

RMLA.

Planning Consultants

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

AN BORD PLEANÁLA	
LDG-	068002-23
ABP-	318406-23
08 NOV 2023	
Fee: €220	Type: <i>Charge P</i>
Time: 14:00	By: <i>HG 44</i>

RMLA Limited,
Unit 3B,
Santry Avenue Industrial Estate,
Santry Avenue,
Santry,
Dublin 9,
D09 PH04

Phone: 083 2068716
Email: admin@rmla.ie
Date: 8th November 2023

Dear Sir/Madam,

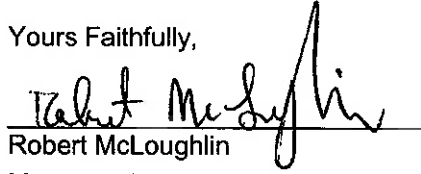
Re: First Party Appeal against Special Contribution under Section 48(2) of the Planning and Development Act relating to the proposed mixed retail scheme at a c.4.126ha site in Cavan Town located in the townlands of Townparks and Tullymongan Lower to the east of the Main Street at Cock Hill, Cavan Town, Co. Cavan.

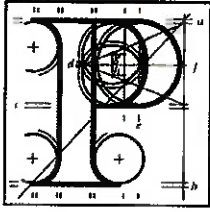
Cavan County Council Reg. Ref. 238

Please find attached a First Party Appeal prepared by RMLA Limited, Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04, on behalf of our Client Tesco Ireland Limited, Gresham House, Marine Road, Dún Laoghaire, County Dublin under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended) against Condition No. 4 of the Notification of Decision to Grant Permission issued by Cavan County Council on 12th October 2023. This Appeal reviews the application of the Special Contribution, demonstrating that the correct Special Contribution applicable to the approved development is €100,130.89 which is €1,399,869.11 less than the €1,500,000 included in Condition No. 4 of the Notification of Decision to Grant Permission.

This Appeal is accompanied by the appropriate fee of €220.00 being a First Party Appeal First under Section 48 of the Planning and Development Act, 2000 (as amended) where the Special Contribution has not been properly applied by the Planning Authority. This Appeal has been made within the statutory period, see Appendix I of the attached Appeal for a copy of the Notification of Decision to Grant Permission.

Yours Faithfully,


Robert McLoughlin
Managing Director
For and on Behalf of RMLA Limited



An
Bord
Pleanála

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Tesco Ireland Limited

(b) Address

Gresham House, Marine Road, Dún Laoghaire, County
Dublin

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

RMLA Limited

(b) Agent's address

Unit 3B, Santry Avenue Industrial Estate, Santry
Avenue, Santry, Dublin 9, D09 PH04

Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the
address in Part 1

☐

The agent at the address in
Part 2

☒

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Cavan County Council

(b) Planning authority register reference number

(for example: 18/0123)

238

(c) Location of proposed development

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

At a c.4.126 ha site in Cavan Town located in the townlands of Townparks and Tullymongan Lower to the east of the Main Street at Cock Hill, Cavan Town, Co. Cavan.

(

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Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Please see attached First Party Appeal Against Special Contribution under Section 48 of the Planning and Development Act which sets out the grounds of the Appeal.

Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the "yes, I wish to request an oral hearing" box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the "No, I do not wish to request an oral hearing" box.

Yes, I wish to request an oral hearing

☐

No, I do not wish to request an oral hearing

☒

NALA has awarded this document its Plain English Mark

Last updated: April 2019.





Planning Consultants

First Party Appeal Against Special Contribution under Section 48(2) of the Planning and Development Act 2000 (as amended).

Cavan County Council Reg. Ref. 238

Prepared by RMLA Limited

On behalf of Tesco Ireland Limited

November 2023

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Prepared By: Robert McLoughlin & Rachel Lawler
Position: Managing Director & Planner
Status: **Final**

For and on behalf of RMLA

Appeal Overview

1.1 Introduction

RMLA Limited, Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04, have been instructed by our client (the First Party), Tesco Ireland Limited, Gresham House, Marine Road, Dún Laoghaire, Co. Dublin, to submit this First Party Appeal under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended) against Condition No. 4 of the Notification of Decision to Grant Permission issued by Cavan County Council on the 12th October 2023 in relation to Reg. Ref. 238 (refer to Appendix I for a copy of the Notification of Decision to Grant Permission). Enclosed is the sum of €220.00 being the required fee for a First Party Appeal under Section 48 of the Planning and Development Act, 2000 (as amended). In this regard we note that as the provisions of Section 48 apply, the Board is restricted to considering the matters under Appeal, i.e. the Special financial Contribution only, and cannot consider the application *de novo*.

This Appeal assesses the application of the Section 48(2) Special Development Contribution by Cavan County Council regarding the 'Cavan Town Centre Eastern Access Route' and demonstrates that the proportionality of the Special Contribution has not been properly applied by Cavan County Council and sets out the appropriate Special Contribution calculations.

1.2 Condition No. 4 – Section 48(2) Special Contribution

A Special Contribution may be imposed under Section 48(2) of the Planning and Development Act, 2000 (as amended) (hereafter 'the Act') where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by the Local Authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development. In this case, the public infrastructure provision relates to, the 'Cavan Town Centre Eastern Access Route'.

Condition No. 4 of Reg. Ref. 238 seeks payment of a Special Contribution under Section 48(2) of the Act as follows:

"The developer shall pay the sum of €1,500 000 (one million, five hundred thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index-Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2) of the Planning and Development Act 2000, as amended, in respect of public infrastructure and facilities benefitting the development namely the Cavan Town Eastern Access Route. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: *It is considered reasonable that the developer should contribute towards the exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development."*

Importantly, it should be noted that there is no publicly available information pertaining to the calculation/breakdown of this Special Contribution. The Planner's Report for Reg. Ref. 238 does not provide any information or commentary regarding the calculation for the Special Contribution attached to Condition No.4. Furthermore, the Local Authority were contacted by both telephone and email on Wednesday, 1st November 2023 (refer to Appendix II), requesting a full breakdown of the calculation. However, no response was received by the deadline date of this Appeal. As such, the Appellant has no information relating to how this substantial sum of money was calculated by the Local Authority.

Grounds of Appeal

As set out above, this First Party Appeal relates solely to Condition No. 4 of Reg. Ref. 238 and the application of the financial proportionality of the Special Contribution under Section 48(2) of the Act. The following section of this statement establishes how the Special Contribution for the 'Cavan Town Eastern Access Route' (hereafter 'Eastern Access Route') has not been correctly applied to the Appellant's site along with a detailed explanation for this assertion with revised calculations provided.

A Part 8 planning permission for the construction of the Eastern Access Route scheme was approved and passed by Cavan County Council Elected Members at the June 2010 Council Meeting. The Eastern Access Route was cited as costing c.€6 million.¹

As stated on the Local Authority's website:

*"In 2010 the BMW (Border, Midland and Western) Regional Assembly approved grant aid under the European Regional Development Fund of **€1.4million** in respect of the Eastern Access Route project. The remaining amount will be co funded from the Councils Own Resources and (Non EU) Grant Aided from the Department of Transport through the National Roads Authority. **Over €900,000** has already been grant aided between 2008 and 2010. 30% of this has gone towards Design and Statutory Procedures, with the remaining 70% going towards Construction."*²

As such, Cavan County Council received €2.3 million in grants with the amount of **€3.7 million** required to pay for the remaining portion of the Eastern Access Route. Attached to the Appellant's Notification of Decision to grant permission is a request for €1.5 million leaving a balance of €2.2 million to be collected from the remaining future development lands and the Town Centre who will benefit directly from the access route. Importantly, a substantial portion of lands benefiting from the Eastern Access Route remain undeveloped to date, with the Appellant being the first landowner, subject to the Special Contribution, to bring forward a planning application for lands situated on this newly constructed access route.

We present three scenarios relating to future development lands that will benefit from the public infrastructure and as such, will be subject to the Special Contribution below:

- Lands immediately adjacent the Eastern Access Road;
- Lands immediately adjacent the Eastern Access Road & N3; and
- Town Centre lands benefiting from the Eastern Access Road.

¹ Cavan County Council website - <https://www.cavancoco.ie/services/roads-transportation/road-schemes/cavan-town-centre-eastern-access/> [Accessed: 2nd November 2023].

² Cavan County Council website - <https://www.cavancoco.ie/services/roads-transportation/road-schemes/cavan-town-centre-eastern-access/> [Accessed: 2nd November 2023].

2.1 Future Development Lands subject to Special Contribution under Section 48(2) of the Act

Adjacent Eastern Access Route

As referred to, the Appellant is required to pay a significant portion (amounting to €1.5 million) of the outstanding balance (being €2.2 million) of the Eastern Access Route. However, it is important to note that a significant amount of lands along the new access route is yet to be developed. Figure 1 overleaf provides an illustration of existing undeveloped lands situated adjacent to the Eastern Access Route, similar to the Appellant's, and subject to the Special Contribution. This section demonstrates that the proportionality of the Special Contribution has not been properly applied by Cavan County Council and setting out the appropriate calculations for same.

Importantly, the Local Authority states the Cavan Town Centre Eastern Access Route project will:

*"Improve access to and from the Killymooney / Killynebbber development zones."*³
(Emphasis added).

Three future development sites directly adjoining the Eastern Access Route have been identified, including the Appellant site, which is subject to this First Party Appeal. As such, the remaining Special Contribution for the Eastern Access Route should, at a minimum, be allocated among the illustrated sites as stated by the Local Authority above, as each will directly benefit from the provision of the public infrastructure and will be liable to pay the Special Contribution.

³ Cavan County Council website - <https://www.cavancoco.ie/services/roads-transportation/road-schemes/cavan-town-centre-eastern-access/> [Accessed: 2nd November 2023].

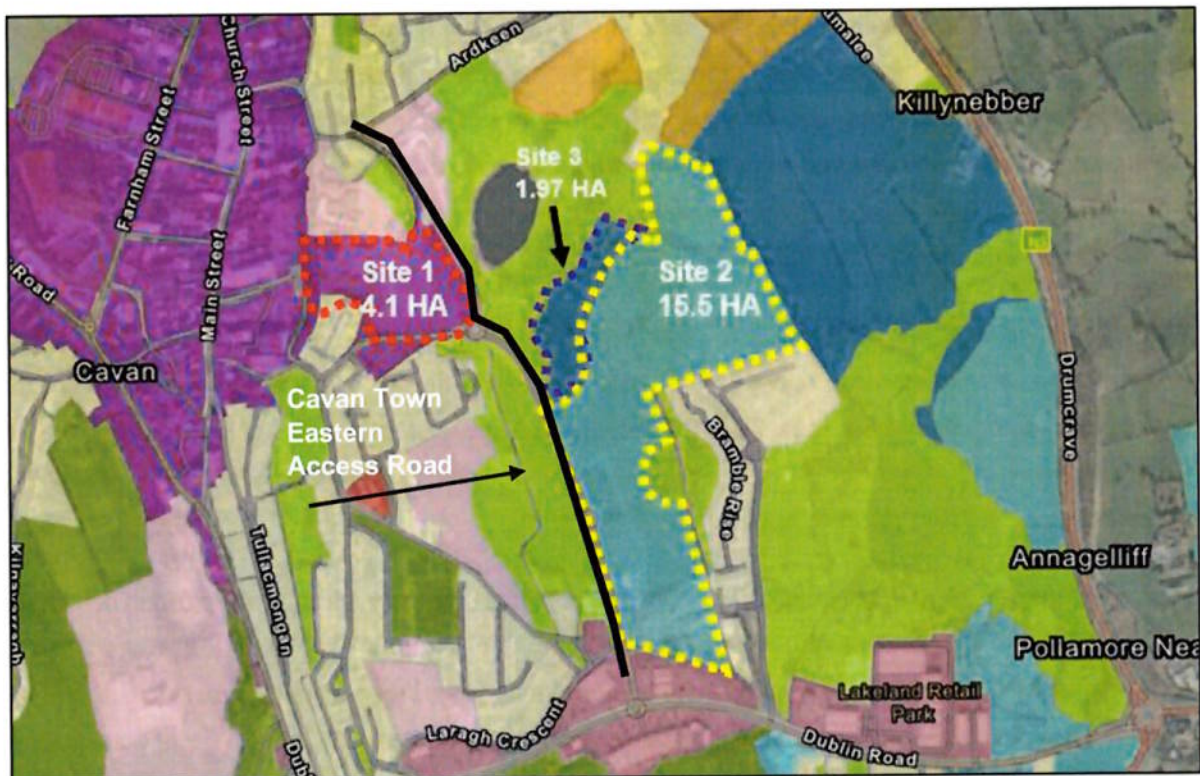


Figure 1: Sites adjacent to the Eastern Access Road subject to the Special Contribution highlighted above. (Source: Cavan County Development Plan 2022-2028 interactive mapping system)

The sites highlighted in Figure 1 are summarised as follows:

- Site No. 1 - The subject site of this First Party Appeal is zoned 'Town Centre', 4.1 ha in area and is envisioned to provide for a mixed retail scheme comprising a Tesco supermarket (c. 5,197sq.m), a drive-thru café (c. 174 sq.m), an 8-island petrol filling station, ancillary car parking, landscaping, and pedestrian linkages to Main Street.
- Site No. 2 - A considerably large plot of 15.5 ha and zoned for 'General Enterprise & Employment', which remains undeveloped to date. Furthermore, this land bank is subject to a site-specific objective to *"provide for office, research and development and high technology type employment in a high quality built and landscaped environment campus style settings. An emphasis on exemplar sustainable design and aesthetic quality will be promoted. Developments on this site shall take cognisance of the site and its importance as a gateway to Cavan town."*
- Site No. 3 - The smallest of the three identified sites measuring 1.97 ha in area and zoned for 'General Enterprise and Employment Strategic Reserve' which is to *"provide for and protect the future economic requirements of the town."* Although the development of this land cannot take place during the plan period as a 'Strategic Reserve', development will at some point be brought forward for this land and will benefit from the Eastern Access Route, as stated by the Local Authority.

In the case of a Special Contribution, it is fair and reasonable to assume that the greater the quantum of development on a site, the higher the Special Contribution should be, as the development will inevitably place a greater pressure on public infrastructure provision, in this case, the Eastern Access Route. As such, it is considered the most appropriate metric for calculating the contribution in this instance is per sq.m calculated using 'plot ratio'. Furthermore, this represents the same methodology as standard Development Contributions.

As the additional two sites (Site Nos. 2 & 3) remain undeveloped at this point and are not subject to any extant permissions or planning applications, the plot ratio for the two sites, taking cognisance of the associated zoning objectives, has been based on average plot ratios for 'office' use in existing Development Plans/Local Area Plans. The plot ratio for the subject site of this Appeal has been provided for based on the current planning application (Reg. Ref. 238).

Figure 1 should be read in conjunction with Table 1 provides summary information for each site based on: Land Use Zoning (as contained in the Cavan County Development Plan 2022-2028); site area (ha & sq.m); plot ratio (which has been used as the determinant of the proportionality of cost for each of the sites); future floorspace based on the accompanying plot ratio; total percentage of floorspace liable for the Special Contribution; and the amount of the total remaining Special Contribution (€3.7 million) that should be paid by that site based on floorspace.

Table 1: Sites adjacent to the Eastern Access Road, proportion of Special Contribution calculated by Plot Ratio.

Site ID	Zoned	Site Area (ha)	Site Area (sqm)	Plot Ratio	Floorspace based on plot ratio	% of total floorspace liable for special contribution	Amount (€) of total Contribution based on floorspace
1	Town Centre	4.1	41,000	0.14	5,748	6.17%	€ 228,443.15
2	General Enterprise & Employment	15.5	155,000	0.5 ¹	77,500	83.25%	€ 3,080,087.65
3	GEE Strategic Reserve	1.97	19,700	0.5 ¹	9,850	10.58%	€ 391,469.20
Total		22	215,700		93,098		€3,700,000

¹Based on average plot ratios for 'Office' use provided in Wicklow County Development Plan 2016-2022 (0.2); Draft Kildare Town Local Area Plan 2023-2029 (1) & Meath County Development Plan 2021-2027 (0.2).

Table 1 effectively demonstrates that the Appellant's portion of the Eastern Access Route Special Contribution has not been calculated accurately by the Local Authority. As demonstrated above, the Appellant's land should only proportionally account for 6.17% of the total floorspace liable for the Special Contribution, while a total of 93.83% of undeveloped land should be subject to the cost based on plot ratio. As such, it is considered that the Appellant's contribution should in fact amount to €228,443.15, an overcharge of **€1,271,556.85** of what is currently attached to the Notification of Decision to grant permission under Condition No. 4 (€1.5 million).

For completeness, the above proportionally measurement has also been calculated on a per site area (ha) basis. Table 2 provides information, using a similar methodology, in which the same pattern is visible. Using a 'site area' calculation, it is evident that the Appellant is still paying a considerable proportion of the Special Contribution. However, it is considered that the most appropriate metric for this exercise is per sq.m calculated using **plot ratio**.

Table 2: Sites adjacent to Eastern Access Road, proportion of Special Contribution calculated by Site Area (ha).

Site ID	Zoned	Site Area (ha)	% of total site area liable for special contribution	Amount (€) of total Contribution based on floorspace
1	Town Centre	4.1	10.49%	€ 703,291.61
2	General Enterprise & Employment	15.5	39.64%	€ 2,658,785.35
3	GEE Strategic Reserve	1.97	5.04%	€ 337,923.04
Total		39		€ 3,700,000

Regarding site area, Site No. 2 is nearly four times greater in area than the Appellant's site. Based on the site area metric, Site No. 2 should be contributing the majority of the remaining cost, being €2,658,785.35, while the Appellant should be liable for €703,291.61, which is an overcharge of **€796,708.39** of what is currently attached to the Notification of Decision to grant permission under Condition No. 4 (€1.5 million).

Adjacent Eastern Access Road & N3 Lands

As outlined above, the remaining Special Contribution for the Eastern Access Route should, at a minimum, be allocated among the aforementioned sites that are located directly adjacent to the Eastern Access Route. However, it should be considered there are a number of plots located directly adjacent to the N3. The Cavan County Development Plan 2022-2028 states:

- **Objective NE 02:** *Protect national roads from inappropriate access in order to protect the substantial investment in the national road network, to preserve the carrying capacity and safety of the National Road Network.*

Taking account of Objective NE 02, it is unlikely, from a safety perspective that a new entrance will be permitted onto the N3 National route. Furthermore, Site No. 4 identified in Figure 2 will be an extension of Site No. 2, with access to be provided via the Eastern Access Route and thus, directly benefiting from the provided public infrastructure. Similar to Site No.4, it is considered Site Nos. 5 & 6 will not be permitted direct access onto a National Road with vehicle speeds of 100 km/h. This would be in contrary to guidance provided by Transport Infrastructure Ireland (hereafter 'TII').

Table 3: Sites adjacent to the Eastern Access Road & N3, proportion of Special Contribution calculated by Plot Ratio.

Site ID	Zoned	Site Area (ha)	Site Area (sqm)	Plot Ratio	Floorspace based on plot ratio	% of total floorspace liable for special contribution	Amount (€) of total Contribution based on floorspace
1	Town Centre	4.1	41,000	0.14	5,748	2.71%	€100,130.89
2	General Enterprise & Employment	15.5	155,000	0.5	77,500	36.49%	€1,350,059.79
3	GEE Strategic Reserve	1.97	19,700	0.5	9,850	4.64%	€171,588.24
4	GEE Strategic Reserve	17.53	175,300	0.5	87,650	41.27%	€1,526,874.08
5	GEE Strategic Reserve	0.75	7,500	0.5	3,750	1.77%	€65,325.47
6	General Enterprise & Employment	5.58	55,800	0.5	27,900	13.14%	€486,021.53
Total		45	454,300		212,398		€ 3,700,000

As presented in Table 3, the Appellant lands account for only 2.7% of the total floorspace liable for the Special Contribution, taking into consideration lands immediately adjacent to the Eastern Access Road and lands that will require access through these development lands, benefiting from the access road. As such, the Appellant lands would be subject to a special contribution payment of €100,130.89 an overcharge of **€1,399,869.11** of what is currently attached to the Notification of Decision to grant permission under Condition No. 4 (€1.5 million).

For completeness, the above proportionally measurement calculated per site area (ha) is presented in Table 4, in which the same pattern is visible, and the Appellant is still paying a considerable amount of the Special Contribution.

Table 4: Sites adjacent to the Eastern Access Road & N3, proportion of Special Contribution calculated by Site Area (Ha)

Site ID	Zoned	Site Area (ha)	% of total site area liable for special contribution	Amount (€) of total Contribution based on floorspace
1	Town Centre	4.1	9.02%	€ 333,920.32
2	General Enterprise & Employment	15.5	34.12%	€ 1,262,381.69
3	GEE Strategic Reserve	1.97	4.34%	€ 160,444.64
4	GEE Strategic Reserve	17.53	38.59%	€ 1,427,712.97
5	GEE Strategic Reserve	0.75	1.65%	€ 61,082.98
6	General Enterprise & Employment	5.58	12.28%	€ 454,457.41
Total		45		€ 3,700,000

Site Nos. 2 & 4 account for 72.71% of total floorspace that should be liable for the Special Contribution resulting in a payment of €2,690,094.66. The Appellant's site only accounts for 9.02% and therefore, should be subject to a contribution of €333,920.32 based on site area, an overcharge of **€1,166,079.66** of what is currently attached to the Notification of Decision to grant permission under Condition No. 4 (€1.5 million).

Town Centre Lands

It should be noted that the route scheme was named as the 'Cavan Town Centre Eastern Access Route' and that the purpose of the road is to also provide greater access to the town centre. As described on the Local Authority's website the project's key objectives are to:

- Improve accessibility to the Town Centre and the Multi Storey Car park,
- Reduce traffic congestion in the Town Centre; and
- Facilitate improved pedestrianisation and traffic management in the Town Centre.⁵

It is unclear as to how Cavan County Council is going to recoup contributions from town centre sites. For the purposes of this First Party Appeal, an analysis has not been carried out for town centre sites.

⁵ Cavan County Council website - <https://www.cavancoco.ie/services/roads-transportation/road-schemes/cavan-town-centre-eastern-access/> [Accessed: 2nd November 2023].

However, we urge the Board to take into consideration that this scheme is for the benefit of the entirety of the town centre, as made clear by the Local Authority.

2.2 Previous Application on Site

We highlight a previous application on site by the Appellant under Reg. Ref. No. 11991992 (ABP Ref. No. 240097) for a much larger development that was not ultimately implemented. The proposal consisted of a foodstore (c.5,009 sq.m net retail area selling convenience and comparison goods), a café unit (c. 264 sq.m) and 471 no. car parking spaces. The proposal received a Notification of Decision to grant permission by Cavan County Council subject to 22 no. conditions including Condition No. 4 requiring the same amount for the Special Contribution:

*"The developer shall pay the sum of **€1.5million** (One point five million Euro only) (updated at the time of payment in accordance with changes in the Wholesale Price Index - Building and Construction (Capital Goods), published by the Central Statistics Office) to the Planning Authority as a Special contribution towards expenditure that was and/or is proposed to be incurred by the Planning Authority in respect of public infrastructure and facilities benefiting the development namely the Cavan Town Eastern Access Route."*

The decision was subject to a Third-Party Appeal but ultimately the Local Authority's decision was upheld by the Board and permission was granted on 14th January 2013. Condition No. 4 was re-attached to the Board Order as Condition No. 14:

"The developer shall pay the sum of €1,500,000 (one million five hundred thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, as amended in respect of public infrastructure and facilities benefitting the development namely the Cavan Town Eastern Access Route. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine."

We wish to highlight that the current development, proposed under Reg. Ref. No. 238 (**5,748 sq.m GFA**) is of a considerably smaller scale to the previous application on site Reg. Ref. No. 11991992 (**8,239 sq.m GFA**). There has been a reduction of c. 2,491 sq.m GFA and as such, the current proposal presents a lesser plot ratio, site coverage, and intensity of development. The results in less pressure on the public infrastructure i.e. Eastern Access Route. Therefore, the current proposal should be subject to a lesser Special Contribution not greater than €228,443.15 amount.

Summary

As set out in detail above, it is considered the Special Contribution under Section 48(2) of the Planning and Development Act, 2000 (as amended) has not been properly calculated for the proposed mixed retail scheme and this First Party Appeal is being made in accordance with the provision of Section 48(10)(b) of the Planning and Development Act, 2000 (as amended). In this regard, we note that as the provisions of Section 48 apply, the Board is restricted to considering the matters under Appeal, i.e. the Special Financial Contribution only, and cannot consider the application *de novo*.

This Appeal reviews in detail the application of the Special Contribution and seeks to set out in a clear and concise manner how the Special Contribution has not been calculated correctly relating to Condition No. 4 of Reg. Ref. 238, and how the Special Contribution should have been proportionally calculated/applied. For ease of reference, these revised calculations based on the most appropriate metric, plot ratio, are set out in Table 5.

Table 5: Summary of the Appellant's appropriate amount of Special Contribution based on Plot Ratio.

	% of total floorspace liable for special contribution	Amount (€) of total Contribution based on floorspace	Overcharge by Local Authority
Lands adjacent route	6.7%	€228,443.15	€1,271,556.85
Lands adjacent route & N3	2.71%	€100,130.89	€1,399,869.11

Having regard to the detailed breakdown summarised in Table 5, we respectfully request that the Board revise the total Special Contribution sought under Condition No. 4 to no more than **€100,130.89** having regard to the significant amount of future development lands within the vicinity of the Cavan Town Centre Eastern Access Route that will benefit as stated by the Local Authority⁶, and are therefore, liable for the Special Contribution.

⁶ Cavan County Council website - <https://www.cavancoco.ie/services/roads-transportation/road-schemes/cavan-town-centre-eastern-access/> [Accessed: 3rd November 2023].

Appendix I – Notification of Decision Reg. Ref. 238



Cavan

Comhairle Contae an Chabháin
Cavan County Council

Cavan County Council
Johnston Central Library
Farnham Street
Cavan H12 C9K1

Planning Section
plan@cavancoco.ie
049 437 8300
www.cavancoco.ie

Planning Compliance
planningcompliance@cavancoco.ie
Enforcement
enforcement@cavancoco.ie

PLANNING & DEVELOPMENT ACT 2000 (as amended)

NOTIFICATION OF DECISION TO GRANT (SUBJECT TO CONDITIONS)

TO: Tesco Ireland Limited
C/o RMLA Planning Consultants
Unit 3B, Santry Avenue Industrial Estate
Santry Avenue, Santry
Dublin 9 D09 PH04

Planning Register Number: 23/8
Application Receipt Date: 16/01/2023
Further Information Received Date: 18/08/2023

In pursuance of the powers conferred upon them by the above-mentioned Act, Cavan County Council has by Order dated 12/10/2023 decided to **GRANT PERMISSION** to the above-named for the development of land, namely: for development consisting of the construction of: (i) a single storey retail unit of c. 5,197 sq.m gross floor area (c. 2,194 sq.m convenience net sales area and c. 957 sq.m comparison net sales area) including a licensed alcohol sales area, bulk store, ancillary offices, staff facilities, cage marshalling area, bin storage, service yard and associated directional signage; (ii) 1 no. drive thru café unit (c. 174 sq.m gross floor area) with external seating and the provision of 5 no. car parking spaces (including 2 no. electric parking spaces, 2 no. disabled and 1 no. standard) and 2 no. set down bay areas; (iii) 1 no. 4 pump (8 stand) petrol filling station incorporating an automatic car wash/jet wash (c. 89 sq.m), a forecourt canopy (covers c. 255 sq.m and 4.8m in height) and associated signage, oil interceptors, underground storage tanks and tanker fill point; (iv) 4 no. internally illuminated elevation signage on the eastern, western and southern elevations; (v) 297 no. car parking spaces associated with the retail unit (including parent and toddler, disabled and electric parking spaces), 120 no. cycle parking spaces in freestanding external shelters and set down/loading bay areas; (vi) 2 no. dedicated 'Click and Collect' car spaces with canopy structure and associated signage; (vii) Grocery Home Shopping delivery vehicle docking area situated in the service yard; (viii) 1 no. vehicle access point from Cock Hill Road at the north east boundary of the site and 1 no. vehicle left-in/left-out access point at the southern boundary of the site, all with associated pedestrian and cycle access facilities; (ix) pedestrian linkages with the Town Centre by way of the provision of a sloped pedestrian walkway and steps on the western boundary of the site with 4 no. pedestrian crossings on Cock Hill Road; (x) 1 no. internally illuminated double-sided totem sign associated with the retail unit (7m X2.3m) and 1 no. internally illuminated double-sided totem associated with the petrol filling station (7.2m X1.7m); (xi) ESB substation and switch room, pump house, sprinkler tank, 2 no. attenuation tanks, 3 no. detention basins, feature and street lighting, plant, store canopy, trolley shelter/bays and all ancillary site development works, landscaping, ramps, fences, enabling works and site services. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) are submitted with this application. The site is bounded to the north by St.



Cavan

Comhairle Contae an Chabháin
Cavan County Council

Cavan County Council
Johnston Central Library
Farnham Street
Cavan H12 C9K1

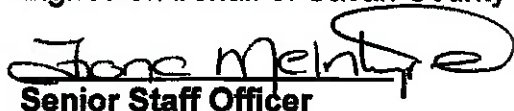
Planning Section
plan@cavancoco.ie
049 437 8300
www.cavancoco.ie

Planning Compliance
planningcompliance@cavancoco.ie
Enforcement
enforcement@cavancoco.ie

Clare's National School, to the south by residential lands and to the west by the Main Street backlands. Significant further information including revised plans has been submitted. at Townparks & Tullymongan Lower (to the east of Main Street), Cock Hill, Cavan Town, Co. Cavan in accordance with the plans submitted with the application.

Subject to the 34 condition(s) set out in the 2nd Schedule and for the reason set out in the 1st Schedule.

Signed on behalf of Cavan County Council.


Senior Staff Officer

Date: 12/10/2023

Provided there is no appeal against this decision, a grant of planning permission will issue at the end of the appropriate period within which an appeal may be made. THIS NOTICE IS NOT A GRANT OF PERMISSION AND WORK SHOULD NOT COMMENCE UNTIL PLANNING PERMISSION IS ISSUED.

NOTE: An appeal against the decision may be made to An Bord Pleanála within four weeks beginning on the date of the decision.

Appeal against a decision of a Planning Authority must be accompanied by the appropriate fee. Forms and full particulars are available from www.pleanala.ie/appeals.

Appeal should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1, D01V902

PLANNING & DEVELOPMENT ACT 2000 as amended.

PLANNING APPLICATION: Tesco Ireland Limited

REG.NO. 23/8

SCHEDULE 1

Having regard to the provisions of the Cavan County Development Plan, incorporating the Cavan Local Area Plan (2022-2028), to the scale and nature of the development, it is considered that, subject to compliance with the conditions set out below, the development would be in accordance with the provisions of the development plan and would not adversely affect the residential amenities of the area. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

SCHEDULE 2

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 16th of January 2023 as amended by the further plans and particulars submitted on the 3rd & 18th of August 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall pay the sum of €142,880 to the Planning Authority in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

3. Before the development is commenced, the developer shall lodge with Cavan County Council a cash deposit, an on-demand bond of an insurance company or other security to secure the provision and satisfactory completion, and maintenance until taken in charge by the said Council of roads, footpaths, sewers, watermains, drains, public open space, public lighting and other services required in connection with the development, coupled with an agreement empowering the said Council to apply such security or part thereof for the satisfactory completion or maintenance as aforesaid of any part of the development.

The said security shall be in the sum of €15,000 but if the development to which this permission relates is not commenced on or before the 1st January 2025, the Planning Authority may require the amount of the said security to be increased by the same percentage as the increase, if any, in the House Building Cost Index between the date hereof and the date of actual commencement of the development.

Reason: To ensure the satisfactory completion of the development.

4. The developer shall pay the sum of €1,500 000 (one million, five hundred thousand euro) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2) of the Planning and Development Act 2000, as amended, in respect of public infrastructure and facilities benefitting the development namely the Cavan Town Eastern Access Route. This contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is considered reasonable that the developer should contribute towards the exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

5. (a.) All landscaping, pedestrian links and civic spaces & boundary treatment shall be fully completed, prior to the operation of the retail unit. The programme for the development of same shall be agreed with the Planning Authority.

(b.) The plaza area and pedestrian connectivity between the site and the existing town centre shall be provided in accordance with the layout plan and detailed drawings received by the Planning Authority on the 3rd of August 2023.

(c.) The pedestrian route (stairs/ramps) on the western side of the site connecting the upper portion of the site with the lower portion of the site and the existing town centre to the west, shall remain open for public use 24 hours a day and 7 days a week.

Reason: In order to provide appropriate pedestrian linkage between the proposed development and the Town Centre.

6. Details including samples of the materials, colours and textures of all the external finishes for the entire development, shall be submitted to and agreed with the Planning Authority in writing, prior to the commencement of the development.

Reason: In the interests of the visual amenities of the area.

7. No additional signs, symbols, advertisement or advertising structure other than those shown on the drawings with the drawings submitted with the application shall be erected or displayed on the building or within the curtilage of the site without a prior grant of planning permission.

Reason: In the interests of visual amenity.

8. The measures specified in the Construction Management Plan (CEMP) submitted on the 3rd of August 2023 and all relevant application documents must be adhered to including all specified mitigation measures, inspection regimes and infrastructure.

Reason: In the interests of public health and proper planning.

9. The applicant shall include Stage 1 Petrol Vapour recovery as part of the proposed development. Stage 2 Petrol Vapour recovery must also be included if the actual/intended petrol throughput is greater than 500 m³/year.

Reason: In the interests of public health and proper planning.

10. The site manager(s) shall carry out a daily inspection during the construction phase to check for uncontrolled water loss or contaminated discharges to groundwater or surface water. Any water loss or contaminated discharges shall be ceased by appropriate methods immediately. The frequency of inspection will increase during/after periods of heavy rainfall.

Reason: In the interests of public health and proper planning.

11. Direct run-off of contaminated discharges from the development site to drains or other watercourses shall be prevented. A buffer zone must be maintained relevant to all watercourses.

Reason: In the interests of public health and proper planning.

12. The applicant shall make provision, as is necessary, to ensure immediate mitigation or alleviation of adverse impacts to surface and groundwater.

Reason: In the interests of public health and proper planning.

13. All possible water quality and environmental protection measures must be in place prior to clearing of the site commencing.

- (i) All plant shall be refuelled off-site.
- (ii) Plant wholly operated within the development site may only be refuelled on-site.
- (iii) Mobile plant shall be refuelled on a hardstanding.
- (iv) Emergency repairs of plant may be carried out provided mechanics use appropriate drip trays and oil catcher tanks to drain hydraulic, or oil lubrication, systems.
- (v) Sufficient oil absorbent material shall be available to cope with an oil or hydraulic fluid loss equal to the total content of the largest item of plant.

Reason: In the interests of public health and proper planning.

14. No hydrocarbons shall enter surface waters from vehicle refuelling, maintenance, waiting and parking and appropriate infrastructure shall be put in place if so required in order to prevent any such discharges occurring. All fuel, lubricants or other chemical storage tanks shall be adequately bunded to protect against spillage. Bunding shall be impermeable and capable of retaining a volume equal to 1.5 times the capacity of the largest tank. The applicant shall take precautions to ensure that oils and fuels used in the operations are stored in a secure place. All waste oil shall be removed from the site and disposed of to the satisfaction of the planning authority.

Reason: In the interests of public health and proper planning.

15. Incidents of surface or groundwater pollution, or incidents that may result in surface or groundwater pollution, shall be notified to the Cavan County Council without delay.

Reason: In the interests of public health and proper planning.

16. During the construction and the operational phases, ununcontaminated surface run-off within the development shall be collected and managed in accordance with the surface water drainage systems detailed in the application documents received.

Reason: In the interests of public health and proper planning.

17. In the event that any analyses or observations made on the quality or appearance of the surface water should indicate that contamination has taken place the applicant shall:
- a) Carry out an immediate investigation to identify and isolate the source of the contamination.
 - b) Put in place measures to prevent further contamination and to minimise the effects of any contamination to the environment.
 - c) Notify Cavan County Council within 24 hours of the applicant becoming aware that contamination has occurred.

Reason: In the interests of public health and proper planning.

18. Construction wastes shall be managed in accordance with the *'Best Practice Guidelines for the preparation of resource & waste management plans for construction & development projects'* (EPA, 2021) and the 'Construction Waste Management Plan' submitted.

Reason: In the interests of public health and proper planning.

19. Soils shall be managed in accordance with the 'Construction & Development Management Plan' submitted with the application and the further information received in relation to this plan.

Reason: In the interests of public health and proper planning.

20. Construction waste shall be managed on-site in such a manner so as to avoid environmental nuisance and pollution pending removal off-site by appropriately authorised waste collection contractors only.

Reason: In the interests of public health and proper planning.

21. Records in relation to Waste Management shall be maintained by the applicant and retained for a period of 7 years following completion of the development.

Reason: In the interests of public health and proper planning.

22. Prior to commencement of the development, the Developer shall submit a final site layout plan and confirm that same fully incorporates the recommendations of the Stage 1/2 Road Safety Audit (Doc ref. 221295-ORS-XX-XX-RP-TR-7d-001).

Reason: In the interests of traffic safety and proper planning.

23. During construction the developer shall be responsible for ensuring that no pavement or structural damage occurs to the public road as a consequence of the works and any damage shall be repaired at full cost to the developer.

Reason: In the interests of traffic safety and proper planning.

24. Prior to commencement of the development, the Developer shall liaise with the Municipal District and agree any required amendments to the CEMP and associated final Traffic Management Plan for the duration of construction works.

Reason: In the interests of traffic safety and proper planning.

25. All approved works relating to the entrance and frontage construction, surface water drainage, footways, ramps, stairways, pedestrian crossings, landscaping, public lighting, access road & surfacing etc, shall be completed prior to the commercial use of the development.

Reason: In the interests of traffic safety and proper planning.

26. Any landscaping in the vicinity of the 2.5m sloped walkway should be low level to ensure that the route remains open, inviting and lit.

Reason: In the interests of traffic safety and proper planning.

27. Car parking shall be appropriately marked with thermoplastic road marking materials designating parking bays, circulation lanes and areas to be kept clear of parking.

Reason: In the interests of traffic safety and proper planning.

28. The internal service roads, car parks and entrance areas shall be structurally designed taking into account ground conditions and proposed levels of use. Areas shall be surfaced using appropriate depths of bituminous bound materials.

Reason: In the interests of traffic safety and proper planning.

29. All roadways and junctions shall be appropriately signed, and road-markings shall be in accordance with the 'Traffic Signs Manual'.

Reason: In the interests of traffic safety and proper planning.

30. Public Lighting for the development shall be designed and constructed in line with the Council's adopted External Lighting Policy. Trees should not be planted near public lighting columns, to ensure unimpeded lighting levels.

Reason: In the interests of traffic safety and proper planning.

31. All new retaining walls to be designed, supervised and certified by a Chartered Civil or Structural Engineer.

Reason: In the interests of traffic safety and proper planning.

32. On completion of construction and prior to opening of the development to traffic, a Stage 3 Road Safety Audit of the development and its junctions with the public road shall be carried out by an independent qualified engineer in accordance with TII Publication GE-STY-01024 and submitted to the Planning Authority. Recommendations of the Audit shall be fully implemented by the applicant at full cost to the developer.

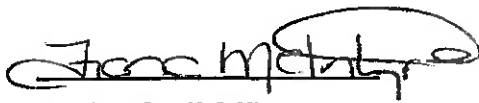
Reason: In the interests of traffic safety and proper planning.

33. The developer shall ensure that all mitigation measures stated in the Environmental Impact Assessment Report (EIAR) – Volume II Main Report, submitted on the 16th of January 2023, shall be implemented in full.

Reason: In the interests of Proper Planning and sustainable development.

34. The developer shall ensure that all mitigation measures stated in Section 6 of the Natura Impact Statement submitted on the 3rd of August 2023, shall be implemented in full.

Reason: In the interests of Proper Planning and sustainable development.

A handwritten signature in black ink, appearing to read 'Jane McIntyre', with a large, stylized loop at the end.

Senior Staff Officer

Important Notes to Applicant:

1.0 SITE NOTICE(S):

The applicant is required to remove the site notice(s) on receipt of the notification of the decision from the planning authority.

2.0 COMPLIANCE CONDITIONS:

A number of the conditions attached to the planning permission may need compliance submissions to be lodged and agreed prior to the commencement of development. Failure to comply with a condition of the planning permission is an offence under Section 151 of the Planning and Development Act 2000, as amended. [Please submit 2 no. hard copies and/or an electronic copy of the compliance documentation.]

3.0 COMMENCEMENT NOTICE:

In accordance with the Building Control Regulations you are obliged to submit a commencement notice prior to the commencement of development. The commencement notice must be received by the Building Control Authority not less than 14 days and not more than 28 days before you wish to commence work. Notice of commencement must be completed online on the National BCMS (Building Control Management System). A commencement notice is relevant in all cases, except where a person intends to commence work on the construction of a building before a grant of the relevant Fire Safety Certificate, where one is required. In this case the correct form to use is a '7 Day Notice'.

4.0 LEGAL TITLE MATTERS:

A person shall not be entitled solely by reason of a grant of planning permission to carry out any development.

5.0 OBLIGATIONS UNDER OTHER STATUTORY CODES:

Please note that consent under the Planning and Development Act 2000, as amended, does not imply consent under the Building Control Regulations. The onus is on the designer and assigned certifier to ensure full compliance with the Building Control Regulations (in certain circumstances design changes may require planning permission). [Your attention is drawn to the requirements of the attached 'Building Control information note,' where applicable.]

It should be clearly understood that the granting of planning permission does not relieve the developer of the responsibility of complying with any requirements under other codes of legislation affecting the proposal. For example, some developments may need to secure separate consents in

order to implement their development, such as:

- Fire Safety Certificate and Disability Access Certificate;
- Road Opening Licence, under the Roads Act;
- Industrial Emissions Licence/Integrated Pollution Control licence from EPA;
- Waste Licence;
- Wastewater Discharge Licence;
- Licences issued by the District Court (such as licensing matters relating to intoxicating liquor licences, restaurant certificates, club registration, etc);
- Environmental Health and Public Health codes;
- Gaming licences;
- Archaeological licences under the National Monuments Acts;
- Department of Agriculture, Food and the Marine Licences;
- Service providers connections, etc.

Appendix II – Request for calculation/breakdown of the special contribution as set out at Condition No. 4.

Rachel Lawler

From: Rachel Lawler
Sent: Wednesday 1 November 2023 11:37
To: plan@cavancoco.ie
Cc: Robert McLoughlin; Brendan Boyle
Subject: Reg. Ref. 238 - Condition No. 4, Special Contribution Breakdown
Attachments: 231012_Reg Ref 23-8_Decision.pdf

Hi,

Further to my telephone call this morning with the County Council planning department, on behalf of our Client, Tesco Ireland Limited, regarding Condition No. 4 of the attached Notification of Decision (Reg. Ref. 238).

This Condition relates to a special contribution (Section 48 (2) of the Planning and Development Act 2000 (as amended)) for the sum of €1.5 million in respect of public infrastructure and facilities benefitting the development namely the Cavan Town Eastern Access Route. Regarding same, we would like to request the calculation/breakdown of the special contribution as set out at Condition No. 4.

We would be grateful for a response to the above query by Monday, 6th November 2023.

Kind regards,

Rachel Lawler
Planner

RMLA.
Planning Consultants

Mobile + 353 (0) 86 084 1973
rachel.lawler@rmla.ie
Unit 3B, Santry Avenue Industrial Estate,
Santry Avenue, Santry, Dublin 9,
D09 PH04

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RMLA.

Planning Consultants

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Unit 3B,
Santry Avenue Industrial Estate,
Santry Avenue,
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D09 PH04

RMLA Limited, trading as RMLA is registered in the Republic of Ireland number 720031.
Registered Address: Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04
Directors of the Company: Robert McLoughlin