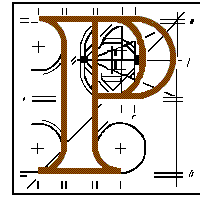


Making a Planning Appeal under the 2000 Planning Act

An Bord Pleanála



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. 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 Planning Act. It is not a definitive legal interpretation of the planning law. For more information you may consult An Bord Pleanála or your local planning authority.

1. 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 two 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 lodge an appeal against the decision of the planning authority without having made submissions or observations on the planning application.
 - (2) 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).

2. Is there a time limit on appeals?

Except where a person is granted leave to appeal by the Board (see questions 1 (2) and 27), appeals 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). 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 in questions 23, 24 and 25.

3. 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 to 5.30 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 submit any part of it at a different time, even within the time limit. (See also question 12).

4. 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 the subject of the appeal (e.g. a copy of the planning authority decision, or details of nature and the 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 by the planning authority of receipt of the submission or observation made by the person to the planning authority at application stage to show that the submission or observation was made at that stage. (A copy of the notification of the decision or similar is not accepted as an acknowledgement of receipt of the submission or observation).

5. What if my appeal is incomplete?

If the appeal does not meet all the legal requirements (see the preceding paragraphs for guidance), it will be invalid and cannot be considered by the Board. (See also question 12).

6. 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.

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

Yes. Copies of the documents referred to at 6 above may be purchased from the planning authority at reasonable cost.

8. 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 is granted authorisation by the Courts to refuse permission on the basis of past failures of a developer or a related person to comply with a previous permission.
- (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 will be no appeal to the Board in relation to financial contributions from 10th March 2004 or the date the local planning authority makes a development contribution scheme, whichever is the earlier.

However, there will be appeals against special contribution conditions imposed by a planning authority and there will be appeals where a developer considers that the terms of the scheme were not properly applied. In such cases, where there is no other appeal against the decision of the planning authority, 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.

9. 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 four 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, four 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, four weeks from the date of the publication of the notice. (Note the example calculation of a time period given in question 2). 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.

10. 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 (9.15 to 5.30 on Monday to Friday except on public holidays and other days on which the offices are closed).

11. 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.

12. 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 2 or 9, as appropriate), must be made correctly (see question 3 or 10) and must include all the information and documents (see question 4 or 11) 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.

13. 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.

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 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.

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 consider matters which have not been raised in the appeal?

Yes. Generally, the Board is required to consider the application, the subject of the appeal, 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.

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 use its discretionary powers not to consider the application afresh but, instead, to 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.

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 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.

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 and may only give leave to pursue the review process where it is satisfied that there are substantial grounds for contending that the Board's decision is invalid or ought to be quashed and that the person seeking the judicial review has a substantial interest in the matter.

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 also declare a planning application or an 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?

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 four-week period for making an appeal falls in the period from 24th December to 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 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.

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 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. Copies of any documents on these files can be purchased at the Board's offices during these hours for the reasonable cost of copying the 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 apply to the Board for leave to appeal a decision of a planning authority? (See also answers to questions 1 and 2).

A person with an interest in adjoining land (e.g. a landowner/occupier) 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 within four weeks of a decision of a planning 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 3 and 4) including a further fee. Details of fees are available from the Board or your local planning authority.

28. 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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