



An
Bord
Pleanála

Functions of the Board

March 2017

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General

An Bord Pleanála was established in 1977 under the Local Government (Planning and Development) Act, 1976 and is responsible for the determination of appeals and certain other matters under the Planning and Development Act 2000, as amended, and associated legislation, and determination of applications for strategic infrastructure development including major road and railway cases. It is also responsible for dealing with proposals for the compulsory acquisition of land by local authorities and others under various enactments. The Board also has functions to determine appeals under the Local Government (Water Pollution) Acts and the Building Control Acts.

An Bord Pleanála is the Competent Authority for Project of Common Interest under European Regulation No. 347/2013 which deals with trans-European energy infrastructure.

The following sets out the categories of cases which the Board may be required to consider and determine.

Planning Appeals under the Planning and Development Acts

Appeals under **section 37** of the Planning and Development Act 2000, as amended, usually referred to as normal planning appeals, constitute a significant proportion of the work of the Board and account for most of the decisions made by it. These appeals arise from decisions by planning authorities on applications for permission for the development of land (including applications for the retention of structures or the continuance of uses). Appeals fall into four categories, namely:

- First party appeals against decision of planning authorities to refuse permission
- First party appeals against conditions proposed to be attached to permissions by planning authorities
- First party appeals against financial contribution conditions
- Third party appeals, which are normally against decisions of planning authorities to grant permission

In some cases, there may be both first party and third party appeals against a decision of a planning authority.

In addition to the “parties” to an appeal, other persons may make submissions or observations to the Board in relation to an appeal. These persons are referred to as “observers”.

Other Appeals under the Planning and Development Act 2000

Section 44(6)	Appeal against the revocation or modification of a planning permission.
Section 45(3)	Appeal against the acquisition of land for open space.
Section 46(6)	Appeal against the removal or alteration of a structure or the discontinuance of a use.
Section 88(5)	Appeal against a notice requiring measures to be taken relating to a structure or other land in an area of Special Planning Control.
Section 169(6)	Appeal against the making of a planning scheme in a strategic development zone (SDZ).
Section 170A	Request for an amendment to a planning scheme in a strategic development zone.
Section 171(2)	Appeal against the revocation of a planning scheme in a strategic development zone (SDZ).
Section 182(4)	Appeal by a local authority against the refusal of consent by an owner / occupier to lay cables, wires and pipelines on his / her property.
Section 207(5)	Appeal against the creation of a public right of way.
Section 254(6)	Appeal in relation to licensing an appliance, apparatus, structure, cable or other matter on a public road.
Section 261(9)	Appeal in relation to the imposition, restating, addition, or modification of conditions of certain quarries.

Referrals under the Planning and Development Acts

Referrals under the Planning and Development Acts, as amended, – referrals deal with certain planning matters which can be referred to the Board for formal adjudication usually following initial consideration of the matter by a planning authority.

Referrals under the Planning and Development Acts	
Section 5 (3)(a)	Referral of a declaration by a planning authority in relation to a question as to what is or is not development or exempted development.
Section 5(3)(b)	Referral where a planning authority fails to issue a declaration within 4 weeks of the due date of a question in relation to what is or is not development or exempted development.
Section 5(4)	Referral by a planning authority of a question as to what is or is not development or exempted development.
Section 5(8)	Referral by the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs as to whether an activity requiring the consent of that Minister comprises development which is not exempted development.
Section 34(5)	Referral of points of detail relating to a grant of permission in default of agreement between the planning authority and the developer.
Section 37(5)	Referral of a dispute as to whether an application for permission is for the same development / description as one on appeal.
Section 37(N)	Referral of points of detail relating to a grant of permission under section 37L

Referrals under the Planning and Development Acts

Section 57(8)	Referral for review by the Board by a person to whom a declaration under subsection 57(3) or a declaration reviewed under subsection 57(7) has been issued by a planning authority relating to a protected or proposed protected structure.
Section 96(5)	Referral of dispute relating to social and affordable housing which may be subject to an agreement between the planning authority and an applicant / or other person with an interest in lands to which an application relates.
Section 193(2)	Referral of a dispute or question as to whether a new structure substantially replaces a demolished or destroyed structure.

Other cases under the Planning and Development Act 2000

Other cases under the Planning and Development Act 2000	
Section 37(6)	Application by an adjoining owner for leave to appeal a decision of a planning authority on a planning application.
Section 146A	Power of the Board to amend any decision made by it for the purposes, inter alia, of correcting any clerical or technical error therein.
Section 172(3)	Request by an applicant / intending applicant for planning permission for exemption from a requirement to prepare an environmental impact statement (EIS) in relation to a planning application.
Section 173(3)	Request by a person to scope an EIS where the person is required to submit an EIS to the Board.
Section 203(2)	Application by a planning authority for confirmation of a special amenity order.

Strategic Infrastructure Development

This category of cases relates to applications for development consent in respect of proposed development which is classified as strategic infrastructure development. The main provisions and definitions relating to this category of development are contained in the Planning and Development (Strategic infrastructure) Act 2006 (S.I. 27 of 2006) which amends the Planning and Development Act 2000 and other Acts. These types of cases involve planning consent applications made directly to An Bord Pleanála and associated applications for compulsory acquisition of land. The process involves mandatory pre-application consultation in certain cases. There are distinct statutory provisions governing different categories of strategic infrastructure development and these are referred to below:

Strategic Infrastructure Development (SID) under the Planning and Development Acts (as amended by the Planning and Development (Strategic Infrastructure) Act 2006)

Category 1: Seventh Schedule SID

Section 37A / 37E	Application for permission for a proposed development specified in the Seventh Schedule which has been determined by the Board to qualify as strategic infrastructure development by reference to the criteria set out in section 37A. The application is made directly to the Board.
Section 37B	Request to open mandatory pre-application consultations with the Board in respect of a Seventh Schedule proposed development.
Section 37D	Request by a prospective applicant to scope an environmental impact statement (EIS) for a proposed Seventh Schedule development which has been deemed strategic infrastructure.

Category 1: Seventh Schedule SID

Section 37G (10)	Referral to the Board for determination of points of detail which were to be agreed between a developer and the planning authority by the terms of a condition attached to a grant of permission (under section 37G) and were not so agreed.
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Category 2: Certain State development requiring environmental impact assessment / appropriate assessment

Section 181A / 181B	Application for approval by a state authority in respect of certain classes of proposed development specified in article 86 of the Planning and Development Regulations 2001 and which require environmental impact assessment or appropriate assessment (e.g. sensitive security and other such proposed development).
Section 181C(1)	Request by a prospective applicant to open mandatory pre-application consultations with the Board in respect of a proposed development covered by section 181A.
Section 181C(3)(a)	Request by a prospective applicant for a determination by the Board of whether a development or proposed development of a class set out in article 86 is likely to have significant effects on the environment and thus require environmental impact assessment or would require an appropriate assessment under the Habitats Directive.
Section 181C(3)(b)	Request by a prospective applicant to scope an environmental impact statement (EIS) or a proposed natura impact statement (NIS) for a proposed development covered by section 181A.

Category 2: Certain State development requiring environmental impact assessment / appropriate assessment

Section 181B(2)	Grant of exemption by the Board in respect of a proposed development covered by section 181A from a requirement to prepare an EIS or an NIS.
Article 123A	Request to the Board to determine whether a proposed sub-threshold State development under section 181 would be likely to have significant effects on the environment thus requiring an EIS and an approval application under section 181A to the Board.
Article 254	Application to determine whether a proposed State development under section 181 would be likely to have a significant effect on a European site thus requiring appropriate assessment and an approval application under section 181A to the Board.

Category 3: Electricity Transmission Strategic Infrastructure Development

Section 182A	Application for approval of proposed development comprising of or for the purposes of electricity transmission as defined in sub-section (9) of section 182A.
Section 182B(2)	Grant of exemption by the Board in respect of a proposed development covered by section 182A from a requirement to prepare an EIS.
Section 182E(1)	Request by a prospective applicant to open mandatory pre-application consultations with the Board in respect of a proposed development covered by section 182A.
Section 182E(3)	Request by a prospective applicant to scope an EIS for a proposed development covered by section 182A.

Category 4: Strategic Gas Infrastructure Development

Section 182C	Application for approval of proposed strategic gas infrastructure development as defined in section 2(1) of the Planning and Development Act 2000 (as inserted by section 6 of the Planning and Development (Strategic Infrastructure) Act 2006).
Section 182D(2)	Grant of exemption by the Board in respect of a proposed development covered by section 182C from a requirement to prepare an EIS.
Section 182E(1)	Request by a prospective applicant to open mandatory pre-application consultations with the Board in respect of a proposed development covered by section 182C.
Section 182E(3)	Request by prospective applicant to scope an EIS for a proposed development covered by section 182C.

Category 5: Local Authority Strategic Infrastructure Development under the Planning and Development Acts

Please note that there are no provisions requiring pre-application consultations in relation to these local authority applications.

Section 175	Application for approval of local authority proposed development requiring environmental impact assessment within the functional area of the relevant local authority (other than road developments).
Section 175(8)	Grant of exemption by the Board in respect of a proposed development covered by Section 175 from a requirement to prepare an EIS.

Category 5: Local Authority Strategic Infrastructure Development under the Planning and Development Acts

Please note that there are no provisions requiring pre-application consultations in relation to these local authority applications.

Article 117 of Planning and Development (Regulations) 2001	Request by a prospective applicant to scope an EIS in respect of a proposed development covered by section 175.
Article 120(3) of Planning and Development (Regulations) 2001	Request to the Board to determine whether a proposed sub-threshold local authority development would be likely to have significant effects on the environment and thus require environmental impact assessment.
Section 226 – Foreshore Development	Application for approval of local authority proposed development which is proposed to be carried out wholly or partly on the foreshore and which requires environmental impact assessment.
Section 175(8)	Grant of exemption by the Board in respect of a proposed development from requirement to prepare an EIS for a proposed development covered by Section 226.
Section 226(6)	Referral by a local authority or the Minister for the Communications, Climate Action and Environment to the Board to determine whether a sub-threshold local authority development proposed to be carried out wholly or partly on the foreshore would be likely to have significant effects on the environment and thus require environmental impact assessment.

Strategic Infrastructure Development under the Roads Acts 1993 to 2015

This generally covers major road proposals by road authorities (including Transport Infrastructure Ireland) including motorways and other road developments which require environmental impact assessment.

Pre-application consultations in relation to a proposed road development application are not mandatory but can be requested by the applicant road authority.

Strategic Infrastructure Development under the Roads Acts 1993 to 2015	
Section 49	Application by a road authority for approval of a motorway scheme, a service area scheme, a bus way scheme, a protected road scheme or a protected road scheme amending an approved protected road scheme.
Section 51	Application by a road authority for approval of a proposed road development.
Section 50(1)(b)	Direction by the Board to a road authority to prepare an environmental impact statement in respect of a proposed sub-threshold road development where the Board considers that the development would be likely to have significant effects on the environment and thus require environmental impact assessment.
Section 50(1)(c)	Referral by a road authority to the Board of a road authority opinion that a sub-threshold proposed road development would be likely to have significant effects on the environment. The Board must determine whether it concurs with the road authority opinion and if it does it shall give a direction under section 50 1 (b) to the road authority to prepare an EIS.

Strategic Infrastructure Development under the Roads Acts 1993 to 2015

Section 50(4)	Request to the Board from a road authority for scoping of an EIS in respect of a proposed road development.
Section 51A	Request by a road authority or Transport Infrastructure Ireland to enter into pre-application consultations in respect of a proposed road development.

Associated Board functions under the National Monuments Acts 1930 to 2004

The National Monuments (Amendment) Act 2004 brought in new provisions relating to procedures where a national monument is discovered during the carrying out of an approved road development and same was not dealt with in the original approval / EIS for the road. The citations relate to new sections of the 1930 Act inserted by the 2004 Act.

Associated Board functions under the National Monuments Acts 1930 to 2004

Section 14B(3)	Determination by the Board as to whether changes to an approved road development necessitated by Ministerial directions relating to a national monument constitute a material alteration to an approved road development.
Section 14B(5)	Decision by the Board following receipt and consideration by it of an EIS covering a change to an approved road development which the Board has determined constitutes a material alteration to the approved road and which is likely to have significant adverse effects on the environment.

Strategic Infrastructure Development under the Transport (Railway Infrastructure) Act 2001

Section 37	Application for a railway order by the National Transport Authority (NTA), Transport Infrastructure Ireland (TII), CIÉ or any other person with the consent of the NTA.
Section 47B	Request by a prospective applicant to open mandatory pre-application consultations in respect of proposed railway works which will be subject to an application for a railway order.
Section 39(3)	Request to scope an EIS for railway works which will be the subject of an application for a railway order.
Section 43(6)	Revocation of a railway order by the Board.

Alterations to approved strategic infrastructure developments (inserted by Planning and Development (Strategic Infrastructure) Act 2006

Section 146B	This is a general provision applicable to strategic infrastructure development and provides for a request to the Board from a person who is carrying out or intending to carry out a strategic infrastructure development to alter the terms of a development which has already been approved.
Section 146C	Decision by the Board on a request for an alteration under section 146B where the Board has directed that an EIS be prepared in respect of the proposed alteration.
Section 146D	Amendment / alteration request in respect of railway works covered by a railway order.

Cases arising from the Planning and Development (Amendment) Act 2010

An Bord Pleanála was given additional functions and responsibilities under various provisions contained in the Planning and Development (Amendment) Act 2010. Some of the relevant provisions of the Act were subsequently amended by the Environmental (Miscellaneous Provisions) Act 2011, the European Union (EIA and Habitats) Regulations 2011, the European Union (EIA and Habitats) (No. 2) Regulations 2011, the European Union (Substitute Consent) Regulations 2011, the European Union (Environmental Impact Assessment and Habitats) Regulations 2015 (numbers 1 and 2).

Section 57 of the Planning and Development (Amendment) Act 2010 inserted 2 additional parts into the Planning and Development Act 2000 (as amended) i.e. Parts XA and XAB. The Board's functions were expanded in both parts. Section 75 of the Planning and Development (Amendment) Act 2011 inserted a new section 261A into the Planning and Development Act 2000 (as amended). This section deals with the control of quarries and it contains additional functions for An Bord Pleanála.

Part XA (inserted by section 57 of the Planning and Development (Amendment) Act 2010) deals with the issue of substitute consent. The concept of substitute consent derives from a European Court of Justice finding to the effect that permission for the retention of development affected by the EU Directive on Environmental Impact Assessment may be granted only in exceptional circumstances.

Cases arising from the Planning and Development (Amendment) Act 2010

Section 177B	A planning authority may direct a person who has carried out development to apply to An Bord Pleanála for substitute consent in circumstances where it becomes aware of a court decision setting aside an existing planning permission in a case involving Environmental Impact Assessment, a determination as to whether or not EIA is required or a requirement for Appropriate Assessment under the EU Habitats Directive.
Section 177C	A person who has carried out development or an owner or occupier of land where development has been carried out in any case type referred to in the previous paragraph may apply to the Board for leave to apply for substitute consent where the person considers that the permission may be flawed or the permission has been set aside by a court.
Section 177C	A person who has carried out development or the owner or occupier of the land, in any of the case types referred to in the note on section 177B, may apply to An Bord Pleanála for leave to apply for substitute consent where the person considers that exceptional circumstances arise which would justify such an application.

Applications for substitute consent are made directly to An Bord Pleanála under section 177E of the Planning and Development Acts.

Part XAB of the Planning and Development Act 2000 as inserted by section 57 of the Planning and Development (Amendment) Act 2010 deals with the issue of appropriate assessment where such is required under the EU Habitats Directive. (Council Directive 92/43/EEC of 21st May 1992 (as amended)).

Part XAB requires An Bord Pleanála to screen proposed developments for which applications are made to the Board or which are the subject of an appeal to determine if appropriate assessment is required and to carry out the assessment where relevant.

Applications for substitute consent are made directly to An Bord Pleanála under section 177E of the Planning and Development Acts.	
Section 177AE	Local authorities are required to make an application to An Bord Pleanála for any proposed development in their functional area, or on the foreshore, where an appropriate assessment under the Habitats Directive is required.
Section 181A	Amendments to the section require a state authority to make an application to An Bord Pleanála for any development prescribed under section 181 where appropriate assessment is required. (The section previously applied only where environment impact assessment was required).
Article 250 (Planning and Development Regulations 2001 -as amended)	Any person may make an application to An Bord Pleanála to determine whether or not development proposed by a local authority requires the carrying out of appropriate assessment. In the event of the Board determining that appropriate assessment is required an application must be made to the Board under section 177AE of the Planning and Development Act 2000 as amended.

Section 261A of the Planning and Development Act 2000 as inserted by section 75 of the Planning and Development (Amendment) Act 2010 contains additional controls on quarry operations. An Bord Pleanála has been assigned additional functions under the section.

**Subsections 261A
(3), (4), (5) & (6)**

Persons served with notices by the planning authority or persons given copies of the notices, as required by the section, may apply to An Bord Pleanála for a review of various decisions and determinations of planning authorities relating to the legal status of quarries vis-à-vis the EU Environmental Impact Assessment and Habitats Directives. Applications for **review** are made under subsection (6) and this subsection sets out the details of matters which may be reviewed and the procedure for review. (The notices in question would be served on the owners and/or operators of quarries and would either require the owners/operators to apply to An Bord Pleanála for substitute consent or would inform them that the planning authority intended to take enforcement action requiring the cessation of the operation of the quarry). In the event of the owners or operators of any quarry being required to make an application for substitute consent the application must be made to An Bord Pleanála under Part XA and section 177E.

Further amendments made to the Planning and Development Acts, as amended, in relation to quarry developments now also provide for the following quarry applications.

Subsection 261A(20)	Leave to apply for substitute consent for certain quarry developments which could not avail of the original section 261A process (as inserted by Regulation 8 of the European Union (EIA and Habitats) (No. 2) Regulations 2015).
Section 37L	Direct application for permission to An Bord Pleanála for proposed future quarry development on a quarry site that is subject to requirement for a substitute consent application for past quarrying as inserted by Regulation 4 of the European Union (EIA and Habitats) Regulations 2015.

Compulsory Acquisition of Land Cases (section 214 of Planning and Development Acts)

The Board's involvement as the deciding authority in respect of compulsory acquisition of land originated in the 2001 transfer of functions from the Minister to the Board in respect of local authority compulsory acquisition under various enactments.

The Board's functions in respect of compulsory acquisition have since expanded further and now include all of the following types of cases.

Compulsory Acquisition of Land Cases (section 214 of Planning and Development Acts)	
Housing Act 1966 Compulsory Purchase Order (section 76 and Third Schedule)	Application to the Board by a local authority for confirmation of a compulsory purchase order (CPO) (a local authority can activate the CPO process (as set out in the 1966 Act) for any of the purposes under its remit for which it can exercise powers of compulsory acquisition). The CPO is the most common procedure used by local authorities to authorise compulsory acquisition of land.
Derelict Sites Act 1990 (sections 14, 15 and 16)	Application by a local authority to the Board for consent to the compulsory acquisition of a derelict site.
Water Supplies Act 1942 (section 8, 9 and 10)	Application by a sanitary authority to the Board for a provisional order to authorise a proposal to take a supply of water from a source of water.
Local Government (Sanitary Services) Act, 1964 (section 8)	Application by a sanitary authority to the Board for consent to compulsory acquisition of land which is or was a dangerous place.

Compulsory Acquisition of Land Cases (section 214 of Planning and Development Acts)

Public Health (Ireland) Act, 1878 (section 203)	Petition by a sanitary authority to the Board for a provisional order to authorise compulsory acquisition of land.
Planning and Development Act 2000 Section 73	Application by a planning authority to the Board for consent to the compulsory acquisition of a protected structure.
Planning and Development Act 2000 Section 83	Application by a planning authority to the Board for consent to the compulsory acquisition of a structure or other land within an architectural conservation area.
Gas Act 1976 Section 32 (section 215A of the Planning and Development Act 2000 as amended)	Application to the Board for an acquisition order to authorise any compulsory acquisition of land or right over land in respect of the construction or operation of a gas pipeline which is a strategic gas infrastructure development.
Gas Act 1976 Section 31 (section 215A of the Planning and Development Act 2000 as amended)	Application to the Board for permission to construct, maintain, repair or replace a gas pipeline which is a strategic gas infrastructure development within approved deviation limits.
Air Navigation and Transport (Amendment) Act 1998 Section 17	Application by the Dublin Airport Authority to the Board for an acquisition order for purposes relating to development of or at State Airports (as set out at Section 18 of the 1998 Act).
Harbours Act 1996 Section 16	Application by a Harbour Company to the Board for an acquisition order to authorise compulsory acquisition of land for harbour related development.

Compulsory acquisition of land cases under various enactments for developments which are classified as strategic infrastructure development.

Any separate compulsory acquisition cases which are for the purpose of facilitating a proposed development which is a strategic infrastructure development are also classified as strategic infrastructure development (see compulsory acquisition cases above). Note that any proposals for compulsory acquisition of land for the purposes of a proposed road scheme (as defined in section 47 of the Roads Act 1993) or railway works the subject of a railway order are incorporated in the relevant road scheme approval application or the relevant railway order application.

Appeals Under Other Acts

Urban Regeneration and Housing Act 2015	
Section 9	Appeal against a planning authority decision to enter a site onto its register of vacant sites by the owner of the site.
Section 11	Appeal against a planning authority decision not to cancel the entry on the register of a vacant site in relation to which it is proposed to apply a charge (vacant site levy) for each year beginning with 2018 after its consideration of the submissions of the owner in relation to the entry on the register.
Section 18	Appeal against a demand for payment of a vacant site levy by the owner of the site.

Building Control Acts 1990 and 2007	
Section 7(1)(a)	Appeal to the Board by an applicant who is dissatisfied with the decision of a building control authority relating to an application for a dispensation from, or relaxation of, any requirement of building regulations.
Section 7(1)(b)	Appeal to the Board by an applicant who is dissatisfied with the decision of a building control authority relating to an application for a fire safety certificate or a revised fire safety certificate.
Section 7(1)(d)	Appeal to the Board by an applicant who is dissatisfied with the decision of a building control authority relating to an application for a regularisation certificate.
Section 7(1)(e)	Appeal to the Board by an applicant who is dissatisfied with the decision of a building control authority relating to an application for a disability access certificate or a revised disability access certificate.

Water Pollution Acts 1977 and 1990

Section 8

Appeal by any person in relation to a grant, refusal, modification or revocation of a licence to discharge effluent to waters.

Section 20

Appeal in relation to a licence to discharge trade effluent to a sewer by-

- An occupier of the premises concerning the revocation or modification of, or attachment of conditions to, the license, or
- A person whose application for the licence is refused.

Air Pollution Act 1987

Section 34

An Bord Pleanála had functions in relation to the determination of appeals made by any person in relation to a grant or refusal of a licence under section 32 or a revised licence under section 33 of the Act to discharge emissions to the atmosphere. These functions were however transferred from An Bord Pleanála to the Environmental Protection Agency by the Environment (Miscellaneous Provisions) Act, 2015 with effect from 31st August, 2015.

An Bord Pleanála therefore no longer has any function in relation to Air Pollution appeals.

Further information can be sought from the [Environmental Protection Agency website](#) or by telephoning Lo-call 1890 33 55 99 or 053 91 60600

Note:

This document does not purport to be a legal interpretation of the relevant statutory provisions. Further details or information relating to the Board's functions can be sought by contacting the Board's offices during office hours.

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