

File With _____

SECTION 131 FORM

Appeal NO: ABP 318406-23Defer Re O/H ☐Having considered the contents of the submission (dated) received 10/01/2024
fromApplicantI recommend that section 131 of the Planning and Development Act, 2000
be not be invoked at this stage for the following reason(s): no new material issuesE.O.: Pat BDate: 11/01/2024

For further consideration by SEO/SAO

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached
submission

to: _____ Task No: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

RMLA.

Planning Consultants

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
10 JAN 2024	
Fee: €	_____ Type: _____
Time: 4.15	By: ITAND.

First Party Response to Cavan County Council

An Bord Pleanála Ref. 318406-23

Cavan County Council Reg. Ref. 238

Prepared by RMLA Limited

On behalf of Tesco Ireland Limited

January 2024

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
10 JAN 2024	
Fee: €	_____ Type: _____
Time: _____	By: _____

Contents

Response to Appeal Overview	3
Response to Cavan County Council Submission	4
Summary	9

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

For and on behalf of RMLA

Response to 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, Tesco Ireland Limited (the First Party), Gresham House, Marine Road, Dún Laoghaire, Co. Dublin to prepare this response following receipt of correspondence from An Bord Pleanála dated, 12th December 2023 (refer to Appendix I), which invites a submission/observation on the submission made by Cavan County Council in response to the First Party Appeal lodged 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. 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*.

Please note all correspondence to this response should be sent to the Agents, RMLA, at the abovementioned address. This First Party response demonstrates that the concerns raised in our original appeal remain with respect to the application of the Section 48(2) Special Development Contribution by Cavan County Council for the 'Cavan Town Centre Eastern Access Route' (hereafter, 'Eastern Access Route') and it is maintained that the proportionality of the Special Contribution has not been properly applied by Cavan County Council.

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."*

Response to Cavan County Council Submission

This section outlines our response to the submission made by Cavan County Council in response to the First Party Appeal lodged under Section 48(10)(b) of the Planning and Development Act, 2000 (as amended) against Condition No. 4. Having reviewed the response by Cavan County Council lodged to An Bord Pleanála (hereafter, 'ABP') under Ref. No. 318406-23, the First Party would like to address the below points raised by Cavan County Council.

The First Party welcomes the response by Cavan County Council and the clarification regarding the calculation of the Special Contribution figure attached to Condition No. 4 of Reg. Ref. 238. The Local Authority have confirmed that the actual cost to construct the Eastern Access Route was €8,549,142, as presented in Table 1 of Cavan County Council's response, rather than the c. €6 million amount previously understood by the First Party to be the cost of construction. In addition, the Local Authority confirmed that it also received further grants, amounting to €2,386,014, meaning €4,763,128 is required to cover the remaining costs of the Scheme.

Given that no information regarding the costs associated with the construction of Eastern Access Route or the method of calculation of the Special Contribution was included in the Planner's Report under Reg. Ref. 238, the Appellant is the first landowner that has been subjected to the Special Contribution. Our First Party Appeal presented scenarios based on the assumed cost of construction the Eastern Access Route. As such, to ensure completeness, the tables presented in the original First Party Appeal, providing the proportion of Special Contribution calculated by plot ratio and site area, have been updated to reflect the updated outstanding amount of €4,763,128. Attached to the First Party's Notification of Decision to grant permission is a request for €1.5 million leaving a balance of €3,263,128 to be collected from the remaining future development lands. The First Party identifies the strategic lands in Figure 1 (Site ID Nos. 1-6 and should be read in conjunction with Tables Nos. 1-4), which will also directly benefit from the Eastern Access Route. The share of proportionality is addressed later on in this Response Submission.

Before the matter of the other strategic lands which will benefit from the Route mentioned, we note that the Local Authority has expressed the opinion that the most appropriate metric to calculate the Special Contribution is on the basis of traffic generation. However, we wish to reiterate that the First Party contends that calculating the contribution based on gross floor area (similar to the Cavan County Council General Development Contribution) remains the most appropriate metric to be used.

Nevertheless, in response to Cavan County Council's alternative methods for calculating the Special Contribution (car parking and/or traffic generation), it should be noted that the proposed development contains a suite of measures that promote sustainability and reduce car dependency (including direct pedestrian links to the Town Centre, cycle parking and a set-down area for a local link bus service).

The Local Authority states that their calculations do not reflect the increased traffic generated by the petrol filling station and/or the home delivery service. However, it is submitted that a petrol filling station is a recognised complementary offer to a foodstore development and that it will promote opportunities for 'linked trips'. Additionally, the home delivery service will result in reducing the amount of traffic generated at the site by reducing the need for private cars to visit the development. It is further submitted that calculations reliant on traffic levels can be very subjective, whereas a contribution rate based on plot ratio or gross floor area allows a consistent approach to be applied for all developments that are subject to the Section 48(2) Special Development Contribution for the 'Cavan Town Centre Eastern Access Route'.

Furthermore, it is important to note the proposal contains significantly less car parking spaces, 304 no. spaces compared to the previous 485 no. spaces granted under Reg. Ref. No. 11991992 (ABP Ref. 240097) and Reg. Ref. 1561 (ABP Ref. 244839).

Additionally, we would like to reiterate, that the proposal under Reg. Ref. No. 238 (5,748 sq.m GFA) is of a considerably smaller scale than the previously permitted foodstore under Reg. Ref. No. 11991992 (8,239 sq.m GFA). In this regard, there has been a reduction of c. 2,491 sq.m GFA. However, the special contribution attached by Cavan County Council in December 2011 is the same as that now being applied for a significantly smaller development. The current proposal represents a lesser plot ratio, site coverage, and intensity of development that will result in less traffic being generated at this location when compared with the original foodstore of 8,239 sq.m GFA. This results in less pressure on the public infrastructure, i.e., the Eastern Access Route. Therefore, the current proposal should be subject to a lesser Special Contribution than originally attached to Reg. Ref. No. 11991992 (8,239 sq.m GFA).

As highlighted by the Local Authority the contribution amount of €1.5 million attached to the previous proposal on the site was not appealed by the First Party under Reg. Ref. No. 11991992. However, in this instance, as the current proposal represents a significantly smaller store, with a lesser amount of car parking, but has been prescribed the same amount of Special Contribution, our client deems it necessary and justified to appeal to the Board for a reduced Special Contribution, based on the reasons outlined above and within the original First Party Appeal.

In terms of distribution of outstanding costs for the road, it is appropriate to consider all lands that will directly benefit from the strategic route which has been delivered by Cavan County Council. In addition, it is noted that the Eastern Access Route is a significant strategic project for Cavan Town, and its route has informed the zoning objectives across previous development plans and is expected to inform future plans. Six sites have been identified in Figure 1 below, that will directly benefit from the now operational Route.



Figure 1: Sites adjacent to the Eastern Access Route & N3 subject to the Special Contribution highlighted above. (Source: Cavan County Development Plan 2022-2028 interactive mapping system)

Lands Adjacent Eastern Access Route

As outlined in the Local Authority's response, it is Cavan County Council's position that site ID No. 1 and No. 2 should be considered on the basis that these lands are zoned for development. The Local Authority makes the argument that site ID No. 3, due to it being unknown if these lands will be zoned in any subsequent Development Plans, should not be considered. However, the above-mentioned lands are zoned within the current Development Plan and have been zoned and identified as development land under the previous Development Plan. As such, it can only be assumed that it is and was the intention to direct future floorspace to these lands, which now benefits from direct access via the Eastern Access Route. It is therefore considered appropriate that any development on these lands would contribute towards the cost of the Eastern Access Route.

As outlined in our client's original First Party Appeal, Figure 1 should be read in conjunction with the updated Table 1, which 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 (€4,763,128) that should be paid by that site based on floorspace.

Table 1: Sites adjacent to the Eastern Access Route, 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%	€ 294,082.15
2	General Enterprise & Employment	15.5	155,000	0.5	77,500	83.25%	€ 3,965,095.06
3	GEE Strategic Reserve	1.97	19,700	0.5	9,850	10.58%	€ 503,950.79
Total		22	215,700		93,098		€4,763,128

For completeness, the above proportionally measurement has also been calculated on a per site area (ha) basis. Table 2 has also been updated and provides information, using a similar methodology, in which the same pattern is visible. Using a 'site area' calculation, it is evident that the First Party is still paying a considerable proportion of the Special Contribution.

Table 2: Sites adjacent to Eastern Access Route, 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	19.01%	€ 905,369.72
2	General Enterprise & Employment	15.5	71.86%	€ 3,422,739.17
3	GEE Strategic Reserve	1.97	9.13%	€ 435,019.11
Total		22		€ 4,763,128

Lands Adjacent Eastern Access Route & N3 Lands

The Local Authority states that their position is that Site ID Nos 4,5, and 6 should not be considered for the same reasons outlined above for site ID No. 3. However, we again reiterate our point that the subject lands are zoned for development. As such, we can only assume it is the intention of Cavan County Council to direct future floorspace to these lands. Furthermore, as noted previously, the Eastern Access Route which has been completed and operational for several years, has not yet recouped contributions from any developments. The subject site is the first development site to retrospectively contribute towards the exceptional costs for the Eastern Access Route. It therefore, stands to reason that other future development lands, that will directly benefit from the strategic Eastern Access Route (whether realised in the lifetime of the current Development Plan, or subsequent Development Plans) should also retrospectively contribute to the cost of same. In this regard, it is noted that the previous special contribution under Reg. Ref. 11991992, was attached when the 2008-2014 Development Plan was in force.

The same methodology applied to the assessment of lands adjacent to the Eastern Access Route has been used in this instance. Figure 1 should be read in conjunction with the updated Table 3, which has determined the proportionality of cost for each of the sites by plot ratio.

Table 3: Sites adjacent to the Eastern Access Route & 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%	€ 128,901.68
2	General Enterprise & Employment	15.5	155,000	0.5	77,500	36.49%	€1,737,975.03
3	GEE Strategic Reserve	1.97	19,700	0.5	9,850	4.64%	€ 220,891.02
4	GEE Strategic Reserve	17.53	175,300	0.5	87,650	41.27%	€1,965,593.69
5	GEE Strategic Reserve	0.75	7,500	0.5	3,750	1.77%	€ 84,095.57
6	General Enterprise & Employment	5.58	55,800	0.5	27,900	13.14%	€ 625,671.01
Total		45	454,300		212,398		€ 4,763,128

For completeness, the above proportionally measurement calculated per site area (ha) has been updated in Table 4, in which the same pattern is visible, and it is submitted under this scenario that the First Party is still paying a considerable amount of the outstanding construction costs.

Table 4: Sites adjacent to the Eastern Access Route & 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%	€ 429,866.27
2	General Enterprise & Employment	15.5	34.12%	€ 1,625,104.20
3	GEE Strategic Reserve	1.97	4.34%	€ 206,545.50
4	GEE Strategic Reserve	17.53	38.59%	€ 1,837,940.43
5	GEE Strategic Reserve	0.75	1.65%	€ 78,634.07
6	General Enterprise & Employment	5.58	12.28%	€ 585,037.51
Total		45		€ 4,763,128

Summary

As demonstrated above, and within the original First Party Appeal lodged with ABP on 8th November 2023, it is considered the Special Contribution under Section 48(2) of the Planning and Development Act, 2000 (as amended) has not been properly calculated in this instance for the proposed mixed retail scheme (significantly reduced in size by comparison to Reg. Ref. No. 11991992).

For ease of reference, the revised calculations based on the most appropriate metric, plot ratio, are set out in Table 5. These have been updated to reflect the actual construction costs of the Eastern Access Route, as confirmed by Cavan County Council in their submission to An Bord Pleanála.

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

	% of total floorspace liable for special contribution	Amount (€) of total Contribution based on floorspace
Lands adjacent Route	6.7%	€294,082.15
Lands adjacent Route & N3	2.71%	€128,901.68

In considering the appropriate amount of Special Contribution to be applied, the Board is requested to note the following:

- The Local Authority have expressed that the most appropriate metric to calculate the Special Contribution is on the basis of traffic generation. However, based on the analysis provided in our First Party Appeal, we wish to reiterate that plot ratio is the most appropriate, fair, and equitable metric to be used.
- The current proposal (5,748 sq.m GFA) is of a considerably smaller scale to the previous application on site under Reg. Ref. No. 11991992 (8,239 sq.m GFA). There has been a reduction of **c. 2,491 sq.m GFA**. As such, this will result in less traffic being generated at this location than the original foodstore of 8,239 sq.m GFA. Therefore, the current proposal should be subject to a lesser Special Contribution than that previously attached to Reg. Ref. No. 11991992 (8,239 sq.m GFA) based on Cavan County Council's own metric.
- It is submitted that a petrol filling station is a recognised complementary offer to a foodstore development. The inclusion of the petrol filling station within the site will promote opportunities for 'linked trips' with the supermarket and it will not result in its own significant traffic generation.
- The home delivery service will reduce the amount of traffic generated at the proposed development by reducing the need for private cars to visit the development.

- It is appropriate that other strategic development lands that will benefit from the Eastern Access Route contribute to the project costs, whether that be during the lifetime of the current Development Plan or under future Development Plans.

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 €128,901.68, having regard to the significant amount of future development lands within the vicinity of the Cavan Town Centre Eastern Access Route that will also directly benefit from the road, and are therefore, liable for the Special Contribution.

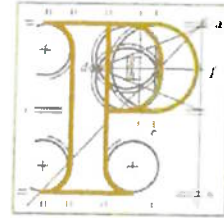
Fundamentally, it is submitted that the proposal is for a significantly smaller development and as such, there is no logic for the attachment of the same Special Contribution amount as previously applied under Reg. Ref. No. 11991992; ABP Ref. No. 240097. The mixed retail development in this instance will generate less traffic, has a lesser plot ratio and less site coverage and for these reasons it is requested that the Board have due regard to the significant development lands that will also directly benefit from this route and apply a reduced fair and equitable Special Contribution for the subject development.

Appendix I – Correspondence Letter from ABP

Our Case Number: ABP-318406-23

Planning Authority Reference Number: 238

Your Reference: Tesco Ireland Limited



**An Bord
Pleanála**

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



Date: 12 December 2023

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

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned appeal.

The Board is of the opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submission dated 6th December 2023 received from Cavan County Council.

In accordance with section 131 of the Planning and Development Act 2000 (as amended) you are requested to make any submissions or observations that you may have in relation to this enclosure **on or before 10th January 2024**. The Board cannot consider comments that are outside the scope of the matter in question.

The provisions of section 251 of the Planning and Development Act, 2000, (as amended), relating to the holiday period between the 24th December and 1st January, both days inclusive, have been taken into account in the calculation of the response date.

Your submission in response to this notice must be received by the Board **not later than 5.30 p.m. on 10th January 2024**.

If no submission or observation is received before the end of the specified period, the Board will proceed to determine the appeal without further notice to you, in accordance with section 133 of the 2000 Act, (as amended).

**Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost**

**Tel
LoCall
Fax
Website
Email**
(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

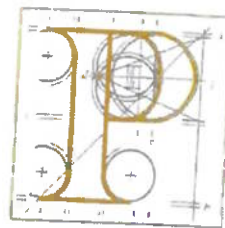
64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Our Case Number: ABP-318406-23

Planning Authority Reference Number: 238

Your Reference: Tesco Ireland Limited



**An
Bord
Pleanála**

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

RECEIVED
14 DEC 2023
BY:

Date: 12 December 2023

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

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned appeal.

The Board is of the opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submission dated 6th December 2023 received from Cavan County Council.

In accordance with section 131 of the Planning and Development Act 2000 (as amended) you are requested to make any submissions or observations that you may have in relation to this enclosure **on or before 10th January 2024**. The Board cannot consider comments that are outside the scope of the matter in question.

The provisions of section 251 of the Planning and Development Act, 2000, (as amended), relating to the holiday period between the 24th December and 1st January, both days inclusive, have been taken into account in the calculation of the response date.

Your submission in response to this notice must be received by the Board **not later than 5.30 p.m. on 10th January 2024**.

If no submission or observation is received before the end of the specified period, the Board will proceed to determine the appeal without further notice to you, in accordance with section 133 of the 2000 Act, (as amended).

Tell
Glaó Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel (01) 858 8100
LoCall 1800 275 175
Fax (01) 872 2684
Website www.pleanala.ie
Email bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902



Comhairle Contae an Chabháin
Cavan County Council

Your Ref: ABP-318406-23

Our Ref: PI Reg. No. 23/8

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG- _____	
ABP- _____	
07 DEC 2023	
Fee: € _____	Type: _____
Time: _____	By: <u>Reg Post</u>

06 December 2023

Cavan County Council

Courthouse
Farnham Street
Cavan H12 R6V2

T: 049 437 8300

E: info@cavancoco.ie

Comhairle Contae an Chabháin

E: eolas@cavancoco.ie

W: www.cavancoco.ie

Re: Application of Tesco Ireland Limited, 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





Comhairle Contae an Chabháin
Cavan County Council

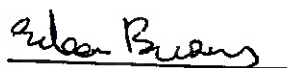
basins, feature and street lighting, plant, store canopy, trolley shelter/bays and all ancillary site development works, landscaping, ramps, fences, enabling works and site services. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) are submitted with this application. The site is bounded to the north by St. 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, Townparks & Tullymongan Lower (to the east of Main Street) Cock Hill, Cavan Town Co. Cavan

A Chara,

I refer to the above grant of permission and to the appeal submitted in relation to same and I attach herewith the Planning Authority's response.

Should you require any further assistance, please do not hesitate to contact our office.

Mise le meas,



pp Senior Staff Officer

Cavan County Council

Courthouse
Farnham Street
Cavan H12 R6V2

T: 049 437 8300

E: info@cavancoco.ie

Comhairle Contae an Chabháin
E: eolas@cavancoco.ie

W: www.cavancoco.ie



From:	Cavan County Council	To:	An Bord Pleanála
Date:	7 th December 2023		
Subject:	An Bord Pleanála Case Number: ABP-318406-23 Cavan County Council Planning Reference: 23/8, Condition 4 Special Contribution under Section 48(2) of the Act		

Response to Appeal

1.1 Background

This submission is made by Cavan County Council (the “Council”) in respect of the First Party Appeal lodged by Tesco Ireland Limited in respect of Condition 4 of the Council’s Notification of Decision to Grant Permission, dated 12 October 2023, in respect of Planning Application Reg. Ref. 23/8.

The Council note that the First Party Appeal relates solely to Condition 4 which provides for the payment of a special development contribution as per section 48(2)(c) of the Planning and Development Act 2000, as amended. Condition 4 provides 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.

The Council further note that the First Party Appeal does not dispute that the Proposed Development should be subject to a Special Development Contribution in respect of the Cavan Eastern Access Road (“CEAR”). The First Party Appeal only disputes the amount of the Special Development Contribution and alleges that the contribution is not proportionate and requests the Board to reduce the amount of the special development contribution to no more than €100,130.89.

On the basis that the principle of the special development contribution in respect of the CEAR is not in dispute, the Council has restricted its response to the quantum of the Special Development Contribution and to the specific information sought by the Board in its letter of 10 November 2023 which enclosed a copy of the First Party Appeal.

The Council's position is that the special development contribution of €1.5million is the appropriate figure based on the traffic that will be generated by the Proposed Development.

1.2 Cavan Eastern Access Road

Section 48(2)(c) of the Planning and Development Act 2000, as amended, provides for the imposition of a special development contribution:

A planning authority may, in addition to the terms of a scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by a scheme are incurred by any local authority in respect of public infrastructure and facilities which benefit the proposed development.

The "public infrastructure and / or facilities" referred to in Condition 4 is the CEAR which is a designated local road L2543 of some 1.17km in length. Figure 1 shows the location of the CEAR along with the planning application site (the "Tesco Site").



Figure 1

The CEAR referred to in Condition 4 is a “specific exceptional cost” which will benefit the Proposed Development and has not been identified in any development contribution scheme prepared by the Council under Section 48 or under Section 49 of the Planning and Development Act 2000, as amended. In this regard, it is noted that the First Party Appeal does not dispute that the CEAR is a “specific exceptional cost”. Nor is it disputed that the CEAR is “public infrastructure and facilities which benefit the proposed development”. The sole complaint is in respect of the quantum of the special development contribution.

The First Party Appeal takes issue with the calculation of the special development contribution and asserts that it does not know how the sum was calculated. In this regard, the Council note that the payment of €1.5million by way of a special contribution in respect of the CEAR was accepted by the First Party in respect of an earlier planning permission granted for a retail development, comprising circa 8,239 square metres on the same site (Reg Ref. 11/1992; PI48.240097). While the Council’s grant of permission was the subject of a number of third party appeals, the First Party did not appeal either the principle or the quantum of the special development contribution in respect of CEAR and the same condition was imposed by the Board in its grant of permission (condition 14).

The Planner’s Report prepared in respect of the Proposed Development, the subject of this appeal, after considering the findings of the TTA modelling and the junction capacity assessment states:

“Notwithstanding, it is recommended that the developer shall pay 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 as per Planning Condition No. 4 of the grant of parent permission 11991992.”

The CEAR was approved by the elected members of the Council at the June 2010 Council Meeting pursuant to Part 8 of the Planning and Development Regulations 2001, as amended. Construction on the CEAR started in March 2011 and was substantially completed 2 May 2013.

As noted in the First Party Appeal, the estimated cost of constructing the CEAR was €6 million. It is accepted that this figures is stated on the Council website. The project was grant aided under the European Regional Development Fund to the sum of €1.4million by the BMW (Border, Midland and Western) Regional Assembly. It also received grant aid, in the sum of €2,386,014, from the Department of Transport Tourism and Sport (DTTAS) through the National Roads Authority (NTA).

While the overall project was estimated to cost €6 million, the actual cost of delivering the CEAR was €8,549,142. As such the overall shortfall is some **€4,763,128** as per Table 1 outlined below* and not the estimated €3.7 million as stated in the Appeal and upon which the figures contained in the Appeal are calculated. It is the Council’s position that the actual shortfall is the relevant figure for the purpose of calculating the apportionment of the remaining costs associated with the delivery of the CEAR and not that of €3,700,000 used by the First Party.

Table 1: Project Costs of Cavan Eastern Access Road CEAR

	Estimated	Actual
Project Cost	€6,000,000	€8,549,142
BMW Grant Aid European Regional Development Fund (ERDF)	€1,400,000	€1,400,000
Grants National Transport Authority (NTA) and Department of Transport, Tourism and Sport (DTTAS)	€900,000	€2,386,014
Difference between Grant Aid and Cost	€3,700,000	€4,763,128

***See appendix 1 for full breakdown of costs and grant aid.**

The First Party has appealed Condition 4 on the basis that the amount levied is not proportionate by reference to other landholdings which it alleges will also benefit from the CEAR. The Appeal identifies three other land banks which it alleges will also benefit from the CEAR and that the remaining cost of the CEAR should be allocated amongst these lands. These other scenarios are referred to in the Appeal as

1. Lands immediately adjacent the CEAR
2. Lands immediately adjacent the CEAR and the National Primary Road N3
3. Town Centre lands benefiting from the CEAR.

The Appeal puts forward a number of basis on which the shortfall relating to the construction of the CEAR should be apportioned between the different landholdings. These will be considered in detail below.

1.3 Lands immediately adjacent the CEAR

The Appeal asserts that the special development contribution for the CEAR should be at a minimum apportioned among three sites which are immediately adjacent to the CEAR – Site ID No 1 (the planning application site) , Site ID No 2 and Site ID No 3. The location of these sites in relation to each other is identified in Figure 2.

Location of the site in question in relation to the surrounding lands



Figure 2 showing Site ID No. 1-6 inclusive adjacent to N3 and Dublin Road.

Tesco Site (Site ID No. 1).

It is the Council's position that only Site ID No. 1 (Tesco) and Site ID No. 2 should be considered on the basis that (i) these lands are zoned for development in the Cavan County Development Plan 2022-2028 (the "Cavan CDP") and (ii) these lands will be accessed from CEAR.

The sites highlighted in Figure 2 are summarised as follows:

- Site ID No. 1 – The planning application site is zoned 'Town Centre' and consists of 4.1 ha. The planning permission provides 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 linages to Main Street. This site is accessible from the CEAR.
- Site ID No. 2 – A considerably large plot of 15.5 ha is zoned for 'General Enterprise & Employment' and remains undeveloped to date. 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." This site is accessible from the CEAR.

Site ID No. 3 – The smallest of the three identified sites measuring 1.97 ha in area is zoned 'General Enterprise and Employment Strategic Reserve' which is to *"provide for and protect the future economic requirements of the town."* These lands remain undeveloped to date. It is the Council's position that Site ID No. 3 is not relevant and should not be included for the purpose of apportioning the remaining costs associated with the delivery of the CEAR on the basis that the zoning of the land is as a "strategic reserve" which means that the land cannot be developed under the Cavan CDP.

Furthermore, given the limited extent of economic development on lands currently zoned, it is unknown if or when these lands will be zoned in any subsequent development plans and, therefore, be available for development.

The First Party Appeal argues that the most appropriate metric for calculating the contribution is per sq.m calculated using 'plot ratio' and that *"this represents the same methodology as standard Development Contributions"*. This is not in fact the case as is apparent from the Planner's Report prepared in respect of the Proposed Development and condition 2 of the Notification of Decision to Grant Permission which requires the payment of a General Development Contribution of €142,880. The General Development Contribution was calculated by reference to the gross floor area of the Proposed Development, which equated to 5,715 sq m, multiplied by €25/ sq m (as provided for in the Cavan County Development Contribution Scheme).

The Council do not consider that this is an appropriate metric to be used for apportioning special development contributions in respect of roads infrastructure.

It is the Council's position that traffic generated by the Proposed Development using the infrastructure is a more transparent and fair means of allocating special contribution costs. This is discussed further in section 2.2 below.

However, should the Board agree with the First Party that the special development contribution should be based on sq.m calculated using 'plot ratio', it is the Council's position that the First Party has "cherry picked" the plot ratio figures which it has applied for the purpose of its calculations. The Appeal applies a plot ratio of 0.14 for the planning application site (Site ID No. 1) and 0.5 plot ratio for the Sites ID No. 2-6 inclusive. The Appeal uses plot ratios averaged from other Local Authority County Development Plans for sites other than Site ID No. 1. The Appeal uses a figure of 0.14 for its own site based on the permitted development.

The Council consider this to be cherry picking the plot ratio figures because the infrastructure benefit the development is a roads project and the benefit gained from such infrastructure is the traffic utilising the relevant developments. In addition the 0.14 plot ratio figure, notwithstanding the above comment of irrelevance ignores intensive elements of the development such as the regional home delivery service and petrol filling station.

In the event that ABP consider plot ratios to an appropriate metric of calculation, the Council has examined the Plot Ratios of similarly zoned developments which have been constructed in Cavan Town and these are detailed in Appendix 2. Table 2 below provides a summary of the information. Applying an average plot ratio of 0.23 for Site ID No. 2 and applying the plot ratio of 0.14 for the planning application site (the First Party's own figure) the apportionment, on the basis of the actual shortfall, would be €660,554.60 (see table 3 below).

However, as referred to above the 0.14 figure ignores strategic traffic intensive elements of the development and Plot Ratio is not an appropriate metric for of calculation metric for roads infrastructure and even more so for development of this nature, where the intensification from a traffic viewpoint arises from uses not contained within the footprint of the building such as Site ID NO. 1.

Table 2: Plot Ratio of two existing comparative land use sites in Cavan Town*

Existing Comparative Land-Use Sites	Site Area (ha)	Site Area (sq.m)	Existing Floor Space (sq.m)	Plot Ratio
Century Business Park	7.5	75,000	15,660	0.21
Kilmore Business Park	4.8	48,000	12,730	0.27
Average	12.3	123,000	28,390	0.23**

*See appendix 2 for the background data and location details of the comparative sites and how 0.23 plot ratio is reached **.

Table 3 Based on actual costs of the CEAR (shortfall €4,763,128) AND existing and permitted Plot Ratios in Cavan Town.

Site ID	Zoned	Site Area (ha)	Site Area (sqm)	Plot Ratio	Floor Space based on plot ratio	% of total floor space liable for special contribution	Amount € of total contribution based on potential floor space
1	Town Centre	4.1	41000	0.14	5740	13.9%	€660,554.60
2	General Enterprise and Employment	15.5	155000	0.23	35650	86.1%	€4,102,573.40
Total		19.6	196000		41390	100.0%	€4,763,128.00

In Table 2 of the First Party Appeal, the Appellant puts forward an alternative calculation based on site area, calculated by reference to a shortfall of €3,700,000. Ignoring Site ID No 3, for the reasons set out above, and calculating it based on the actual shortfall (€4,763,128), the Council calculate the apportionment based on site area to be **€996,368.61** as per Table 4 below.

Table 4: Sites adjacent to the CEAR (actual shortfall of €4,763,128) calculated by Site Area (ha)

Site ID	Zoned	Site Area (ha)	Site Area (sqm)	% of site area liable for special contribution	Amount € of total contribution based on site area
1	Town Centre	4.1	41000	20.9%	€996,368.61
2	General Enterprise and Employment	15.5	155000	79.1%	€3,766,759.39
Total		19.6	196000	100.0%	€4,763,128.00

1.4 Lands adjacent the CEAR and the National Primary Road N3

The Appeal asserts that the special development contribution for the CEAR should be at a minimum apportioned among the planning application site (Site ID No 1), Site ID No 2 and Site ID No 3. The Appeal goes on to assert that there are other sites directly adjacent to the N3 (Site ID No 4, Site ID No 5 and Site ID NO 6) and that these sites should also be considered for the purpose of apportioning the remaining cost associated with the CEAR. **The location of these sites in relation to each other is identified in Figure 2.**

The Council has already outlined above why it considers that Site ID No. 3 should not be considered.

The Council's position is that Site ID No 4, Site ID No 5 and Site ID NO 6 are also not relevant and should not be considered.

- Site ID No. 4 – measuring 17.3 ha in area is zoned for 'General Enterprise and Employment Strategic Reserve' which is to *"provide for and protect the future economic requirements of the town."* These lands remain undeveloped to date. It is the Council's position that Site ID No. 4 is not of relevance as it is zoned as strategically reserved, meaning it cannot be developed under the current Cavan County Development Plan 2022-2028. Furthermore, given the limited extent of economic development on lands currently zoned, it is unknown if or when these lands will be zoned in any subsequent development plans and, therefore, be available for development. Also, as part of the Cavan County Development Plan discussions

2022-2028, the vision for site ID no. 4 is for the Primary Access to be onto the Dublin Road (via the Lakeland Retail Park to the rear of Woodies) with a road linking back to the CEAR.

- Site ID No. 5 – measuring 0.75 ha in area is zoned for ‘General Enterprise and Employment Strategic Reserve’ which is to “provide for and protect the future economic requirements of the town.” These lands remain undeveloped to date. We contend that Site ID No. 5 is not of relevance as it is zoned as strategically reserved, meaning it cannot be developed under the current Cavan County Development Plan 2022-2028. Furthermore, given the limited extent of economic development on lands currently zoned, it is unknown if or when these lands will be zoned in any subsequent development plans and, therefore, be available for development. Also, as part of the Cavan County Development Plan discussions 2022-2028, the vision for site ID no. 5 is for the Primary Access to be onto the Dublin Road (via the Lakeland Retail Park to the rear of Woodies) with a road linking back to the CEAR.
- Site ID No. 6 –measuring 5.58 ha in area is zoned for ‘General Enterprise and Employment Strategic Reserve’ which is to “provide for and protect the future economic requirements of the town.” These lands remain undeveloped to date. We contend that Site ID No. 6 is not of relevance as it is zoned as strategically reserved, meaning it cannot be developed under the current Cavan County Development Plan 2022-2028. Furthermore, given the limited extent of economic development on lands currently zoned, it is unknown if or when these lands will be zoned in any subsequent development plans and, therefore, be available for development. In any event Site ID6 is not of relevance as they are intended to be accessed from the Dublin Road (via Woodies) as this is a logical extension to the existing business park.

2.0 Council's alternative methods of calculating the apportionment

2.1 Calculation of special contribution on the basis of car parking spaces

As noted above, the First Party was previously granted planning permission for a retail development, comprising circa 8,239 square metres on the same site with 471 car parking spaces (Reg Ref. 11/1992; PI48.240097). The Proposed Development the subject of the appeal consists of circa 5197 sq. m Gross Floor Area (GFA) with an 8 stand petrol station, Grocery Home Shopping delivery and café and provides 304 car parking spaces*and 120 bicycle spaces. While the number of car parking spaces in the Proposed Development has been reduced from the previous development permitted on site (Reg Ref. 11/1992; PI48.240097), the fact is that the Proposed Development will result in increased traffic, due to the petrol filling use and grocery home delivery.

Calculating the apportionment based on the car parking spaces permitted in the Proposed Development relative to the previous permission is shown in Table 5 below and is calculated by reference to the actual shortfall (€4,763,128) and the estimated shortfall (€3,700,000). Based on the actual shortfall, the special contribution figure based on car parking spaces would be **€1,181,119.04**.

It is important to note that this calculation does not reflect the increased traffic generated by the petrol station and or the home delivery service.

*304 Car Parking Spaces (297 parking Spaces plus five parking spaces for Café plus 2 spaces for click and collect)

TABLE 5: Calculation of special contribution using parking spaces

Planning Ref	Project Shortfall	Special Contribution	Proportion of costs	Car Parking Spaces	Cost Per space	Total Special Contribution €
11/1992 Estimated shortfall	€3,700,000.00	1,500,000.00	0.4054	497	€3,018.11	1,500,000.00
23/8 Estimated shortfall	€3,700,000.00			304	€3,018.11	917,505.44
11/1992 Actual shortfall	€4,763,128.00	1,930,972.09	0.4054	497	€3,885.26	1,930,972.09
23/8 Actual shortfall	€4,763,128.00			304	€3885.26	1,181,119.04

2.2 Calculation of Special Contribution using Traffic Generated by the Proposed Development

The First Party Appeal argues that the most appropriate metric for calculating the contribution is per sq.m calculated using 'plot ratio'. The Council does not consider this to be an appropriate metric for calculation of a special development contribution in respect of roads infrastructure. The Council's position is that traffic generated by the proposed development utilising the infrastructure is a more transparent and fair means of allocating contribution costs.

For comparative purposes the Council has used contemporary traffic data collected in the preparation of the Baseline Traffic Survey Report for the Draft Cavan Area Based Transport Assessment, August 2023 (ABTA)* for comparative & nearby existing land use, also zoned General Enterprise & Employment, which is the same zoning as Site ID No. 2.

*The Cavan ABTA is a project whose objective is to develop an area based transport assessment for Cavan Town and its Environs and to identify its transport requirements/solutions to facilitate the current and future land use objectives of Cavan County Council. The project is funded by the National Transport Authority, in consultation with the Transport Infrastructure Ireland and the consultants are DBFL consultants.

The Council has used two existing commercial enterprise and employment sites on the Dublin Road, Cavan namely:

- i. Century Business Park Dublin Road, Cavan a 7.5 ha site with 15,660 sqm building footprint.
- ii. Kilmore Business Park Traffic Dublin Road, Cavan a 4.8 ha site with 12,730 sqm building footprint.

In the interest of transparency we have averaged the data from the two parks.

	Century Business Park (7.5 Ha Site)	Site ID No. 2 (15 Ha Site)	Site ID No. 1 (Tesco Site)
Two-way peak flow	48.5 *	97 **	482.5 ***
Traffic Flow Ratio	0.5	1	4.97
Apportionment of €4.76m Project Cost by Traffic Ratio	N/A	€800,000	€3,970,000

**Based on recorded information from the Baseline Traffic Survey Report, of the Draft Cavan Area Based Transport Assessment, August 2023, average of AM & PM peak values of 47 & 50 respectively*

***On pro-rata basis with Century Business Park site (by land area)*

****Based on average two-way peak flows (341 Friday pm and 624 Saturday pm) taken from the TTA for 2023 Tesco application prepared by SYSTRA Ltd.*

See page 20 appendix 2 for the complete breakdown of data and costs.

	Kilmore Business Park (4.8 Ha Site)	Site ID No. 2 (15 Ha Site)	Site ID No. 1 (Tesco Site)
Two-way peak flow	237 *	741 **	482.5 ***
Traffic Flow Ratio	0.49	1.54	1
Apportionment of €4.76m Project Cost by Traffic Ratio	N/A	€2,880,000	€1,880,000

**Based on recorded information from the Baseline Traffic Survey Report, of the Draft Cavan Area Based Transport Assessment, August 2023 (average of AM & PM peak values of 188 & 286 respectively)*

***On pro-rata basis with Kilmore Business Park site (i.e., X 3.125 by land area)*

****Based on average two-way peak flows (341 Friday pm and 624 Saturday pm) taken from the TTA for 2023 Tesco application prepared by SYSTRA Ltd.*

See page 22 appendix 2 for the complete breakdown of data and costs.

Apportionment of Costs for CEAR

Averaging the apportioned costs to the Tesco site for the above comparative sites:

$$(\text{€}3,970,000 + \text{€}1,880,000)/2 = \text{€}2,920,000$$

Based on the Traffic Generation and Demand, €2,920,000 can reasonably be apportioned to the Tesco Site for the construction cost of the Eastern Access Road.

See appendix 2 for the complete breakdown of data and costs.

From this data we can see that based on the Traffic Generation and Demand, a figure of **€1.5 million** is recommended to be apportioned to the Tesco Site for the construction cost of the CEAR.

For completeness the Council's Road Design Office carried out a comparative study in relation to the previously permitted development on the site (Reg. Ref. 11/1992) with the Proposed Development 23/8 based on traffic generation details submitted with both applications.

Table 6: Comparative average two way traffic flows between planning application 11/1992 and planning application 23/8

Planning Ref	Average two way Peak Flows	Percentage difference $=(483/778)*100$
23/8	483	60%
11/1992	778	100%

It is anticipated that the Proposed Development the subject of the appeal will result in a 40% reduction in traffic flows from that anticipated from the previous planning permission granted on the site (Reg. Ref 11/1992). The following are possible methods of comparative calculation.

- Direct reduction of the original €1.5m contribution to give a new Special Contribution of **€900,000**. i.e. 60% of €1.5 million.
- Calculation utilising the actual shortfall costs of the CEAR and proportioned as per the planning Reference 11/1992 giving a new Special Contribution of **€1,934,000**. (40.6% of €4,763,128)

Shortfall in funding	Special Contribution €	Percentage
€3,700,000	1,500,000	40.6
€4,763,128.00	1,934,000	40.6

If Tesco proceeds with the Proposed Development, the Council consider that wider benefits will be derived from the development to the economy of Cavan Town and on that basis we consider the original figure of **€1.5 million** which applied to all planning permissions granted on this site to date to be an appropriate contribution.

3.0 Summary

In summary the Council stands over the calculation of €1.5 million of a special contribution as fair and reasonable.

This calculation was applied by the Council in respect of a previous application by the First Party on the site. The First Party did not appeal the special development contribution and it was applied by the Board in its decision (Reg. Ref. 11/1992, ABP Ref. No. 240097).

While the overall project was estimated to cost €6 million, the actual cost of delivering the CEAR was €8,549,142. As such the overall shortfall is some **€4,763,128**. Not the estimated €3.7 million as stated in the First Party and upon which its figures are calculated. It is the Council's position that the actual shortfall is the relevant figure and not that of €3,700,000 used by the First Party.

Plot Ratio is not an appropriate metric for calculating Special Contributions for Road Infrastructure and Traffic Generation is a more appropriate way of apportioning the remaining cost of the CEAR.

The Proposed Development will generate 60 % of the traffic levels of the development previously granted by the Board on the same site which also included a special development contribution in the sum of €1.5 million (ABP Ref. No. 240097). Using comparative calculations using traffic data the Special Contribution can be calculated as €2,920,000 to €1,934,000 to €900,000.

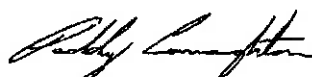
Even using the crude metric of car parking spaces and discounting the 8 stand petrol station, Grocery Home Shopping delivery and 120 bicycle spaces as opposed to the original proposal of 471 car spaces, the special contribution should be €1,173,348.52 million.

The Council have presented a number of scenarios which show that the Special Contribution can vary between **€660,554 to €2,992,179** depending on the metrics chosen. We consider that the €2.92 million to be the correct figure with a reduction to €1.5 million to allow for the wider societal benefits of the CEAR to be fair to all parties.

The Council note that the payment of €1.5million by way of a special contribution in respect of the CEAR was accepted by the First Party in respect of an earlier planning permission granted for a retail development, comprising circa 8,239 square metres on the same site (Reg Ref. 11/1992; P148.240097). While the Council's grant of permission was the subject of a number of third party

appeals, the First Party did not appeal either the principle or the quantum of the special development contribution in respect of CEAR and the same condition was imposed by the Board in its grant of permission (condition 14). The earlier planning permission (Reg Ref. 11/1992; PI48.240097) was the subject of an Extension of Duration application, sought by the First Party and granted by the Council (Reg. Ref. 17/473). This meant that the special development contribution was 'live' for 10 years, until very recently. It seems punitive that a delay in the construction of the development by a developer (after the critical infrastructure was constructed by the Local Authority to facilitate the development) can result in a severe financial punishment to the local authority, whilst significantly benefitting a private developer.

We trust that we have shown that the €1.5 million figure for the Special Contribution to be fair and reasonable and ask that An Bord Pleanála to uphold condition 4.

A handwritten signature in black ink, appearing to read 'Paddy Connaughton'.

Paddy Connaughton BE C Eng FIEI MA Dip Arb Law
Director of Services
Roads and Infrastructure, Climate Change, Environment, Water and Waste Management

Appendix 1
MEMORANDUM

FROM: Niamh Creamer Administrative Officer Roads & Transportation Office	TO: Paddy Connaughton Director of Service Roads & Infrastructure
--	---

Date: 7th December 2023

Subject: Planning Appeal - File 23/8 – Financial Information

In reference to An Bord Pleanála Case Number: ABP-318406-23 Cavan County Council Planning Reference: 23/8, Condition 4 Special Contribution under Section 48(2) of the Act , I looked at the income and expenditure for the Cavan Eastern Access Road on our financial management system and below is an outline of the information.

The cost of the project is €8,549,143. We received grant funding of €3,786,014 which is made up of €2,386,014 from the National Roads Authority and a further €1,400,000 from the Border Regional Authority. This left a shortfall of €4,763,128. Please note we have a loan balance outstanding of circa two million which helped fund the shortfall.

If you require any further information, please let me know.

Kind Regards,



Niamh Creamer
Administrative Officer
Roads & Transportation Office

Appendix 2

Road Design calculations of apportionment costs

From:	Road Design Office	To:	Paddy Connaughton Director of Service
Date:	7 th December 2023		
Subject:	Planning Reference: 23/8, Special Planning Contribution Road Design calculations of apportionment costs		

Tesco Ireland Limited are appealing the quantum of the Special Contribution set out in Condition No. 4 of the granted planning permission No. 23/8.



Fig 1: Location of proposed Tesco Development

The proposed Tesco development is located within the 50km/h speed limit of Cavan Town. The proposed development site is bounded by the L-2543 Eastern Access Road to the east and by the L-2537 to the south. The L-2543 Eastern Access Road cross section fronting the site is a 2-way single carriageway with a 2.75m wide shared footpath/cycleway on the northbound carriageway adjacent the site. The L-2537 runs along the southern boundary of the site which is a 2-way single carriageway with a separate off-road shared footpath/cycleway on the southern side of the road.

Project Costs of Cavan Eastern Access Road CEAR

	Estimated	Actual
Project Cost	€6,000,000	€8,549,142
BMW Grant Aid European Regional Development Fund (ERDF)	€1,400,000	€1,400,000
Grants National Transport Authority (NTA) and Department of Transport, Tourism and Sport (DTTAS)	€900,000	€2,386,014
Difference between Grant Aid and Cost	€3,700,000	€4,763,128

Table 1

Comparative Assessment of undeveloped Lands abutting the Eastern Access Road

The appeal refers to a 15 ha site to the east of the Eastern Access Road (EAR), which is zoned General Enterprise & Employment. Utilising contemporary traffic data available under the Baseline Traffic Survey Report, of the Draft Cavan Area Based Transport Assessment, August 2023 for comparative & nearby existing land use, also zoned General Enterprise & Employment. Two existing commercial enterprise & employment sites are identified with known traffic data. Both sites are on the Dublin Road, Cavan and are outlined below. Junction Turning Counts were undertaken at the both the Kilmore and Century Business Parks over 12-hour periods: between 07:00 to 19:00 on Thursday 30th of March 2023, as well as Saturday 1st of April 2023.



Fig 2: Site Adjacent to the Eastern Access Road

i. **Century Business Park, Dublin Rd, Cavan**



Fig 3: Area of Century Business Park

(for the purposes of this exercise it is assumed that the access road accommodates all traffic to/from buildings B1-B5 inclusive and service vehicles only for buildings B6 and B7 (Kyte Powertech))

Area of the Century Business Park outlined in red is 7.5 ha.

Traffic Analysis for Century Business Park

Link	AM Peak Flow (Two-Way)	PM Peak Flow (Two-Way)	AM & PM (Two-Way)	AADT
DR	884	1173	2057	11710
DS	170	518	688	3917
DT	1259	1685	2944	16758
DU	7	6	13	74
DV	1206	1485	2691	15320
DW	1606	1399	3005	17106
DX	1837	1940	3777	21502
DY	1126	1211	2337	13307
DZ	1232	1520	2752	15665
EA	47	50	97	551

Table 2: Extract from ABTA Baseline Traffic Survey Report - Appendix C

Building Reference	Approximate Footprint Area (m2)	Details
B1	1,600	Ama Distribution / Europar Cavan
B2	1,600	Lakeland Storage
B3	1,400	
B4	1,900	Value Centre Cash & Carry
B5	2,570	Cavanbox Warehouse
B6	6,000	Kyte Powertech
B7	590	Kyte Powertech
TOTAL	15,660	

Table 3: Details of building footprints and assumed occupancy at Century Business Park

Comparison based on Century Business Park Traffic:

	Century Business Park (7.5 Ha Site)	ID1 (15 Ha Site)	ID 2 (Tesco Site)
Two-way peak flow	48.5 *	97 **	482.5 ***
Traffic Flow Ratio	0.5	1	4.97
Apportionment of €4.76m Project Cost by Traffic Ratio	N/A	€0.80M	€3.97M
<i>*Based on recorded information from the Baseline Traffic Survey Report, of the Draft Cavan Area Based Transport Assessment, August 2023, average of AM & PM peak values of 47 & 50 respectively</i>			
<i>**On pro-rata basis with Century Business Park site (by land area)</i>			
<i>***Based on average two-way peak flows (341 Friday pm and 624 Saturday pm) taken from the TTA for 2023 Tesco application prepared by SYSTRA Ltd.</i>			

ii. Kilmore Business Park, Dublin Rd, Cavan



Fig 4: Area of Kilmore Business Park (Area bound in red is 4.8Ha approximately)
Area of the Century Business Park outlined in red is 4.8ha

Building Reference	Approximate Footprint Area (m2)	Details
B1	1,000	Curves
B2	760	Autumn Blu Furniture Store / Dog Ranch
B3	680	House of Fabric / Eastern Electrical
B4	5,950	Fitforce Gym, Choice, Anglo Celt / Cavan Digital Hub / Ford Auto
B5	1,690	Blackstone Motors
B6	390	Blackstone Motors
B7	490	
B8	590	Motor Factors / Cavan Windscreen Centre
B9	590	Muldoon Car Sales/Repairs
B10	590	McAdam Kitchens
TOTAL	12,730	

Table 4: Details of building footprints and assumed occupancy at Kilmore Business Park

Traffic Analysis for Kilmore Business Park

Link	AM Peak Flow (Two-Way)	PM Peak Flow (Two-Way)	AM & PM (Two-Way)	AADT
DR	884	1173	2057	11710
DS	170	518	688	3917
DT	1259	1685	2944	16758
DU	7	6	13	74
DV	1206	1485	2691	15320
DW	1606	1399	3005	17106
DX	1837	1940	3777	21502
DY	1126	1211	2337	13307
DZ	1232	1520	2752	15665
EA	47	50	97	551
EB	1665	1755	3420	19472
EC	257	346	602	3429
ED	1800	1930	3730	21236
EE	188	286	473	2694

Table 5: Extract from ABTA Baseline Traffic Survey Report - Appendix C

Comparison based on Kilmore Business Park Traffic:

	Kilmore Business Park (4.8 Ha Site)	ID2 (15 Ha Site)	ID1 (Tesco Site)
Two-way peak flow	237 *	741 **	482.5 ***
Traffic Flow Ratio	0.49	1.54	1
Apportionment of €4.76m Project Cost by Traffic Ratio	N/A	€2.88M	€1.88M
*Based on recorded information from the Baseline Traffic Survey Report, of the Draft Cavan Area Based Transport Assessment, August 2023 (average of AM & PM peak values of 188 & 286 respectively)			
**On pro-rata basis with Kilmore Business Park site (i.e., X 3.125 by land area)			
***Based on average two-way peak flows (341 Friday pm and 624 Saturday pm) taken from the TTA for 2023 Tesco application prepared by SYSTRA Ltd.			

Apportionment of Construction Costs for Eastern Access Road

Averaging the apportioned costs to the Tesco site for the above comparative sites:

$$(\text{€}3.97\text{m} + \text{€}1.88\text{m})/2 = \text{€}2.92\text{m}$$

Based on the Traffic Generation and Demand, €2.92m apportioned to the Tesco Site for the construction cost of the Eastern Access Road.

Comparison to 2011 approved Tesco Development

For the purposes of completeness, below is an application of above methodology, but using the peak flow from the Planning Application for the larger Tesco development granted in 2011.

Tesco site Traffic (modelled in TTA, for 2011 PI Application 11/99/1992): Two-way peak flows of 778*

*Extract from EIS, Transportation Impacts, PL Application 11/99/1992

	Site No. ID1 (Tesco Site) 2011 EIS Traffic	Site No. ID2 (15 Ha Site) Pro-rata Kilmore Business Park
Two-way peak flow	778	741
Traffic Flow Ratio	1.05	1
Apportionment of €4.76m Project Cost by Traffic Ratio	€2.44	€2.32M

	Site No. ID1 (Tesco Site) 2011 EIS Traffic	Site No. ID2 (15 Ha Site) Pro-rata Century Business Park
Two-way peak flow	778	97
Traffic Flow Ratio	8.02	1
Apportionment of €4.76m Project Cost by Traffic Ratio	€4.24	€0.53M

Averaging the above, the larger 2011 Tesco planning application would have been required to contribute €3.34m (average of €2.44m & €4.24m) of the €4.76m actual project costs, less grants.

Plot Ratio using comparative sites

Existing Comparative Land-Use Sites	Site Area (ha)	Site Area (sq.m)	Existing Floor Space (sq.m)	Plot Ratio
Century Business Park	7.5	75,000	15,660	0.21
Kilmore Business Park	4.8	48,000	12,730	0.27
Average	12.3	123,000	28,390	0.23

Table 6: Plot Ratio for existing comparative sites

Conclusion

Traffic Generation, rather than Plot ratio, is a more appropriate way of apportioning the €4.76m remaining cost of the CEAR. The above averaged scenarios utilise contemporary traffic data available for comparative & nearby existing land use that are also zoned General Enterprise & Employment. Based on the Traffic Generation & Demand, a sum of €2.92m could reasonably be apportioned to the Tesco Site for the overall shortfall of the actual cost of delivering the Cavan Eastern Access Road.

Recommendation

Allowing for the wider societal benefits of the CEAR, the €1.5 million figure for the Special Contribution is fair and reasonable.



Alan Lyons
Senior Executive Engineer
Road Design

RMLA.

Planning Consultants

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

C