

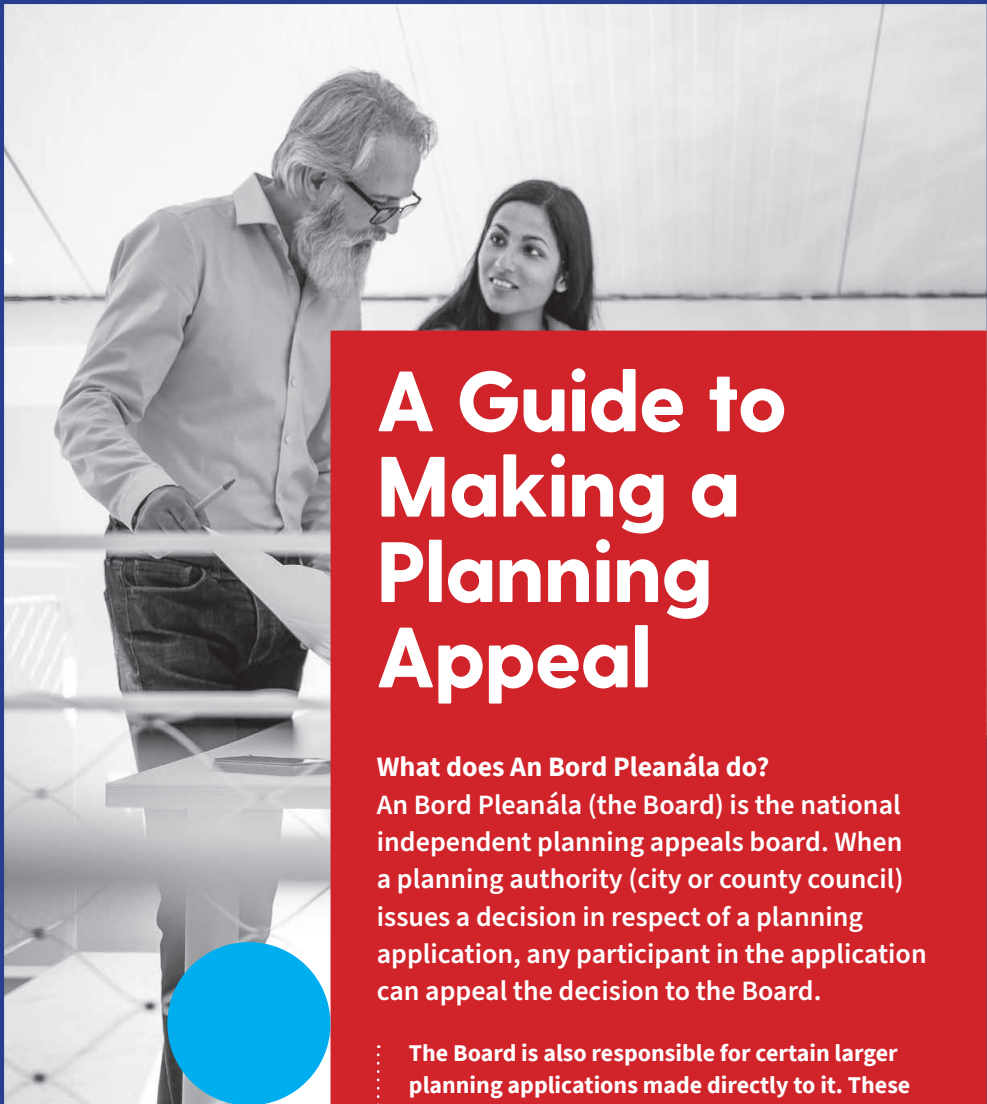


A Guide to Making a Planning Appeal



Planning Leaflet **5**





A Guide to Making a Planning Appeal

What does An Bord Pleanála do?

An Bord Pleanála (the Board) is the national independent planning appeals board. When a planning authority (city or county council) issues a decision in respect of a planning application, any participant in the application can appeal the decision to the Board.

The Board is also responsible for certain larger planning applications made directly to it. These are called strategic infrastructure and strategic housing development applications (see Planning Leaflet 14 – “Strategic Infrastructure Development” for details relating to strategic infrastructure applications).

The full list of matters that the Board deals with is available from the offices of the Board or its website www.pleanala.ie.

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

There is no official form for making an appeal, however, the Board has produced a '**Planning Appeal Form Instructions and Checklist**' which you can use as a cover page in an appeal. This form/checklist is available on the Board's website www.pleanala.ie. In addition, the Board has published a **Guide to Planning Appeals** which provides information on how to make a valid planning 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
 · D01 V902

or it can be delivered by hand to an employee of the Board at the Board's offices during office hours (9.15a.m. to 5.30p.m. Monday - Friday, except public holidays and other days when the offices are closed).

Appeals placed in An Bord Pleanála's letterbox are invalid.

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.

2. Who can make an appeal?

- An applicant for planning permission, or
- any person, body or interested group etc., who made a valid submission or observation in writing to the planning authority in relation to the planning application, subject to three exceptions below:

1 Where a prescribed body should have been notified of a planning application by the planning authority but was not. In this case, the body may lodge an appeal against the decision of the planning authority without having made submissions or observations on the planning application.

2 Where an Environmental Impact Assessment Report (EIAR) was required with the application to the planning authority. In this case, 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 Where a person, who has an interest in adjoining lands in respect of which a decision to grant permission has been made, applies to the Board for leave to appeal the decision of the planning authority and is granted leave to appeal (see Question 18).

3. Is there a time limit on appeals?

Appeals must be received within four weeks (28 days) beginning on the date when the decision was made by the planning authority, not necessarily the date of notification of the decision to the applicant. For example, if the planning authority made the decision on Tuesday 1st of a month, the last day to lodge an appeal is Monday 28th of the same month. Where a person is given leave to appeal, the Board must receive the appeal within two weeks of him/her receiving notification of that fact. The time limit is strictly adhered to. An appeal posted in time but received out of time is invalid. Where the last day to appeal falls on a bank holiday, public holiday or weekend or any other day on which the offices of the Board are closed, the appeal must be received on the next day on which the Board's offices are open.

The period from 24th December to 1st January inclusive (i.e. 9 days) is excluded for the purposes of calculation of all time periods 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 an appeal is extended.

4. What must I include with my appeal?

- Your name and address. Where an agent makes the appeal on your behalf, he/she must give his/her name and address and your name and address.
- The subject matter of the appeal. You must give sufficient details to enable the Board to identify the application which is the subject of the appeal (e.g. a copy of the planning authority's 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 relating to 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.
- The **correct fee**. Details of the applicable fees are available from the Board, its website 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.

If the appeal does not meet all of the legal requirements, it will be invalid and the Board cannot consider it.

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

Yes. The planning authority will make the planning application and any submission or observations received about the application publically available at its offices. Within three working days of its decision, the planning authority will also make the following documents available at its offices or online:

- the complete application and any additional information supplied by the applicant;
- technical reports (including the planner's report) on the application; *and*
- details of the decision and notification of this to the applicant and any other person or body who made submissions or observations in relation to the application.

The planning authority's file will remain open for public inspection for a period of at least seven years after the application is decided. Copies of the documents referred to above may be purchased from the planning authority at a reasonable cost or viewed online for free.

6. Can I give my views 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 four weeks from the date of the Board receiving the appeal (or the last appeal where more than

one is made), where the Board has requested the applicant to publish a further site or newspaper notice, four weeks from the date of the publication/erection 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.

An 'observer' must submit his/her submissions or observations in writing and they must be sent by post or hand delivered to an employee of the Board at the Board's offices during office hours with the required fee.

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

Your submissions or observations must be accompanied by:

- your name and address. Where an agent makes the submissions or observations on your behalf, he/she must include his/her 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 identify the application/appeal e.g. include a copy of the planning authority's 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; *and*

- the **correct fee** (except in the case of certain prescribed bodies). Details of fees are available from the Board and via its website www.pleanala.ie and from your local planning authority.

8. Can I ask for an oral hearing?

A person making an appeal or a person making an observation on an appeal may request an oral hearing, provided they pay the correct non-refundable fee in addition to the appeal fee. The person making the appeal must make the request within the period for lodging the appeal. A person making an observation on an appeal can also seek an oral hearing but must do so within the period for making an observation. 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 can refuse a request for an oral hearing. The Board will generally only hold an oral hearing where this will aid the Board's understanding of a particularly complex case or where the Board considers that significant national or local issues are involved.

9. 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 applicant. These parties

have four weeks to submit their views/response. The Board cannot consider any views that are received late. No party is allowed to elaborate on his/her views in writing once they have been submitted to the Board.

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

Where the Board considers it appropriate in the interest 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 to submit any document, information etc. which it considers necessary. The Board will specify a time limit (minimum two weeks) for submission of the requested material and this limit will be strictly enforced.

11. 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 above, if new issues arise the parties and observers will generally be given an opportunity to comment on these.



12. Can the Board contravene the local development plan?

Yes. The Board, while obliged to have regard to the local development plan, may contravene it in certain circumstances. In circumstances where the planning authority decides to refuse permission because 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;
- there are conflicting objectives in the development plan or the objectives are not

clearly stated, insofar as the proposed development is concerned;

- permission should be granted having regard to the Regional Spatial and Economic Strategy 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 is subject to a statutory objective to seek to decide appeals within 18 weeks.

The Board can also refuse permission for other reasons even where the proposed development would be in accordance with the local development plan.

13. What is the time limit for deciding appeals?

The Board is subject to a statutory objective to seek to decide appeals within 18 weeks. However, where the Board does not consider it possible or appropriate to reach a decision within 18 weeks, it will inform the parties of the reasons for the delay and will say when it intends to make the decision.

The exclusion of the Christmas/New Year period also applies to any other matter regarding 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.

14. 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.

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 are included in the decision order.

15. Is the Board's decision final?

Yes. The Board's decision may only be challenged by way of judicial review in the High Court within eight weeks of the Board making the decision. 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.

16. 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.

17. Can I withdraw my appeal?

Yes. An appellant can withdraw an appeal and the applicant can withdraw the planning application at any time before the Board decides the case. 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 applicant withdraws the planning application, the planning authority cannot grant permission.

18. 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 four 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 that 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 two weeks of him/her receiving notification of that fact.

19. Where can I get further information?

Further information is available from An Bord Pleanála, 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 Act 2000, as amended and the Planning and Development Regulations 2001, as amended. You can purchase these from the Government Publications Sales Office, telephone (01) 6476834 or at publications@opw.ie or download them for free from the Department of Housing, Local Government and Heritage's website www.gov.ie/housing. Legislation is also available to view and download from: www.irishstatutebook.ie.

Office of the Planning Regulator

Fourth Floor (West Wing)

Park House

Grangegorman

191-193A North Circular Road

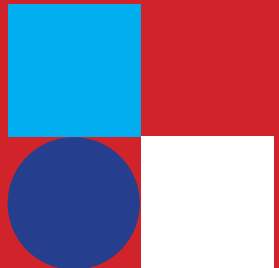
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