

Submission to The All-Party Oireachtas
Committee On The Constitution

by

the society of
Chartered 
Surveyors

July 2003

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Executive Summary

The Society of Chartered Surveyors recognises the growing imbalance between the dictates of social justice and the Constitutional right to private property, and the need to recover profits for the community from the zoning and servicing of land. However the Society does not advocate nor see the need for constitutional change.

The Society advocates a combination of development levies to reflect the true added value of such zoning and servicing, combined with an imperative to bring land suitable for development to the open market so as to bring equilibrium, as far as is possible, between supply and demand for development land and for housing.

The Society is of the view that there is a valuable fund of statutory and common law jurisprudence in the area of Compulsory Purchase and does not advocate changes in this area. However, it recognises reluctance on the part of acquiring authorities, to refer to the Property Arbitrator and proposes mechanisms to encourage more such referrals.

1. Introduction

The Society of Chartered Surveyors is pleased to respond to the invitation for written submissions from the All-Party Oireachtas Committee on the Constitution, with regard to Property Rights.

The Society of Chartered Surveyors is an independent professional organisation, whose members are involved in all aspects of the management and development of urban and rural land in Ireland. All Society members are also members of the RICS, Royal Institution of Chartered Surveyors, the world's leading professional body concerned with land, property, construction and the environment.

The Constitutional articles under examination are as follows:

Article 40.3.2°

The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

Article 43

1. ***1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.***
2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.
2. ***1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.***
2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

The content of this submission is focused on five primary issues, of which the Society has specialised professional knowledge and experience, as follows: *Infrastructural Development; the Price of Development Land; House Prices; the Zoning of Land and Compulsory Purchase.*

The Society has, on two previous occasions, made submissions in these matters. Much of what is outlined herein was contained in the response to the Minister of Local Government on the Kenny Report in 1974, when the Society supported the minority report, and again in 1983 to the Oireachtas Committee on Building Land. Copies are attached for your reference.

We have also attached a copy of the SCS Housing Study 2002, prepared by Dr. Brendan Williams, Chartered Surveyor, which the SCS was delighted to fund.

The Society acknowledges a growing imbalance between the needs of social justice and the Constitutional right to private property, in the area of property prices generally and particularly in the areas of house prices and development land 'windfall' capital gains. However, the Society is of the view that addressing these matters does not require an amendment to the Constitution, but rather revised approaches to recovering gains for the community at large. These are complex matters with multi faceted causes and solutions and we provide a synopsis of what we see as the main factors.

By way of context, it must be realised that recent dramatically increasing house prices and development land prices, are equally a consequence of the country's economic success and demographic changes, which together have fuelled demand. It must be realised that such dramatic changes may not reoccur in their present form for some time, but rather time will bring a differing set of conditions and problems. The legislative and other changes now proposed will, of themselves, have a long term unanticipated effect and must not only address current issues, but provide for future needs and circumstances. Without careful study, it is more than possible that solutions to present problems may exacerbate future problems.

We would like to take this opportunity to state that, while we will be focusing our initial comments on the areas outlined above, we would be happy to amplify and clarify any points at issue.

2. Infrastructural Development

The value of a location, and the land within it, is socially and economically created. Infrastructure, broadly defined, is a major component of that enhancement and historically has been paid for by the taxpayer. Therefore, the Society recognises the vital and valuable contributions of publicly provided services to the developments process, and acknowledges that this increased value should be recovered for the community at large.

However, we are of the view that taxation has its limitations and tends to inhibit the supply of land coming to the open market and encourages ever more complex tax avoidance schemes.

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We have long been of the view that the recovery of the true added value of infrastructural schemes is the best, most efficient and fairest, by means of statutory levies, way of recovering that gain for the community.

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The Society endorses the powers and duties on Planning Authorities to prepare, publish and adopt a Development Contribution Scheme for their area under Part III (Section 48) of the Planning and Development Act 2000 and expect they will take the opportunity to fully value both historic and contingent infrastructural investments.

We trust that the introduction of more meaningful development levies will allow Local Authorities to ease the burden of rates on commercial occupiers

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In practical terms, Planning Authorities are the only bodies in a position to provide the bulk of infrastructural services. For many reasons, not least of which is lack of resources, it has to be said that they have historically failed to anticipate and meet the need for such services. This failure has left a backlog of lack of supply and must be acknowledged as one of the main components in the more recent price crises.

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The Society dissents from the widely held view that increased levies will add to the cost of development land. We take the view that the nature of private enterprise is such that house and other developments are generally at the maximum price which the purchasers can afford. Whilst it is acknowledged that increased levies will add to the cost of development of land-banks, it is submitted that such increased cost will quickly be absorbed by reduced land prices by The Society's further recommendations herein.

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However, it is axiomatic that when the demand and supply of development land are in balance and the price of land has therefore stabilised, such levies will remain as an added cost in the production of a house.

It should be noted that part of that gain has been recovered for the community under Part V of the Planning & Development Act 2000, where up to 20% of the development land in any new Planning Applications, must be set aside for social

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and affordable housing (at construction cost and existing use value of the land) should be acknowledged as one step in recovering some added value for the Community.

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We are of the view that the market for development land has largely accommodated the requirements of Part V of the Planning and Development Act 2000 and that this has not been a factor in recent increased house prices.

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Members of the Society have noted, with concern, the tendency of Planning Authorities to adopt apparently ad hoc and arbitrary planning gain for the community in comprehensive developments and it is submitted that this practice should cease when Development Contribution Schemes are adopted.

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The Society regrets that Planning Authorities do not, as a matter of course, publish within their statutory development plans, end-dated programmes for the rollout of infrastructure and thereby allow the market to plan accordingly. It is appreciated that limited financial resources are one of the explanations but it is hoped that increased levies will allow them to publish such plans.

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3. The Price of Development Land

The Society is of the opinion that there is an undersupply of serviced and zoned land coming to the market.

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The Society contends that were there a sufficient supply of zoned and serviced land coming to the market, it would lead to reduced land prices and in turn reduced purchase prices to the end-user.

The price of development land is a residual or contingent function of the ultimate value or revenue from the scheme of development, which it will support. The competitive land market of recent years, with strong demand from both commercial and residential developers, resulted in a continual upward pressure on the under-supplied land market. Where zoned and serviced land is in short supply, it will tend to be dedicated to satisfying the needs of the most financially powerful end-users and the land will be priced accordingly.

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The shortage of serviced and zoned land is not necessarily a lack of such land, but rather that such land is not released on the open market. There is a need for a scheme to encourage the sale of zoned and serviced land on the open market. One approach could be to empower Planning Authorities to issue Certificates of Suitability for Development, such that within, for example five or seven years, if the land is not developed it will be subject to increased taxation.

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The Society would caution that increased levies will not work without some mechanism to force serviced and zoned lands onto the market, with a view to increasing the supply and introducing real competition into land purchase costs.

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Whilst Local Authorities have the power generally to acquire zoned and serviced lands, the Society is of the view that private enterprise will do a more efficient job. However, there is a case to be made that Local Authorities continue to be resourced to acquire land banks years in advance of zoning and servicing and to release those lands according to the needs of the market.

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4. House Prices

House Prices are fundamentally a function of the balance between supply and demand and the economic capacity of purchasers, coupled with market expectation on interest rate predictions

The cost of producing a house includes the construction cost, the cost of the land together with developer's overheads and risk margins. In this regard, the Society is broadly of the view that construction costs are essentially competitive and dramatic short-term reductions are unlikely. The cost of land is determined by the available supply of zoned and serviced land at any point in time relative to demand.

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However, while the Society is of the view that the construction industry is essentially competitive. The overall capacity of the industry is a factor. When the economy is booming, the demand for construction across all sectors of the industry is such that housing construction must compete for limited resources and costs will escalate. Developers may not be able to recover or absorb those increases and the number of house completions must fall short of requirements.

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The demand for houses is complex and multifaceted. Demographics play a big part - an increased number of persons of both childbearing and economically active age, combined with a continuing decline in household sizes, means that high demand levels are likely to continue. However, it should not be assumed that the demographics will remain consistent or that identified trends will continue. Householders must be facilitated in living in housing appropriate to their needs. In particular trading down and single or two-person accommodation must be a component in any solution.

The Society takes this opportunity to once again condemn the punitive 9% stamp duty on house purchases and trust that with the relative reduction or increased affordability of housing, that the rate can be brought down to nominal levels. The high rate of stamp duty inhibits essential mobility within the housing market, such that it is all too common to find single occupiers in family houses.

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The Society supports the continuing subsidisation of the first time buyer but regrets that the historic approach to such subsidies in times of severe undersupply, often did no more than facilitate increased house prices.

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5. The Zoning of Land

Zoning or rezoning is a vital part of our expanding urban population, but there is widely acknowledged public disquiet that it is open to abuse. Whilst acknowledging the importance of public participation in such matters, the Society is of the view that the promotion of such zonings and re-zonings should only be at the instigation of professional planners, subject to the overriding confirmation of elected representatives.

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It is evident that zoned land in itself is insufficient to promote development without adequate infrastructure.

6. Compulsory Purchase

The Society is of the view that there is a valuable fund of statutory and common law jurisprudence in the area of Compulsory Purchase and the Committee should be very slow to recommend interference.

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Whilst the Society values the fund of jurisprudence, it acknowledges the apparently cumbersome public consultation and procurement process but cautions that change in these areas should not undermine the fundamental principals of Compulsory Purchase Compensation.

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The Society notes a marked reluctance to refer disputes regarding compensation to arbitration by the Property Arbitrators. While claimants make an assessment as to whether they can reasonably expect increased compensation from the Property Arbitrator, the reluctance of the acquiring authority is more complex. Experience shows that the acquiring authority is likely in any case, to be fixed with costs on both sides, which can be significant and occasionally seriously disproportionate to the level of compensation. The Society advocates more use of sealed offers and Interim Awards as a matter of routine, such that the claimant can thereby be equally at risk of being liable for costs. The Society questions the need for legal representation above the cost of a solicitor, where there are no substantive legal issues but rather disagreement centres around divergent opinions of Value. The Property Arbitrator is entitled to state whether the matter before him was fit for counsel. There is a case to be made that the Property Arbitrator or an independent Adjudicator should approve all proposed settlements above a certain sum and that claims not settled within a defined period of lodging the claim should automatically be referred to the Property Arbitrator.

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The Society notes that there is significant expertise and specialist management time involved in promoting a Compulsory Purchase Scheme and it should not be assumed that those smaller or single project acquiring authorities have the necessary management and professional expertise in-house. There is a need for a standing central task force to be available to such authorities. Given the adversarial nature of compulsory purchase claims, a lack of expertise on the part an acquiring authority is of special concern.

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The trend towards Design & Build procurements has consequences in compulsory purchase cases. Without full details of the proposed scheme, it is impossible for the claimant to draft a final claim. In those circumstances the Society recommends the suspension of the legal requirement to lodge the claim for compensation within 30 days of a Notice to Treat. Further, it is suggested that acquiring authorities be required to pay on account an independent preliminary assessment of compensation payable with the option for the Claimant to lodge a considered claim on completion of the scheme and to refer this to the Property Arbitrator in the established way.

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We note that some acquiring authorities publish a Code of Practice or Claimants Charter, including contact numbers and names for compulsory acquisition schemes.

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The Society is of the view that many widely publicised, apparently excessive compensation payments, are the result of repeatedly delayed infrastructural scheme delivered long after the need for the scheme is identified such that zoning and urban expansions have long anticipate the scheme. Were schemes implemented on time they would involve the acquisition of un-zoned and otherwise un-serviced lands at a considerably lower cost.

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Furthermore it should be noted that the land compensation element of a compensation settlement is often but a small part of the total figure payable. Other heads of claim such as Disturbance and Injurious Affection are often significant and arise because the acquisition is compulsory.

7. Summary of Recommendations

- The Society of Chartered Surveyors does not advocate a change in the Constitution regarding property rights, nor does it believe such changes are necessary.
- We recognise the growing imbalance between the needs of social justice and the Constitutional right to private property and the need to recover profits from the zoning and servicing of lands for the community at large.
- We are of the opinion that taxation-based solutions are of limited benefit and advocate minimum intervention in the operation of the open market. We consider that the most efficient and fairest way to recover gain for the community is by means of levies on developments. However, increased levies will not work, without some mechanism to force serviced and zoned lands onto the market, with a view to increasing the supply and introducing real competition into land purchase costs.
- House prices are a function of supply and demand and the lack of competition in the market place is fundamental to house prices.
- We acknowledge that demographic and economic trends are a contributing factor to the current land value crisis.
- We recommend that the zoning or rezoning of land be instigated solely by planning professionals.
- We are of the view that there is a valuable fund of statutory and common law jurisprudence in the area of Compulsory Purchase and the Committee should be very slow to recommend changes in this area.

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