, it simply transferred from other budgets in the Department to fund the farm nutrient management scheme (FNMS). That showed the goodwill of the Department in trying to meet our requirement and to prioritise our expenditure so that we funded what was an inescapable demand.

Secondly, the £79 million was always justified by its own economic appraisal. There was an economic appraisal for the scheme as a whole that showed that it was clearly in the best interests of the Executive to invest in the scheme. First, because we would infract and risk fines of £50 million a year; and, secondly, because, if we did not invest in that slurry storage, farmers would have to destock, and we would lose £40 million a year of production. Those factors combined made the case for investment overwhelming. The case for investment was never based on the availability of a capital receipt.

**Mr Dallat:**

I will go back to give some balance to the record from earlier.

Mr Lavery, you quoted this Committee as supporting the disposal of surplus assets. I was surprised at that remark, and I need to get on record that this Committee has stood very much against the corruption of green belt areas. For example, we put an enormous amount of energy into the Knock Golf Club case. Were someone to read the record in 100 years' time, I would not want this Committee to be depicted as promoting the desecration of green belts. We will leave

that at that.

However, Mr Lavery, you are the custodian of the Department of Agriculture and Rural Development. Did you not feel a bit compromised getting involved, almost lining up with dodgy speculators who were tearing BMAP apart by trying to pull it in every direction to get a brick in every corner of Belfast? Was that an example of what someone who headed up a Department dealing with agriculture should be involved in, whatever the merits of doing so?

**Mr Lavery:**

First, I have certainly not alleged that the Committee said that it was in favour of disposing of surplus assets. I said that the Committee recommended that, if we were disposing of surplus assets, we should do so very professionally, seeking to secure best value.

**Mr Dallat:**

Do you agree, Mr Lavery, that the last thing on that list would be green belts, which people need to preserve their health, for recreation and for everything else?

**Mr Lavery:**

If we had arrived at the position to dispose of Crossnacreevy, we would have looked at all the issues and made a considered decision that would have taken account of the green belt issue. Bearing in mind that our commitment from the outset, which was given by the then Minister of Agriculture and Rural Development, was that there would be no disruption to the research that was being done at Crossnacreevy, we would always have been looking for land elsewhere of comparable size that we would have been designating for agricultural trials. Therefore, we might have ended up securing land elsewhere, outside the green belt. It is hard to argue the hypothetical case when we never reached the point of disposal. We never sold any land, and, therefore, we never reached the point of weighing up the benefit of retaining green belt land and the benefit of bringing other land into agricultural trials.

**Mr Dallat:**

Not for one moment do I want to suggest that Mr Lavery should take total responsibility for this madcap scheme. Who else was involved? Who inspired this?

**Mr Lavery:**

Happily, sir, I am responsible and accountable to the Committee, and I have the benefit of having been acquainted with all of this from the outset. As I said on a previous occasion, I know that the Committee is keen to approach issues in appropriate time so that the people who appear before it have a personal interest and a personal recollection to share. I am happy to do that.

**Mr Dallat:**

You will know that it is the Committee's function to get behind what we are told. I find it difficult to accept that you as an individual would take on your shoulders a responsibility of that magnitude, which involved valuing green belt land at 20 times its value to get a grant to provide for storage space for slurry. That does not add up.

**Mr Lavery:**

Indeed it does not, Mr Dallat. The responsibility that I took on my shoulders was the responsibility to place an asset on the table. The asset was 80 acres of land. We gave an undertaking that we would seek to dispose of that land at best value during the comprehensive spending review period. I was happy to give that undertaking, and we have honoured it by the process that we engaged in. No one in government finance circles has said that we have not honoured that undertaking. I was happy that I discharged my responsibility and that the Department discharged its responsibility.

**Mr Dallat:**

It may be my simple way of thinking, but I am amazed that, when figures of £200 million were floating about, you had no conversation with the Minister of Finance and Personnel. Did you not run it past him to see how he felt about it?

**Mr Lavery:**

I do not normally move in those circles, Mr Dallat. The figure of £200 million rapidly became public knowledge. As I said, the Committee for Agriculture and Rural Development was keen to scrutinise the decision. I appeared before that Committee on a number of occasions, and the point was not made that the land could not possibly command that value. In fact, the point was made



that, if the land did command that value, the Department should try to ensure that any balance of the proceeds of disposal also went to agriculture, as it was seen as a very important site. Indeed, it is still a very important site for the Department's work.

**Mr Dallat:**

I suggest that it is a most important site, in its present form.

You have an e-mail dated 13 December 2005 from a Mr Al Adair in the Planning Service that basically tells you that it was a no-hoper. Why on earth did you pursue it for then?

**Mr Lavery:**

If you look through the entirety of the correspondence, Mr Adair was following up on a meeting that my finance director had had with him and was commenting on John Smith's note of that meeting. Mr Adair's advice is, as you said, very direct.

**Mr Dallat:**

It could not be more direct.

**Mr Lavery:**

John Smith wrote to the divisional planning officer on 2 November 2007 seeking advice. He replied on 18 December 2007, and his was a more considered and nuanced reply, in which he did not say in such peremptory terms that the land would not achieve planning approval. In fact, he said quite the contrary. He set out the constraints on the land and how it might be utilised, pointing out that the bulk of the land would be classified as already being in business use and that it could, for example, be used for another business use within that classification. Therefore, the advice from the Planning Service was not quite as blunt, if I may say so, as Mr Adair's advice. The advice from the Planning Service on 18 December was nuanced, and we proceeded to work forward on that using a professional planning consultant to head off future criticism that we had allowed land to go to sale without having first assured ourselves that no developer could benefit unduly from it.

**Mr Dallat:**

I do not want to harp on too much about this issue, but who first raised the madcap idea that Crossnacreevy could be flogged off to the private sector?

**Mr Lavery:**

If we go back to the last week in May 2007, it was obvious to us that, within a fortnight, we would have to stop inspecting farms. At that point, we had to find a way of breaking through the financial process to get a capital allocation in the first year of the Budget, even though the Executive had not opened the Budget process. We began by putting around a draft Executive paper, which put the issue on the table, and DFP agreed to discuss it with us. In discussions, DFP asked what we could put on the table. I had been working since around February 2007 in that area of assets, and I knew that when we set up the Agri-Food and Biosciences Institute (AFBI), we had retained control of the estate, because we believed that, in the longer term, we would be able to dispose of some of the assets in that estate.

I spoke to the chief executive, and he indicated that, at that point, he believed he could find a way to vacate the Crossnacreevy site. That is when we said to DFP in terms that we would put the Crossnacreevy site into the deal; that is, we would seek to dispose of 82 acres of land at Crossnacreevy. DFP said that although it welcomed that and saw it as a very positive step, it needed a figure. That last part is the reason that the Committee is taking issue, quite properly, with what then happened.

**Mr Dallat:**

OK. Let us discuss the LPS letter to the Department of Agriculture and Rural Development of 1 August 2007 regarding the potential for the redesignation of all or part of the Crossnacreevy site. You were told then that you should

“secure the services of a specialist planning consultant”

— bless us — but you did not bother doing anything about that until 10 December 2007. Is that not more evidence of a laissez-faire approach to a scheme that, at the end of the day, was designed to do nothing more than get you £79 million for a project for which you did not have the money, and it did not matter whether that money came out of education, health or wherever else?

**Mr Lavery:**

There are two points there. First, on the appointment of the planning consultant, it is not that we did nothing. A working group, including members from Land and Property Services, our financial management branch and the Agri-Food and Biosciences Institute sponsor branch met monthly throughout that period to progress the issues surrounding Crossnacreevy.

The issues were not straightforward because we had to look at how we would relocate grassland trials. We also had the emerging issue of the tenants of Houston Road, as four people have homes on the land. We also had issues with researching the leases for the land and buildings.

In line with best practice, we engaged Central Procurement Directorate (CPD) on 10 December 2007 to guide us through the tendering process for the use of external consultants, and, subsequent to that, we were able to appoint the most economically advantageous tenderer.

**Mr Dallat:**

In view of what happened — the disastrous development process and the coming into existence of the organisation called the National Asset Management Agency (NAMA) — would you have done this differently if you had to do it again, or would you still line up with all the madcap people who put crazy valuations on property that were never realistic?

**Mr Lavery:**

There are lessons for us to learn here about trying to value land and buildings for a purpose other than their current use; about the protracted nature of disposal; and about the expertise needed in managing a disposal. That expertise does not consist simply of asking within government for advice from Land and Property Services on value; rather, it has to reach into the private sector. We have learnt those lessons. We would approach those things with a greater state of knowledge.

**Mr Dallat:**

We have to accept that you were successful — you got £79 million. Are you happy that all the tanks, and so on, were built to the proper specification and will stand up to all the scrutiny? Can you answer all the questions that are being asked about them?

**Mr Lavery:**

First, as I have said of the £79 million, the entirety of that scheme — £121 million — is justified by economic appraisal, not by the capital receipt and the disposal of Crossnacreevy.

Secondly, we believe that the scheme was necessary and a good scheme. We believe that it has saved the economy money and safeguarded the farmers' production. It has stopped farmers from going out of businesses. We believe that the tanks were properly built and have been inspected. The technical advice given to farmers was very good. The tanks are built to a high standard, and each should last 20 years. Therefore, we believe that the scheme will stand up to scrutiny.

**The Chairperson:**

Can I take you back to the question of the date of the letter that you brought to the Agriculture and Rural Development Committee? You said that you brought it on 23 January 2008. However, the Executive had agreed to provide the capital cover on 21 January 2008, so you went to the Committee two days after the Executive had agreed to include the £200 million valuation in the draft Budget. Did you not think of bringing the letter to the Committee prior to that date?

**Mr Lavery:**

At the time, as I mentioned, the Agriculture and Rural Development Committee was asking for all correspondence on Crossnacreevy, and we were releasing a large volume of papers. That letter was one of the papers released. Dialogue between us and the Committee was ongoing.

**The Chairperson:**

When did the Agriculture and Rural Development Committee ask for all the papers?

**Mr Lavery:**

I would have to check that, because I do not have the precise date.

**The Chairperson:**

That is a very important piece of information. It is important for us to know when that

Committee asked for all the papers.

**Mr Lavery:**

I am happy to try to give you more detail on that.

**The Chairperson:**

We need it as soon as possible. My point is that that Committee was not told until after the Executive made their decision. Were you challenged at that Committee on that issue?

**Mr Lavery:**

The Committee was, at that time, under the robust chairmanship of Dr William McCrea, and I was challenged fairly repeatedly on that transaction.

**Mr Copeland:**

Hello again, Mr Lavery. Prior to 1 June 2007, do you or your Department have any record or knowledge of any enquiries made by any person, persons, individuals or group of individuals acting as bodies, whether incorporated or unincorporated, that were seeking to establish or change the nature of the planning potential for Crossnacreevy?

**Mr Lavery:**

I certainly have no knowledge of it. I can check with the Department to see whether there is anything, but I do not think that there is. I was not aware of it.

**Mr Girvan:**

Apologies for arriving late, but I had another engagement in Ballyclare. I want to tease out some detail on the timing and choreography of events. I have difficulty in understanding at what stage the Department of Agriculture and Rural Development was aware of the major difficulties in achieving the valuation that it predicted and when that was imparted directly to DFP, which, in turn, would have fed in that information. We appreciate that the final figures all had to be timed together so that everybody knew when the budgets were being set. The paperwork indicates that, prior to the Executive's final decision on the Budget, the Department of Agriculture and Rural Development was aware of the difficulties in achieving the figure that it had put on that piece of

land because of its lack of involvement in the Belfast metropolitan area plan consultation and submission stages and, ultimately, because it had not asked for any official or unofficial rezoning of that land.

I have a difficulty in seeing that the Department made DFP aware of all the details before the decision was made, because, if that is the case, there is evidence of a willingness to mislead. I am being careful with my words, because I want to be sure that all the facts are on the table this afternoon. I want to be sure that DFP was made aware, right from the outset, of the difficulties in achieving the figure that was put on the piece of land so that, ultimately, it could set spend in that Department. We dealt with it recently in the Excess Votes issue, and, at this stage, I will not go into the nutrient scheme that it funded at this stage. However, I want to tease out the detail and the choreography of events.

Our correspondence gives some indication that DFP was not aware at the time of your concerns. You did not feed directly to DFP that there was a difficulty in achieving the magical £200 million valuation. In the letter, the Department said that it would not exceed the requirement that the Department needed to deliver the programme. Therefore, ultimately, it would be looking for some moneys back. Therefore, the £200 million was nowhere near what it required for the programme. That is stated at paragraph 11 in a letter dated 1 June 2007 directly from your Department. It states:

“At this stage, we would want to keep open some of the issues raised by this solution”.

The letter also states:

“In certain circumstances, therefore the anticipated receipt would greatly exceed the requirements of the Department”.

Therefore, you had already made that judgement and were spinning that story to DFP, which, in turn, was presenting your case to allow you to get the additional money. I want to know exactly when you let DFP know. I do not want to go any further at this stage, but I want a straight answer on that, Mr Lavery.

**Mr Lavery:**

We corresponded with DFP on two occasions to make it aware of what was happening. First, my letter of 2 January 2008 stated that there were emerging difficulties and that there appeared to be no opportunity for us to lodge objections in the draft Belfast metropolitan area plan.

Secondly, in the June monitoring round after the Budget was agreed, DFP asked all Departments for their views on the realisation of the capital receipts that were against them. We indicated at that time that we did not believe that we would be able to bring in a capital receipt of £200 million. The fact that it was a year 3 issue meant that that was left standing against the Department until year 3. However, that is when DFP was definitively aware of the difficulty.

**Mr Frew:**

I hear what you say about making DFP aware on 2 January 2008. In the letter, you went into BMAP in some detail. However, at no time in that letter do you make DFP aware of the lowering in the valuation from £200 million to £10 million, a valuation that you received from Land and Property Services on 1 August 2007. From what I hear — I could be wrong — DFP did not know that information at that point. Given that, in the letter, you went into so much detail on the BMAP issue and the fact that there would be no opportunity to seek to have the property rezoned under the draft BMAP, do you not think that it would have been better to have raised with DFP the fact that the valuation had gone down from £200 million to £10 million? That valuation was not pie in the sky but came from Land and Property Services. Why was that not raised with DFP so that it could make a difference to the Budget?

In this Committee on 15 June 2011, I asked Mr Pengelly:

“Are there any other areas throughout the Budget process from that day to now where that has occurred again?”

In his answer, he said:

“The Department immediately commissioned a formal valuation from LPS. Due to the complexity of the issue and the unique nature of the site, that process was not concluded until, I think, March 2008. In the meantime, the Budget process was concluded, and, for the necessity of the Budget process, our indicative figure was used.”

That indicative figure was £200 million, so there was opportunity from 1 August 2007 until the Budget process began to tell DFP, “The valuation is not £200 million, guys; it is £10 million. Land and Property Services is telling us that.”

The fact that that information was not forthcoming had a major effect on the Budget process. Will you respond to that?

**Mr Lavery:**

Certainly. First, I will explain the difference between the £200 million figure and the £10 million figure. The £200 million figure was a very informal estimate of what the land might command if every single acre of it received residential planning approval. The hope value figure was a figure for 82 acres of land with none of it having residential planning approval, only the possibility that the four existing dwellings could be rolled over into residential dwellings. That is the difference between the £200 million and the £10 million.

The issue then was, if planning approval could be secured, the valuation would be somewhere above £10 million. We were determined to pursue that.

**Mr Frew:**

There was no chance of pursuing that because the Belfast metropolitan area plan was closed. There was no chance of you ever being able to build on that land unless BMAP was reopened. Even today, it has not been reopened. Surely you could have had an effect on the Budget process that year.

We went through this issue in the previous evidence session, but the fact that you could have influenced the Budget process by letting DFP know that, instead of £200 million, you were looking at £10 million with the hope of getting more if the area plan opened up and you were able to influence it. Surely it would have been better to tell DFP that so that it could place that information in the budgetary review process. In that way, we would have been looking at a much more realistic budget.

It is difficult to recall things after such a period of time. However, on the day that you gave evidence to the Committee for Agriculture and Rural Development and the papers were presented, did any Committee members question the fact that the letter of 1 August 2007 mentioned £10 million? You referred to the scrutiny role of the Chairperson. Obviously, the figure of £200 million would have been in members' minds. Did no one raise the issue of the £10 million, which is down on paper from Land and Property Services?



**Mr Lavery:**

I do not recall it becoming a subject of discussion, but we will check that.

Hope value is selling land without planning approval. The hope lies with the developer, not with us. With respect, the situation would not have been, as you described, us saying to DFP that the land was worth £10 million with the hope of fetching more. We would have been saying that we proposed to dispose of this land now on the basis that it did not have planning approval and leave it to the private sector to determine whether it could get planning approval. That was never part of our processing game plan.

In our mind, the real obstacle to achieving a significant capital receipt was the fact that we were being advised that the draft Belfast metropolitan area plan would not be open to objections, which was a potential difficulty. We were still being advised that it could be concluded in 2008, after which we would be able to object. Our view was that, although we could lodge an objection, it could take some time for that to feed through. Therefore, we were alerting people to a potential difficulty but not moving from the capital receipt that was against the Department.

What would have happened had we changed our valuation? It would not have impacted on year 1 of the Budget or, therefore, on the funding for the farm nutrient management scheme, which was all in year 1. It would have meant that, in year 3 of the Budget, there would no longer have been a £200 million capital receipt and that the Executive would have had to depress year 3 and reject some further capital expenditure proposals. That would have removed an ambition from the Budget.

What actually happened was that, in 2010-11, a number of major capital expenditure projects did not materialise. Therefore, the system righted itself without any further intervention. If we had brought in the receipt, and those projects had not materialised, we would have had £200 million of capital to surrender. To that extent, the system righted itself.

**Mr Frew:**

I hear what you are saying, but on 2 January 2008, you sent a letter that went into great detail about BMAP and the Planning Service. The last two sentences read:

“I will of course keep you updated as this project develops. I am copying to Richard Pengelly who may wish to consider implications for the final Budget.”

However, that letter did not state the differential in monetary terms. I apologise, but I have not yet got my head around why you did not think that it would be useful to alert DFP and the people who would be processing and shaping the Budget, or why you did not think that it would be important to provide them with the information that the figure was not £200 million but £10 million? That would have to have been factored into the Budget. You mentioned that you needed to consider the Planning Service and the fact that there would be no opportunity to seek rezoning, yet you make light of the money aspect.

DFP has previously stated that the £200 million figure:

“is an important and in the final analysis ... persuasive point.”

If the figure was then £10 million, would that not have had a major bearing? It was a persuasive point, but the £200 million had shrunk to £10 million, so there should have been a complete re-evaluation, not only of what DARD was asking of DFP and the Executive but also of the whole Budget process.

You said that the situation squared or righted itself naturally, but that would not have been known at that point. It seems to me that it was simply by chance or by luck that projects did not go ahead as hoped. I still cannot get my head around why you did not feel that it was important to tell DFP about the £10 million valuation in the letter dated 1 August 2007.

**Mr Lavery:**

The letter dated 1 August 2007, which responded to specific questions from us, said that if we had put that land on the market that same day with vacant possession and without planning approval, in the view of Land and Property Services, it would fetch £10 million. We did not have vacant possession, and we were not about to do that. That valuation was not relevant to the Budget process. The issue for the Budget process was a capital receipt of £200 million in year 3, and it was the judgement of DFP and the Executive around that issue that had to be worked through. The £10 million valuation was not going to be relevant because the land was not vacant. We could not put it on the market on 1 August or in the subsequent six months.

**Mr Frew:**

At our previous evidence session on 15 June, we were told that you had to make a decision and get a valuation quickly, and that is how you came across the figure of £200 million. You told us about the multiplication sum done with one acre that produced the figure of £200 million. The question has been asked as to whether you had time to get a proper valuation, and now DFP tells us that the site was not evaluated properly and finally until 18 March 2008, which was after the Budget process.

Therefore, there was a period of time between you making the £200 million judgement and the receipt of the letter from Land and Property Services — it should know — which stated in black and white that the site was worth £10 million. You should have raised that with DFP and told officials that the last time that you had looked at the issue, you were under time pressure, had to sort it and put in a value of £200 million but that you had now received a letter from Land and Property Services that highlights the fact that the land is worth only £10 million. That should have been factored in.

For the life of me, I do not see how you did not feel that that was important information. It would have made a difference to the judgement calls made by DFP in the Budget process, and everyone else around the Executive table would have found it useful. I cannot understand why that £10 million valuation was not passed on to DFP.

**The Chairperson:**

Gerry, in your letter to which Paul referred, it states:

“I will of course keep you updated as this project develops. I am copying to Richard Pengelly who may wish to consider implications for the final Budget.”

What implications were you thinking of when you wrote that letter?

**Mr Lavery:**

The implication was that the receipt might not come in. I can understand why members believe that the £10 million valuation should have been disclosed, and I can see a strong argument for doing so. However, the issue that I raised was the increasing possibility that a receipt would not come in. It was not that the site might not be worth £200 million, but that we might not achieve a receipt.

**The Chairperson:**

You were trying to give DFP a heads-up. It is strange that you did not give DFP that information when you had it, you did not show it the letter from LPS, and you did not take it to the Committee until two days after the Executive had made their decision.

**Mr Byrne:**

We are all looking at the same period in the second half of 2007 and in early 2008. Obviously, in the second half of 2007, it was common knowledge in DARD that the valuation of the land was, in reality, about £10 million for agricultural purposes. That valuation was confirmed in the letter of 1 August 2007 from LPS to Carol Hetherington, which stated categorically that the land was within the green belt. If that was the case, why was a planning consultant hired at all, or was that done to provide a fig leaf to cover what had been a gross exaggeration of the land's notional value?

**Mr Lavery:**

With respect, the land was not worth £10 million for agricultural purposes, and had it been valued as agricultural land, it might have been worth £1 million. As a research station with four houses and in its current condition, the land was valued at between £2 million and £6 million, which was subsequently borne out in March 2008. It was never worth £10 million for agricultural purposes. The valuation of £10 million was based on the site being placed on the open market with vacant possession, and with the possibility of a developer taking on the job of getting a change of use for residential or other development.

On 2 January 2008, I was not disclosing the letter of 1 August 2007, which was some time in the past. Rather, I disclosed the advice of John Cummins, the divisional planning manager, of 18 December 2007. In that correspondence, he stated that the land was in the green belt, was covered by BMAP and that there were difficulties in the path of getting development approval for it. That is what I was disclosing. I was saying that difficulties were emerging. As I said, the considered advice of 18 December 2007 stated, for instance, that the Planning Service would take account of BMAP. It did not state that planning approval would never be given; it just said that it would take account. It is a more nuanced position, which I reflected to the Department of

Finance and Personnel by saying that there were difficulties that might mean that we would not bring in a capital receipt.

The position was uncertain, and DFP took that into account moving forward. The Budget included a £200 million capital receipt against the Department. I had to deal with that position and did so by accelerating our work on the estate management plan. We shifted to try to get all our assets on a comprehensive database and to create an estate management strategy, the draft of which is out for consultation until 7 November 2011. That strategy will allow us to do our level best to bring in capital receipts that will arise from making our estate more efficient.

**Mr Byrne:**

Do you accept the fact that the £10 million was also an exaggerated figure because the land was being valued beyond agricultural use? How much did the planning consultants cost?

**Mr Lavery:**

In correspondence dated 4 July, we disclosed a figure of some £2,600. It was not a vast sum.

**Mr Byrne:**

When DARD provided the Committee with a copy of the LPS letter to the Department of 6 March 2008, the three appendices relating to the planning position were not attached. Why not? Were they deliberately withheld?

**Mr Lavery:**

Never. Since they strengthen my hand, I wish that they had been attached in the first instance. We were happy to attach them when the Committee Clerk brought the omission to our attention.

**Mr Copeland:**

I will rewind a bit, Gerry. You repeatedly referred to the hope valuation. I would go so far as to suggest that, in some respects, hope and desperation are close cousins. Was the possible option of selling the land subject to planning permission being achieved considered? That took place in substantial tracts in greater Belfast.

You also said that the site, as it was, was not in vacant possession, which would have precluded its sale at the £10 million valuation. Do you know of any restrictive covenants that are in place on that land? I think that I am right in saying that there is more than one piece of head title. In other words, there might have been a number of complications. I think that the title is resident in two head rents. I am really trying to understand how serious the Department was in the operation on which it had embarked. Was it, perhaps, an exercise in dotting the i's and crossing the t's? Do you have any knowledge of the money that the Department eventually received? In the absence of a receipt, you got what, in some respects, might be called bail-out money. Where did that come from, and what other Department suffered as a consequence?

**Mr Lavery:**

I have not seen any particular consideration of land being sold subject to planning approval being achieved. I am not aware that we followed through on that idea. The issue of whether we were serious is linked to that, which is why I had to pursue the issues to a conclusion and had to take advice transparently from the private sector.

If that had been a viable option, I would have expected our planning consultant to present us with that option in order to achieve greater value. I do not think that that is in there, and I assume, therefore, that our professional advice was deficient or that he made a judgement that by 14 February 2008, when he submitted his advice, that was not an option.

**Mr Copeland:**

You raised the issue of the nature of the planning consultant. You said "our" planning consultant. Is that the planning consultant from the private sector?

**Mr Lavery:**

Yes, the planning consultant whom we employed.

**Mr Copeland:**

How was he selected?

**Mr Lavery:**

We engaged the Central Procurement Directorate. It guided us through the tendering process for the use of external consultants. It was decided that the estimated contract value of about £2,500 was so low that a secondary tendering exercise would not be required. The commission was awarded to the most economically advantageous tenderer. That turned out to be, as the Committee knows, DTZ, the Paul Hogarth company. We followed best procurement advice.

You asked about restrictive covenants. I have no particular knowledge of them, but I referred earlier to the fact that at that time we were researching the leases and the issue of the tenants on the land. It was a sensitive issue because people have homes there, and we must respect that.

With regard to the money that we received and the impact on other Departments, the fact remains that ours was an inescapable piece of expenditure with an overwhelmingly positive return to the taxpayer. We avoided infraction; we safeguarded production; and we safeguarded the meat-processing industry and the throughput of livestock. That was always going to be funded. However, in June 2007, there was no process to pre-allocate funding in 2008-09.

It was in that context that the commitment to use our best endeavours to bring in a capital receipt was pivotal in getting pre-approval. It was not pivotal in justifying the scheme. It was pivotal in getting pre-approval. The pivot was that we were seen to be putting our best foot forward, putting something into the deal ourselves in addition to the reallocation that was referred to of £7.5 million in 2007-08, when we did go round other areas of the Department and squeeze them dry.

**Mr Copeland:**

I realise that. I read the post-project evaluation and, with the Chairperson's permission, will raise one or two questions about that later.

**Ms J McCann:**

You said that the system righted itself and then went on to say that a number of capital build projects did not happen. Were those capital build projects in your Department?

**Mr Lavery:**

No, they were not. They were not under our control.

**Ms J McCann:**

Have you any idea what capital build projects did not happen because the system righted itself?

**Mr Lavery:**

I think that we previously mentioned the Royal Exchange project.

**Mr Michael Brennan (Department of Finance and Personnel):**

The most obvious one that comes to mind for 2010-11 is the Department of the Environment's (DOE) strategic waste infrastructure fund, which had £170 million set against it. However, there was always a risk, so that was factored into the construction of the Budget position. However, that project did not materialise.

**Ms J McCann:**

I will go back to Mr Copeland's question. If the system righted itself, it must have balanced out. Therefore, there must have been implications for other Departments. If you had a £200 million capital receipt to go to whomever with, you would have a better bartering position than you would have had if you had a £10 million capital receipt. What other Departments were affected by the receipt of £79 million for the farm nutrient management scheme? What were the implications for other Departments and projects?

**Mr Brennan:**

Perhaps I can shed some further light on what happened in 2010 as a consequence of the £200 million receipt not materialising. The Executive constructed a capital position in that year in which they allocated an extra £200 million in capital spend to all other Departments, so £200 million additional spend happened not only in DARD but elsewhere. During 2010-11, Departments could not spend the capital that they had, and significant reduced requirements came in from them. Members will remember that, in February, at the spring Supplementary Estimates stage, the Executive made frantic efforts to try to spend as much money as possible on capital expenditure because the Treasury announced that it had abolished the end-year flexibility (EYF)



system. Therefore, any capital that was left over at the end of 2010-11 will have gone automatically to the Treasury. The Executive and the Assembly were left with £6 million of capital that could not be spent, which went back to the Treasury. In effect, we had £200 million of extra spend because of the Crossnacreevy receipt. If Crossnacreevy had not happened, and we went on the original budget position for 2010-11, a significantly greater amount of capital would have had to have been surrendered back to the Treasury.

**Ms J McCann:**

That is not the point that I am making. We are not saying that the scheme was not a good one, although we have criticisms of its outworkings, but £79 million was given to the Department as a result of bartering on the basis that Crossnacreevy was worth £200 million, not £10 million. If that £79 million had not been given to the Department, where would it have gone? What other Departments were affected by that? You said that the situation righted itself, so it must have balanced itself out.

**Mr Brennan:**

We do not have a counterfactual position on the £79 million that was allocated in 2008-09, so we do not know what would have happened if it had not been given to the Department of Agriculture and Rural Development. When DARD submitted a bid for £79 million in 2008-09 as part of the monitoring round process, the numbers to justify that bid in an economic appraisal will have been quite stark. For example, the Executive and the Assembly would have avoided £50 million a year infraction costs and the £40 million costs to the agriculture and construction sectors. When the Executive were constructing where that £79 million would go, I suspect that the DARD bid would have ranked pretty highly.

**Ms J McCann:**

Michael, what I am asking is: what other Departments made bids in that monitoring round that were not granted?

**The Chairperson:**

Are you able to share that information?

**Mr Brennan:**

We can look back at the bids that were submitted in 2008-09 as part of the monitoring rounds. That will give you a feel for the unsuccessful bids.

**Mr Girvan:**

Earlier, a comment was made that there was a worry that the capital might not be realised in the three-year period. The issue is not whether the money was realised because, if the asset was worth the money, it would still be carried forward on a balance. The issue is whether the asset was worth the money. Whether it was realised or not, it had a value that could have been put down and used as a lever to draw money. The point is not whether the asset was sold but that we were told that it was worth a certain amount of money, which it was not worth. I caution against using the argument that the Department was unable to sell it, because many banks have lent money to people who own property that they have been unable to sell, and they have done so on a commercial basis. As a Government, we would have had a similar approach. We would have drawn the money towards it and said that it was still worth that amount, irrespective of whether there was a write-down in the property market.

Even if we say that there was a 20% reduction, that brings us down to £160 million. Whatever the figure might be, it would have been worth an awful lot more than what was being said, and it would still be worth an awful lot more than the actual valuation. However, it comes back to the point being made about infraction costs. Perhaps we will want to deal with that issue separately or perhaps we will want to conclude this line of questioning on Crossnacreevy before we go on to the nutrients scheme issue, but I prefer to put a marker down about the fact that I would not have been worried if what I had was worth the money that was there. It was not up to me to make sure that it was sold. Put it on the market and let the market decide at that stage, but that was not going to be an issue.

**Mr Frew:**

I go back to the letter of 2 January 2008, in which you, Mr Lavery, as senior finance director, wrote to DFP's Supply officer flagging up planning limitations at the Crossnacreevy site. You specifically noted that the site "lies in the green belt" with

"no opportunity to seek to have the property rezoned under the draft BMAP in the short term."

We touched on this before, but was that DARD's first notification to DFP that the BMAP issue

was closed?

**Mr Lavery:**

I believe that it was.

**Mr Frew:**

OK. As I said, you said in that letter that there was

“no opportunity to seek to have the property rezoned under the draft BMAP in the short term.”

What is meant by “short term”? The e-mail from Al Adair in DOE states:

“The review of BMAP might be quicker than 3-4 years but only if Planning Service can secure a more efficient process by then”.

Therefore, what do you mean by “short term”? Is that the period that you mean or is it a different period? What was in your mind when you used the words “short term”?

**Mr Lavery:**

By referring to the short term, I meant that we were being advised that the draft BMAP process was considering objections lodged prior to 2005 and that the draft BMAP was awaiting adoption. We understood that it could be adopted in 2008. That was what we meant by “short term”. I expected that, by the second half of 2008, we might have been in a position to put in an objection and to test the designation. However, I was also conscious of the fact that if, in 2008, the Planning Service was still considering objections lodged prior to 2005, I could not expect that any objection that we lodged would get a quick return of serve. Therefore, I started to say that it could all be a much longer, slower process than we had hoped for and that we would not realise a capital receipt in the Budget period. However, it was still a possibility, reflecting the advice of 18 December 2007.

**Mr Frew:**

Therefore, is it fair to say that the short term was certainly within the new Budget period?

**Mr Lavery:**

Yes, that was my expectation.

**Mr Frew:**

It did not mean before the Budget period or before the Budget was finalised?

**Mr Lavery:**

No, I did not expect that we would get any further signal.

**Mr Frew:**

The e-mail was sent from Al Adair on 13 December 2007, and you wrote to DFP on 2 January 2008. I know that there is a significant holiday between those dates, but why did it take three weeks for you to tell DFP about the lack of opportunity?

**Mr Lavery:**

I hesitate to say it, but, first, I think that the correspondence from Al Adair was simply commenting on a draft note that John Smith had done of a meeting. The more considered advice was the 18 December advice. There are two considerations. The first is that that every year around 25 December there is an important event that tends to distract even senior civil servants.

However, secondly, we were in the middle of a Budget. It is as simple as that. It was the first Executive Budget, and it was a very difficult one. We were developing efficiency delivery plans, which required us to identify areas in which we could improve performance. Unusually, the Department of Finance and Personnel, under the direction of the then Minister of Finance and Personnel, had indicated to Departments that they could expect broad increases but had not actually met specific bids. Departments had to have an internal process to prioritise their bids and determine where to allocate them. Our senior management group met at least once a week to do exactly that and to offer the Minister our best advice. Therefore, all of that was going on at the same time. It is not an excuse or a special pleading, but that played into the period that it took for us to adjust that.

Furthermore, we were working to try to realise a capital receipt in 2010-11, and, therefore, a matter of days did not, at that point, appear as important as it perhaps appears to the Committee when it looks back at the Budget process.

**Mr Frew:**

Yes, I understand that. We are asking questions now in hindsight, and it is sometimes very difficult to put the position in context with the day-to-day pressures at a certain time. I will turn to the minutes of evidence from the Committee's hearing on 15 June 2011. In response to a question from me on the day, you stated:

"A proper valuation, for a purpose other than we held the land, was going to take time, and so it proved. We only got the final, proper valuation from Land and Property Services in March 2008."

Apart from the actual valuation, what was the difference in format between the information that you received in March 2008 and the information that you received on 1 August 2007? I ask that because, at the previous evidence session, you were able to tell us very quickly that, after the pressurised time placed on you to get a first valuation, you then submitted the £200 million valuation. You went on to tell us about the pressures that quickly materialised with the Planning Service, and I recall that you went into detail in that evidence session. However, at no time during that session did you mention that you had received other information about the £10 million valuation on 1 August 2007.

I will ask a serious question that, I feel, has to be asked and answered: could your response to the Committee on that day in June be interpreted as grossly misleading or, at least, a case of withholding information from us? You did not mention the £10 million valuation that you received from LPS on 1 August 2007 at all.

**Mr Lavery:**

Let us be clear about one thing: we are all on the same side in this room, and we are all looking for improvement in managing public money. I welcome an adversarial challenge as much as anyone, and it is frequently the best way to find out what exactly has gone on.

As I said, we are on the same side. There is no question of my misleading the Committee or being less than comprehensive in evidence. The valuation of 1 August 2007 was not a major factor in our decision-taking. That much is apparent from the evidence that I have given today. The Committee may take the view that it should have been, but it was not. Therefore, it does not have the same resonance in my memory as the advice to go and employ a planning consultant does. That is the point that I made to the Committee. I referred very openly to the fact that I had advice from Land and Property Services and that that advice was in writing from August 2007, so

I directed the Committee to the correspondence.

The difference between that advice and the advice in March 2008 is that the two valuations were on very different bases. One is a valuation without any attempt to gain planning approval. The other is a valuation with the knowledge that any attempt to gain planning approval was likely to be defeated by the BMAP process. The advice in March 2008 had the benefit of the Planning Service correspondence, from both Mr Adair and the divisional planning officer. It had the benefit of advice from a private sector planning consultant and of being informed by Land and Property Services' own internal process. It set out the situation much more fully and included a view on what was happening in the broader context of the residential housing market, which was very volatile at that stage.

That is the difference between the two pieces of advice. I regarded the advice in March 2008 as definitive and effectively putting beyond the CSR period the ability to deliver the capital receipt that we wanted to deliver.

**Mr Frew:**

What was the period between your receiving the information from Land and Property Services in March 2008 and DFP getting it?

**Mr Lavery:**

We would have to confirm that. What I can say is that DFP was putting in place the new Budget at that stage. In preparation for the June monitoring round, it was asking us and all Departments for a return that asked the likelihood that we would bring in our capital receipt. We replied in that context. Therefore, DFP had that information fairly quickly in the new financial year.

**Mr Frew:**

You provided that information through the yearly mechanisms or structures?

**Mr Lavery:**

Yes, and in the June monitoring return, we disclosed our correspondence with DFP to the Committee for Agriculture and Rural Development.

**Mr Frew:**

Was a similar mechanism around in 1 August 2007 to enable you to implant the £10 million valuation in the system?

**Mr Lavery:**

No, that would have to have been done by a specific letter. As I said, it did not seem to me relevant. However, if the £10 million valuation was relevant to anything, it was relevant to a capital receipt that might appear in 2010-11, which is obviously outside any 2006-7 monitoring round.

**Mr Byrne:**

To go back to that letter from LPS in August 2007, how do you regard LPS in relation to the valuations that it makes? Do you have faith in LPS?

**Mr Lavery:**

I certainly have faith in LPS, if I may say so. As a colleague, I say that we rely on LPS.

**Mr Byrne:**

Therefore, would you have regarded the £10 million figure as the maximum possible valuation and were alarm bells now ringing?

**Mr Lavery:**

No. I regarded £10 million as a valuation that reflected the constraints and assumptions set out in the letter.

**Mr S Anderson:**

I do not know where to start. It is mind-boggling, to say the least. I go back to the 1 August letter and advice from LPS: in the previous evidence session, you stated that DARD's impression was that negotiations could take place regarding the rezoning of Crossnacreevy. It was green belt land from the outset, as has been said here today. When we read part of the letter, we learn that you, Mr Lavery, said that you were quite cautious about approaching the Planning Service in case

you were seen to be swaying one way or another about green belt land. Does your caution not tell us that there was not much of a chance from the very beginning of rezoning that land?

**Mr Lavery:**

May I give two facts? First, on 1 June 2007, I did not know that that was green belt land. Perhaps I should have known, but I did not. That is a simple fact. Secondly, as regards being cautious with the Planning Service, the reason for my caution was first that, as one Department approaching colleagues in another, we would be seen as wielding undue influence. That is precisely the point that Mr Dallat made — we would be seen as attempting to get special treatment of our concerns about planning approval. As I said, early in October, I spoke to the divisional planning office and was reassured on two points. One was that the BMAP process had a long way to run, while the other was that it would be quite normal for a Department seeking to dispose of land to approach the divisional planning office for advice, to supply that office with accurate maps and to seek to know what constraints, and so on, applied to the asset. On foot of that reassurance, we wrote to the divisional planning office and sought its advice, which came on 18 December 2007. To that extent, my caution was not about the possibility of rezoning — a subject about which I know very little, and much less than Committee members who have been councillors.

**Mr S Anderson:**

You admit that you did not know that the land was green belt land. Was not finding that out a failing on your part?

**Mr Lavery:**

It would have been better if I had known more about the asset at the point where we put it in play, yes.

**Mr S Anderson:**

I am sure that you agree that, at the time, there was a lot of interest in land from developers, speculators, call them what you will. What you tried to achieve at Crossnacreevy played into that game. Anyone who worked in such circles would agree with me that you should have known whether the site was green belt.



**Mr Lavery:**

To go back to my earlier point, faced with my own ignorance, I was determined that, going forward, I would take the best possible advice and secure the best possible value for the public from the disposal of the asset. I knew that I did not know enough about it. Therefore, I asked people to work on finding out, to employ planning consultants and to achieve the best possible value.

**Mr S Anderson:**

Based on LPS advice, DARD's impression was that negotiation could take place on the rezoning. What gave you that impression?

**Mr Lavery:**

We simply —

**Mr S Anderson:**

Did LPS tell you that that was the way to go? Did it say that that was perhaps something that you should do?

**Mr Lavery:**

With respect, I do not think that Land and Property Services commented on planning matters.

**Mr S Anderson:**

However, you are saying that, from the LPS correspondence, you got that impression.

**Mr Lavery:**

The advice to employ a planning consultant implied that, yes, there was work to be done, but there was no direct assertion that the land should be rezoned, and I have not said that there was.

**Mr S Anderson:**

Mr Lavery, do you not think that that was taking it a bit far? It was one thing to employ a planning consultant to assess the potential for the land but another to get to the ultimate goal of taking the land out of the green belt to allow it to be much more financially beneficial. Are you

saying that that was the impression that you were getting? You used the word “impression”.

**Mr Lavery:**

There was work that could be done to realise best value, and I have put that in the context that, at that time, there were a number of public sector property deals in which planning approval was an issue. There was the QinetiQ case in England, as well as the issue of PFI surplus land in Northern Ireland. Therefore, it was prudent to employ a planning consultant rather than proceed on our own knowledge.

**Mr S Anderson:**

Planning consultants can work only within the plan itself. I would have seen whether the land could have been encompassed in BMAP. Given that BMAP had been closed since February 2005, how could you reach that impression from that particular correspondence?

**Mr Lavery:**

At that point, I did not have that last piece of knowledge — that BMAP was closed.

**Mr S Anderson:**

Did no one in your Department have it?

**Mr Lavery:**

We do not dispose of land inside the Belfast metropolitan area often, or possibly at all. It was not part of our general knowledge.

**Mr S Anderson:**

You did not have that knowledge to create that impression?

**Mr Lavery:**

No.

**Mr S Anderson:**

In hindsight, will you now accept that the valuation of £10 million should have been disclosed to

the Department of Finance and Personnel?

**Mr Lavery:**

That would have saved me the embarrassment of the past hour and a half.

**Mr Dallat:**

You are not as embarrassed as we are.

**Mr S Anderson:**

There is more to come. *[Laughter.]*

**Mr Lavery:**

Thank you for that reassurance. I am not able to say that doing that would have led to a different outcome for the Budget process or the Department.

**Mr S Anderson:**

It may not have led to a different outcome for the Budget, but, in hindsight, should you have informed DFP?

**Mr Lavery:**

On the one hand, if such a disclosure had been made, it would have given the Committee reassurance. On the other hand, I run the risk of drawing DFP into every step of the process. The importance of that is that we have our job to do and DFP has its job to do. When an issue is remitted to our Department, DFP properly expects us to do our job and not to run back to it and cover our backs by involving it every step of the way. It would send out a bad message if we were to end up in the position of seeking to disclose everything to DFP. I am being totally frank.

**Mr S Anderson:**

In hindsight, should you have disclosed the £10 million valuation to DFP in this case?

**Mr Lavery:**

Given the dialogue that we have had, I think it would have been better to have disclosed that valuation. I do not attempt to say whether it would have changed the process, and I do have

concerns that if I were to apply that approach widely, I would undermine not just the relationship between the two Departments but also the way in which we look to civil servants to take responsibility. It is as simple as that. When I ask a senior civil servant to take on a job, I do not expect him to bring every decision back to me. I want him to take responsibility and do it, and DFP has the same view that it wants DARD to take responsibility. I suspect that the Committee wants us to take responsibility as well.

**Mr S Anderson:**

Even when there is a variance of £190 million.

**Mr Lavery:**

I do not accept that. The £200 million figure is based on the idea that there are 82 acres with residential approval. The hope value is based on putting the land on the market with no approval and saying to speculators, “You take the risk, and, on that basis, what would you pay?” The answer in LPS’s view was £10 million. A real risk then would be that a speculator could, by whatever means, secure development approval, and the public would, therefore, subsequently lose out.

**Mr Dallat:**

Obviously, when you were sizing up how much money you would get for the site, you relied on the report from DTZ that suggested that there was a requirement for land for new cemeteries in the Belfast metropolitan area, but no data was provided to confirm the requirements. To get to the dead centre of this, can you tell us, please, where that idea came from? Who came up with that?

**Mr Lavery:**

Happily, not us. There is a reference in that report to a demand for land for a cemetery or the extension of a cemetery. People will be aware that our land is near Roselawn, and it has been a subject of widespread comment that the amount of land at Roselawn is now limited and that Belfast City Council may need to acquire additional land. No evidence was provided to us of demand for a cemetery. Subsequently, I think in 2010, some approach was made to the Department about whether we could make land available in exchange for land that would be sold

to Belfast City Council. However, there was no advantage to the Department in doing that, and the idea was not pursued. I do not think that it was ever a serious proposition.

**Mr Dallat:**

You are not aware of any individual in private or public life who floated that idea.

**Mr Lavery:**

Not at that time. There was some talk in 2010 about a landowner selling land but only if that landowner could acquire land from us. In that chain, there was some proposition, but it was not going to be of benefit to us.

**Mr Dallat:**

That has unearthed that.

**The Chairperson:**

Three Committee members want to ask supplementary questions. I will take Alex first.

**Mr Easton:**

Mine is not a supplementary. It is my question.

**The Chairperson:**

I will call you at the end, then. I call Paul and then Michael. I will let both of you ask your questions before they are answered.

**Mr Frew:**

You said that you felt that you did not need to employ the mind of DFP for every decision. You felt that your Department had to take decisions itself. In the previous evidence session, I raised the point that it was DFP's view that the figure of £200 million was:

“important and in the final analysis the persuasive point”.

I must keep harping back to that. You answered:

“That quotation in the report is from a letter from the DFP permanent secretary to my then accounting officer. As you said, it states that the valuation of £200 million was, in the final analysis, the persuasive point. However, in the letter, the requirement on my Department was that, in the comprehensive spending review (CSR) period, we would:

‘seek to maximise the capital receipt arising from the Crossnacreevy site’.”

Therefore, you would have been aware of DFP’s view. When was that letter sent from the permanent secretary of DFP to your then accounting officer? I take it that it was before 1 August 2007.

**Mr Lavery:**

It was sent on 12 June 2007.

**Mr Frew:**

Therefore, you would have known that that valuation was the most important and persuasive point. That should have triggered you to take the view that, if anything changed, you would need to notify DFP. I take your point that you did not want to be ringing DFP every day to provide officials with different information that they did not need, but surely they needed to know that the valuation of £10 million was floating about.

**Mr Copeland:**

I want to hark back to something that Mr Dallat said a few moments ago. On 15 September 2011, the Chair of the Committee wrote to the accounting officer in the Department of Finance and Personnel, and, with uncharacteristic rapidity, he received an answer the following Wednesday, 21 September. That response included some information that I presume was resident in your Department with regard to what Mr Dallat said about the cemetery. The last paragraph in the response appears to indicate that Belfast City Council had seemingly approached DARD out of the blue to discuss the possible use of the site for a cemetery. However, it then appears that an approach had been received by the council from a private landowner and that that private landowner professed to have knowledge of the council’s requirements for a cemetery and the requirements of your Department to dispose of the Crossnacreevy site. According to that response, that individual was in a position to put forward the view that DARD might be willing to become involved in such a transaction. Have you any idea how such a state of affairs could have arisen?

**Mr Lavery:**

By mid-2007, it was generally known that we were minded to dispose of the land at

Crossnacreevy, which gave rise to a number of concerns. We received a considerable amount of correspondence from our neighbours at Crossnacreevy, who were concerned that they might wake up to find an 80-acre housing development beside them.

**Mr Copeland:**

Or a cemetery.

**Mr Lavery:**

We also received a considerable amount of correspondence from our tenants, and we tried to treat them sensitively. What you referred to was another piece of correspondence, but it was not something that we actively pursued.

**Mr Copeland:**

What would persuade a private individual that a Department might be willing to enter into such negotiations? Is that normal? Has it happened before?

**Mr Lavery:**

I assure you that we gave no indication —

**Mr Copeland:**

I am not saying that you did. Has it happened in the past?

**Mr Lavery:**

I responded to newspaper reports that we were minded to dispose of the Crossnacreevy site. I cannot remember the details, but if that individual's land was adjacent to Roselawn cemetery and fulfilled the requirements of drainage, and so on, for a cemetery —

**Mr Copeland:**

How far is the Crossnacreevy site from Roselawn cemetery?

**Mr Lavery:**

The site is at least a mile from Roselawn cemetery. Our land is not adjacent to the cemetery, but

that is not to say that people with land between those two parcels of land would not be willing to dispose of that land, if they could secure agricultural land in exchange or as part of the overall chain. However, we have never gone into that.

**Mr Copeland:**

Your view is that there would have been sufficient knowledge in the public domain to lead someone to the level of knowledge that they apparently had.

**Mr Lavery:**

I think that the word in the letter is “speculatively”. It was not something that we encouraged.

**Mr Frew:**

I am trying to tease out the timeline. You are quite right about not wanting to go to DFP with every issue. However, you would have had sight of the wording in the letter and known at that point how important the issue of the £200 million was for DFP. Surely there should at least have been a line of communication if there was any tolerance or change in that £200 million, no matter how small or large. The £200 million figure was, if you like, on the hoof. You were going through a proper final re-evaluation that came in the winter of the following year. Surely, in the meantime, you should have kept DFP involved. I ask that again after the point that was raised by Mr Anderson. If you had seen fit to give DFP the information from the Planning Service, combined with the fact that BMAP was not to be opened again, and there was no opportunity to seek rezoning, surely you should have been giving DFP information on the financial aspect at least.

**Mr Lavery:**

I think that I have already conceded that, in this instance, I would be better placed had I disclosed that valuation at the time.

**Mr McLaughlin:**

In the timeline from June 2007, we had the June monitoring round, the autumn monitoring round and the Budget preparations through to the eventual definitive evaluation. We had references in correspondence by very senior Civil Service officials to the benefits and persuasive influence of



the £200 million, which clearly represented more than the bid from the Department to be able to conduct the farm nutrient management scheme, and a net receipt to the Executive. In that same timeline, there was an indication from LPS that the hope value was around £10 million. You eventually got a figure that was, at best, half of that and, at worst, 25% of that valuation. During those critical discussions about the overall financial issues and the negotiation between Departments or the bids, counter-bids and competition among Departments for additional support, did you find it necessary to indicate that the £200 million was a wholly unreliable figure? Bear in mind the fact that a £10 million evaluation was the hope value, and I doubt whether it fitted the category of being even a hopeful estimate.

However, you were looking for much more than that, and in fact you got much more than that. Therefore, the £10 million valuation, let alone the actual final valuation, was in no way supportive of the quantum that you were seeking — namely, £79 million. Does that not indicate that people who should have been asking questions of you were for some reason not asking them or that you, as the senior finance director, had a responsibility to share that information, given that if you got money that was not going to be realised from the disposal of assets, another Department was not going to get it?

**Mr Lavery:**

With regard to the £10 million valuation, we have agreed that, in hindsight, it would have been better to disclose that to DFP at the time. My letter of 2 January 2008 alerted the system to the possibility that we would not achieve the capital receipt, as did the DFP advice in the Budget process. Therefore, we shared that information generally. Even then, it was not the case that we were saying definitively that we could never achieve a receipt: we were saying that it was starting to look very difficult.

It is not the case that we got £79 million as some sort of “barter”— that word was used earlier. The £79 million figure was justified by an economic appraisal and was justified in competition with other bids. It was never going to be a difficult decision. It was always going to be a wise investment to put the money into the farm nutrient management scheme.

**Mr McLaughlin:**

I do not know whether you are misunderstanding me or whether you are diverting me. I am asking a question about the actual receipt that you could have achieved. The best LPS estimate was £10 million: that was the hope value and was the best that was available to you. However, you were looking for much more than that. I am quite prepared to discuss the benefits of the scheme, but not yet.

**Mr Lavery:**

I beg your pardon. As I explained earlier, my understanding of hope value is that it is not my hope that is at stake but the hope of a developer and speculator that he can secure planning approval. Therefore, it is his judgement. Obviously, a speculator will pay the minimum possible price for a piece of land.

**Mr McLaughlin:**

Your assessment was £200 million. That was worked out on the back of a piece of paper over coffee. That was your hope value. LPS came back with a much more realistic figure, which also turned out to be inflated. I do not need the definition of hope value. I am as much interested in why other people were not challenging you or asking questions as the fact that you were not volunteering information.

You needed £89 million: you got £10 million from your own resources and £79 million additional, which was money that somebody else did not get. That happened on the basis of a proposition that was described by very senior civil servants as being a persuasive argument: £200 million was persuasive in making that decision. I am going to come back to that point, because you have not addressed the point that I wanted to be addressed, but I have another line of questioning.

Mr Fay, you are probably feeling a bit neglected, so I am going to put a question to you. You are very welcome. Can you help us to understand why it took from 11 June 2007, when DARD first wrote to what was then the Valuation and Lands Agency (VLA), until 6 March 2008 to produce the final valuation, which was between £2.28 million and £5.87 million? Could that not have been done much more quickly, given the urgency and importance of the situation? We

heard from Mr Brennan about the significance of the infraction fines that were avoided. That was clearly a factor and was in people's heads: I think that the sum of £50 million was mentioned, and I would certainly have regarded that as an urgent matter. Will you explain why it took so long to come back? There were, as I said, monitoring rounds and Budget preparations ongoing in the same time frame that it took you to respond formally with a final evaluation.

**Mr Stephen Fay (Land and Property Services):**

It is important to point out that our role was to provide DARD with advice and guidance on the potential disposal of the site. Our original instructions were on the bases that were received on 11 June 2007. At that point, we were basically investigating the details of the property and its various aspects.

It must be remembered that, at that time, the property market was in the most incredible state of boom. From 2005 through to the middle of 2007, house prices basically doubled and land values, particularly for residential land, traded at incredible prices.

We provided a valuation on 1 August 2007, which is not a terribly long time from 11 June. That valuation set out two principal issues, the first of which concerned the pivotal nature of planning. We recommended to DARD that it needed to take clear advice on planning matters so that, if the property were ever to go forward for disposal, it would do so on certain grounds. We clarified the exact planning position. We then waited until we received the planning report on 14 February 2008, and we provided a draft valuation to DARD five days later. We provided the final valuation on 6 March 2008. Therefore, the delay was because we were awaiting that planning report to clarify that pivotal matter.

**Mr McLaughlin:**

Who was that planning report from?

**Mr Fay:**

The planning consultant.

**Mr McLaughlin:**

The private sector planning consultant who was working for the Department?

**Mr Fay:**

Yes.

**Mr McLaughlin:**

That is very interesting because, of course, that came after the Budget settlement. Were you given a deadline?

**Mr Fay:**

No. We were asked to provide advice and guidance on the possible disposal of the asset and on the timing and method of that disposal.

**Mr McLaughlin:**

I assume that the planning consultant was not there to help you to do your job but to help a client to explore all the options for maximising the value of the property that the client owned?

**Mr Fay:**

The role was twofold. It was to assist DARD to ensure that we were taking all reasonable steps to make sure that we got the best price for that public asset when it eventually came to market. However, the role was also to provide advice on what was acceptable or reasonable in the planning regime and what planning permission could be anticipated.

**Mr McLaughlin:**

Did the VLA become LPS in July or August?

**Mr Fay:**

No. We were LPS at that stage.

**Mr McLaughlin:**

The correspondence in June was to the VLA, and the response from you was from LPS. Can you

clear that up for us?

**Mr Fay:**

LPS was in the process of moving. Initially, the Valuation and Lands Agency and the Rate Collection Agency (RCA) merged.

**Mr McLaughlin:**

I know that, and you did a remarkable job in change management in a very tight timetable. I am trying to understand — it is only a detail, but it is important — whether the VLA, as it was about to go out of existence, was involved in the correspondence at all or whether that was a mistake in the description.

**Mr Fay:**

I will check the dates, but my understanding is that, at the beginning of April 2007, the VLA and the RCA merged to create LPS.

**Mr McLaughlin:**

That is relevant to my next question. Was formal or informal advice given that there was no need to expedite the process until after the Budget process?

**Mr Fay:**

Not that I am aware of. Our clear instructions in the instructing letter from DARD on 11 June 2007 was to provide a valuation, advice and guidance on the possible disposal of an asset.

**Mr McLaughlin:**

Was there any advice, formal or informal, that, given the ongoing budgetary processes and the pressures and threat of infraction, it was urgent to get a response from you?

**Mr Fay:**

No. Our role was to advise on the possible disposal of a publicly owned asset. LPS was not party to any of the discussions on the funding of the farm nutrient management scheme. We were unaware of those discussions.

**Mr McLaughlin:**

In your professional opinion — I do not know whether you were involved in the project, so when I say in “your” opinion, I am talking about LPS — was there a realistic prospect, in mid-2007, of rezoning Crossnacreevy as building development land?

**Mr Fay:**

That, ultimately, is why we recommended obtaining specialist advice.

**Mr McLaughlin:**

Yes, I know. However, I need to know whether you believe that that was possible, in which case you should, as you said, have sought professional advice about how to steer your way through the planning process. Alternatively, in your experience of area plans and the BMAP situation, was there not a pup’s chance in hell of getting building development permission?

**Mr Fay:**

There are two elements: the BMAP element and the possibility of rezoning, and also clarification of what planning, within existing planning arrangements, could be obtained for the site. Was there a possibility with regard to the four houses already on the site of permission being granted for some form of additional residential use? Was there a possibility of the plant testing station being used for an alternative purpose? The use of the land as a cemetery has also been mentioned. That is what we were seeking planning clarification about, and our valuation of March 2008 was based on the detail of the various scenarios that had been identified.

**Mr McLaughlin:**

Yes, and your valuation maxed at that time at a hope value of £10 million but, more credibly and realistically, at £2.28 million to £5.87 million the following year.

**Mr Fay:**

Yes.

**Mr McLaughlin:**

I think that that is clear. Were we to explore the issue, how long is the rezoning process likely to take? Realistically, might it have been started and finished in time for the sale to be completed and moneys received in 2010-11? Could that have been done?

**Mr Fay:**

I have no expertise or knowledge of rezoning. I really do not know the timescales involved.

**Mr McLaughlin:**

Has BMAP been reopened for any reconsideration?

**Mr Fay:**

My understanding is that it has not.

**Mr McLaughlin:**

That is also our understanding.

Mr Brennan, you and I keep meeting each other in our different roles. When DARD put forward the sale of Crossnacreevy as a potential £200 million receipt, was DFP supply aware that the Belfast metropolitan area plan had been closed since 2005?

**Mr Brennan:**

No. From 12 June 2007 until 2 January 2008, DFP supply had a series of engagements at official level. There were also bilateral engagements at ministerial level. That issue was not flagged up. We first became aware of the planning issue on 2 January 2008.

**Mr McLaughlin:**

People will be amazed at that, given that DFP supply is at the core of financial planning and management. At that time, we were in the middle of a discussion about such assets, central to which was how to maximise their potential. I would have thought that every parcel of land being considered would have come with a ticket that stated “possible”, “not possible”, blah, blah, blah.

**Mr Brennan:**

Yes. As you would probably appreciate, there was wide-ranging and detailed discussion on the construct of DARD's strapped budget position. A range of issues were discussed. This issue was not flagged up. Indeed, we looked, for example, at DARD's submissions to the Agriculture Committee during that time, and the record should show that the presumption was always that the £200 million receipt would materialise.

**Mr McLaughlin:**

I am struggling to get my head round how this could happen. I know that Richard is here. Is it in order for me to ask him to help us to understand why no one could pick up on the necessity of adding that information into the mix?

**Mr Richard Pengelly (Acting Treasury Officer of Accounts):**

BMAP? It is interesting. With regard to development beyond this, the Executive recently agreed to increase the central asset management unit. The creation of a unit to deal with future disposals is a recognition of the fact that the day job of civil servants is managing policy; if they have an asset that is available for disposal, that is not their day job. They do not know when a lease may be up, and so forth. Mr Lavery made the point that they do not know the various intricacies of the issue. We will come back to where we are with this scheme, but, moving forward, we need a centre of expertise. We need a group whose day job is about site assembly, dealing with planning issues and looking at potentials for disposal. The ball was just dropped on this matter. The key issue is around DARD and questions that DFP could legitimately have asked. Our perspective was that DARD put its hand up and said that it owned the property and was going to sell it and had an informal valuation through which at least £200 million in excess of three years from now could be generated. It said that it would take that, assume the responsibility and deliver it. That was the agreement.

In a sense, it goes back to the point about DFP sitting solo as a Department, because we oversee and scrutinise; we physically do not sit beside people every step of a journey such as this. That is what we were doing in reality.



**Mr McLaughlin:**

My point is that civil servants who are not dealing with these market issues on an ongoing basis, and you in particular, Mr Lavery, did not compare the price of development land. You compared it with prices in the middle of Belfast, which are the most expensive. You knew that much. You were market-aware in calculating how to maximise the 84-acre site in your bid for additional resources. You did not go into the Bogside and compare the prices there. You knew that Belfast city centre had the most expensive real estate in this region, and you did your sums on the back of the proverbial envelope. The current head of the Civil Service is quoting this £200 million figure. I am not sure, but I think that Richard may feature in correspondence referring to it. It is quite interesting how it takes legs.

**Mr Lavery:**

I explained to the Committee that we looked at the price that development land with full residential approval was fetching in greater Belfast. I frequently drive past Crossnacreevy, and I assure you that it can be caught within the greater Belfast area by any stretch of the imagination. It is literally just out the Castlereagh Road.

I said to the Committee previously that I believe that the real persuasive point was not the fact that it was £200 million; it was the fact that we were putting a significant asset in play in order to help to fund the Department's requirements. It was never going to fund the farm nutrient management scheme directly, because the two processes could never match in time.

**Mr McLaughlin:**

When you got the correspondence that stated that it was a persuasive point, did you write back and say that it was not?

**Mr Lavery:**

No.

**Mr McLaughlin:**

The situation is that you are now the accounting officer by virtue of the fact, as I understand it, that your then accounting officer was transferred to the Department for Regional Development

(DRD) over the Paul Priestly suspension, and you then stepped into his shoes. Has this process ever been critically reviewed, and have you been criticised rather than promoted? I just cannot understand.

**Mr Lavery:**

I feel as if I have been criticised. The process has had a number of beneficial outcomes so far. First, we secured the farm nutrient management scheme, which we will come to in due course. Secondly, we allowed for the ambition of Departments to put forward a capital expenditure programme that was larger than it otherwise would have been.

**Mr McLaughlin:**

And all of that was done in an entirely professional, best-practice fashion? Was it all fortuitous?

**Mr Lavery:**

No. I am not going to say that there are not things that we could not have done better or more transparently. I have already conceded several points. However, I genuinely do not think that the Department took some covert, malign or irregular action. For example, before we received the letter that referred to the disposal of Crossnacreevy as the most persuasive point, we both met and wrote to Land and Property Services specifically to ask it to embark on valuation.

We were committed to the disposal of the asset and were proceeding down that road as quickly as we could. Obtaining a hope value was part of that process and part of our commitment. We behaved with integrity. We may well have misjudged the likelihood of the land ever commanding residential planning approval in its entirety. We may well have misjudged the apparent weight that should have been attached to the £10 million valuation. However, we behaved with integrity in trying to bring this to a conclusion and get best value for the asset.

**Mr Copeland:**

Thank you for your perseverance, Gerry. You will be glad to hear that it is Michael's turn now.

Stephen Peover's letter to the Committee of 21 September 2011 stated that the Department of Finance and Personnel's

“Central Finance Group (CFG) can find no record”

— That is an interesting phrase —

“of any notification by DARD to DFP of a valuation of the Crossnacreevy site by Land and Property Services (LPS) at £10m prior to the Executive agreeing the Budget on 21 January 2008.”

Can you confirm that the central finance group had no knowledge, which is a different word from “record”, of the £10 million valuation between 1 August 2007 and 31 January 2008?

**Mr Brennan:**

Yes, I can certainly confirm that we had no knowledge or record of the £10 million figure. The first formal notification of it that we received was in the June 2008 monitoring submission from the Department of Agriculture and Rural Development. Informally, our Department of Agriculture and Rural Development colleagues alerted our Supply colleagues in the Department of Finance and Personnel on 21 April 2008 that the Crossnacreevy receipt would not materialise.

**Mr Copeland:**

What date was that?

**Mr Brennan:**

It was 21 April 2008. From reviewing the records, we had no knowledge of a £10 million figure between 12 June 2007 and the sign-off on the Budget.

**Mr Copeland:**

DARD wrote to DFP Supply on 2 January 2008 flagging up that there was no opportunity to have Crossnacreevy rezoned under BMAP. Was that drawn to the attention of the Executive prior to its acceptance of the £200 million valuation in the Budget on 21 January 2008?

**Mr Brennan:**

The letter of 2 January 2008 did not cause any undue alarm, because it referred to seeking an “independent second opinion” and stated that the draft BMAP had to be addressed in the short term. In subsequent correspondence and before the Budget was signed off, the then Minister of Agriculture and Rural Development, for example, gave a commitment to the £200 million. There was a ministerial exchange. Ministers were aware that there was an issue around planning, but we were not told that the £200 million receipt would not be delivered.

**Mr Copeland:**

Were those exchanges were between the Minister of Finance and Personnel and the Minister of Agriculture and Rural Development?

**Mr Brennan:**

Yes.

**Mr Copeland:**

Do you think that that figure should have been left in the Budget?

**Mr Brennan:**

That goes to the heart of my earlier point. With the benefit of hindsight, it is just as well that it was left in the 2010-11 Budget, because to take it out would have meant a significant surrender of resources out of Northern Ireland. Effectively, capital spend in Northern Ireland was £200 million higher than it would have been otherwise. As you know, when the Executive and the Assembly construct a Budget each year, they have what is called an overcommitment, in which they actually allocate more money than they have. The same principle applies here. In hindsight, the figure's inclusion was effectively the same as an overcommitment of £200 million.

**Mr Copeland:**

Do you agree that the defining moment of the £200 million valuation was not when it was given to the Department of Agriculture and Rural Development, when it was mooted in that Department or even when it was discussed by the that Department and the Department of Finance and Personnel, but when it was accepted and included in the Budget? That was when it became something tangible.

**Mr Brennan:**

When the Executive signed up to the Budget in January 2008, they knew that there was a degree of risk, upwards and downwards, associated with major capital projects. I gave the example of the strategic waste project earlier. Constructing a Budget is always a case of constructing a portfolio of risks. That was an element in it, but, when it got to that stage, we did not know that

the £200 million would not be delivered. We knew that there were planning issues, but ministerial guidance stated that the value would be maximised.

**Mr Copeland:**

You operate with levels of money that are pretty much incomprehensible to most mere mortals. Is £200 million a lot of money?

**Mr Brennan:**

Yes.

**Mr Copeland:**

Even on the scale on which you operate? It is not a blip here and there but a substantial amount of public money?

**Mr Brennan:**

It is.

**Mr Copeland:**

Finally, you will be glad to hear, DARD's —

**The Chairperson:**

May I bring in Jennifer to ask a supplementary?

**Mr Copeland:**

Sure.

**Mr J McCann:**

Was DFP involved in the capital assets realisation task force at the time of the valuation of the capital assets?

**Mr Brennan:**

Sorry, the central finance group?

**Ms J McCann:**

Yes.

**Mr Brennan:**

Yes, there would have been engagement with the capital assets realisation task force at the time.

**Ms J McCann:**

Therefore, you would have had some sort of knowledge of what properties were worth? Surely you would have had some knowledge of what a certain property or piece of land would be worth, given that you were involved in that.

**Mr Brennan:**

We did not have that expertise at all in the central finance group, but a portfolio of capital receipts was constructed as part of the Budget position, and it would have been provided to CART. No one came back and told us that, for example, the Crossnacreevy receipt was illogical or undeliverable.

**Ms J McCann:**

That was my next question. Would there not have been economists there or people who sensed that and had the skills to know that there is such a big difference between £200 million and £10 million, and even that £10 million was pushing the boat out a bit?

**Mr Brennan:**

I am not that close to how CART in the Office of the First Minister and deputy First Minister (OFMDFM) worked then or know what degree of expertise that it had internally. The aggregated receipts across the Budget period were quite significant. It goes back to the point that Mr Lavery made earlier: the Executive very proactively encouraged Departments and Ministers to try to maximise the receipts that they drew in.

**Mr McLaughlin:**

Can we ask for the information on that site?

**Mr Brennan:**

We will liaise with colleagues in OFMDFM to see what the staffing of CART was at the time.

**Mr McLaughlin:**

I suggest that the Committee ask in writing for that information.

**Mr Copeland:**

If we accept that the Department of Agriculture and Rural Development's bid for additional capital was to fund the FNMS, the DFP accounting officer's letter of 12 June 2007 stated that the "key outstanding issue is affordability". Given that Crossnacreevy was ultimately valued at between £2.28 million and £5.87 million, in what way was DFP's affordability requirement met?

**Mr Brennan:**

In June 2007, the Department of Agriculture and Rural Development was looking for comfort to progress the scheme into 2008-09. It could not go down that route unless it had confirmation from DFP that its capital requirements would be covered. DFP, however, would have had to wait until the June 2008 monitoring round to see the bid come in for the £79 million. The value for money of the bid was quite stark, which was the point that I was making earlier. Given my knowledge of monitoring rounds, I suspect that that bid would have been at or very near the top of bids that were submitted by all Departments in respect of the return that the Executive and Assembly would have received.

**Mr Copeland:**

Forgive me for this last point, but DFP's letter of 12 June 2007 referred to the potential £200 million capital receipt as "an important and"

— and, as I have said —

"in the final analysis the persuasive point".

Given that the £200 million valuation was completely unfounded, as it turned out, do you feel that it would be too strong to say that DARD got the additional capital cover under a degree of false pretences?

**Mr Brennan:**

I do not think that we can say that. Looking specifically at the £79 million that was needed in 2008-09, I think that DARD would have got that money regardless of whether it put the Crossnacreevy receipt on the table.

**Mr Copeland:**

DARD would absolutely have to have had it; otherwise there might not have been money to pay wages. The Department effectively would have run out of money. Is that not correct?

**Mr Brennan:**

In the following year, yes.

**Mr Byrne:**

I have listened to Mr Lavery and Mr Brennan over the past hour. The sum of their proposition is that this overvaluation led to a very exciting capital investment project in DARD. It almost seems that that is being advocated as a desirable way of operating. Is that right?

**Mr Lavery:**

No. That would be too summary. If you —

**Mr Byrne:**

All that I have heard about over the past hour is the advantages that have accrued from the FNMS happening that otherwise might not have happened.

**Mr Lavery:**

Let me put it this way: there are two events here, and there is a link between them, but that link is not straightforward. One event is the farm nutrient management scheme, which, I maintain, was very desirable, endorsed by farmers and very necessary for the economy. It was a good outcome.

The second event is that we sought to dispose of an asset to bring in £200 million, and we have failed.



**Mr Byrne:**

A bogus exercise?

**Mr Lavery:**

No. I do not accept that. We failed, having done the work, and we have not retreated. We have said that when BMAP reopens for objections, we will return to the matter, but we have failed in the task that we set ourselves to dispose of the asset within the comprehensive spending review period.

It is not a good outcome for the Department to fail at any task to which we put our minds. Fortuitously, and it is fortuitous, that failure has not done any harm. In fact, it had some beneficial consequences, in that it raised the bar in for capital expenditure ambitions in Departments. However, I do not defend it. We failed to deliver what we set out to do, which was to bring in a receipt. In mitigation, the exchange of correspondence at the outset referred to our commitment to seek to dispose of the asset. We delivered on that, because we sought to dispose of the asset. We have not disposed of it. I will not posture on the head of a pin and say that we have delivered on seeking to dispose of it, so we are all right. We are not all right. Our commitment at the outset was that we would dispose of the asset and bring in a significant capital receipt. I am not trying to fudge that by saying that the exchange of letters gives me wriggle room. I would far rather be sitting here today and saying that we had disposed of it. Even if we did not bring in £200 million but a sizeable receipt, I would be much more comfortable.

**The Chairperson:**

I will bring in the Treasury Officer of Accounts (TOA) at this stage. Richard, you were overseeing part of the preparation for the Budget. Let us look at the letter from DARD to DFP Supply, dated 2 January 2008. Why did the £200 million estimated receipt from the proposed sale of Crossnacreevy remain in the budget? Why was it still in the Budget in that way? The correspondence, from Mr Lavery especially, states that there could be implications.

**Mr Pengelly:**

It goes back to the June 2007 correspondence between the then DARD accounting officer and the then DFP accounting officer. We had formal correspondence then. The DARD accounting

officer said that, based on an informal valuation, there was an expectation that the site could generate well in excess of £200 million, I think his words were. I will quote from that letter, dated 1 June 2007:

“an initial, informal valuation suggests that with planning permission for the whole site, it would command in excess of £200m”.

That was a formal piece of correspondence from the accounting officer. We considered that to be legitimate, and we engaged with our Minister. Our accounting officer responded to the Minister of Finance and Personnel, who accepted that we move forward on the basis that that land disposal would be factored into the Budget.

The 2 January 2008 correspondence has been well rehearsed here. It did not fundamentally change the assumption. There was no figure work in that correspondence. It did not say that £200 million was not attainable or reference the £10 million figure that had come from LPS in the interim. As Mr Brennan said, there was a further exchange in mid January at ministerial level. Again, nothing in that correspondence at ministerial level suggested that £200 million was not achievable or that that valuation should be replaced with a £10 million valuation. The £200 million valuation was then put to the Executive, and I think that it was a matter of public record at that time that the Budget was agreed unanimously by the Executive.

**The Chairperson:**

The letters that you talk about are from June 2007. The letter that I was talking about, which I mention because of its implications, was written in January 2008, which is some six months after.

**Mr Pengelly:**

It is six months later, but, it certainly highlights that there were emerging difficulties. However, the letter did not say that £200 million was not achievable. It did not reference a different valuation or that the Department was seeking to substitute the £200 million valuation. It also specifically mentions various difficulties and that the Department sought an independent second opinion on the advice.

It is not a major point, but Mr Frew made the point that we were in the middle of a Budget and were dealing with similar levels of correspondence from all 12 Departments. We do not get to spend a huge amount of time on it. There was nothing in that correspondence that sounded the

sort of alarm bells that possibly mature reflection on the valuation might do.

**The Chairperson:**

Did you or anybody write back to Mr Lavery to find out about the implications that he was talking about?

**Mr Pengelly:**

There is no formal correspondence. Our reading of the situation at the time was that it meant considering the implications of any delay. Mr Lavery made the very valid point that we were talking about a planned disposal that, at that stage, was still three years away. There was therefore still ample time once we got the Budget out of the way to return to that and address timing issues.

**The Chairperson:**

I thought that Mr Lavery said that they knew at that stage that they probably would not be getting £200 million. Is that not the implication? I ask because that figure was still in the Budget at that stage. Should the figure not have been pulled out of the Budget?

**Mr Pengelly:**

When I read the letter on 2 January 2008, I did not read into it at that stage that the Department was saying that it was not going to get £200 million. I have to concede that nothing that I have heard from Mr Lavery today —. I have heard him say that, when he wrote the letter, his view was that he was not going to get £200 million. He was articulating difficulties and logistical problems.

**The Chairperson:**

Fair enough. I will now turn to Mr Lavery. I will not rehearse all the arguments that we have had today, because you have said the same thing quite a number of times. However, do you not believe that there was a lack of urgency on your part in stating the fact to even the Department of Finance and Personnel, and was the reason for that that you were trying to prolong the entire process so that you could get the outcome that you needed?

**Mr Lavery:**

No. I do not accept that we were prolonging the process to achieve an outcome. In a sense, we achieved the outcome that we needed — it was over. Once the 12 June 2007 letter arrived, we had approval to spend up to £79 million. More importantly, we had approval to commit. Therefore, our inspectors went to farms, and we continued to approve tanks. As a result, we incurred debts. It is as simple as that.

By January 2008, we were over the brink. We were committed on the basis of the letter of comfort we had that said that our capital undertakings would be honoured come the Budget. There was no way back from that. Had I been in possession of a piece of a paper on 2 January 2008 that said, as the March 2008 valuation did, that we were not going to be able to get planning approval and that the exercise was not going to give us a receipt, I could have disclosed that quite happily, and would have done so, because we had already committed the capital expenditure. That was the whole reason for such urgency and why I raised the issue of June 2007 with the Committee. In June 2007, I needed comfort that we could continue to inspect. By inspecting, we were entering into commitments to pay. There was no way back once we went over that brink. That was the whole point. With respect, that was why that was an innovative solution that jumped the rails of the financial process. The Executive did not —

**The Chairperson:**

The £200 million valuation was not innovative.

**Mr Lavery:**

No. Committing to a disposable is normal practice. What was innovative was the fact that, in 2007, I needed a letter of comfort that allowed our inspectors to go on farms on the basis that, in 2008-09, the Executive would honour an undertaking to pay for the tanks that they were now approving. That was innovative. Now, I fully appreciate that, in the dialogue around that, DFP, through its accounting officer, indicated that, in the final analysis, a pivotal point was the Crossnacreevy receipt. That remains on the books. What was really innovative was that we needed approval in 2007 to go on inspecting. We got that approval, so we went on inspecting, and, by January 2008, there was no way back from paying out the vast bulk of £79 million. As it transpired, we did pay that in 2008-09.

**The Chairperson:**

That was because the Department was innovative.

**Mr Lavery:**

The Department was committed to doing that work, and so were the farmers. There was enormous pressure in May and June 2007 to get on with the work before we lost the confidence of the construction industry and the European Commission, and triggered infraction proceedings that the farmers would have no way of dealing with. They were going to end up having to destock.

**Mr Frew:**

On that point, are we putting too much emphasis — we could well be — on the “persuasive point” on which DFP came to its decision? Are you saying, Mr Lavery, that, by suggesting that that was a persuasive point, DFP is actually missing the point? At the time, there was severe pressure on the agricultural world, and, as you just relayed to us, the issue needed to be resolved quickly. You feel that you dealt with that issue appropriately and that, therefore, the dialogue today about valuations and the persuasive arguments used to get the funds that you required misses the point. Did DFP miss the point in the first place, when it used that as the persuasive point, and are we then missing point here in our line of questioning?

**Mr Lavery:**

I will put it this way: it is not for me to say that this Committee ever misses the point. The fact is that, in June 2007, the Department of Finance and Personnel had to convince its Minister and, thereby, the Executive that that was a pressure point for the agriculture industry that required an intervention. The issue of having a significant capital receipt in prospect was a persuasive point in convincing Ministers. That is why I said, before we even saw the letter, that we were off and running to try to deliver against that mandate, and it is a source of regret and disappointment that we have not been able to do it.

**Mr Easton:**

The good news, Mr Lavery, is that everybody else has asked my questions. The bad news is that

I have a few simple ones for you. You seem to be taking all the responsibility, and that is very commendable. The £200 valuation going down to £10 million and then to £2.25 million, or whatever, is quite a depreciation, even in today's market. Did you feel let down at any stage by any information or advice that you were given during the process that put you in that position?

**Mr Lavery:**

I am not trying to lay this off on any advice received by the Department, let alone by me. We went into the process with a lack of experience in that type of transaction, and Mr Pengelly has indicated that that is perhaps a common failing in the system and something to which we have to find a structural solution. We acted on the advice that we got, and, only with the benefit of the scrutiny that we are under at the moment, we see some additional actions that we could and should have taken to be more transparent with information and to build a stronger bridge into the Department of Finance and Personnel. At the time, we judged the situation differently, and the Committee has a right to take a view on that.

**Mr Easton:**

Have you learnt lessons from that?

**Mr Lavery:**

I think that we have. We have learnt a lot about how to approach a major capital asset and how to seek advice. We have learnt a lot about the constraints on disposing of an asset, and we carry that forward with us. It is a joy of my life that I occasionally get to talk to the young people who come into the Civil Service, and, in the past week, I brought in a young fast-track graduate. The recommendations of this Committee are very important and are taken very seriously by all of us. It will be of concern, particularly for younger people who have careers in front of them, if we end up driving out the measurement and the management of risk. I want to put that on the table as something to bear in mind.

Frankly, it would have been possible in June 2007 for the Department and Ministers to say that they have their processes and that there is nothing that they can do. They could have told the agriculture industry to deal with its own slurry problems and to destock because it is the polluter. We did not do that. We took a risk and, in retrospect, aspects of that risk have not worked out for

us. If we were to end up driving out the management of risk as a concept and issue for young people coming into the Department, I would be genuinely disappointed.

**The Chairperson:**

On a number of occasions, we said that we support Departments taking a risk, as long as it is a well-calculated risk. We are not averse to that, but it has to be well managed.

**Mr Girvan:**

I appreciate that this has been quite a long session. Various pressure points were brought on a Department or the Executive to bring about funding of the farm nutrient management scheme as it was presented. To deal with that, Northern Ireland spent 1,000%, or 10 times, more than the amount spent in England and Wales to deliver the same scheme.

According to the reports that I have read, there is no statistical evidence of where the scheme was targeted to identify areas with a problem. It was run as a lottery, in that those who submitted their grant application had an opportunity to have a shout at it. Major lessons must be learned about that process, because it was not necessarily targeted in the proper way.

I appreciate the fact that the Department of Finance and Personnel will have had no knowledge of the threat of £50 million of infraction charges. It will have accepted that infraction proceedings could have been taken against Northern Ireland should it did not meet certain targets. What indication was there that Northern Ireland's waterways were ever going to exceed an acceptable level of nitrate pollution? I can see that a lot of pressure was brought to bear on the Executive to spend the money to save paying out £50 million. Anyone would decide to spend money to make a saving in the future, but the business case had to be 10 times better than the one that was presented for England, where £13 million was spent, whereas we spent £150 million. That is my key point.

I appreciate the fact that we have taken a very serious line of questioning on Crossnacreevy. The Crossnacreevy issue was part of the pressure that was brought to bear, but the other part was to ensure that we delivered this hare-brained scheme. People say that there are benefits to the scheme, and there are. The same amount of slurry needs to be dispensed of in a smaller window,

and I appreciate all of those aspects, because we have to deal with that.

Why did the pressure have to be brought to bear, and where was it identified that there were major problems? Why, when the scheme was delivered, did it not identify the farms that would derive the greatest benefit? On some of the farms that needed it most, the farmers funded it themselves rather than going through the scheme. I am aware of that, and I could give you a list of names of farmers to whom that applied. They did not use the scheme because it was so bureaucratic. Was that a good way to spend money?

I appreciate the fact that I went off a bit on that issue, but I believe that a full business case was never conducted to evaluate whether it was necessary to extend the scheme to the level that it was. Without the carrot of the £200 million receipt from the sale of Crossnacreevy, it would never have been extended to such a level. We would have had to have cut our cloth accordingly long before that, and, in that year's budget, instead of £79 million being put forward, it would have been a similar amount to that which was put forward in Scotland, which was around £24 million or £25 million.

**Mr McLaughlin:**

I share Paul's evaluation of how the scheme was designed, brought forward, financed and implemented. There are many lessons to be learned from that, which I hope will happen. Given that Paul covered that ground, more or less, I will move on to the other issue that I want to discuss, which emerged in the early days of the re-establishment of the institutions. The capital assets realisation task force probably emerged subsequently and was not already in position and functioning. However, I am interested to know what guidance existed at that time. I am talking about mid-term in 2007. What guidance existed for the disposal of assets? What is different now?

**Mr Lavery:**

I will take Mr McLaughlin's comment first and then come to Mr Girvan's point. I have no specific recollection of the guidance that existed mid-2007, but the critical distinction is that, in general terms, when an asset is surplus within government, our obligation is to dispose of it at best value. As I said, the Committee gave very good guidance that people should know their



market and look at whether the asset can be used elsewhere in the public sector or whether it would be better to dispose of it in a commercial transaction. *[Interruption.]* If I may finish my —

**Mr McLaughlin:**

I am sorry for interrupting you. Did you have a central resource? Did you take that forward in your departmental silo?

**Mr Lavery:**

I will finish my point. The critical distinction is that we did not have a surplus asset. We had a research station that was, and is, performing very well. We were making an asset available, and that was the prize for DFP. This was going beyond normal practice. I realise that your point relates to whether we took it forward. We did; we did the heavy lifting of asking how we should go about this. First, we contacted Land and Property Services and gave it a specific list of questions, which are contained in the correspondence that we have given to the Committee. Subsequently, we went through a process of setting up a working group, employing a planning consultant and trying to take best advice.

Mr Pengelly has already indicated that our experience in this area is limited. It would be better if there were a structural solution within which we could have access to that sort of multidisciplinary approach on a regular call-off basis, instead of having to tender and to ask ourselves whether we can properly approach the Planning Service, as in my case, or whether that would be seen as disproportionate influence. I hope that I have answered that point.

I come now to Mr Girvan's points, which are many. He mentioned benchmarking with other member states and territories. The most valid comparison is with the Republic of Ireland, which also has a total territory approach to the implementation of the nitrates directive and a similar focus on livestock production. That is the big difference between us and England and Wales. There is a lot of arable land in England. You can spread slurry on arable land, and it can take it up. For historical reasons, Northern Ireland has had more intensive stocking, we have much more grassland-based agriculture, and, unfortunately, we have been applying phosphate-rich fertiliser to that land for a very long time. The phosphates built up in the land, and the very bad run-off in

the late 1990s led to eutrophication. We could have put forward a targeted nitrate-vulnerable-zone approach. We estimate that it would have covered the vast bulk of the land in Northern Ireland. Given that the South had total territory, it would mean asking the European Commission to accept a map of Ireland with nitrate-vulnerable zones covering the vast majority of land, except for tiny pockets in Northern Ireland. It would not have accepted that.

**Mr Girvan:**

I disagree with that. I have a reason to do so because of the funding of the Republic of Ireland scheme, how it was presented and how it got additional funding under the EU to deliver that scheme, which was specifically earmarked, unlike our scheme, which was funded totally differently. I appreciate the fact that there are slight differences in the way in which we manage our pasture land, but from my understanding, the facts of the matter were that there was no clear indication that we were going to incur infraction charges. I have been told and the statistics show, that we would not have had to pay infraction charges. If you are willing to present me with different data, I am happy to accept it, but I need to see it. I have heard about it, but I have not seen it.

**Mr Lavery:**

I am happy to bring forward additional information on the phosphate and nitrate loading. Our advice was that we ran a strong risk of infraction. That was based on scientific research that was conducted on behalf of the DOE and DARD. The issue that you raised about the same amount of slurry being spread in a smaller window is absolutely true, but the whole point is that we have seen a massive cultural change. When I worked in this area in the mid-1990s, farmers treated slurry as waste and spread it on what was termed “sacrifice” land. Now they treat it as a nutrient and apply it during the window in a measured way in accordance with soil sampling. I am sure that Mr Girvan knows that we offer a service that allows farmers to bring soil samples to our offices for an assessment of just how much phosphate and nitrate capacity there is in the land. I advise Mr Girvan that we did carry out a robust business case that ran to some 85 pages with about 14 appendices. We updated it when we went back for the additional funding. That was accepted by DFP in June 2007. I do not know whether Brian wants to add anything to that.

**The Chairperson:**

We need to start involving members. I do not want this to be a two-way conversation; others want to ask questions. I need you to be brief, Mr Ervine.

**Mr Brian Ervine (Department of Agriculture and Rural Development):**

The original economic appraisal looked primarily at the options for implementation and whether to go for designation or total territory. The total territory approach went out to consultation and was overwhelmingly supported by stakeholders. It was a very robust economic appraisal. The consultants from BDO Stoy Hayward who were commissioned to carry out that appraisal had the relevant experience, but they subcontracted a consultancy company called Environmental Resource Management (ERM), which had worked for the European Commission for several years and had highly relevant experience in that area. The total territory approach has not been questioned by farming organisations, nor has it been questioned in the South. There was an overall problem with eutrophication, and the solution was an overall package. Whether the issue is nitrates or phosphates, the problem is eutrophication. The solution is the same: manures, slurries and fertilisers need to be managed carefully. The only way to manage slurry and maintain livestock numbers is to increase storage capacity.

**Mr Girvan:**

That would allow farmers to use slurry as opposed to phosphate-generated fertilisers.

**Mr Ervine:**

Yes, indeed. That is part of our package. It is because manures are being used more efficiently that the use of chemical fertiliser and phosphate has come down. We have placed restrictions on chemical phosphate fertiliser.

**Mr Girvan:**

Do you agree that we had a phosphate problem as opposed to a nitrate problem, primarily because we were using more phosphate-based fertilisers? A relaxation of the rules and allowing farmers to use more of their slurry has reduced phosphate levels in Lough Neagh and Lough Erne.

**Mr Ervine:**

Yes, and there are two sources of the phosphate: fertiliser and slurry.

**Mr Girvan:**

To a lesser degree.

**Mr Ervine:**

We could look at the figures, but —

**Mr Lavery:**

We are more comfortable talking about agricultural matters than about financial matters.

**Mr Copeland:**

I stress that our role is to check and to ask questions. Sometimes, that places us in uncomfortable positions. You will be aware of the Department of Agriculture and Rural Development's post-project evaluation document. What is that for?

**Mr Lavery:**

Post-project evaluations are designed to draw out lessons that we can apply when we run similar schemes in the future. That is where we aim to learn both from our mistakes and from our best practice.

**Mr Copeland:**

Does a lot of work go into those evaluations?

**Mr Ervine:**

A significant amount of thought goes into them.

**Mr Copeland:**

I am at an advantage, because I have a post-project evaluation in front of me, whereas I do not think that you have. Under the section "lessons learned" is a statement, which I presume is a statement of fact. I always learned that facts were things that could be examined. This evaluation

seems to suggest that the summer of 2007, which is described as the wettest on record, had a significant effect on construction progress. It states that foundations were dug and flooded and that the wet weather delayed the installation of the above-ground tanks. However, 2007 was not the wettest summer on record — it was not even the fourth wettest.

**Mr Ervine:**

It was 2008.

**Mr Copeland:**

So the document is wrong.

**Mr Lavery:**

I remember 2008, because I was involved in dealing with the very severe flooding of agricultural land at that time.

**Mr Copeland:**

Instead of being the wettest summer on record, it turns out it was actually the fourth wettest, behind 1958, 2008 and 2002. So it was not even close. That is not a criticism, but at some stage someone will read a document that is on the periphery of this entire fiasco — forgive the word— and consider it as evidence. It is not a big mistake, but it is significant. It may be that that is indicative of the change from direct rule to local scrutiny, but I trust that it is safe to say that lessons will be learned from that as well.

**Mr Lavery:**

Indeed, it is a benefit of devolution that Ministers and Assembly Members bring local knowledge to issues, and we benefit from that.

**Mr Copeland:**

Writing accurately about whether it was wet or not does not require local knowledge; that is down to a good memory and common sense.

**Mr Lavery:**

We used to turn over Agriculture Ministers at such a rate that they probably would not have remembered what happened in Northern Ireland two years previously.

**Mr Copeland:**

Is that the current position or the direct rule position?

**Mr Lavery:**

That was the direct rule position.

**The Chairperson:**

If we get today's meeting over, we might actually get home to see the weather forecast.

Richard, the Crossnacreevy site was never going to realise £79 million for the Executive, so why was that level of funding for the farm nutrient management scheme retained in the 2008-09 budget?

**Mr Pengelly:**

There are two very different issues there: the issue of funding the scheme and the issue of Crossnacreevy. Between 2007 and 2009, as Gerry mentioned, the business case and economic appraisal for the scheme were the subject of much dialogue and scrutiny by DFP with DARD. On the reference to the word "persuasive" in the DFP accounting officer letter, Gerry talked about an innovative approach. My take on that, without have spoken to the accounting officer, is that the persuasive element was the fact that this was an allocation in June 2007, several months ahead of a strategic Budget process being undertaken by the Executive. Therefore, it gave the Agriculture Department certainty that that money would be available. The alternative was to wait for a budget process that may not conclude until December or January.

Interestingly, at that stage, our colleagues on the Strategic Investment Board were charged with developing capital plans for further years. They had developed a range of scenarios to look at the capital allocations for 2008-09 onwards. Every single one of their scenarios included that funding for the farm nutrient management scheme. Therefore, at no point in any scenario was

that money not available. The persuasive element was the Finance Minister being prepared to confirm in June 2007 the certainty of the allocation. Colleagues in the Department could get on with processing the applications so that there was no pause. To have tried to restart it several months later would have caused difficulty.

**The Chairperson:**

Has DFP learned any lessons?

**Mr Pengelly:**

The key and most strategically important lesson has been the establishment of the central asset management unit, which the Executive have endorsed. Of fundamental importance is the capital asset realisation task force, which was referred to and is quite a mouthful. The subtlety is “asset realisation”. The emphasis was on selling assets. Now the emphasis is on the asset management unit.

Gerry made the point about looking at sites such as Crossnacreevy, which we might not want to sell, and asking whether we are driving out best value. Could we use a site for an alternative purpose? It is also about making sure that any consideration of disposals is done centrally so that we do not have a situation in which Department A sells a piece of land to a developer only for Department B to seek to buy it back a couple of years later with some hefty profits for the developer. That is the key point.

The other point about the management of Crossnacreevy is that we need to be careful about the difference between the financial accounting and an accurate reporting of transactions that happened in the past and budgeting techniques that are two or three years in the future. The nature of the beast is that there is a reliance on estimates and forecasts and, as Michael mentioned, managing a portfolio of risk. I am comfortable that we got that bit right. We gave back £6 million to the Treasury. Last year, Northern Ireland’s capital underspend was 0·5%, when the UK average was 2·9%. We got that right. The Executive, to their credit, did that very well.

**The Chairperson:**

Thank you, Richard. You will be glad to hear that there are no further questions. You are free to go. We hope that we do not have to bring you back again. If some of that information had been provided in the previous evidence session, we would not have been back here today. That is unfortunate. We want as much information as possible, especially from senior civil servants, when they come to our inquiry. That is very important. We do not want to have to revisit issues, and not having to do so would save your time and ours. On that note, thank you very much.