

# CHAPTER 1

## Introduction

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### Introduction

Housing affects everyone. Housing as a home reflects personal and household memories, as well as providing the base for living. Today, almost everyone in Ireland holds a view on housing, often strongly felt and imbued with a wide and varied range of experiences.<sup>1</sup> These perspectives vary from the personal attachment and uniqueness of their homes, to the role of housing in the collapse of the economy or corruption of some politicians, issues of security, interest rates and taxes on homes. Housing informs much personal and family related discourse, as well as providing a focus for consumer advertising and spending. It is often the defining feature of status in society, while identity and opportunities are shaped by housing circumstances. In Ireland, spatial distance in housing location signifies social distance. This is illustrated in the socially and economically segregated “townships” or suburban social housing estates, on the edge of almost every town and city. However, beyond the obvious and personalized approaches and associated media comment concerning the visible deficiencies in the Irish housing system, it is clear that more comprehensive studies are needed today. **1-01**

Housing in Ireland is also big business. It can dominate the economy and is driven by global as well as national institutions, particularly in housing finance. Housing related work accounts for a significant (if diminishing) level of the business of lawyers. As the main asset and central repository of wealth, as a centre of security, home-life and consumption, housing forms the focus for many branches of law, perhaps even emerging as a new discipline. The housing base of land, succession, finance, family and other areas of law is becoming increasingly obvious. Indeed, far-reaching legislative reforms in the Land and Conveyancing Law Reform Act 2009 were inspired by proposals for savings to house purchasers. Yet, the public, political and legal discourse on housing remains ensnared within the free market versus State provision dichotomy. Echoes of earlier times still resonate in this debate, when the Irish State could adopt discretionary or principles based regulation, and actually decide on the level of annual housing related spending. Contemporary State housing policy reports based on the National Economic and Social (NES) “vision of society” documents grapple with such nebulous concepts as **1-02**

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<sup>1</sup> Housing is treated in the holistic sense in this book, covering all types of living accommodation, whether permanent or temporary, fixed or movable.

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“social inclusion” and the more cosmetic “sustainable communities.” But these hardly impact on the underlying market-based corpus of housing and property law, which is supplemented by occasional enabling legislation and a multiplicity of statutory instruments.

**1-03** However, there is a somewhat debilitating dissonance between housing law, rights and policy within the Irish housing system. The three elements of the apparatus of the State, the executive, legislature and judiciary, offer dissonant treatment to the housing system, acting in ways which are often highly contradictory. This is clearly visible by the avoidance of any consideration of constitutional, legislative or curial roles in the development of housing policy, while the courts have marginalised policy considerations as being solely within the remit of the *Oireachtas* and contained within the arid lines of statutes.

**1-04** Curial interpretation of housing-related legislation takes place within the context of a corpus of common law property, land, mortgage, planning and other precedents and legislation drawn from 18th and 19th century principles, occasionally constrained or facilitated by the Constitution and recent enactments reflecting rights for women, families and others. Social housing legislation is dominated by the creation of systems for controlling tenants and encouraging their salvation through subsidised owner-occupation. Significantly, genuine and effective tenant consultation or participation (outside particular projects) is almost non-existent in Ireland, in this era of “inclusion,” “participation” and “partnership” policies.

**1-05** Even such potentially invigorating constitutional concepts as social justice and the common good have been relegated into the arena of policy (held to be reflected in legislation), and the courts, often relying on 18th and 19th century English legal perspectives, tread a cautious path, fearful of entering this unsure and highly contested ground. Aside from specific legislation, housing rights development is largely confined to a prudently delicate examination of the legal liberalist obligations of the State to protect life, liberty and property. The classical liberal doctrine of separation of powers provides justification for such vigilance against any extension of socio-economic rights in the courts.

International common law precedents often inform the boundaries for this approach, so that no new sets of rights are judicially created, although the expansion of this framework within the European Court of Human Rights is leading to the development of valuable jurisprudence in housing law. The development of EU law arising from the Lisbon Treaty which incorporates the EU Charter of Fundamental Rights may well circumvent some of these historical, political and conceptual barriers.

**1-06** The significance of social housing is rising immeasurably within the financial rescue regime created by National Asset Management Agency Act 2009 and the collapse of the normative owner-occupier housing market. However, traditional notions of Irish Catholic, nationalist or

republican communitarianism and concern for the poor have been now displaced in favour of market oriented philosophies. Indeed, the Housing (Miscellaneous Provisions) Act 2009 creates a scheme whereby the Irish State adopted the role of the ultimate sub-prime lender, as the government of the day sought to match the fervour of mortgage lenders, estate agents and developers in promoting the market as the overarching principle of Irish housing policy.

While the housing system in Ireland displays all the signs of a lengthy period of atrophy following the crash of the market and the mortgage system, it is now an appropriate time to advance this examination from the perspective of law, rights and policy. Of course, housing as property, as a market commodity, or as an investment, constitute the dominant legal, social and political paradigms. Law and the legal system are part of the machinery of modern neo-liberal or social democratic States, which operate under the liberal pluralist concept of the State. In this context housing law ensures that markets operate, contracts are honoured and State regulations (such as they are) can be enforced. There is an assumption (now widely questioned) that the actions of the various stakeholders in society will ensure that State power is controlled and dispersed, and will act in the interests of the common good. Perhaps the liberal pluralist model, however, has failed to identify the sources and impacts of non-State power within Irish society, and how this could be effectively regulated. **1-07**

Of course, the housing system in modern Ireland incorporates many elements and interacts with many other areas of people's lives, State, economic and social policies. Many legal, statistical, policy, economic and sociological studies and reports on aspects of the system, dealing with specific areas, such as mortgage lending, property law, sustainable development or planning, or focus on social housing. In this context, the role, influence and interaction of law, rights and policy on the housing system are key areas of interest.

### The Irish Housing System

The national housing stock was estimated at 1.934 million units at the end of 2008, representing about 437 units for every 1,000 persons, broadly in line with EU norms.<sup>2</sup> Over one-third of this housing has been built in the past 10 years and almost one-third is made up of one-off housing, i.e., detached housing in open countryside. One-quarter of new homes built in 2008 were apartments, and this housing form now accounts for over 10% of homes. **1-08**

<sup>2</sup> Department of Environment, Heritage and Local Government, *Annual Housing Statistics Bulletin 2008*. Available at: <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/>. These were the most recent available at time of writing.

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**1-09** The Census of Population in 2006 (most recent at time of writing) showed that there were 1,462,296 housing units in the State at the time, of which 216,500 (12%) were vacant and 49,789 (2.8%) were holiday homes. The types of housing where people resided at the time of the 2006 Census show a preponderance of detached houses in Ireland:

- Detached House — 42.6%
- Semi-detached house — 27.1%
- Terraced house — 17.5%
- Flat/apartment in block — 7.5%
- Flat/apartment in converted building — 2%
- Bed-sit — 0.5%
- Caravan or other temporary structure — 0.5%
- Not stated — 2.2%

In terms of housing tenure in Ireland in 2006, there was a significantly high level of owner-occupation (almost 75%), and some 40% of these homes had no outstanding mortgages:

**Table 1. Housing Tenure in 2006<sup>3</sup>**

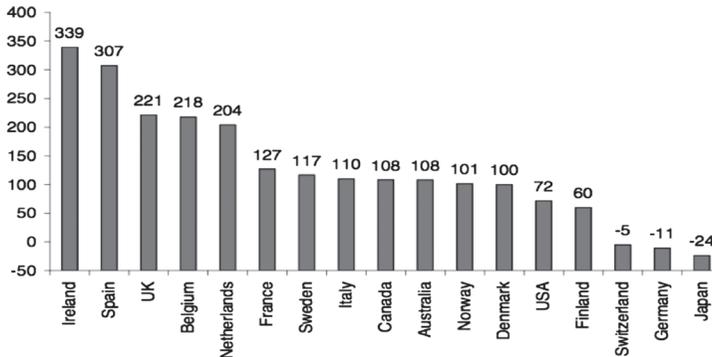
Nature of Housing	Number of Dwellings	%
Owner-occupied with loan/mortgage	569,966	39%
Owner-occupied without loan/mortgage	498,432	34%
Being purchased from Local Authority	23,547	1.6%
Rented from Local Authority	105,509	7.2%
Rented from Voluntary Body	50,480 <sup>4</sup>	3.5%
Private rented - unfurnished	16,621	1.1%
Private rented - furnished	128,696	8.8%
Occupied rent-free	21,701	1.5%
Not stated	47,344	3.2%

In line with the growth in economic activity, the national housing stock grew by some 60% in the period 1992–2007. House prices in Ireland rose dramatically until the peak in early 1997, but had dropped by 35% by mid-2010.<sup>5</sup> Ireland has shown the highest level of accumulated house price increases in the world between 1985 and 2006.

<sup>3</sup> Census 2006, - *Volume 6 - Housing*, p 48. This level of owner-occupation is around the average of the EU 27, and well below the highest levels.

<sup>4</sup> This figure may not be correct since the number of tenancies is more likely to be approximately 30,000 and many private rented sector tenants may have incorrectly ticked this category in the Census. See *Cornerstone*, October 2007, p 5.

<sup>5</sup> Source: Central Bank of Ireland, *Quarterly Bulletin* Q4, 2010, p 23. Household net worth in Ireland increased by 83% between Q1, 2002 and Q4, 2006 reaching a value of €647bn., some 84% of which resulted from appreciation in house valuations and financial assets. By Q1, 2010 net worth had reduced to €453bn. – a 30% decline, with depreciation in house valuations of 35%. Housing as a proportion of total assets fell from 63% to 55% between Q4, 2006 and Q1, 2010. See Cussen, M and Phelan, G, “Irish Households: Assessing the Impact of the Economic Crisis”, Central Bank of Ireland, *Quarterly Bulletin* Q4, 2010, pp 63–73.

**Chart 1. Accumulated real house prices increases (1985–2006)(%)<sup>6</sup>**

There have been many house price booms across the world between 1985 and 2006, and although Ireland did not experience the longest, it has experienced the most intense, as shown in recent European Central Bank (ECB) research: **1–10**

- Australia: 2001 Q1-2005 Q2
- Belgium: 1988 Q3-2001 Q1
- Canada: 1986 Q3-1990 Q1, 2002 Q1-2006 Q4
- Denmark: 1995 Q1-2002 Q2
- Finland: 1985 Q1-1990 Q3, 1997 Q2-2006 Q4
- France: 1988 Q1-1991 Q2, 2000 Q1-2006 Q4
- Germany: 1992 Q1-1994 Q4
- Ireland: 1995 Q4-2004 Q2
- Italy: 1989 Q2-1993 Q4, 2002 Q2-2006 Q4
- Japan: 1986 Q4-1991 Q1
- Netherlands: 1988 Q2-2002 Q3
- Norway: 1985 Q1-1988 Q3, 1995 Q4-2002 Q4, 2004 Q1-2006 Q4
- Spain: 1986 Q4-1992 Q2, 2002 Q1-2006 Q4
- Sweden: 1987 Q4-1991 Q4, 1998 Q1-2006 Q4
- Switzerland: 1986 Q1-1990 Q2, 2002 Q1-2006 Q4
- UK: 1986 Q1-1990 Q3, 1998 Q3-2006 Q2
- US: 2000 Q2-2006 Q4<sup>7</sup>

The effects of the boom in Ireland has been a dramatic rise in affordability problems for new households, resulting in waiting lists for social housing

<sup>6</sup> See Goodhart, C and Hofmann, B, House Prices, “Money, Credit and the Macroeconomy”, *ECB Working Paper Series*, No. 888, April 2008 (Frankfurt, ECB, 2008), p 27.

<sup>7</sup> See Goodhart, C and Hofmann, B, House Prices, “Money, Credit and the Macroeconomy”, *ECB Working Paper Series*, No. 888, April 2008 (Frankfurt, ECB, 2008) p 25. “Episodes of house price booms (1985–2006).” Note: The table reports periods of house price booms. A boom is defined as a consecutive positive deviation of house prices from a smooth Hodrick-Prescott trend (smoothing parameter = 100,000) of more than 5% lasting at least 12 quarters.

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rising cumulatively. While average house prices increased by 13% per annum between 1990 and 2006, house building costs increased only by 4.9% per annum during that period, demonstrating that less than one-third of price increases can be attributed to building cost increases.

**1-11** Housing policy in Ireland in the past decade has largely revolved around a neo-liberal market approach of increasing supply to meet growing demand, a policy which led to a major drop in prices once demand evaporated through the dramatic decline in mortgage lending. This one-dimensional and rather simple approach led to a major oversupply, which, boosted by tax incentives, led to some 621 “ghost estates,” defined as housing estates where more than half of the properties are empty or remain under development, by 2010.<sup>8</sup> However, a government survey of 2,846 uncompleted developments in Summer 2010 estimated that there were only 43,000 dwellings which were in a stage of construction and unoccupied.<sup>9</sup>

**1-12** Significantly, profits from housebuilding have never been researched in Ireland. Land prices, however, have grown exponentially, across the State driving up resulting housing prices. At the higher end of the scale, prices paid for land in Ballsbridge, Dublin, at the height of boom of €57.5m, €95m and €133m per acre, respectively, were based on the speculative value of the many thousands of apartments expected to be built there.<sup>10</sup> The result of this unsustainable housing boom has been a dramatic increase in mortgage lending, resulting in some €143,995 million outstanding mortgage credit at end June 2010.<sup>11</sup> In Ireland, the housing boom has led to a major population increase in practically all cities, towns and villages, and in the countryside. Government figures now show that almost 100,000 new housing units were produced in 2006 at the peak of housing production, with housing in estates

<sup>8</sup> The Maynooth-based National Institute of Regional and Spatial Analysis (NIRSA) pointed out that some 86 of these estates had more than 50 properties. The study used the GeoDirectory, the 2006 Census and the Department of Environment figures based on ESB connections. See *The Irish Times*, 27 January 2010. See Kitchin, *et al*, *A Haunted Landscape: Housing and Ghost Estates in Post-Celtic Ireland* (NUI Maynooth, NIRSA Working Paper 59) July 2010. The NIRSA Report (2010) at p 24 showed that there was a potential oversupply of housing of 120,248 units, equivalent to 3.5 years demand for new homes. In the context of overall housing stock of 1,769,613 units at the time of the 2006 Census this would represent a significant oversupply of 6.8% of housing in the State.

<sup>9</sup> See Department of Environment, Heritage and Local Government, *National Survey of Ongoing Housing Developments: October 2010*. Available at: <http://www.environ.ie/en/DevelopmentandHousing/Housing/News/MainBody,24374.en.htm>.

<sup>10</sup> See McDonald, F, and Sheridan, K, *The Builders*, (Dublin, Penguin, 2008), Chapter 8 - “The Battle of Ballsbridge”. *An Taisce* has suggested that the actions of some senior local authority officials in encouraging developers to lodge applications for high rise buildings were key to the enormous bank loans which fuelled the property bubble, although this is rejected by these officials. See *The Irish Times*, 5 July 2010.

<sup>11</sup> Central Bank of Ireland, *Quarterly Bulletin* Q4, 2010, p 43. This was made up of €111,447m. In mortgages on principal dwellings, €31,294m; on buy-to-let properties, €1,224m; on holiday/second homes and €494m; on other housing finance.

making up more than 50% of this. The dramatic decline has taken largely taken place in estate and apartment development.

**Table 2. New Houses completed by type 2005–2010<sup>12</sup>**

	Individual House	Apartment	Estate/Scheme House	Total
2005	20,362	18,035	42,160	80,557
2006	22,806	19,946	50,267	93,019
2007	19,663	18,691	39,273	77,627
2008	17,386	12,811	21,127	51,324
2009	12,065	5,148	9,207	26,420
2010 (9 months)	5,862	1,468	3,433	10,763

The weakness of the planning system and poor regulation by local authorities are often criticized. There is much condemnation of urban sprawl, poor quality development, lack of proper planning in terms of facilities integrated with new housing and pollution of water supplies. However, it is important to recognize that the legally and politically accepted regulatory system for housing quality involves only sporadic inspections, combined with a self-certification system.

The local authority planning system which was almost overwhelmed in the housing boom, deals with development plans, zoning, planning permissions and planning enforcement. However, the local authority does not control the rate or extent of development once permissions are granted. This is in the hands or power of developers and builders, operating at a frenzied pace in times of peak demand.<sup>13</sup> The State does not control the supply of building land, and in any case it is questionable if the State could have responded effectively to the sudden and growing market demand for housing after 2000, driven as it was by the supply of cheap mortgage credit, borrowed on the back of European Monetary Union low interest rates.

Mortgage lending in Ireland was integrated in the past decade with the flows of the international financial markets, giving a globalised aspect to

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<sup>12</sup> Department of Environment, Heritage and Local Government 2010. These figures are based on ESB connections to new dwellings. Estate/Scheme House is defined as where a connection is provided to two or more houses. Apartments are defined as accommodation where all customer metering for the block is centrally located.

<sup>13</sup> The NIRSA Report (2010) stated that there was a catastrophic failure of the planning system: "... permissions and zoning have been facilitated by the abandonment of basic planning principles by elected representatives on the local and national stage and driven by the demands of local people, developers and speculators, and ambitious, localised growth plans framed within a zero-sum game of potentially being left behind with respect to development. Further, central government not only failed to adequately oversee, regulate and direct local planning, but actively encouraged its excesses through tax incentive schemes and the flaunting of its own principles as set out in the National Spatial Strategy through policies such as decentralization" (p 3).

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this everyday need.<sup>14</sup> Since the adoption of European Monetary Union and the euro, the ECB has taken control of interest rate policy across EU States which adopted the euro as their currency. This blunt, one-size-fits-all instrument of aggregate monetary policy proved ineffective as a control on reckless lending by banks, leading to unsustainable housing booms in the peripheral EU States, and demonstrating the need for a more holistic EU housing policy in the future.<sup>15</sup> Of course, there is now much stricter regulation on bank lending, but the failure to act over the past decade leaves a legacy of unaffordable and overpriced housing in Ireland. Some local authorities have purchased land-banks, but it is a moot point whether this form of public ownership of development sites costs less than private developer land-banks, which have attracted massive public subsidies to lending institutions through NAMA and other means.<sup>16</sup> In any case, while the oversupply of housing is attributed to failures in the planning or regulatory system, the overproduction of housing inherent in the cyclical market system (albeit boosted by cheap credit and sympathetic political actors at local and national level) must also be considered.<sup>17</sup>

**1–15** At another level, Norris and O'Connell have pointed out, that uniquely in Western Europe, the Irish Government continued to fund 100% of the capital costs of social house building over the past decade, and this funding has increased dramatically since the 1990s.<sup>18</sup> Indeed, the scale of expenditure has grown to match the increasing costs of housing supply, as well as the

<sup>14</sup> The primary objective of the ECB's monetary policy is to maintain price stability, although this has not been applied to house prices. See <http://www.ecb.int/home/html/index.en.html>. This variable and often contradictory approach is illustrated in the absence of house prices from the Consumer Price Index (CPI), although mortgage payments are included. See also Kenna, P. (2008), "Globalization and Housing Rights", *Indiana Journal of Global Legal Studies*, Vol. 15, Issue, 2, 397–469.

<sup>15</sup> The President of the European Council Mr Van Rompuy announced following a meeting of the Council in October 2010 that the Heads of State had agreed the creation of a new macro-economic surveillance framework, which would detect imbalances and risks, like housing bubbles across EU States. "I have said before that the Euro has acted as a sleeping pill, especially in good times. We now propose a system of timely awakening. This will enhance confidence". See PCE 248/10. Available at: [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/.../117489.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/.../117489.pdf).

<sup>16</sup> Of course, the proposals in the *Kenny Report on the Price of Building Land* (1973) were that local authorities would acquire land at its agricultural value plus 25%. In the absence of the implementation of that Report by successive governments, local authorities were forced to buy land at market prices or with the minor reductions arising through planning gain.

<sup>17</sup> Lobbying by developers and landowners on local councillors has resulted in 14,191 hectares of zoned serviced land available nationally in Development Plans, with an estimated yield of 462,700 housing units (Annual Housing Statistics Bulletin 2008). This would equate to over seventeen years supply of sites at a rate of output of 26,420 new homes, as in 2009.

<sup>18</sup> See Norris, M and O'Connell, C, "Social Housing Management, Governance and Delivery in Ireland: Ten Years of Reform on Seven Estates", *Housing Studies*, Vol. 25, No. 3, 317–334, May 2010.

new set of State subsidies for homeownership since 2000 (reaching almost quarter of a billion euro in 2008).<sup>19</sup>

**Table 3. Pattern of Public Capital Expenditure on main Housing Constituents (1994–2008) (€m)<sup>20</sup>**

Year	1994	1998	2002	2006	2008
LA Housing	199.5	307.5	977.5	1,142.3	1,454.0
Vol. & Coop Housing	34.9	34.3	171.0	185.5	399.1
Shared Ownership	56.4	63.7	225.3	100.4	74.8
House Purchase and Improvement Loans etc.	24.4	25.3	87.5	42.2	25.2
Private House Grants	33.6	46.9	80.3	40.9	81.3
Affordable Housing (incl. Part V)			60.3	137.7	263.4
Other Housing	5.1	6.3	16.6	25.6	5.4
Total	353.9	484.0	1,618.5	1,674.6	2,303.3

In order to provide some context to this expenditure it is necessary to set out the pattern of mortgage lending over the period for new housing.

**Table 4. Pattern of Loans Paid by All Lenders and Values (new homes) 1999–2008<sup>21</sup>**

Year	1999	2002	2005	2006	2007 <sup>22</sup>	2008
No. of loans	31,359	32,298	53,758	55,737	40,497	24,467
Value €(m)	2,459	3,696	9,750	12,971	11,649	6,454

The economic and financial crisis (which may be largely attributed to a failure to regulate the housing system as a whole) has led to significant changes on State housing policy. A new and historical shift in housing policy in Ireland towards long-term renting of private leased properties from landlords and developers, created by the housing overproduction crisis, involves the diversion of a significant amount of public finance away from social housing production. While government and social partners' adopted the NESC Report *Housing in Ireland: Performance and Policy* (2004), proposing increased levels of social housing, there is now a major swing away from the traditional building of social housing for rent (and State subsidies for individual homeownership), to using social housing

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<sup>19</sup> The level of Rent Supplement paid to tenants in private rented housing who were unable to afford their rents reached over €500m in 2009. Similarly, the numbers claiming Mortgage Interest Supplement rose from 7,647 in 2008 to 14,716 in 2009, with mortgage supplement payment increasing from €27.7m to €60. See Department of Social Protection, *SWS Statistics Annual Report 2009*.

<sup>20</sup> Department of Environment, Heritage and Local Government 2010.

<sup>21</sup> Annual Housing Statistics Bulletins to 2008. There is some inconsistency in these figures as the number of new homes produced annually does not equate with the number of mortgage loans shown in the statistics.

<sup>22</sup> The new data for 2007 and 2008 is compiled by the IBF/PWC Mortgage Profile and the Local Authorities and is not directly comparable to previous years where data was collected by the Department of the Environment, Heritage and Local Government.

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expenditure to support the loans of ailing banks.<sup>23</sup> In 2010, the Minister for Housing pointed out that:

“It is my view that a combination of new building/acquisitions and long-term leasing—which fits squarely into the Government’s stated housing policy objectives—represents the most significant possibility we have for making meaningful inroads into the level of need we are faced with.”<sup>24</sup>

Thus, while Irish State housing policy statements continue to repeat the phrase, “the key objective of Irish housing policy is to enable every household to have available an affordable dwelling of good quality, suited to its needs, in a good environment and, as far as possible, at the tenure of its choice,” it is now accepted that this will not include opportunities for homeownership and long-term tenancies for all, and the current financial crisis is leading to a major revision of this policy ideal.<sup>25</sup>

**1–17** But there is, as yet, no constitutional or legislative focus on housing as a means of enhancing opportunities for personal and social development of all the people, including children, in Ireland. There is little real emphasis on shaping housing law or policy for social integration, or other people-centred values.<sup>26</sup> There are no proposals for any legal provisions to ensure that everyone has the opportunity of living in a good home at a reasonable cost and in a stimulating, secure and ecologically sustainable environment.

Instead, housing as property is the overarching institutional focus of the Irish State, and almost all recent housing policy measures can be viewed as measures to expand property ownership. Property, is of course, not just a set of detached legal relations. It has social, institutional and dominant power aspects. Those who can claim the benefit of State enforced property rights control the allocation of social wealth, as well as the use and enjoyment of resources. While the constitutional State support for property rights may be tempered by the concepts of the common good and social justice, these principles are far removed from the day-to-day control of access to resources in society. Property rights trump all other social and policy claims, and in relation to housing property rights comprise the dominant focus of the law. Little quarter is given to the competing influences of housing and social policy, even where State agencies have accepted the need for fundamental changes in approach. Indeed, it is becoming increasingly clear that practically all Irish housing policy measures (and related measures such as the NAMA

<sup>23</sup> National Economic and Social Council, *Housing in Ireland: Performance and Policy*, (Dublin, NES, 2004).

<sup>24</sup> *The Irish Times*, 9 April 2010.

<sup>25</sup> The Minister for Housing, Mr Finneran stated in 2010 that “a system that provides only one solution to housing need, a house for life for life and succession rights for family members, is not one that current circumstances support”. See *The Irish Times*, 9 April 2010.

<sup>26</sup> There are many references in housing related legislation to the requirement on local authorities to counteract and prevent “undue social segregation” but this is not the same as an obligation to promote an integrated society.

legislation) are governed by the demands of property law (including the property law rights of mortgagees), rather than the rational organization of the housing system.

### Content of this Book

The reader will notice that some areas of law, such as planning, tort, and indeed the jurisprudence of many areas of law receive only a general treatment here. This is due to the nature of the topic and the extensive range of materials which have a bearing on the interaction and dynamics of law, rights and policy in this area. It is suggested that this approach offers a new and particular focus to this interplay (or lack of such) action between law, rights and policy. Neither are all areas of housing law, rights and policy fully addressed here. The issues around regeneration of housing estates and parts of urban areas are not included due to space and time constraints, although this will be addressed in a future publication.<sup>27</sup> Another area which deserves greater consideration and indeed a publication in its own right is that of energy conservation, energy generation and other “green” issues associates with housing.<sup>28</sup> This important area will also be addressed in a future publication and has been omitted here due again to space and time constraints.<sup>29</sup>

Housing Law, Rights and Policy provides a comprehensive reference point, examining all elements of the housing system, as well as setting out and proposing a critique of key issues. Based on an understanding of the nature and dynamics of the housing system, it highlights the range of paradigms and influences upon which it is shaped. The book places within the covers of one publication legislation, housing related case-law, government and other

<sup>27</sup> The two major regeneration projects of Ballymun and Limerick are described in detail on the website of the Department of Environment, Heritage and Local Government: <http://www.environ.ie/en/DevelopmentandHousing/Housing/SocialHousingSupport/RegenerationSchemes>. See also Treadwell Shine, K, & Norris, M, *Regenerating Local Authority Housing Estates: Review of Policy and Practice*, (Dublin, Centre for Housing Research, 2006); Bissett, J, *Regeneration: Public Good or Private Profit?* (Dublin, Tasc/ New Island, 2009). See also website of Tenants First on regeneration at: [http://www.stmichaelsestate.ie/news\\_events/publications\\_eng.html](http://www.stmichaelsestate.ie/news_events/publications_eng.html). One significant issue in the public private partnerships proposals (which were withdrawn by Bernard McNamara when the housing market collapsed) for regeneration of estates in Dublin was the proposal from Corcoran-Mullins-Jennison, a company which had pioneered the revitalization of a major rundown social housing estate at Harbor Point in Boston, Massachusetts. See: <http://www.corcoranjennison.com/>.

<sup>28</sup> The website for Sustainable Energy Ireland at [www.sei.ie](http://www.sei.ie) provides a range of information on these issues. The Building Energy Rating (BER) Certificates required in relation to all rented or sold second-hand homes since 2007 are described on the SEI website. See also Department of the Environment, Heritage and Local Government at: <http://www.environ.ie/en/>.

<sup>29</sup> See, for example, the Eco-village at Cloughjordan Co. Tipperary which is a major development in energy efficiency and housing at <http://www.cloughjordan.ie/ecovillage/index.htm>.

## INTRODUCTION

policy reports, human rights decisions and other relevant materials upon which a new approach to housing law, rights and policy can be developed. It adopts a wider approach than the traditional black letter study of law, placing the relevant legislation and common law within the contemporary contextual background within which it can be fully explained, understood and examined. The book will be of interest to lawyers and law-makers, at national and local level. It will be useful to academics and students, policy-makers and social policy analysts. It should be vital reading for housing and housing related professionals, such as planners, housing managers, estate agents, architects, engineers, surveyors, and public officials

This examination of housing law, rights and policy is divided into a number of chapters. Chapter 2 outlines the development of the Irish housing system from earliest times to the 1970s. Chapter 3 sets out the variety of perspectives which inform debates and policy in relation to the housing system in Ireland. Chapter 4 examines in some detail the concept of housing need, which occupies central importance in the allocation of State housing resources. Chapter 5 considers the particular housing needs of older people, homeless people, people with disabilities and others whose needs are not normally met by market provision. Chapter 6 seeks to illustrate the nature and complexity of the relationship between housing and Irish State finance. Chapter 7 provides a detailed analysis of mortgages, including mortgage law under the Land and Conveyancing Law Reform Act 2009. Chapter 8 sets out the range of housing rights within international and regional law and examines how these are being gradually integrated into Irish law, especially through the ECHR Act 2003. Chapter 9 considers the relationship between private law and housing, while Chapter 10 outlines planning issues, housing standards and building regulations affecting housing. Chapter 11 examines the nature of local authority housing and sets out the law in this area, including developments under the Housing (Miscellaneous Provisions) Act 2009. Private rented housing, with recent delegated legislation in relation to standards is considered in Chapter 12, while Chapter 13 examines the developing legislation in relation to apartments, multi-unit developments and estates. Chapter 14 examines the nature of and law concerning housing associations and co-operatives. Chapter 15 provides an overview of law, rights and policy relating to rural housing, while Chapter 16 addresses the developing EU law relating to housing, including recent cases on State aid. 1-20