

File With _____

SECTION 131 FORM

Appeal NO: ABP 318406-23Defer Re O/H ☐Having considered the contents of the submission dated received 07/12/2023
fromPA

I recommend that section 131 of the Planning and Development Act, 2000

be not be invoked at this stage for the following reason(s): in the interests of justiceE.O.: Pat BDate: 11/12/2023

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 70 Xmas - Section 131 notice enclosing a copy of the attached submissionto: 1st + 3rd party Task No: 364068-23Allow 2/3/4 weeks – BP 70 XmasEO: Pat BDate: 11/12/2023AA: Anthony McNallyDate: 12/12/2023

File With _____

CORRESPONDENCE FORM

Appeal No: ABP 318406-23

M _____

Please treat correspondence received on 07/12/23 as follows:

- | | |
|--|--|
| 1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP <u>20</u>
3. Keep copy of Board's Letter <input type="checkbox"/> | 1. RETURN TO SENDER with BP _____
2. Keep Envelope: <input type="checkbox"/>
3. Keep Copy of Board's letter <input type="checkbox"/> |
|--|--|

Amendments/Comments

PA Response to 1st party appeal10/11/23: 07/12/23 ✓

4. Attach to file

- | | |
|---|---|
| (a) R/S <input type="checkbox"/> | (d) Screening <input type="checkbox"/> |
| (b) GIS Processing <input type="checkbox"/> | (e) Inspectorate <input type="checkbox"/> |
| (c) Processing <input type="checkbox"/> | |

RETURN TO EO ☐

	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Pat B</u>	AA: <u>Anthony McNally</u>
Date: <u>11/12/2023</u>	Date: <u>12/12/2023</u>



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

06 December 2023

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

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 Pary 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 space Per	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; 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 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.



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
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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.

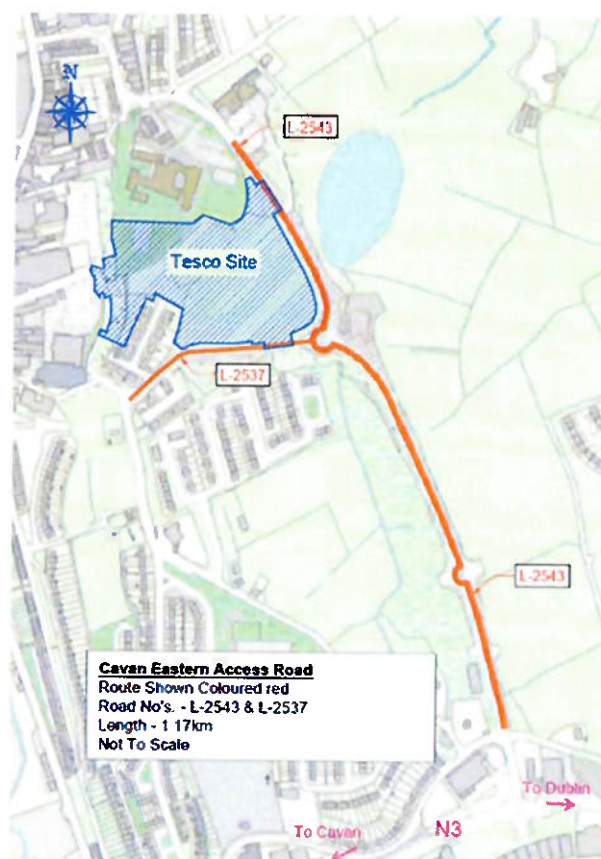


Fig 1: Location of proposed Tesco Development

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

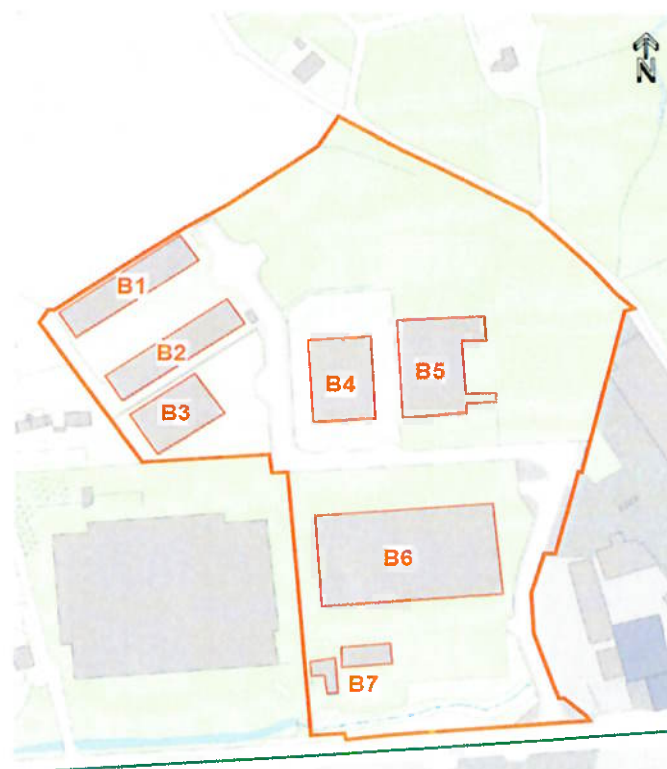


Fig 3: Area of Century Business Park

(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
<p>*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</p> <p>**On pro-rata basis with Century Business Park site (by land area)</p> <p>***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.</p>			

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

