

# **The All-Party Oireachtas Committee on the Constitution**

## **IPI Submission on Property Rights**

### **Introduction**

In addition to the written submission attached, a delegation from the Council of the Institute made an oral presentation on Tuesday 22nd July 2003. The presentation was followed by a cross examination by the Committee on the ideas set out in the submission. Scheduled for a half hour slot, the presentation and examination took an hour and a half in all.

The delegation from council consisted of Ms Louise McGauran, Vice-President, Ms Rachel Kenny, immediate Past-President, Mr Philip Jones, Hon Secretary & Past-President, and Mr Ciarán M. Tracey, Past-President.

Ms. McGauran introduced the delegation and the Institute to the members of the committee.

Mr. Tracey dealt with issues relating to the first proposal i.e. the separation of ownership rights from development rights.

Mr. Jones batted the questions in relation to the suggested Development Land tax.

Ms. Kenny, appropriately, fielded the questions relating to state ownership of newly zoned lands, which referred heavily to the "Kenny Report"

The form of the submission was set out to correspond with the headings used by the committee itself when it extended its invitation to interested parties and bodies to make submissions.

### **THE SUBMISSION**

#### **1.1. The right to private property, private property and the common good.**

The IPI wishes to put forward three possible alternative systems of dealing with private property.

##### **1. Separation of ownership rights and development rights**

The right to private property as enshrined in article 40.3.2 should be altered so that the right of ownership is separate to the right to develop. This system would be similar to that in place in relation to mineral deposits. At present the right to develop minerals found under a property holder's land rests with the State and not with the landowner, and the state licenses private companies to explore for, and develop, mineral deposits.

In the same way, if the right to develop property were to be vested in the State, the State (through the planning system) could confer its rights on particular property owners to develop that property, in accordance with Development Plans etc. Such a separation would permit the State and its agencies, when purchasing property for infrastructural purposes in the interests of the public good, to pay the value of the property, as it stands and discounting the future potential development value of the property. This would have the effect of substantially reducing the costs of providing such infrastructure. However, the development of property, as permitted under the planning system, would not change in its major essentials.

This separation between property ownership rights and property development rights could also allow the development of a dual property system, whereby the owner of property, having obtained permission to develop it, could trade that right to develop to another person, in a similar way to the sale by a dairy farmer of a milk quota to another farmer, while retaining his property. Hence planning permission would not, as it currently does, enure to the benefit of a particular property but could be bought and sold.

This system would also be similar to that which is operated in some states of North America whereby development rights can be purchased or traded.

##### **2. Development Land Tax**

Provision should be made for a Development Land Tax applied when there is any transfer of ownership following a change in zoning. A rate of 80% would apply if the land was not developed in five years, 75% if not developed in four years and so on on a sliding scale. The entirety of the tax would be paid, not to central government, but directly to the local authority in whose jurisdiction the land is located. The tax would be ring

fenced for infrastructure, public transport schools, parks, amenity provision and the compulsory purchase of roads etc.

### 3. State ownership of newly zoned land

An alternative approach would be for the state to be in a position to CPO all newly zoned land at agricultural values plus injurious affection (current use value plus 25%). The State would then sell off large parts at full development value to developers and use the profit to fund social and physical infrastructure for the community. This idea would be similar to that used for the post war new towns in England and also similar to the approach as outlined in the Kenny report.

## 1.2 Compulsory Purchase

### 1. Operation of CPO under a system of separation of ownership rights and development rights

If the system outlined in one above were implemented, the system for payment of compensation for compulsory purchase of land would be altered. At present compensation is based on the value of land in an artificial world i.e. Value to be compensated is based on the land being prime development land and any planning controls on the land are disregarded.

Under a system of transferable development rights and a climate of two markets a landowner would not be compensated for the potential development value of the land as the development value would rest with the state. Only the ownership would rest with the owner. Compensation would only be given to the landowner for injurious effect – i.e. if the proposed development on the lands to be compulsory purchased would have an adverse effect on the landowner.

### 2. CPO under a system of Development Land Tax

If a system existed whereby a development land tax applied, local Authorities would be in a position to buy land and obtain the tax back. In instances where Local Authorities purchased land the 80% tax would automatically go to the Local Authority thus effectively ensuring that they were purchasing the land for 20% of the value allowing the remainder to benefit the community.

### 3. CPO under State ownership of newly zoned land

Under the system proposed in point three above the state would purchase newly zoned land at a current use value plus 25%. This figure would be below the values currently paid for such land and would vastly reduce the amount paid in the CPO process at present.

## 1.3 The zoning of Land

### Process

Zoning of land occurs through the Development Plan process and is governed by the Planning and Development Act 2000. Under section 10 (2) (a) a Development Plan must contain objectives in relation to the zoning of land. Under section 11 (4) (d) the elected members of a planning authority may issue directions to the manager of a local authority regarding the preparation of any draft development plan. Experience has shown that many of these directions relate to the zoning of land. The manager then prepares a draft plan, which is considered by the elected members. Prior to public display this managers draft plan may be amended and then becomes the elected members draft plan. Experience has indicated that amendments also often relate to zonings.

In accordance with section 10 (1) a Development Plan shall set out an overall strategy for the proper planning and sustainable development of an area. However there is no onus inferred in the Act for elected members to give any planning reason when issuing directions in relation to what to include in the draft plan or when later they may amend the plan. Experience has shown that sometimes neither the planner's advice nor the manager's advice in relation to zoning issues is taken. Yet the elected members do not have to give reasons as to why this advice is not taken.

This practice has led to serious public disquiet about the fairness of the whole planning system, and also a dis-respect for elected representatives as a whole, especially at local authority level, based on the perceived failings of a minority of councillors and parliamentarians. Such a development has obvious detrimental implications for the future of our democratic institutions generally.

A number of improvements in relation to the zoning of land could ensure greater transparency and

accountability, and reduce the public perception of unfairness in the system.

Firstly, Directions given by elected members under section 11 (4) (d) of the Planning and Development Act 2000 which relate to what shall be included in the managers draft development plan should not be given in respect of zoning of land. At this pre draft stage in the development plan preparation process neither the Local Authority planners nor the manager has yet recommended a strategy for the proper planning and sustainable development of the area in question. Therefore it is premature for elected members to give directions in relation to the zoning of specific landholdings. At the draft and amended draft stages of the development plan process elected members should not be permitted to give directions in relation to the zoning of particular land holdings unless the direction is in response to a submission made in respect of same. Any direction must include reasons to explain how the direction accords with the proper planning and sustainable development of the area.

Secondly, where a county plan (or indeed a local area plan) is being reviewed, and changes are sought in zoning or in policies for development, all submissions to the draft plan or amended draft plan (whether they be from landowners, builders or residents and community groups) should be heard in the first instance, in public open session, by an independent inspector. This inspector would have to have regard to the views of the Local Authority planners on these submissions. This inspector, who might be appointed by the Department or by An Bord Pleanála, would then report to the councillors, in a written public report, on the proposed rezoning or other changes and on their acceptability from the point of view of proper planning and sustainable development. To preserve local democracy, it would still be for the councillors to make the Plan, but they should be required to state their reasons for doing so, and in a public forum. If they went against this outside, objective and public advice, the electorate would be entitled to draw their own conclusions.

Thirdly, to avoid the problems which have become evident, where zoning decisions are made by a simple majority of councillors who happen to be there on the day of the vote, all rezonings – all changes in zoning in plans – would have to obtain a three-quarters majority of the Council in order to pass. (This already applies to material contraventions, so members are already used to the process). It would ensure that only those rezonings with a wide measure of political support would get through, and of course would make any future attempts to “influence” such decisions much more difficult.

#### Outcome

The zoning of land under the present system invariably results in a windfall for the landowner with little common good accruing to the public and no benefit to those who have not been zoned (point 1 above has already outlined means of rectifying this situation by learning from the models used in North America and Holland). It is recognized that the development need actually arises from the community demand with the community receiving no gain.

One tool which could ensure community benefit could be the introduction of an additional tax in respect of profits (on capital appreciation) accrued to individuals as a result of lands being zoned for development (in particular agriculture to residential). These taxes would be paid to local government. It is hoped that this would allow planning authorities to engage in a more proactive manner in respect of CPO (being better funded). They could in effect purchase lands that were not being released quickly enough and which were inhibiting sustainable and comprehensive development of an area. The Local Authority could then sell it on the open market to developers.

There is sometimes a perception amongst landowners that only ‘well connected’ developers will be ‘bestowed’ with the benefit of zoning by councilors although this is now changing. A high DLT would remove much of the incentive for developers to speculate on land.

### **1.4 Access to the Countryside**

There is a need for legislation for landowners which would allow people enter land at their own risk – an open countryside policy which puts the responsibility on the individual thus ensuring that farmers and landowners can welcome people onto their land. Such an open countryside policy operates in Sweden where individual can enter land provided that it is not tillage land or within 100 metres of a dwelling unit.

Farmers and landowners are vindicated against injury unless there is evidence of gross negligence.

An alternative system could ensure that payment be made to farmers in respect of the maintenance and upkeep of signposted walks only. Such payment should come from the national exchequer having regard to the benefits accruing to national tourism from a comprehensive system of routes. It would be a matter for local authorities and/or regional tourism organizations to designate such routes.