

An Bord Pleanála

CODE OF CONDUCT FOR BOARD MEMBERS, EMPLOYEES AND CERTAIN OTHER PERSONS.

As adopted by An Bord Pleanála on the 8th of June 2011.

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CODE OF CONDUCT FOR BOARD MEMBERS, EMPLOYEES AND CERTAIN OTHER PERSONS

1. INTRODUCTION

General

An Bord Pleanála is an independent administrative body which was established in 1977 under the Local Government (Planning and Development) Act, 1976 and is responsible for the determination of applications for local authority and other strategic infrastructure developments, planning appeals, referrals, compulsory purchase orders, and certain other matters under the Planning and Development Acts, 2000 to 2010. The Board is also responsible for dealing with appeals under the Building Control Acts, 1990 and 2007, the Local Government (Water Pollution) Acts, 1977 and 1990 and the Air Pollution Act, 1987. It also deals with applications for Railway Orders under the Transport (Railway Infrastructure) Act 2001.

Section 150 of the Planning and Development Act, 2000 (Appendix 1) requires that the Board adopt a code of conduct for members and employees. This Code is designed to comply with that legislative requirement. It is the intention that members and employees should adhere not just to the letter of the Code but also to the spirit of the Code in a manner that maintains the highest level of public confidence and trust in the Board and in the independence, impartiality and transparency of its operations.

Board members and employees should also acknowledge their responsibility to be loyal to the organisation. Every Board member and employee should ensure that none of the organisation's resources including staff time is used for personal gain or for activities unconnected with the organisation unless so authorised. Nor should members or staff knowingly gain from any sensitive information which might come into their possession while carrying out their duties.

Section 147 of the Planning and Development Act 2000 requires that Board members and certain employees shall give to the Board a declaration of interest including interests in land or in any business engaged in the development of land. The Board maintains a register which is open for public inspection, of all such interests.

Section 148 of the 2000 Act sets out requirements to be complied with by Board members, employees/consultants etc., in situations where a potential conflict of interest may arise.

Each member of the Board and each person holding a designated position of employment must also ensure his or her compliance with the relevant provisions of the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001.

Appendix No. 1 contains more detailed information on sections 147, 148 and 150 of the Planning and Development Act 2000.

Mission Statement

To play our part as an independent body in ensuring that physical development and major infrastructure projects in Ireland respect the principles of sustainable development and are planned in an efficient, fair, and open manner.

Objectives

1. To fulfil its statutory duty to determine applications, appeals and other matters expeditiously and, in particular, to meet the statutory objective of determining appeals, referrals, compulsory purchase orders, infrastructure project applications and other matters within 18 weeks (strategic target 90%).
2. To determine all matters before it in accordance with:
 - (a) the principles of natural and constitutional justice,
 - (b) the principles of sustainable development, and
 - (c) the proper planning and sustainable development of the area concerned.
3. To deliver a high quality, effective and efficient service through skilled and motivated staff.
4. To carry out its work in an independent manner that embodies the public service ethos of integrity, impartiality and a desire to serve the public interest while giving due consideration to all legitimate viewpoints and interests.
5. To ensure:
 - (a) effective provision and development of the Board's human resources, organisation, accommodation and central support services (with particular emphasis on information technology and staff training),
 - (b) proper management and control of its financial resources, and
 - (c) an effective public information/communications service.
6. To have regard to relevant Government and Ministerial policies and be aware of the concerns of stakeholders.
7. To show the maximum degree of accountability consistent with the quasi-judicial nature of the Board's functions.
8. To ensure that decisions are based on clearly stated considerations and reasons.

2. MEMBERSHIP OF ORGANISATIONS, ASSOCIATIONS AND OTHER BODIES

- 2.1 No Board member, the Chief Officer, a Director of Planning/Director of Corporate Affairs or the Secretary may be a member of a political party.
- 2.2 Where an employee, other than the holder of a position referred to in paragraph 2.1, is or becomes a member of a political party, they must make a declaration to this effect to the Secretary. Furthermore, where such an employee is or becomes an office holder or holder of any other nominated or elected position in a political party or is elected to any public office this must be declared to the Secretary.
- 2.3 Board members and employees may be members of their professional bodies/institutes and/or of a trade union, and participate in the activities of these bodies.
- 2.4 A member or employee's involvement in outside organisations should generally be confined to membership of his/her professional body and membership of clubs, organisations or groups whose aims and objectives and regular activities and programmes are not aimed at influencing policies relating to planning or the environment and/or planning decisions. This restriction does not apply to membership of local residents' associations. Where a question arises as to whether any organisation falls within the scope of this sub-paragraph, the question should be referred to the Chairperson.
- 2.5 A Board member or employee shall not engage in the activities of any organisation which would result in a potential conflict of interest between his/her own interests and the interests of the Board. A member or employee shall not engage in the activities of any outside organisation in a manner which could reasonably be interpreted as compromising his/her potential to carry out his/her duties with the Board in an impartial manner or as compromising the Board in carrying out its functions in an impartial and objective manner.

3. MEMBERSHIP/FINANCIAL INTERESTS IN COMPANIES, PARTNERSHIPS OR OTHER BODIES

- 3.1 Any membership of a pecuniary nature, and any financial interest in Companies, partnerships or other bodies shall be declared and the Board members and employees should follow the procedures set out in paragraphs 13 and 14 in respect of their involvement/membership where there could be, or could be seen to be, a conflict of interest in respect of any particular case.
- 3.2 Legislative requirements under sections 147 and 148 of the Planning and Development Act 2000 and under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 referred to in Part 1 i.e. Introduction must

also be complied with.

4. UNDERTAKING OF WORK DURING AND AFTER MEMBERSHIP/ EMPLOYMENT

- 4.1 Membership of the Board is in a whole-time capacity. No member shall accept emolument for any outside employment, consultancy or advisory service other than with the written consent of the Chairperson.
- 4.2 On leaving office, no Board member should accept employment connected with, act as a consultant or otherwise advise in relation to any case which was with the Board during his/her period of office.
- 4.3 No employee shall accept emolument for any outside employment which may in any way represent or may be reasonably interpreted as representing a conflict of interest on any matters pertaining to the functions undertaken by An Bord Pleanála other than with the written consent of the Chief Officer.
- 4.4 On leaving employment, no employee who is of a class, description or grade prescribed for the purposes of section 147 of the Planning and Development Act, 2000 should accept employment connected with, act as a consultant or otherwise advise in relation to any case which was with the Board during his/her period of employment.

5. ACCEPTANCE OF GIFTS

- 5.1 A member or employee should not accept or obtain, or agree to accept or attempt to obtain from any person or body for himself/herself or for any other person, any gift, invitation, sponsorship, consideration or favour which may be interpreted as an inducement or reward for doing or forbearing to do any act or exert influence in relation to the functions or business of the Board.

6. FINANCIAL EFFICIENCY, EXPENSES CLAIMS AND FRAUD PREVENTION

- 6.1 Board members and employees shall, in carrying out their duties, endeavour to ensure that the best possible use is made of the organisation's financial, environmental and human resources.
- 6.2 Expenses claimed by and paid to Board members or employees must relate only to appropriate business needs of the organisation and should be in accordance with good practice in the public service generally.
- 6.3 The Board shall maintain controls to prevent fraud including adequate procedures to ensure compliance with prescribed procedures in relation to the

claiming of expenses for business travel and all members and employees shall ensure compliance with such controls and procedures.

7. DISCLOSURE OF INFORMATION/PUBLICATION OF OPINIONS/VIEWS

- 7.1 Section 113 of the Planning and Development Act, 2000 prohibits the disclosure of specified information by Board members or employees without the consent of the Board. The section does not apply to information disclosed by the Board (a) to the Minister for the Environment, Community and Local Government, (b) in accordance with the provisions of the Freedom of Information Act, 1997 and (c) in accordance with the European Communities Act, 1972 (Access to Information on the Environment) Regulations, 1998.
- 7.2 Nothing concerning disclosure of information in this Code shall be interpreted as prohibiting, restricting or in any way preventing the disclosure of information in relation to possible fraud, malpractice or irregularities dealt with in the Board's Code on Confidential Disclosures in accordance with the provisions set out in that code.
- 7.3 Board members and employees should not express an opinion to any member of the public relating to any matter which is before the Board, other than the giving of information in relation to procedures and compliance with the statutory objective which it is proper to give.
- 7.4 Information in relation to the following should not be given by any Board member or employee to any party, applicant, observer or other member of the public:-
- the names of the Board member or the Inspector dealing with or likely to be dealing with particular cases,
 - specific information in relation to Board meetings,
 - attendance at future Board meetings,
 - future leave arrangements of Board members,
 - the contents of an Inspector's recommendation/report, or the terms of a Board direction, during the currency of an appeal or referral until they are generally available in accordance with proper procedures.
- 7.5 Any enquiry from the media to a Board member or employee should be directed to the Secretary in the first instance.
- 7.6 Except with the written consent of the Chairperson, no Board member or employee may
- (i) make a statement or give an interview to the media about the performance of the functions of the Board,

(ii) prepare for publication, publish or otherwise cause or permit to be published or broadcast by radio or television or other media any matter relating to the performance of the functions of the Board,

(iii) deliver a paper about the performance of the functions of the Board,

Subparagraphs (i) to (iii) above shall not apply to office holders of professional bodies for the period of their offices.

7.7 A Board member or employee must not allow a situation to arise where there is a conflict or potential conflict with his/her official duties. A Board member or employee shall not publish or publicly express personal views or opinions which could reasonably be interpreted as compromising his/her ability to carry out his/her official duties with the Board in an impartial manner or as compromising the Board in carrying out its functions in an impartial and objective manner.

7.8 Board members should not retain documentation obtained during their terms as members and should return all such documentation to the Secretary or otherwise indicate to the Secretary that all such documentation has been disposed of in an appropriate manner. In the event that former Board members require access to papers from their time on the Board this can be facilitated.

8. PUBLIC PROCUREMENT/FAIRNESS IN BUSINESS DEALINGS

8.1 All purchasing of goods/services shall be done in accordance with An Bord Pleanála Public Procurement Guidelines. Board members and employees must be conscious of their responsibilities in relation to commercially sensitive information obtained in relation to tenders and not release such information other than in accordance with established practices.

8.2 The Board is committed to ensuring fairness in all business dealings and all members and employees shall be conscious of this commitment in carrying out their functions and responsibilities.

9. ACCURACY OF INFORMATION

9.1 Employees shall take care to ensure that all accounts, reports or statistics relating to the business of the Board are accurate and are not misleading.

10. WORK/EXTERNAL ENVIRONMENT

- 10.1 The Board places the highest priority on promoting and protecting the health and safety of members and employees. It is committed to compliance with relevant codes and regulations including employment equality and equal status legislation. The Board will operate its business in such a manner so as to ensure that local community concerns in the area of where its offices are located are fully considered and that its practices are in accordance with the sustainability of the environment.

PROPER PROCEDURE

11 CONSIDERATION OF APPEALS/APPLICATIONS

- 11.1 It is essential that proper procedures are followed in the interests of fairness and of natural and constitutional justice.
- 11.2 The Board is obliged by law to ensure that there are no avoidable delays at any stage of the appeal process and it has a statutory objective to determine cases within eighteen weeks or four months, as appropriate.
- 11.3 It is the duty of each Board member/employee -
- (a) not to engage in conduct which is dishonest or which may otherwise bring the standing of the Board into disrepute or which may be prejudicial to the effective performance by the Board of its functions, and
 - (b) to be competent, efficient, courteous and professional in the execution of his/her duties.

12. IMPROPER COMMUNICATIONS

- 12.1 Under section 114 of the 2000 Act it is unlawful for a person to communicate with the Chairperson, an ordinary Board member, an employee, consultant or adviser or other person whose services are availed of by the Board for the purpose of influencing improperly the consideration of matters with which the Board is concerned or a decision of the Board in regard to any such matter. It is the duty of any such person, on receipt of such a communication, not to entertain it further and to bring it to the attention of the Board without delay.

13. PROCEDURES FOR BOARD MEMBERS

- 13.1 Sub-section 148(1) of the Planning and Development Act 2000 as amended sets out legislative requirements relevant to this issue.
- 13.2 Where a Board member has a pecuniary or other beneficial interest in, or which is material to, any application, appeal or other matter which falls to be decided or determined by the Board under any enactment, he/she shall:
- (a) disclose to the Chairperson and to other Board members the nature of his/her interest; he/she shall also notify the Secretary who shall keep a register of all such notifications;
 - (b) not participate in or attend any meeting at which the matter is discussed or determined;
 - (c) neither influence nor seek to influence a decision or any procedure of the Board as regards the matter.
- 13.3 When a member is presenting a file at a Board meeting, every other member present should disclose any possible conflict of interest. Where the Chairperson of the meeting determines that a conflict exists the member in question shall not thereafter participate in or attend any meeting at which the case is discussed or determined.
- 13.4 Where a question arises as to whether or not there is a conflict of interest, (other than the situation as referred to at 13.3) the Chairperson of the Board or in his absence the Deputy Chairperson shall determine the matter.
- 13.5 When a member is presenting a file to the Board, all issues of significance must be raised, including relevant procedural matters and technical points. It is the duty of the member to present the appeal objectively and an appropriate opportunity must be given to other members present to state their views before a decision is made.

14. PROCEDURES FOR EMPLOYEES/OTHERS DEALING WITH CASES

- 14.1 Sub-section 148(5) of the Planning and Development Act 2000 as amended sets out relevant legislative requirements in relation to this issue.
- 14.2 Where an employee of the Board, a fee-per-case Inspector, a consultant or adviser engaged by the Board, or any other person whose services are availed of by the Board has a pecuniary or other beneficial interest in, or which is material to any appeal or other matter which falls to be decided or determined by the Board, he/she shall comply with the following requirements:

- (a) he/she shall neither influence nor seek to influence the processing of the case or the decision of the Board as regards the matter;
 - (b) he/she shall disclose in writing to the Secretary the nature of his/her interest and comply with any directions the Board may give in relation to the matter;
- 14.3 Where it is considered that an employee, fee-per-case Inspector, consultant, adviser or other person whose services are availed of has a pecuniary or other beneficial interest in or which is material to, any appeal, or other matter, this shall be recorded in memo form and the file shall be returned to the Director of Planning, Assistant Director of Planning or other supervisor, as appropriate, for reassignment. The memo should be forwarded by the person in question to the Secretary who will maintain a register of such matters.

15. ASSIGNMENT OF FILES OR OTHER WORK

15.1 Assignment means,

1. assignment of work including a file or other matter to an employee, Inspector, consultant, adviser or other person whose services are availed of by the Board for the preparation of a report/recommendation or other matter connected with a case, or
2. the allocation of a file or other matter to a Board member for consideration or for presentation to the Board.

15.2 A member or other person referred to in 15.1 shall not deal with any case in any capacity on behalf of the Board where she/he previously had any involvement at any time in the matter, either on a personal basis or on behalf of a previous employer or as a member of any other organisation or voluntary body.

15.3 A member or other person referred to in 15.1 shall not knowingly deal with a file or other matter or participate in determining a case concerning his/her own immediate neighbourhood or concerning persons well known on a personal basis to him/her.

15.4 A member or other person referred to at 15.1 shall not knowingly deal with a file relating to a planning authority or a private practice where he/she was previously employed during the previous 2 year period or any voluntary or professional organisation of which the person is or was a member during the previous 2 year period.

15.5 A member or other person referred to in 15.1 shall not knowingly deal with a file or participate in determining any case which relates to or could have any

implications for any land, business or professional interests which are contained in his/her declaration of interests.

- 15.6 Where a doubt exists in relation to any question arising under 15.2, 15.3, 15.4 or 15.5 the matter shall be resolved by the Chairperson (for Board members), the Secretary (for administrative staff) or the Director of Planning (for Inspectorate staff).
- 15.7 A Board member or employee shall not deal with or participate in the decision making process in any case where he/she considers such involvement could give rise to an appearance of objective bias i.e. that such involvement could give rise to a reasonable apprehension that the decision maker or the process leading to the decision might have been biased or that a reasonable observer would apprehend that there had not been an impartial decision making process. In the case of doubt on this issue a member should seek a ruling from the Chairperson and an employee should seek a ruling from the Chief Officer.
- 15.8 Other than the Chairperson, no member or employee shall request that a particular file be assigned to him/her.
- 15.9 Where a file is assigned to a Board member, employee or other person which falls into any of the categories outlined in paragraphs 15.2, 15.3, 15.4, 15.5 or 15.7 the file shall be returned to the assignor for reassignment.

16. CIRCULATION OF CODE OF CONDUCT

- 16.1 The Board will circulate the Code of Conduct to all members and employees and shall also make other relevant persons aware of the code as necessary. All recipients will acknowledge receipt and understanding of same.

APPENDIX 1

STATUTORY REQUIREMENTS

1. CODE OF CONDUCT - SECTION 150 AS RELEVANT TO AN BORD PLEANÁLA

1.1 Section 150 of the Planning and Development Act, 2000 provides that An Bord Pleanála shall adopt a code of conduct for dealing with conflicts of interest and promoting public confidence in the integrity of the conduct of its business.

1.2 A code of conduct shall consist of a written statement setting out the Board's policy on at least the following matters:

1. disclosure of interests and relationships where the interests and relationships are of relevance to the work of the Board;
2. membership of other organisations, associations and bodies, professional or otherwise;
3. membership of, or other financial interests in, companies, partnerships or other bodies;
4. undertaking work, not being work on behalf of the Board, both during and after any period of employment with the Board, whether as a consultant, adviser or otherwise;
5. acceptance of gifts, sponsorship, considerations or favours;
6. disclosure of information concerning matters pertaining to the work of the Board;
7. following of proper procedure in relation to the functions of the Board including the procedures for –
 - the processing of planning appeals and applications,
 - the granting of permission which would materially contravene the development plan, and
 - the disclosure by members and employees of any representations made to such members or employees whether in writing or otherwise in relation to those matters.

1.3 This section shall apply to –

- a member of the Board, and
- an employee of the Board or any other person –
 - whose services are availed of by the Board, and
 - who is of a class, description or grade prescribed for the purposes

of this section.

(see section 3 of this Appendix for details of prescribed persons)

- 1.4 It shall be a condition of appointment of Board members that they shall comply with the code of conduct.

It shall be a condition of employment of persons listed at subsection (3)(c) in the 2000 Act that they shall comply with the code of conduct.

- 1.5 The Board may at any time review a code of conduct adopted under this section and may -

- amend the code of conduct, or
- adopt a new code of conduct.

2. DISCLOSURES OF INTERESTS - RELEVANT STATUTORY PROVISIONS SECTION 147

- 2.1 Section 147(1) of the Planning and Development Act, 2000 states that it shall be the duty of a person to give a declaration of interests signed by him or her for so long as the section applies to them. This section applies to the following persons:

- a member of the Board,
- an employee of the Board or any other person –
 - whose services are availed of by the Board, and
 - who is of a class, description or grade prescribed for the purposes of this section.

- 2.2 Sub-section 147(2) requires that a declaration under the section shall be given at least once a year.

- 2.3 On appointment to the Board, or on commencement of employment, members and employees of the Board or any other person whose services are availed of by the Board, and who is of a class, description or grade prescribed for the purposes of this section are required to complete a statutory declaration containing particulars of every interest to which this section applies of:

1. any estate or interest in any land held by him/her, but excluding any interest consisting of any private home, within the meaning of paragraph 1(4) of the Second Schedule to the Ethics in Public Office Act, 1995;
2. any business of dealing in or developing land in which he/she is engaged or employed and any such business carried on by a company or other body of which he or she, or any nominee of his or hers, is a member;
3. any profession, business or occupation in which he/she is engaged whether on his/her own behalf or otherwise, and which relates to dealing in or developing land. [See s.147(3)(b)]

- 2.4 The register of interests shall be kept at the offices of the Board and shall be available for public inspection during office hours. A declaration shall be given at least once a year or where there is a change regarding interest particulars. The statutory declaration form shall be used for this purpose. [see s.147(a)]
- 2.5 Persons shall not be regarded as having an interest if the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in considering or discussing, or in voting on, any question with respect to any matter arising or coming before the Board or in performing any function in relation to any such matter. [see s.147(6)]
- 2.6 (1) Where a person has a pecuniary or other beneficial interest referred to in subsections (3), (4) or (5) of section 147 of the Planning and Development Act, 2000, by reason only of the beneficial ownership of shares in a company or other body by him/her or by his/her nominee and the total value of those shares does not exceed the lesser of-
1. €13,000 or
 2. one-hundredth part of the total nominal value of either the issued share capital of the company or body or, where that capital is issued in shares of more than one class, the issued share capital of the class or classes of shares in which he or she has an interest,
- the statutory requirements concerning declarations and disclosures do not apply in relation to that interest. [see s.147(7)]
- 2.7 A person who fails to comply with sub-sections (1) and (2) of section 147 or who when purporting to comply with the requirements of sub-section 1 gives particulars which are false or which to his or her knowledge are misleading in a material respect shall be guilty of an offence (see s.147(11))

3. PRESCRIBED PERSONS FOR SECTIONS 147 AND 150

- 3.1 Article 180 of the Planning and Development Regulations, 2001 sets out the class, description or grade or prescribed persons as follows:
- (1) The following classes, descriptions and grades of employees of the Board and other persons are hereby prescribed for the purposes of sections 147 and 150 of the Act –
 - (a) every employee of the Board, except those in an employment for which –
 - (i) the qualifications are not wholly or in part professional or technical, and
 - (ii) the maximum remuneration is less than the maximum remuneration for the office of Executive Officer in the Civil

Service;

(b) (i) every officer of the Minister who, pursuant to arrangement made under section 122(1) of the Act,

(ii) every person employed in a part-time capacity by the Board in accordance with section 120(2) of the Act,

who is engaged in duties relating to appeals, referrals or other matters which fall to be determined by the Board under the Act or any other enactment.

(2) Every person engaged as a consultant or adviser to the Board under section 124 of the Act is hereby prescribed for the purposes of section 150 of the Act.

4. REQUIREMENTS IN RELATION TO PERSONS WHO HAVE CERTAIN BENEFICIAL INTERESTS (SECTION 148)

4.1 Section 148 at sub-sections (1) and (5) sets out requirements for members and employees/consultants who have a financial or other beneficial material interest in any appeal or question before the Board.

4.2 The person with an interest as referred to in 3.1 is required to disclose same if a Board member or if he/she is concerned with the matter as an employee/consultant. If a Board member he/she shall take no part in the discussion or consideration of the matter and shall neither influence or seek to influence the decision of the Board if an employee etc. [See s.148(1) and 148(5)]

4.3 For the purposes of section 148 a person shall be regarded as having a beneficial interest if:

1. he or she or his or her spouse/civil partner, or any nominee of his or her or of his or her spouse/civil partner, is a member of a company or any other body which has a beneficial interest in, or which is material to, a matter referred to in subsections (1) to (5) of section 148 of the Planning Act, 2000,
2. he or she or his or her spouse/civil partner is in partnership with or is in the employment of a person who has a beneficial interest in, or which is material to, such matter,
3. he or she or his or her spouse/civil partner is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such matter relates, or
4. his or her spouse/civil partner has a beneficial interest in, or which is material to, such matter. [See s.148(6)]

- 4.4 Where a person has a beneficial interest referred to in sub-sections (1) or (5) of section 148 by reason only of the beneficial ownership of shares in a company or other body by him/her or by his/her nominee and the total value of those shares does not exceed the lesser of-
1. €13,000 or
 2. one-hundredth part of the total nominal value of either the issued share capital of the company or body or, where that capital is issued in shares of more than one class, the issued share capital of the class or classes of shares in which he or she has an interest,
- sub-sections (1) and (5) referred to shall not have effect in relation to that beneficial interest. [see s.148(8)]
- 4.5 A person who contravenes or fails to comply with a requirement of section 148 shall be guilty of an offence [see s.148(10)]

APPENDIX 2 DEFINITIONS

For convenience, a reference in this Code to an appeal should generally be construed as a reference to an appeal or other matter with which the Board is concerned. A reference in this Code to a function to be discharged by the Chairperson should be construed as a function to be discharged by the Deputy Chairperson in his/her absence.

Member means the Chairperson or an ordinary member of the Board unless specified.

Employee, where used without qualification means a person employed by the Board under a contract of service whether on a full time or part time basis but excludes, except where otherwise stated, persons on career breaks or other special leave arrangements other than sick leave where such leave has extended beyond six months and also includes persons who are engaged by the Board on a secondment or other temporary arrangement.