

PL 10 Making a Planning Appeal

A fundamental part of the planning system is an appeals process. Under this, all planning decisions made by planning authorities may be subjected to independent review by An Bord Pleanála (the Board), the statutory independent planning appeals body. This leaflet gives details of the main features of the appeal process. This leaflet does not deal with applications for strategic infrastructure.

This leaflet is intended as a practical guide. It is not a definitive legal interpretation of planning law. For more information you may consult the Board or your local planning authority.

1. What is the role of An Bord Pleanála?

An Bord Pleanála is responsible for the determination of appeals and certain other matters under the Planning and Development Act 2000, as amended, and with appeals under the Building Control Acts 1990 and 2000, the Local Government (Water Pollution) Acts, 1977 and 1990 and the Air Pollution Act, 1987. Under continuity arrangements under the 2000 Planning Act, the Board also deals with appeals and other cases under the Local Government (Planning and Development) Acts 1963, as amended, where such cases were initiated under those Acts. A list of all the matters that the Board deals with is available from the Board or their website www.pleanala.ie. The Board has also been given responsibility for deciding infrastructure developments which are considered to be of strategic or national importance.

Strategic infrastructure development is defined in the Seventh Schedule to the amended Planning and Development Act, 2000. It can generally be described as development which is of strategic economic or social importance to the State or a region. It also includes development which will contribute significantly to the fulfilment of any of the objectives of the National Spatial Strategy, or any successor to that document, or regional planning guidelines for an area, or proposed developments which would have significant effects on the area of more than one planning authority.

2. 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. 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.

3. Who may appeal?

- An applicant for planning permission, and
- any person, body or interested group etc. who made a submissions or observations in writing to the planning authority in relation to the planning application in accordance with permission regulations. There are three exceptions to this:

- (a) where a prescribed body was entitled to be notified of a planning application by the planning authority and was not notified, the body may lodge an appeal against the decision of the planning authority without having made submissions or observations on the planning application,
- (b) 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,
- (c) a person who has an interest in adjoining lands in respect of which a decision to grant permission has been made, may apply to the Board for leave to appeal the decision of the planning authority (see Question 27).

4. Is there a time limit on appeals?

Except where a person is granted leave to appeal by the Board (see Questions 3(c) and 27), appeals must be received by the Board within 4 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). 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 of the same month.

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 explanation of the time limits is given at Questions 23, 24 and 25.

5. 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 (9.15a.m. to 5.30p.m. on Monday - Friday, except on public holidays and other days on which the offices are closed).

The appeal must be fully complete from the start - you are not permitted to submit any part of it later on, even within the time limit.

6. What must I include with my appeal?

- Your own name and address. Where an agent makes the appeal on your behalf, he/she must give 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 which is the subject of the appeal (e.g. a copy of the planning authority decision, or details of the nature and site of the proposed development, or the name of the planning authority and the planning register reference number shown 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 21).
- The correct fee. Details of fees are available from the Board or your local planning authority.
- In the case of a third party appeal, the acknowledgement given by the planning authority that it received the submission or observation made by the person.

7. What if my appeal is incomplete?

If the appeal does not meet all the legal requirements (see the preceding paragraph for guidance), it will be invalid and cannot be considered by the Board.

8. 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 submission or observations in relation to the application.

The planning authority file will remain open for public inspection for a period of

not less than 7 years after the application is decided.

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

Yes. Copies of the documents referred to at Question 8 above may be purchased from the planning authority at a reasonable cost.

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

Yes. 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 4 weeks from the receipt of the appeal by the Board (or the last appeal where more than one is made) or, in the case where an Environmental Impact Statement has been submitted, within 4 weeks of the date the Board publishes notice of its receipt, or where the Board has requested the applicant to publish a further site or newspaper notice, 4 weeks from the date of the publication of the notice. Should the appeal (or all the appeals where there is more than one) be withdrawn by the person who made it, the decision of the planning authority will stand and your submission will lapse.

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

An “observer” must submit his/her submissions or observations in writing and they 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 (9.15a.m. to 5.30p.m. on Monday to Friday except on public holidays and other days on which the offices are closed.)

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

Your submissions or observations must be accompanied by:

- your own name and address. Where an agent makes the submissions or observations on your behalf, he/she must include 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 prescribed bodies). Details of fees are available from the Board or your local planning authority.

13. Can I ask for an oral hearing?

Any party to the appeal may request an oral hearing provided the correct non-refundable fee is paid in addition to the appeal fee. The person making the appeal must make the request within the period for lodging the appeal but, where a party to an appeal other than the person making the appeal is sent a copy of an appeal, he/she may make the request within 4 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.

14. 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 4 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.

15. 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.

16. Can the Board do more than review the decision of the planning authority?

Yes. Generally, the Board is required to consider the proposed development afresh. Accordingly, all the relevant planning issues relating to the application are considered by the Board in its determination of the case whether or not they were raised by the planning authority, the parties or observers. As stated at 15 above if a new issue arises the parties and observers will be given an opportunity to comment on these.

17. 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, the Minister 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.

18. What is the time limit for deciding appeals?

The Board's 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.

19. Will I be informed of the Board's decision?

Yes. Generally, a decision will be made either:

- to grant permission/outline permission;
- to grant permission/outline permission with conditions or;
- to refuse permission/outline permission.

and all parties and observers involved in the appeal will be notified. 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 is 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.

20. Is the Board's decision final?

Yes. Its validity may only be challenged by way of judicial review in the High Court within 8 weeks. The Court will not re-open the planning merits of the case but will only consider the procedural and legal issues. The Court may extend the period for seeking a judicial review where it finds that there are good reasons for doing so.

21. 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 declare a planning application or appeal withdrawn where it is satisfied it has been abandoned.

22. 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.

23. 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 others, and where invited by the Board, to additional submissions.

24. What if the offices of the Board are closed on the last day allowed?

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.

25. What if the last day falls over the Christmas or New Year period?

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 last day of the 4 week period for making an appeal falls in the period from 24th December to 1st January (both dates inclusive), the last day for making an appeal is extended. So, for example, if the last day of the 4 week period falls on 24th December, the last day for making an appeal is 2nd January, and if the last day of the 4 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 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 the appropriate number of days.

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

Files on appeals can be inspected by members of the public after the appeals are determined by the Board. These files can be inspected free of charge at the Board's offices on weekdays between 10a.m. - 12.30p.m. and 2.30p.m. - 4.30p.m., except on public holidays and other days on which the offices are closed. Copies of any documents on these files can be purchased at the Board's offices during these hours for the reasonable cost of copying

documents. Further details concerning inspection and purchase of documents etc., are available from the Board and on its website, www.pleanala.ie.

27. Can I appeal a decision of a planning authority if I have not made a submission/observation to the planning authority?

Generally no. The only exception to this is if a person with an interest in the adjoining land (e.g. a landowner/occupier) who did not make a submission or observation to the planning authority in relation to the application may apply to the Board for leave to appeal within 4 weeks of a decision of a planning authority to grant permission. The Board may grant leave to appeal where the adjoining landowner shows that the decision of the planning authority to grant permission differs materially from the application because of the conditions attached to the permission and the conditions 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, when a fee is set by the Board, the appropriate fee.

Where a person is granted leave to appeal, the planning appeal must be received by the Board within 2 weeks of him/her receiving notification of that fact.

28. Can I get further information?

Further information can be obtained from An Bord Pleanála at the address given at Question 5 above, telephone (01) 8588100, www.pleanala.ie or from your local planning authority.

The law governing the planning system is set out in the Planning and Development Acts 2000, as amended and the Planning and Development Regulations 2001, as amended. These are may be purchased from the Government Publications Sales Office, telephone (01) 6476834 or at publications@opw.ie or downloaded freely from the Department of the Environment, Community and Local Government's website www.environ.ie

Legislation is also available to view and download from the internet at: www.irishstatutebook.ie

The leaflets in this series are:

- PL1 A Guide to Planning Permission
- PL2 Making a Planning Application
- PL3 Commenting on a Planning Application
- PL4 Building A House - The Planning Issues
- PL5 Doing Work Around the House - The Planning Issues
- PL6 Agriculture and Farm Development - The Planning Issues
- PL7 Planning and the Business Person
- PL8 The Development Plan
- PL9 Environmental Impact Assessment
- PL10 Making a Planning Appeal
- PL11 Guide to the Planning Control System
- PL12 Guide to Architectural Heritage
- PL13 Archaeology in the Planning Process
- PL14 Guide to Planning Enforcement in Ireland