

- The compulsory acquisition of land dates back many centuries in Ireland and we have in excess of 70 compulsory acquisition systems in place, with some of the laws governing these systems predating 1922, therefore a genuine question arises as to whether this system should be overhauled and simplified.
- The 1922 Constitution of the Irish Free State contained no general provision on property rights for individuals.
- The 1937 Constitution introduced two separate provisions dealing with property rights for individuals, namely Article 40.3.2 and Article 43. The wording set out in Article 40.3.2 and Article 43 has given rise to a commonly perceived view that property rights are weighted too heavily in favour of the individual and that this has created obstacles for the Oireachtas where it attempts to regulate or control such property rights in the public interest.
- Prior to the enactment of the 1963 Local Government (Planning and Development) Act, planning permission was seldom required to build or demolish buildings.
- Between 1963 and 1971, there was a significant increase in the prices paid for serviced land, that many attribute to the introduction of the 1963 Act which created zoning restrictions and concentrated developments to particular lands.
- In 1973 the Kenny Report was published, this report was commissioned by the Government to consider possible measures for controlling the price of building land in the interests of the common good. The Kenny Report recommended that legislation be introduced to allow local authorities to compulsorily purchase land in specific areas at existing land values plus 25%, the committee felt that such a proposal would not be found to be unconstitutional if legally challenged.
- The 1980's and 1990's gave rise to a significant amount of litigation in the area of property rights – the vast majority of which support the position that property rights are far from absolute and that, in some cases, far reaching interferences with such rights can be justified by reference to the common good.
- In 1995 the Government established a Constitutional Review Group to consider areas in the 1937 Constitution where change was desirable or necessary.
- In 1996 the Review Group published its report which spanned over 700 pages. The Review Group confirmed that the caselaw up to 1996 clarified that the courts have not interpreted Article 43 of the 1937 Constitution in an absolutist fashion, meaning that the caselaw confirms that the courts are already weighing the rights of the individual to the private ownership of goods against the principles of social justice and the common good. Regardless of this acknowledgment, the Review Group proceeded to propose that the 1937 Constitution be amended, and that the proposed amendment would give the Oireachtas extensive powers to regulate, control and extinguish the exercise of property rights.
- In 1996 the Government established an All Party Oireachtas Committee on the Constitution to establish areas of the 1937 Constitution where change was necessary or desirable. The All Party Oireachtas Committee published a report spanning 456 pages in 2004 dealing exclusively with Private Property. The report concluded that a significant majority of constitutional challenges in the area of property rights fail and that the caselaw does not bear out the frequent criticism that the property rights provisions unduly protect the right of property or create undue difficulties for the Oireachtas where it attempts to regulate or control such property rights in the public interest.
- In 2012 the Government established a Convention on the Constitution to consider possible changes to the 1937 Constitution and make recommendations, the final topic covered by the committee in 2014 was whether the 1937 Constitution should include enhanced constitutional protection for economic, social and cultural rights (which would include a

right to housing). The results from the Convention found that 85% of the members favoured amending the 1937 Constitution in order to strengthen ESC Rights.

- In 2016, the Dáil established a Special Committee on Housing and Homelessness to identify how the obstacles that were impeding progress on housing and homelessness could be surmounted; The report of the committee found that *“There was general consensus among legal experts addressing the Committee that there was no particular legal impediment to the extensive use of compulsory purchase orders as a policy instrument in increasing housing supply...”*
- There have been three separate private members bills introduced since 2017 to attempt to bring forth a referendum on a right to housing in Ireland. The only bill that remains live in this regard is a Bill proposed in 2020 titled *“39th amendment of the Constitution (Right to Housing) Bill 2020”*.
- In 2017 the Law Reform Commission published a report on the Compulsory Acquisition of Land and confirmed that the threshold that an authority must pass before it can be said to be achieving the *“common good”* is rather low. The report confirmed that the common good could be seen as any benefit to either an identifiable group (such as in a social housing estate) or a non-identifiable group (such as the building of a motorway). This report also confirmed that the term in the public interest is interpreted extremely broadly, in that the compulsory transfer of property from one private individual to another *“may, depending on the circumstances, constitute a legitimate means for promoting the public interest”*.
- In November 2021, the Government established a Commission on Housing, one of the roles of the Commission being the establishment of a subgroup tasked with examining previous proposal for a referendum on a right to housing, such that they can draft wording for an amendment to the Constitution that can be put to the people in 2023.

Conclusion:

From the caselaw and reports commissioned to date, it is quite clear that the compulsory acquisition of development land to build more houses is not impeded by the current wording in the Constitution.

The question, therefore, is:

in circumstances where the property clauses in the Constitution and the Supreme Courts interpretation of those clauses do not prevent the capping of the price of building land, limiting compensation or rent, reducing land speculation or land hoarding and other reforms of the planning and rezoning process – all of which illustrate that the Oireachtas already enjoy a wide discretion in relation to the restriction or extinguishment of property rights where such restriction is for common good, what is the real agenda behind the proposed referendum on a right to housing?