

# 2023 Review and 2024 Horizon Scan: Real Estate, Critical Infrastructure Developments and Public Law

*Thursday, 25 January 2024*

**KNOWLEDGE  
NETWORK  
SEMINAR**



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# Real Estate (General)

- **Economic backdrop 2023 / 2024**
- **Transactions / Conveyancing practice**
  - **New commercial rates regime**
  - **Conditions of Sale 2023 Edition**
  - **New FDI Screening regime**
- **Case-law developments**



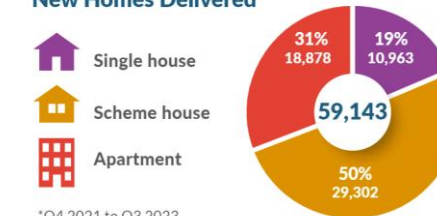
# Housing and Residential Development: 2023

- [Housing for All – progress report Q3 2023 \(14 November 2023\)](#)
- **Public: New schemes and LDA-related developments**
  - **Secure Tenancy Affordable Rental (STAR) investment scheme**
  - **Commencement Part 9 LDA Act; LDA Valuation Regulations; First Section 52 Report**
- **Private Development:**
  - **Incentives: Development Levies Waiver; Revision of Vacant Property Refurbishment Grant**
  - **Taxation measures: including changes to RZLT, VHT and stamp duty rebates**
  - **Regulation – removal of specific design standards for BTR**



## Housing for All - Delivering Homes

New Homes Delivered\*



\*Q4 2021 to Q3 2023



# Housing and Residential Development: 2024



- **Legislation proposed to:**
  - **provide for Land Value Sharing and Urban Development Zones**
  - **provide residential tenants with a right to purchase the dwelling they occupy**
  - **regulate short-term tourist lettings**



# ESG and the Built Environment - Buildings

- **Proposed Recast of Energy Performance of Buildings Directive (“EPBD (recast)”)**
- **Energy Efficiency Directive**
- **Renewable Energy Directive**





# ESG and the Built Environment - EPBD (recast)

- **New buildings: new zero emissions standard**
- **Existing buildings: minimum energy performance standards**
- **EPCs to be standardised across EU**
- **Measures to:**
  - **phase-out of fossil fuels in heating and cooling**
  - **boost sustainable mobility by making provision for pre-cabling, recharging points for electric vehicles and bicycle parking spaces**
  - **require buildings to be solar ready**
  - **ensure MS put in place plans and strategies to facilitate renovation wave**



# ESG and the Built Environment - Broader Developments



- **Impact of increasing ESG regulation for all businesses, sectors and economic activity:**
  - **SFDR and EU Taxonomy Regulation**
  - **CSRD and CSDDD**
  - **Green finance initiatives**
- **TCLP Green Lease clauses:** [here](#)
- **Green leases / contracts require consideration of (1) legal obligations; (2) broader commitments; (3) aligned counterparty; and (4) agreement on cost sharing**



MCCANN FITZGERALD





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# Planning and Environment

## **Wildlife Amendment Act 2023**

By end 2026, a biodiversity action plan with objectives and targets for the conservation and sustainable use of biodiversity, to which public authorities must have regard

## **Planning and Development and Foreshore (Amendment) Act 2022 (Commencement) Order 2023**

Temporary measures to enable the appointment of members, and the efficient discharge of business of, An Bord Pleanála

## **Planning and Development and Foreshore (Amendment) Act 2022 (Commencement) (No. 2) Order 2023**

Temporary exemption for local authorities from the 'Part 8' approval process to construct housing developments on local authority and designated State-owned lands zoned to include residential use

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# Planning and Environment

## **Planning and Development Act 2000 (Exempted Development) Regulations 2023**

For deposit and return scheme “reverse vending machines”

## **Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2023**

For bus stop infrastructure to support the use of public transport, but not shelters

## **Planning and Development Act 2000 (Exempted Development) (No. 3) Regulations 2023**

For small-scale, gas infrastructure to facilitate the safe supply of natural gas to customers.

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# Planning and Environment

## **Planning and Development Act 2000 (Exempted Development) (No. 4) Regulations 2023**

To extend the Class 20F exemption that allows change of use for the purpose of providing facilities and accommodation for international protection applicants

The temporary period for exemption is longer, from 31 December 2024 to 31 December 2028

The use is expanded to include persons displaced by the Russian invasion of Ukraine



<b>Department of Environment, Climate and Communications</b>		
<b>Environment Protection Agency and Waste Management (Amendment) Bill</b>	The purpose of the Bill is to enable the EPA to be more efficient and effective in its determinations by providing a stream-lined approach for decision making and shortening the period for final determinations of the Agency.	Heads in preparation.
<b>Gas Safety (Amendment) Bill</b>	A Bill to provide number of specific amendments to the existing Electricity Regulation Act 1999, focused on ensuring that third party operators of Liquid Petroleum Gas (LPG) networks are fully incorporated into the current Gas Safety Regime.	Heads in preparation.

<b>Department of Housing, Local Government and Heritage</b>		
<b>Electoral (Amendment) (Dáil and European Parliament Constituencies) Bill</b>	To provide for the revision of Dáil and European Parliament constituencies and for the number of members to be elected for such constituencies.	Heads of Bill approved in September 2023.
<b>Planning and Development Bill</b>	To review and replace the Planning and Development Act 2000 with a consolidated Bill improving the clarity and structure of current code.	Draft Bill approved on the 13 December 2022. PLS is complete.
<b>Land Value Sharing Bill</b>	To permit the State to secure a proportion of the uplift in land values resulting from zoning and designation to facilitate provision of infrastructure.	PLS has taken place, awaiting report.
<b>Marine Protected Area Bill</b>	Bill to provide for the designation and effective management of Marine Protected Areas (MPAs) in the Irish maritime area.	PLS report received February 2023.
<b>Residential Tenancies (Right to Purchase) Bill</b>	To allow tenants in rental properties a first right of refusal to purchase a property when it is put forward for sale.	Heads in preparation.

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# Planning and Environment

## Planning and Development Bill 2023

“Policies and guidance will be more consistent throughout all tiers of planning, from national to local. Ministerial guidelines and policy directives will be upgraded to National Planning Statements. These Statements will be approved by Government. It will be mandatory for all plans to be aligned to these Government approved National Planning Policies and Measures and once issued.”

“The lifespan of Development Plans will be extended from six years to ten years and will be more strategic in nature. The cycles of these plans will align to the cycle of Census data availability.”

“Local authorities will also choose from a range of new area-based plans, tailored to different contexts, such as Urban Area Plans for more densely populated areas and Coordinated Area Plans for towns and locations that straddle more than one Local Authority.”

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# Planning and Environment

## Planning and Development Bill 2023

“Increased clarity on the integration of the scope and role of environmental assessments into plan making functions and the consenting process, whilst fully reflecting the wording and intent of relevant EU Environmental Directives.”

A significantly revised corporate structure for An Bord Pleanála, which will be renamed An Coimisiún Pleanála, with a separation of corporate, decision making and governance functions.

The Bill provides a clearer distinction between different categories of consents, making it easier for an applicant to identify which type of application is appropriate to their application.

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# Planning and Environment

## Planning and Development Bill 2023

For Commission processes, timelines are being introduced for appeals as well as the various consents applications made directly to the Commission, including Strategic Infrastructure Developments. The key time periods will range from 18 weeks for appeals of decisions of planning authorities to 48 weeks for strategic infrastructure developments.

A more streamlined process for taking a Judicial Review with clarity on sufficient interest and standing rights for applicants, as well as the introduction of an Environmental Legal Costs Financial Assistance Mechanism to ensure that the costs to applicants taking a Judicial Review will not be prohibitively expensive.



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# Planning and Environment

## Planning and Development Bill 2023

Removal of the leave stage - reducing time spent in court and unnecessary additional legal costs to all parties.

An application for judicial review may only be made on the grounds of challenge raised by the applicant in the statement of grounds filed with their application and sets out limited criteria by which the Court may allow subsequent amendments to that statement of grounds.

Sufficient Interest - all JR applicants must exhaust any available appeal procedures or any other administrative remedy available in respect of the decision or act concerned. For example, an individual must have made a submission to the relevant body (planning authority or Commission) whose decision is at issue in order to later make an application to take a judicial review on that application. ENGOs will still enjoy special status within the legislation.

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# Planning and Environment

## Planning and Development Bill 2023

Residents' Associations - Unincorporated organisations such as Resident's Associations will be able to take Judicial Review Cases in matters that materially affect their neighbourhood, provided:

- They have a Constitution
- They take a vote of their members on whether to proceed with a JR
- Two thirds of those voting agree to proceed with the JR
- The names and addresses of those in favour of the JR are filed with the JR application.

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# Planning and Environment

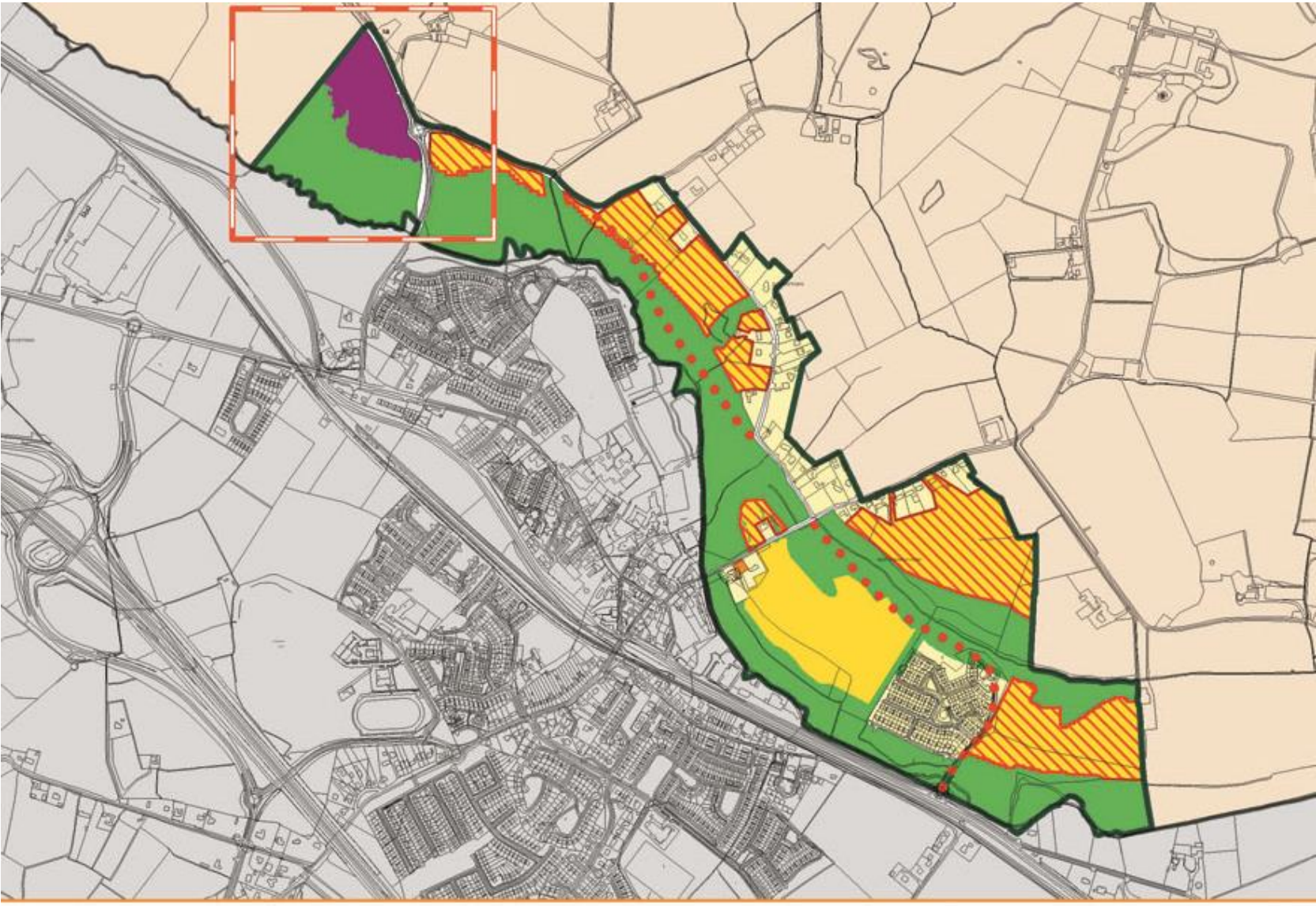
## Planning and Development Bill 2023

“The new Bill provides for a new Environmental Legal Costs Financial Assistance Mechanism to be established. A corresponding Scale of Fees will also be introduced for all planning-related judicial reviews and other Aarhus Convention cases, and each party shall bear its own costs.

Where an applicant is unsuccessful or doesn't receive costs, it will be able to apply to the mechanism for a contribution to costs. The level of contribution will be determined by an assessment and, depending on the applicant's circumstances, could be up to 100% of the applicable scale fees.”



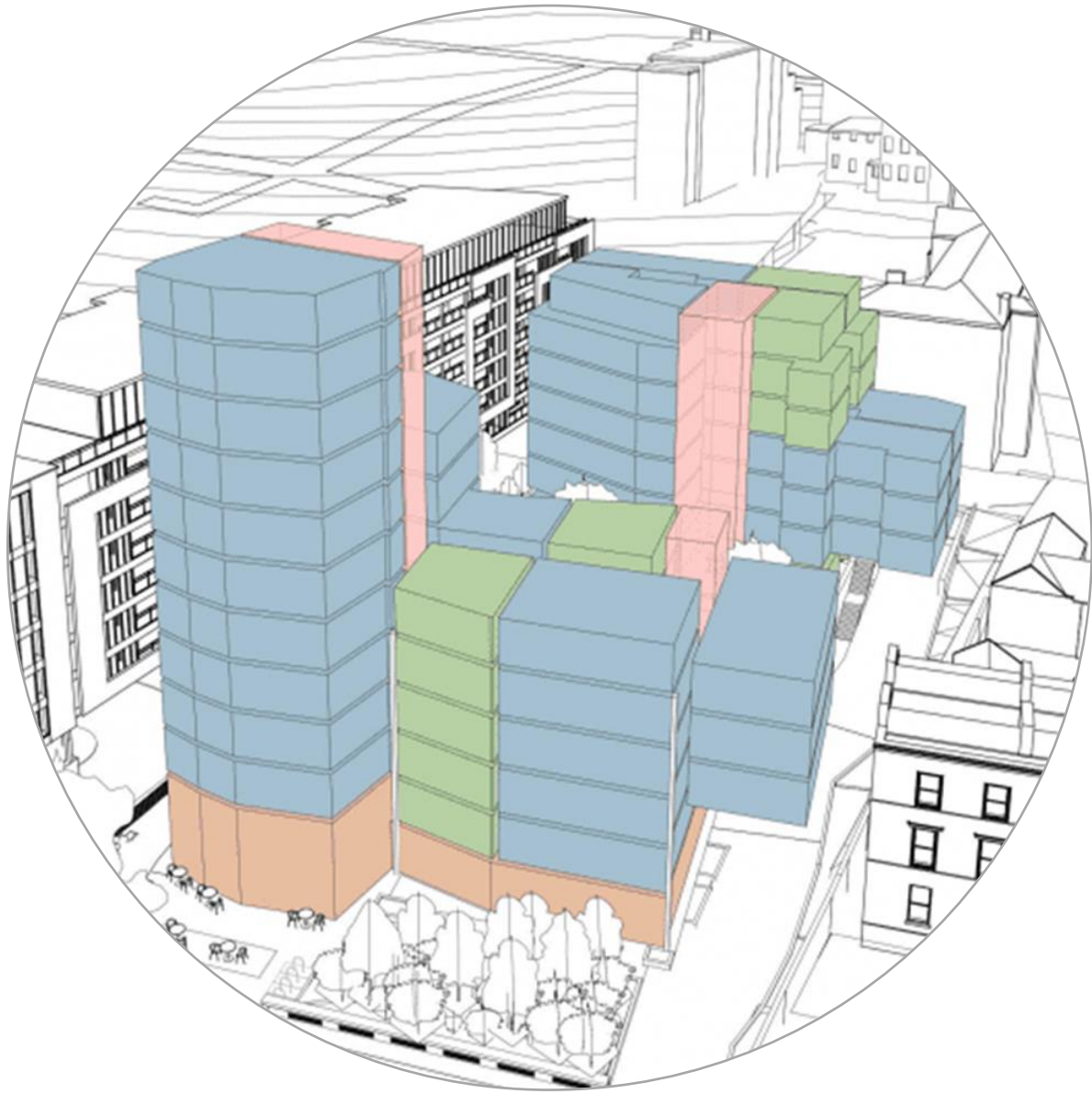














Business

### Wicklow development plan will mean shortage of new homes, say builders

Cairn Homes and Glenveagh Properties challenging proposals which they say are based on out-of-date population data

Expand



Housebuilders Cairn and Glenveagh are challenging the Wicklow county development plan.

Barry O'Halloran  
Thu Oct 27 2022 - 11:28



Two of the Republic's biggest housebuilders are challenging a plan in a case many other local authorities could follow.

Dublin-listed Cairn Homes and Glenveagh Properties have begun judicial review proceedings — where a High Court judge will decide — against Wicklow County Council over its development plan.

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The Bank of the Mater has struck. I hope the drawing doesn't get erased

## Glenveagh, Cairn seek judicial review of Kildare development plan

Proposals would limit new homes in the county to just over 9,100

Expand



Building companies are challenging plans to limit development in Co Kildare. File photograph: Bloomberg

Ciara O'Brien  
Thu Feb 9 2023 - 13:20



Two of Ireland's largest home builders are seeking a judicial review of Kildare County Council's new development plan that would mean the number of homes built in the county cut to just over 9,000 in the next six years.

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# More land needs to be zoned for house building, says O'Brien

IRELAND



Minister for Housing Darragh O'Brien said a review will be based on the latest census data. Photo: PA Images

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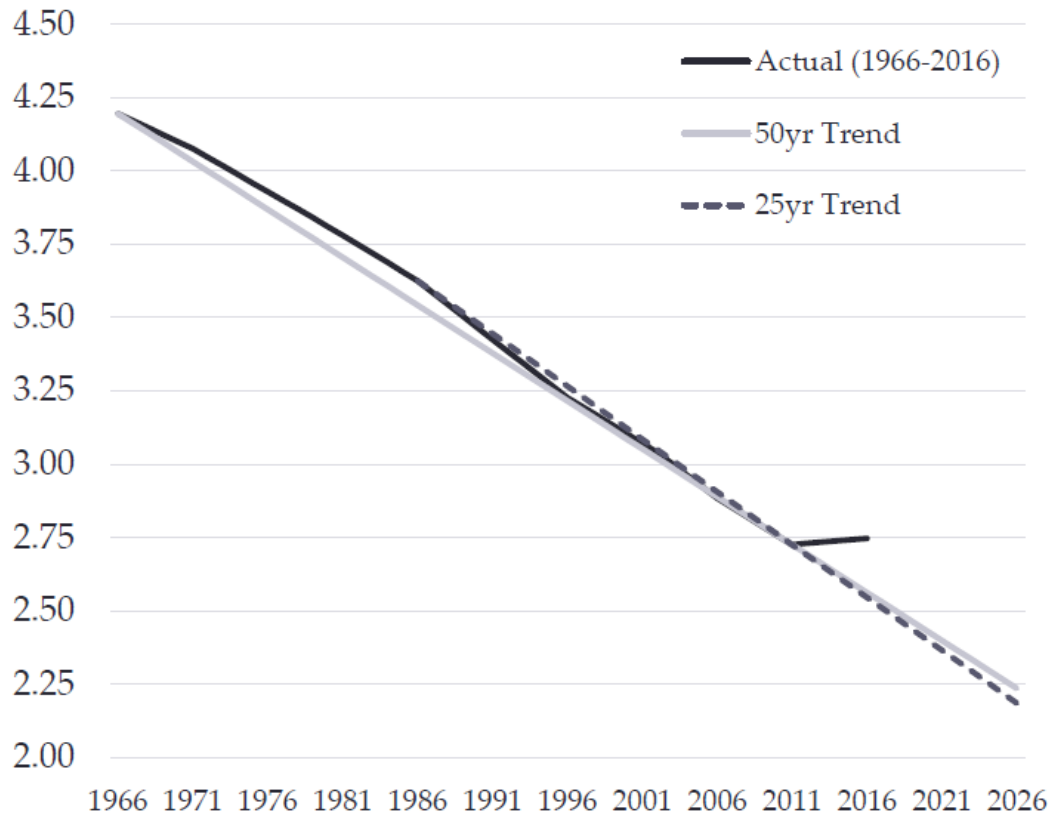
04/10/2022 | 16:21 PM  
MICHELLE DEVANE, PA

More land needs to be zoned as residential for house building, Minister for Housing Darragh O'Brien has said.

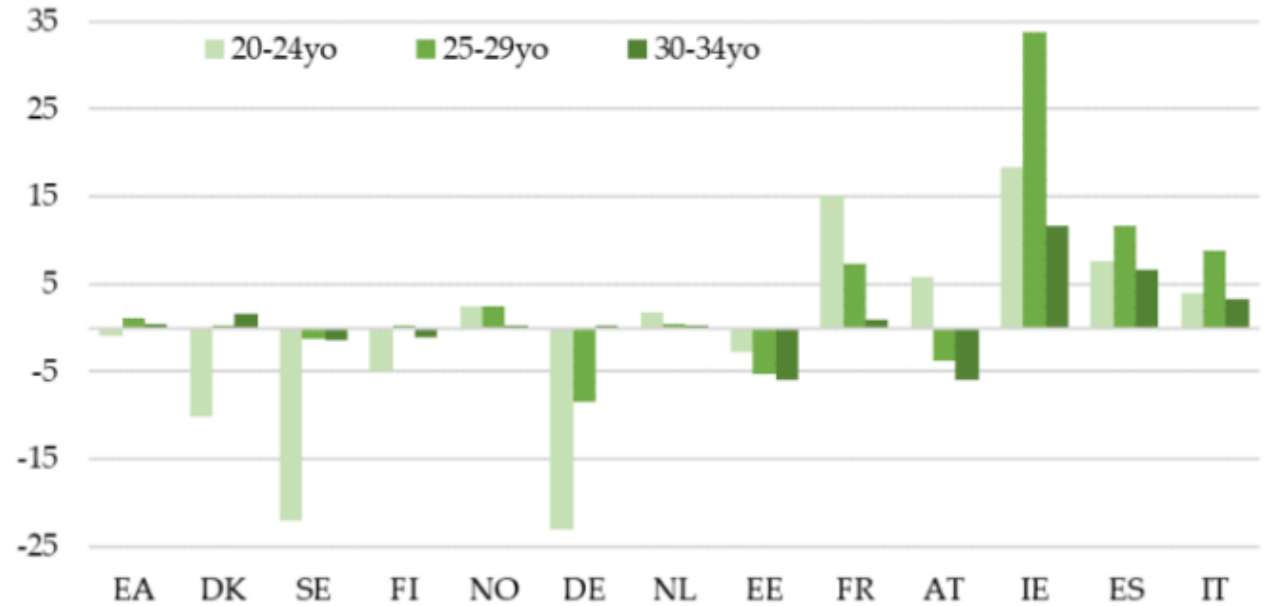
Mr O'Brien said the Government is reviewing the National Planning Framework to assess how much zoned residential land is needed across the country.



Average household size, by year and trend



2012-2022 change in share living in parental home (percentage points)



Source and notes: Author calculations, based on EU SILC. Data for 2012 and 2022 where available (2020 others). EA refers to 'Euro area 18'; other series are member states, sorted left to right by overall share living with parents (20-34). Figures for 30-34 cohort are estimated from 25-29 and 25-34 cohort figures.



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## Planning and Environment

**Case C-721/21 Eco Advocacy**, on mitigation measures at screening for appropriate assessment

**Case C-166/22 Hellfire Massy**, on integration of strict protection for species in the planning consent process

**Case C-9/22 Kerins (Bailey Gibson)**, on non-binding masterplans and use of guidelines in environmental assessment

**Case C-84/22 An Taoiseach v. Commissioner for Environmental Information**, on cabinet confidentiality

**Case C-330/22, Friends of the Irish Environment CLG v. Minister for Agriculture**, fisheries bycatch

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## Planning and Environment

[2023] IEHC 640, **Coillte CGA v. Commissioner for Environmental Information (Wonka)**

[2023] IEHC 40, **Toole v. Minister for Housing (No. 4) (Dublin Array)**

[2023] IEHC 715, **O'Donnell v. An Bord Pleanála (Derogation)**

[2023] IEHC 661, **Waltham Abbey Residents Association v. An Bord Pleanála (Screening for EIA)**

[2022] IESC 42, **Friends of the Irish Environment CLG v. Government of Ireland (Project Ireland)**





# Public Law

## Occupier's liability changes

- *Part 6 Courts and Civil Law (Miscellaneous Provisions) Act 2023*
  - Change in standard of care owed by occupiers to visitors and recreational users / trespassers
  - Introduction of concept of voluntary assumption of risk
  - Commenced on 31 July 2023



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## Public Law

### **GDPR: Case C-300/21 – UI v Österreichische Post AG (“Austrian Post Case”)**

- First jurisprudence at EU level concerning non-material damages under article 82 GDPR

### **Alternative dispute resolution**

- *Sere Holdings Ltd v HSE [2023] IEHC 63*
  - State bodies should consider mediation in every dispute in which it is involved
- State Litigation Principles
  - Published in June 2023
  - State actors to conduct themselves as a “model litigant”. State to consider alternative dispute resolution where possible

# Public Law

## Sanctions: Restrictive Measures in 2023

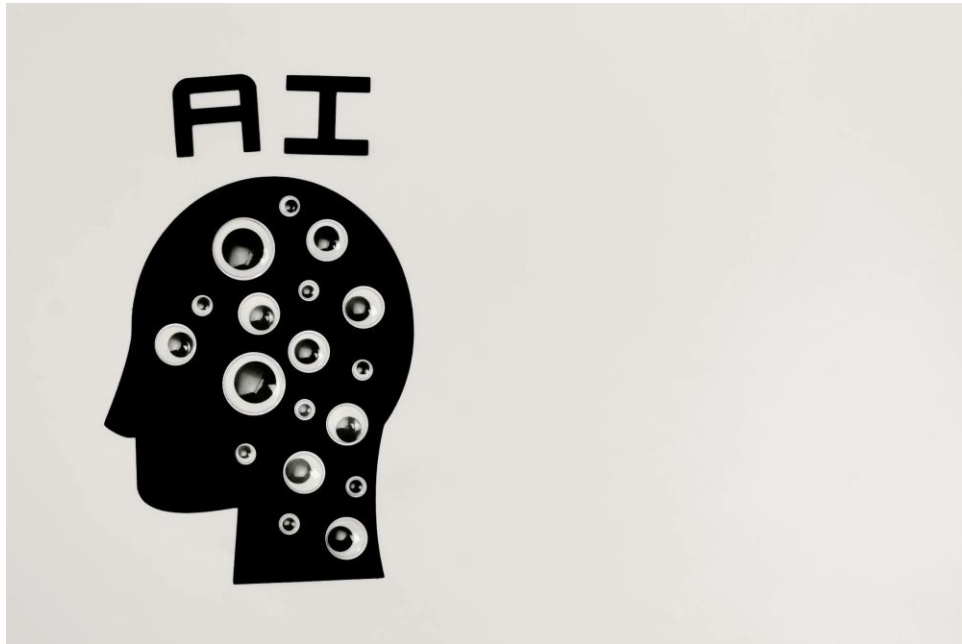
- 2023 saw more than 75 sanctions-related statutory instruments in respect of various jurisdictions and organisations, with 15 relating to restrictive measures concerning Ukraine due to Russia's ongoing war against Ukraine.
- Irish sanctions always are in pursuance of United Nations or EU measures

## *Restrictive Measures Bill*

- Bill intends to create mechanism obliging person to adhere to asset freezing requirements
- Heads of Bill are in preparation



# Public Law: Horizon-Scan to 2024



- **DORA (“Digital Operational Resilience Act”)**
  - Regulation (EU) 2022/2554, known as DORA, introduced detailed and comprehensive rules on the digital operational resilience for the financial sector.
  - Will take effect on 17 January 2025
- **Proposed EU Artificial Intelligence Act (“AI Act”)**
  - The AI Act will be the world’s first comprehensive AI legislation laying down the coordinated European approach on the human and ethical implications of artificial intelligence.



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# Questions?



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