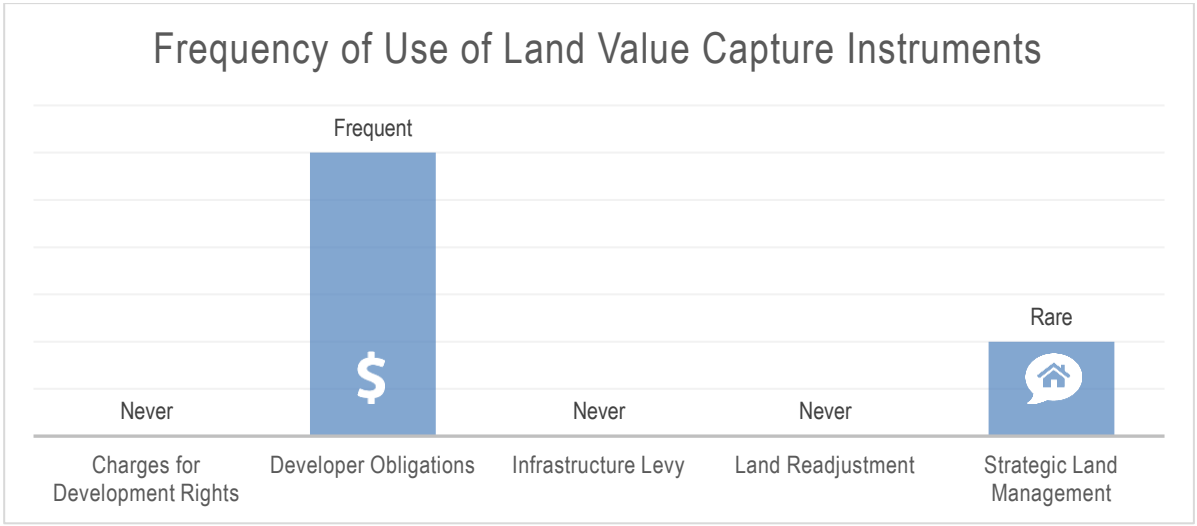
Ireland



Developer obligations ('development contributions' in Ireland) are the only systematically used land value capture instrument. Political resistance has ensured that other forms of land value capture have remained unacceptable. Despite the existence of many local area plans, development plans and an expanding corpus of complicated planning legislation, planning is largely developer led.

Main instruments

Instrument (OECD-Lincoln terminology)	Local name	National legal provision	Implementation	Use
Developer obligations	Development contributions	Sections 48-49 of the *Planning and Development Act*/2000	Local governments and a special purpose body	Frequent
Strategic land management	N/A	*Planning and Development Act*/2000	The national and local governments, a special purpose body and a public company	Rare

Enabling framework

Ireland is a unitary state with two levels of government: the national level and 31 local governments at the county or municipality level (OECD, 2021[1]). In between the two levels, three indirectly elected Regional Assemblies exist.

At the national level, two main organisations have responsibility for planning: the *Department for Housing, Planning, Community and Local Government* and the *Planning Appeals Board* (*An Bord Pleanála*). The Department is responsible for the planning legislation's framing, for devising a *National Planning Framework* and for issuing guidance documents in respect of national planning issues. *An Bord Pleanála* provides an arbitration forum in which any decision made by a planning authority on a planning application can be reviewed at the applicant or another interested party's request. Regional Assemblies coordinate and support strategic planning (OECD, 2017, p. 124[2]).

Local governments are the planning authorities and decide on land use and management. Moreover, in some cases they provide non-statutory guidance, for example on the design of new developments. Every development requires planning permission from the local authority unless it is exempted development or designated as strategic infrastructure at the national level (*ibid*). Local officials have high discretion when issuing planning permits. Various state and semi-state bodies as well as local authorities have land expropriation powers.

According to Article 43.2 of the Constitution, private property rights should be regulated by the principles of social justice. Therefore, the state may limit the use of private property rights in the public interest.

The national government level can create the legal framework for land value capture. Until recently, the government has been reluctant to introduce land value capture measures. In 2021, the government published a *General Scheme Land Value Sharing and Urban Development Zones Bill 2021*. The bill proposes that communities get a greater share of land value increases arising from local planning decisions and public investment and infrastructure.

Developer obligations ('development contributions' in Ireland)

Developers are subject to obligations to obtain approval for new development. The obligations consist of cash or in-kind payments. They are designed to help defray the costs associated with the provision of public infrastructure and services that facilitate private development. The legal basis dates back to 1963 but many changes have been introduced since then. Local governments almost always implement the obligations and receive the revenues. In a minority of cases, a special purpose vehicle is used.

Local governments frequently use the obligations. However, several obstacles hamper their efficacy:

- Developers often resist paying the obligations. In some cases, local governments agree to collect them after developments are completed and sold.
- Occasionally, developers go bankrupt and cannot afford paying the obligations. In such cases, the obligations have to be written off.

- National legislation is not detailed enough for some developer obligations schemes. In such cases, specific legislation has to be drafted to charge the obligations.

- Many local governments do not mobilise the necessary planning and legal expertise to ensure the obligations' maximum efficacy.

- The obligations may have to be returned to developers together with any interest that may have accrued while they were held by the government if the following occur: the government does not provide the public works private development requires as originally planned, does not start them within five years of developers' payment or does not complete them within seven years of developers' payment.

- During a downturn in the economy there is political pressure to waive developer obligations to kick start the construction sector.

Often, the obligations are calculated using a fixed formula, based on the size, type and location of developments as well as the estimated total public costs. If the actual costs differ from the estimated costs, the amount of the obligations may be adjusted. Depending on the developer obligations scheme, developers must pay for local public roads, transport and utilities that will benefit their developments. The payment modalities, for example whether the obligations are paid through a lump sum or instalments, depend on the payment capacity of developers. Conditions are also imposed in relation to affordable housing. Almost no developer is exempt.

If developers must build affordable housing, usually they must do so within their project sites. Occasionally, local governments have accepted affordable units within their territory but outside developers' project sites. However, this is frowned upon as it goes against achieving a social mix.

The following are eligible to rent affordable housing: households eligible for social welfare programmes; households with one or more disabled individuals; households with one or more employed individuals; single parents; or individuals with no eviction or criminal history. Affordable units are comparable to market-rate units in terms of size, design standards and amenities. Approximately 900 affordable units were built in 2018 through developer obligations.

Strategic land management

Strategic land management is used for urban redevelopment, land consolidation, public road and rail projects, and to control urban growth. The national and local governments, a special purpose body and a public company implement it. Local governments and the special purpose body receive the revenues.

Land is bought at market price; transferred between levels of government or public entities; or expropriated (compulsory purchase). The government can buy or expropriate land at the price before the announcement of a public investment or zoning change. This allows recovering the increase in land values public investment or zoning changes generate.

However, the government's different levels as well as public entities lack coordination and resources for land purchases. In addition, land expropriation faces specific challenges:

- There is a predisposition against expropriation at the political and administrative level.

- The expropriating public entities lack qualified personnel to carry out the expropriation process efficiently.
- The current legislation is criticised for being difficult to use and open to court challenge. A study of compulsory purchase (expropriation) law is underway to streamline the process.

There is no limit to the length of land retention. After development, land can be sold at market price to the highest bidder; at a predetermined price to the preferred buyer, especially to encourage industrial development in remote areas; through public tenders that involve criteria beyond the sales price; or it can be transferred to another public entity.

The government also leases its land to generate public revenues and encourage industrial development as well as development with a public purpose, for example the construction of schools or affordable housing.

Vacant land that was zoned for residential development but remained undeveloped was subject to an annual levy to discourage land hoarding and to release land for development in a timely fashion. The levy's imposition started in 2018 at 3% of the land's market value and rose to 7% in 2019. Certain criteria had to be met to charge the levy. Landowners could challenge the levy's imposition initially at the *Planning Appeals Board* (*An Bord Pleanála*) and eventually in court by way of judicial review on a point of law. However, the scheme was abandoned on the grounds that the revenues were not worth the administrative effort.