



An
Bord
Pleanála

Memorandum
ABP-318406-23

Mr Buckley
Please forward file
to Area Co-ordinator
for allocation & report

By 18/12/23

To: Bronwyn Byrne, Senior Executive Officer
From: Patrick Buckley, Executive Officer
Re: Construction of a single storey retail unit, drive thru café unit, petrol filling station and all associated site works. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) were submitted with this application.
Townparks & Tullymongan Lower (to the east of Main Street), Cock Hill, Cavan Town, Co. Cavan
Date: 13th December 2023

On 7th November 2023, the Board received a third party appeal from Cian O'Donoghue against Cavan County Council's decision on Reg.Ref: 238 to grant permission with conditions for the above proposed development.

A further appeal was received from the first party on 8th November 2023 against Condition 4 of the grant of permission requiring the applicant to pay a special contribution in accordance with section 48(2) of the Planning and Development Act, 2000 (as amended).

The two appeals were circulated and later cross circulated to all parties on 8th November and 10th November 2023.

EIAR

An Environmental Impact Assessment Report (EIAR) was submitted with the application. An EIAR Recommendations – EIAR submitted form (green) attached.

NIS

A Natura Impact Statement was submitted with the application. Please find attached NIS recommendation form (light green) to be completed by inspectorate.

The case is considered high priority, Cian O'Donoghues contends the following:

1. The proposed development is contrary to policies and objectives of the Cavan County Council Development Plan 2022-2028
2. There is lack of connectivity between the development site and Cavan Town centre which will result in increased traffic on the roads.
3. The proposed development will result in a negative visual impact to the area.
4. The proposed development may negatively affect the retail sector of Cavan Town.

Tesco Ireland Limited contend the following:

1. The Special Contribution required by Condition 4 of the grant of permission was not calculated correctly and ask the Board to reduce the amount to be paid to be no more than €100,130.89.

Condition 4 states that:

"The developer shall pay the sum of €1,500,000 (one million, five hundred thousand euro) (updated at 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. The 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."

The reason given by the planning authority is as follows:

"It is considered reasonable that the developer should contribute toward 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."

Section 48(10) (a) provides that no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid in accordance with the scheme made under this section.

Section 48(10) (b) provides that an appeal may be brought to the Board where an applicant for permission under section 34 considers that the terms of the scheme have not been properly applied in respect of any condition laid down by the Planning Authority.

I would consider that the appeal against condition 4 is valid having met the criteria of the said section.

It is a matter for the Board to final analysis to determine the validity of the appeal having regard to the provision of section 48 of the Planning and Development Act, 2000, as amended.

The statutory time period for the submission of observations expired on 4th December 2023. No observations were received.

The statutory time period for the submission of responses to the appeals expired on 7th December 2023. The Planning Authority's response to the third party and first party appeals were received on 27th November 2023 and 7th December 2023.

Section 131 of the Planning and Development Act, 2000 has been invoked and the first party has been invited to make further comments as the planning authority's response to the first party appeal included a breakdown of the calculation of the special contribution under appeal. The last day for a response from the first party is 10th January 2024.

File herewith for comments.

