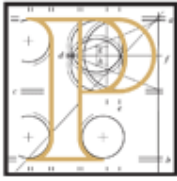


An Bord Pleanála



Guide to Making a Planning Appeal – Revised 2010

The planning system includes a comprehensive appeals process. Under this, all planning decisions made by planning authorities may be subject to independent review by An Bord Pleanála (the Board). This leaflet gives details of the main features of the appeal process and is intended as a practical guide to the procedures under the 2000-2006 Planning Acts. It is not a definitive legal interpretation of the planning law. You are also advised to read “*Guide to Fees payable to the Board*” leaflet. This and further information is available from the Board or your local planning authority. This Guide does NOT deal with direct applications to the Board for planning permissions / approvals in respect of strategic infrastructure development. See separate guide for those procedures.

1. Is there an official form for making an appeal?

There is no statutory form for making an appeal. However, the Board has produced a ‘*Planning Appeal Form/Check List*’ which may be used as a cover page in an appeal. This document provides an easy-to-use guide which, if followed fully, should help to ensure that your appeal will be valid. Remember that the onus is on you to make a valid appeal. The document is available from the Board, may be downloaded from its website www.pleanala.ie and should be available from your local planning authority.

2. Who may appeal?

- An applicant for planning permission (**first party**), and
- any other person, body or interested group etc. who made submissions or observations in writing to the planning authority in relation to the planning application in accordance with permission regulations (**third party**). There are three exceptions to the requirement to have made prior submissions or observations: -

(1) where a prescribed body was entitled to be notified of a planning application by the planning authority and was not notified in accordance with law, the body may appeal the decision of the planning authority without having made submissions or observations on the planning application,

(2) where an environmental impact statement (EIS) was required to be submitted with the application to the planning authority, a body whose aims or objectives relate to the promotion of environmental protection and which meets certain other requirements may appeal the decision of the planning authority without having made submissions or observations on the planning application,

(3) a person with an interest in land (e.g. a landowner/occupier) adjoining the application site may apply to the Board for leave to appeal the decision of the planning authority without having made submissions or observations to the planning authority (see question 32).

3. Is there a time limit on appeals?

Yes. Except where a person is granted leave to appeal by the Board (see questions 2(3) and 32), an appeal must be received by the Board within four weeks beginning on the date of the making of the decision by the planning authority (N.B. not the date on which the decision is sent or received). The day the decision is made is counted as the first day. For example, if the decision of a planning authority is made on Wednesday 2nd of a month, the last day for receipt of the appeal is Tuesday 29th (not Wednesday 30th) of the same month. The Board's website has a ready-reckoner to assist in calculating the last day for making an appeal.

Where a person is given leave to appeal, the appeal must be received by the Board within two weeks of him/her receiving notification of that fact.

These are strict statutory time limits. The Board has no discretion to accept late appeals, whether they are sent by post or otherwise. It is your responsibility to ensure that the appeal or other material is delivered or posted in time for delivery within the appropriate period. An appeal or other material posted within the permitted period but received outside it will be invalid. Further information on time limits is given in questions 28, 29 and 30.

4. How may I appeal?

Every appeal must be made in writing and must be:

- sent by **post** to: The Secretary,

An Bord Pleanála,

64 Marlborough Street,

Dublin 1,

Or

- delivered by **hand** to an employee of the Board at the Board's offices during office hours (9.15 a.m. to 5.30 p.m. on Monday to Friday except on public holidays and other days on which the offices are closed). Appeals placed in the Board's letterbox are invalid.

The appeal must be fully complete from the start – you are not permitted to clarify, elaborate or submit any part of it at a different time, even within the time limit. (See also question 15).

5. What must I include with my appeal?

- Your own name and address – both of which must be **clearly stated**. Where an agent makes the appeal on your behalf, he/she must **state clearly** his/her own name and address **and** your name and address.

- The subject matter of the appeal - you must give sufficient details to enable the Board to readily identify the application the subject of the appeal (e.g. a copy of the planning authority decision, or details of the nature and the site of the proposed development, or the name of the planning authority and the planning register reference number of the decision you are appealing).
- The grounds of appeal and supporting material and arguments. The Board cannot take into consideration any grounds of appeal or information submitted after the appeal (except information specifically requested by the Board) and it cannot consider non-planning issues; grounds of appeal should not, therefore, include such issues. (See also question 26).
- The correct fee. Details of fees are available from the Board or your local planning authority.
- In the case of a third party appeal a written acknowledgement (or copy thereof) by the planning authority of the receipt of submissions or observations made by the person (third party) at planning application stage.

6. What if my appeal is incomplete?

If the appeal does not meet all the legal requirements at the time the appeal is made (see the preceding paragraphs for guidance), it will be invalid and cannot be considered by the Board. (See also question 15).

7. Do different fees apply in different situations?

Yes. Where, for example, the appeal involves an EIS or relates to commercial development and/or unauthorised development (includes most development works and changes of use carried out without a grant of permission) and the appeal is made by the first party, higher than normal fees apply. Commercial development for this purpose includes, for example, the provision of 2 or more residential units (houses, apartments, etc), the conversion of a single residential unit into 2 or more residential units, the provision of a residential unit in conjunction with some other development, and the conversion of an existing structure or use into a residential unit and some other use. Different fees also apply to other categories such as “observers” (see question 12), certain public bodies and for oral hearings. Please refer to the Board’s *“Guide to Fees payable to the Board”* or its determination order on fees for more information.

8. Are appeal fees likely to change?

Yes. Under the Planning Acts, the Board is required to review the level of fees payable to it for making appeals, referrals, applications for leave to appeal, submissions or observations and oral hearing requests at least every 3 years. You should always check the latest position to ensure that you know the current applicable fee.

9. Can I see the planning authority file before appealing?

Yes. The planning authority will make available for public inspection the planning application and any submissions or observations received in relation to the application at its offices as soon as may be after they are received.

Within 3 working days of its decision, the planning authority will also make available for public inspection at its offices-

- the complete application and any additional information supplied by the applicant,
- its own reports on the application,
- its decision and notification of this to the applicant and any other person or body who made submissions or observations in relation to the application.

10. Can I get copies of documents relating to a planning application?

Yes. Copies of the documents referred to at 9 above may be purchased from the planning authority at reasonable cost.

11. Are there certain decisions or conditions of a planning authority on a planning application which cannot be appealed?

(a) There is no appeal to the Board where a planning authority decides to refuse permission on the basis of past failures of a developer or a related person to comply with a previous permission (and the High Court does not annul that decision).

(b) There is no appeal to the Board against a decision to grant permission consequent on the grant of an outline permission in respect of any aspect of the decision which was decided in the outline permission.

(c) Generally, there is no appeal to the Board in relation to conditions against financial contributions imposed under Development or Supplementary Development Contribution Schemes. However, appeals are permitted against special contribution conditions imposed by a planning authority and appeals are also permitted where a developer considers that the terms of a Development or Supplementary Development Contribution Scheme were not properly applied. In such cases, where there is no other appeal against the decision of the planning authority, the Board can only deal with the matter under appeal (see question 20) and the planning authority may make the grant of permission notwithstanding the appeal to the Board provided that the person taking the appeal furnishes to the planning authority security for payment of the full amount of the contribution or special contribution, as appropriate.

12. Can I make my views known to the Board without appealing?

Where an appeal has already been made, another person can become an “observer” and make submissions or observations on the appeal. A copy of the appeal can be seen at the planning authority’s office. The time limit for such submissions or observations is- (a) four weeks of receipt of the appeal by the Board (or the last appeal where more than one is made) or, (b) in a case where an Environmental Impact Statement has been requested and received by the Board, four weeks of the date the Board publishes notice of its receipt or, (c) where the Board requested the applicant to publish a further site or newspaper notice, four weeks of the date of publication of the notice. So, in the case of (a) above, if an appeal is received on Wednesday 2nd of a month, the last day for receipt of submissions or observations on the appeal by an “observer” is Tuesday 29th (not Wednesday 30th) of the same month. The Board’s website has a ready-reckoner to assist in calculating the last day for making a submission / observation. See also questions 28, 29 and 30 regarding time limits.

Should the appeal (or all the appeals where there is more than one) be withdrawn by the person(s) who made it, the decision of the planning authority will stand and your submission will lapse.

13. How may I make my views known to the Board?

An “observer” should submit his/her submissions or observations in writing by: -

- sending them by **post** to: The Secretary,

An Bord Pleanála,

64 Marlborough Street,

Dublin 1,

- **or**, delivering them to the Board’s offices. (Office hours are 9.15a.m. to 5.30p.m. on Monday to Friday except on public holidays and other days on which the offices are closed).

14. What must I include with my submissions or observations?

- Your own name and address - which must be **clearly stated**. Where an agent makes the submissions or observations on your behalf, he/she must **state clearly** his/her own name and address **and** your name and address.
- The subject matter of the submissions or observations – you must give sufficient details to enable the Board to readily identify the application/appeal e.g. a copy of the planning authority decision or the appeal reference number.
- The full grounds of the submissions or observations and supporting material and arguments. The Board cannot take into consideration any further submissions, observations or other information submitted after the initial submissions or observations are submitted (except information specifically requested by the Board) and it cannot consider non-planning issues.
- The correct fee (except in the case of certain bodies specified by the Board). Details of fees are available from the Board or your local planning authority.

15. If my appeal or observation is invalid, can I re-lodge the appeal or observation?

If you comply fully with ALL the requirements at the time you re-lodge the appeal or observation, then it will be accepted. The requirements are that the appeal or observation must be received within time (see question 3 or 12, as appropriate), be made correctly (see question 4 or 13) and must include all the

information and documents (see question 5 or 14) when it is re-lodged. Even if a fee (correct or not) was lodged with the invalid appeal or observation, the full fee must always accompany the new appeal or observation.

Where the time limit has not expired for re-lodging a fresh appeal or observation, the Board does not guarantee that it will notify appellants or “observers” in sufficient time that would allow a fresh appeal or observation to be made within the statutory time limit.

16. Can I ask for an oral hearing?

Any party to the appeal (not an “observer”) may request an oral hearing provided the correct non-refundable fee is paid in addition to the appeal fee. The appellant must make the request within the period for lodging the appeal but, where a party to an appeal other than an appellant is sent a copy of an appeal, he/she may make the request within four weeks from the date the copy is sent to him/her.

If you request an oral hearing, you still must state your grounds of appeal in full and comply with the other legal requirements when lodging your appeal.

The Board has absolute discretion to hold an oral hearing with or without a request from a party and will generally only hold one where this will aid its understanding of a particularly complex case or where it considers that significant national or local issues are involved. The Board may also direct the holding of an oral hearing to determine whether an appeal is made with the sole intention of delaying development or of securing the payment of money, gifts, considerations or other inducement by any person.

17. What happens next?

The Board sends a copy of the appeal to the planning authority and, in the case of a third party appeal, to the developer. These have four weeks to submit their views. The Board cannot consider any views that are late and no party is allowed elaborate on his/her views in writing once they have been submitted to the Board.

18. What does the Board take into consideration when deciding an appeal?

Generally, the Board is required to consider the planning application, the subject of the appeal, *de novo*, (i.e. as if the application had been made to it in the first instance) and the EIS, if any. The Board will determine the application on the basis of the proper planning and sustainable development of the area and the effects, if any, the proposed development would have on the environment. The Board must have regard to such matters as the policies and objectives of the local development plan, Ministerial planning guidelines, regional planning guidelines, the National Spatial Strategy, the policies and objectives of the Government and the national interest. In addition, the Board must consider the grounds of appeal, the decision of the local planning authority, any submissions or observations made to the planning authority and/or the Board in relation to the application and the appeal, as appropriate, and the report and recommendation of the Board’s inspector on the appeal.

19. How does the Board ensure fair play for all?

Where the Board considers it appropriate in the interests of justice, it can ask any party, observer or any other person or body to make submissions or observations on any matter that has arisen in the appeal. This will allow the Board, for instance, to seek comment on any significant new matter arising in the appeal. The Board also has powers to require any party or observer to submit any document, information etc. which it considers necessary. The Board will specify a time limit (minimum 2 weeks) for submission of the invited material and this limit will be strictly enforced.

20. Can the Board consider matters which have not been raised in the appeal?

Yes. As stated at 18 above, the Board is generally required to consider the application *de novo*. Except in the circumstances as outlined in question 21 following, all the relevant planning issues relating to the application are considered by the Board in its determination of the appeal whether or not they were raised by the planning authority, other parties or any ‘observers’. As stated at 19 above, if a new issue arises the parties and observers will be given an opportunity to comment on these.

21. In what circumstances may the Board not consider the application *de novo*?

Where an appeal relates to conditions only which are attached to a decision of a planning authority to grant permission and there is no other appeal, the Board may generally use its discretionary powers not to consider the application *de novo*. Instead, it may issue directions to the planning authority to amend, remove or attach new conditions to the decision. Where it decides not to use its discretionary powers, the Board may either grant or refuse permission for the development even where conditions only are appealed. However, see answer 11(c) relating to Development and Supplementary Contribution Scheme conditions and special contributions where different provisions may apply.

22. Can the Board contravene the provisions of the local Development Plan?

Yes. The Board, while obliged to have regard to the provisions of a local development plan, may contravene its provisions in certain circumstances. In circumstances where the planning authority decides to refuse permission on the grounds that the proposed development materially contravenes the Development Plan, the Board may grant permission on appeal but only if it considers that –

- the proposed development is of strategic or national importance, or
- there are conflicting objectives in the Development Plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- permission should be granted having regard to regional planning guidelines for the area, Ministerial guidelines, Ministerial policy directives, the statutory obligations of any local authority in the area, and any relevant policy of the Government or any Minister of the Government, or
- permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Development Plan.

The Board can, of course, refuse permission for other reasons even where the proposed development would be in accordance with the provisions of the local Development Plan.

23. What is the time limit for deciding appeals?

The Board's statutory objective is to dispose of appeals within 18 weeks. However, where the Board does not consider it possible or appropriate to reach a decision within 18 weeks (e.g. because of delays arising from the holding of an oral hearing), it will inform the parties of the reasons for this and must say when it intends to make the decision.

24. What type of decision can the Board make and will I be informed of it?

Generally, a decision will be made either-

- to grant permission/outline permission with or without conditions, or
- to refuse permission/outline permission.

However, see question 21 above which refers to other types of decisions the Board may make. All parties and observers involved in the appeal will be notified of the decision by post. A copy of the Inspector's Report, the Board's Direction (e.g. whether to grant or refuse, what conditions, if any, should be attached to a permission, other instructions etc.), and the Board's decision order are posted on the Board's website at www.pleanala.ie. The reasons and considerations for the Board's decision will be included in the decision order and, in any case where the Board does not accept the Inspector's recommendation in relation to granting or refusing permission, the main reasons for not accepting it.

25. Is the Board's Decision Final?

Yes. No challenge may be made to the decision other than to its legal validity. A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50 and 50A of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

26. Can I be sued for comments made in an appeal or other submission?

Yes. Participants in cases before the Board should be aware that comments involving allegations of any kind against a named or otherwise identifiable person or organisation may be viewed as defamatory by the subject of the comments. Participants may be sued directly for any defamatory allegations in any appeal or submission and should avoid making such allegations. Any submissions made to the Board are generally circulated and/or made available for public inspection. All material relevant to any case determined by the Board becomes available for public inspection following the Board's decision. Please note that in the event of any potentially defamatory allegation giving rise to legal action against it, the Board may seek indemnity from the person making the allegation. It

should be understood that the Board is only concerned with issues relevant to the proper planning and sustainable development of the area and that personalised comments are generally not relevant to its deliberations. The same general principles apply to comments or submissions made at oral hearings.

27. Can the Board dismiss appeals?

Yes. The Board has discretion to dismiss an appeal where it is satisfied the appeal is vexatious, frivolous or without substance or foundation or where the appeal is made with the sole intention of delaying development or of securing the payment of money, gifts, considerations or other inducement by any persons. The Board can also declare a planning application or an appeal withdrawn where it is satisfied it has been abandoned.

28. Can I withdraw my appeal?

Yes. An appeal can be withdrawn by an appellant and the planning application can be withdrawn by the applicant at any time prior to the determination of the case by the Board. Where an appeal is withdrawn (or all the appeals where there is more than one), the original decision of the planning authority takes effect. Where the planning application is withdrawn by the applicant, no permission can be granted by the planning authority in relation to the application.

29. How strict are the time limits?

So that the Board can determine appeals generally within 18 weeks, all the time limits are very strict and the Board has no discretion to extend the dates. This applies to the lodging of appeals, submission of comments by parties, the making of submissions and observations to the Board by “observers” and others and, where invited by the Board, to additional submissions.

30. What if the offices of the Board are closed on the last day allowed for making an appeal or submission?

When the last date for receipt of an appeal or other material falls on a weekend, public holiday or other day when the offices of the Board are closed, the latest date for receipt will be the next day on which the offices of the Board are open.

31. What if the period for making an appeal or submission falls over Christmas or the New Year?

The period from 24th December to 1st January inclusive (i.e. 9 days) is excluded for the purposes of calculation of all periods of time in relation to planning appeals. Therefore, if the period for making an appeal falls between 24th December and 1st January (both dates inclusive), the last day for making the appeal is extended. So, for example, if the last day of the four-week period falls on 24th December, the last day for making an appeal is 2nd January, and if the last day of the four-week period falls on 29th December, the last day for making an appeal is 7th January.

The exclusion of the Christmas/New Year period also applies to any other matter in relation to an appeal where a time period is specified. So, if the last day of the period for making submissions or observations in relation to an appeal or of the 18-week statutory objective period within which the Board should decide an appeal falls within the Christmas/New Year period, the period is extended by an appropriate number of days.

32. Can the Board's documents be inspected and purchased?

Files on appeals can be inspected by members of the public 3 days after the appeals are determined by the Board. These files can be inspected free of charge at the Board's offices on weekdays between 10 a.m. - 12.30 p.m. and 2.30 p.m. - 4.30 p.m., except on public holidays and other days on which the offices are closed. Subject to copyright provisions, copies of documents on these files can be purchased at the Board's offices during these hours for the reasonable cost of copying the documents. The inspector's report and the Board's direction and decision may be viewed and downloaded from the Board's website. Further details concerning inspection and purchase of documents etc., are available from the Board and on its website, www.pleanala.ie

33. Can I apply to the Board for leave to appeal a decision of a planning authority? (See also answers to questions 2 and 3).

A person with an interest in land (e.g. a landowner/occupier) adjoining the application site who did not make submissions or observations to the planning authority in relation to the planning application may apply to the Board for leave to appeal the decision of the planning authority within four weeks of the

decision of the authority to grant permission. The Board may grant leave to appeal where the person shows that the decision of the planning authority to grant permission differs materially from the application because of the conditions imposed and the conditions imposed will materially affect his/her enjoyment of the land or reduce the value of the land.

Like a planning appeal, the person seeking leave to appeal must state his/her name and address, the grounds on which he/she is basing the leave to appeal (see above), a description of his/her interest in the land and the correct fee.

Where a person is granted leave to appeal, the planning appeal must be received by the Board within two weeks of him/her receiving notification of leave to appeal and must otherwise comply with the requirements for lodging the planning appeal (see questions 4 and 5) including a further fee. Details of fees are available from the Board or your local planning authority.

34. Can I refer the planning authority's refusal to deal with a second planning application to the Board?

Where a decision of a planning authority in relation to a planning application is on appeal to the Board, a second application for the same development or development of the same description may not be made to the planning authority. Where a dispute arises as to whether an application is for the same development or development of the same description, the matter may be referred to the Board for a determination.

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