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## **Planning by commonhold**

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Stealthily and with surprisingly little public debate outside the United States a path-breaking innovation in urban living has begun to transform the way cities around the world are organised. In the first systematic study of gated communities in England, a recent ODPM-sponsored report found that there were approximately 1,000 of these developments, clustered in London and the South East, but scattered from the Scottish borders to the tip of Cornwall (Atkinson et al 2004). Over a third (38%) of England's non-Metropolitan District Councils, Unitary Authorities, Metropolitan Districts and Boroughs reported at least one gated development and 62% of the schemes had been built since 1995. The phenomenon has a longer recent history across the Atlantic, where it now very well understood. The debate there is not so much about gates as about home owner associations (HOA) – micro-governments where elected HOA boards act as neighbourhood decision makers; where legal contracts more restrictive than public planning and nuisance laws govern resident behaviour; and where local amenities and services are financed by assessments (monthly 'club' fees). By the year 2000 over 15% of the US housing stock was in so called common interest developments – CID - (a form of co-ownership tenure and organisation) and the number of units in these privately governed residential schemes rose from 701,000 in 1970 to 16.3 million in 1998 (McKenzie, 2003, 2005a and b). The Community Association of America estimated in 2002 that 47 million Americans were living in 231,000 community associations and that 50% of all new homes in major cities belong to community associations (Webster et al 2002).

The big deal about gated communities is not the gates. Rather, it is the way 'community' is organised (Webster 2003). Possibly only about 40% of America's privately governed

estates are gated. In this respect, Atkinson et al's study for the ODPM only scratches the surface of an urban trend and approach to local planning and neighbourhood management that is far more significant than the 1000 reported schemes implies. In most of those schemes, individual homes will have been sold under leasehold tenure (some under freehold) and the common facilities governed by various organisational and legal arrangements that give residents some degree of right to govern their own neighbourhood affairs. The legal basis for doing this in the UK is messy, however, and only in 2004 (after years of debate) have we now our own legal equivalent to American CID and condominium tenure. *Commonhold* was established by the Commonhold and Leasehold Reform Act 2002 (Commencement Order) 2004. It has not yet, as far as we are aware, been used as the basis for a gated community scheme in the UK, but it will, if the experience of other countries is anything to go by. The whole point of the new Commonhold law is to make the co-ownership and governance of shared facilities more efficient. It was conceived to solve the traditional problems of leasehold but it does much more than that: it opens up a new way of organising collective action in urban neighbourhoods new and old. As one commentator put it: *ownership will never be the same again* (Driscoll 2005).

So why is contractual neighbourhood governance such a significant innovation? Actually, it is not strictly speaking a very recent innovation. In 1978 a comprehensive survey found that there were 1500 private neighbourhoods (villas) and private streets in the center of Paris. In France, a Condominium law was passed in 1804, and for 200 years, every new land subdivision in the country has been required by law to set up restrictive covenants and in case of private streets, a home owners association. Under France's strong urban municipal culture, these have remained relatively under-used and minor elements of the overall urban governance infrastructure (much as Town and Parish Councils have in the UK). In parts of the world where the state is not so successful at delivering civic goods and services or not so minded to do so, the borrowed and adapted French condominium idea has provided the legal basis for entrepreneurs to supply not just homes but entire neighbourhoods complete with governance structures and private management (private versions of town halls for groups of anything from 200 to 200,000 residents). The largest

private city in the US is Leisure world in California with about 19,500 people. The largest in the world is probably the suburban settlement in the Chinese city of Wuhan planned for 200,000 and built and governed entirely by a for-profit company (Webster et al 2005). It is perhaps surprising that the UK, with a relatively liberal modern political economy but strong tradition of municipal government and with its legacy of Ebenezer Howard's Garden City idea (a late 19<sup>th</sup> century precursor to the modern private community), has not been quicker to explore this new genre of urban living (Webster 2001).

All the signs are that Britain is discovering its own version, however. Five years ago, house builder firms were predicting that the typical medium sized British city had a capacity for something like 10,000 new city centre homes (Blank et al 2003). This estimate will undoubtedly have shifted upwards with the popularisation of smart city-centre living and its gradual extension spatially into secondary office neighbourhoods and beyond and to lower income niches. The apartment complexes lining the Thames and filling dockland and other brown field sites throughout the country are a manifestation of the same phenomenon. Defining a community legally and supplying a bespoke package of paid-for neighbourhood facilities and services has made it possible for middle and higher income people to move back into the city. The amenities bundled into the schemes by developers, including secure access, uncongested parking and quality and uncongested on site facilities, reduce the risks previously associated with these locations and add to the city centre attractions in compensating for the loss of land (which is consumed in greater amounts in the suburbs). One of the most compelling attractions of private neighbourhoods is their ability to offer residents a package of amenities that fits their preferences and pocket – a *packaged neighbourhood* industry. In this sense, the experiments in re-engineering social housing estates using various kinds of partnership and co-ownership governance models, should also be seen as a manifestation of the same decentralisation phenomenon. They are led by different kinds of entrepreneurs but the common thread is the selective enclosure of urban spaces and better definition of property rights over shared resources and new forms of organised neighbourhood.

We are witnessing world wide something of a general enclosure of the urban commons (Lee and Webster 2005). The public realm is being re-shaped as *privately* more efficient ownership patterns are explored (Webster and Lai 2003). What can be said about this in terms of sustainability and other *social* (shared as opposed to private) goals and government drivers?

First, legal enclosure (with or without physical enclosure) tends to be an efficient method of conserving at-risk, congested and depletable resources. The greatest example in urban England is Ken Livingstone's Central London road pricing. With open access, roads congest and their value progressively dissipates – at the extreme, to the point of zero net benefit. Converting Central London roads into something more like a club with daily membership had the effect of significantly reducing congestion, forcing people to value journeys more accurately and generating a stream of revenue that can be used for more efficient management. The neighbourhood environments of most private communities are typically better ordered than conventional neighbourhoods – with professional management and timely re-investment. Like Bluewater Mall in Kent, which recently announced it would ban 'hoodies', private neighbourhoods have the legal right and the budget to address their own problems using local knowledge and with a sensitivity to local issues. This makes them lower risk environments. As well as conserving congestible urban space and infrastructure they are also more sustainable in financial, social and political terms (at least in terms of internal politics and society).

The big question begged, of course is how good or bad is this for society at large? Should the British government allow small communities to plan and organise their collective life contractually – with private bylaws, fees, private management and local decision making? The reverse question is more helpful. What justification might there be for disallowing them? The negative spill-over effects to wider society have to be rather dire and incontrovertible for a government to enact the outright general ban of a product. Clearly many people derive benefits from drawing a second boundary of ownership beyond the front door – to define an area that is more public than their home but less public than the city at large and the quality of which they have a special interest in

sustaining and enhancing. There can surely be no obvious case for an outright ban of such a social innovation. But there are without doubt some problems – actual and documented as well as possible, probably and speculative – with private communities. The biggest speculation is about their impact on social fragmentation. Here the arguments are strong but the evidence mixed and the jury out. When a high income gated community was built next to a poor squatter community on the outskirts of Santiago, Chile a few years ago, the poor residents by and large welcomed their new neighbours as a source of employment. The new development also brought trunk water, sewerage and other utilities to the location – the squatters had been lobbying for these unsuccessfully for years (Salcedo and Torres 2004). The rich residents also thought well of their poorer neighbours – who supplied essential trades and services. This is perhaps not so dissimilar to the new inhabitants of inner London's gated apartment complexes who have helped bring new services, facilities and tax revenues into areas that have struggled for years with an unsustainable social imbalance.

On the other hand, concern is frequently expressed about three kinds of risk. First, is the risk of increased social segregation. A filtering of residents occurs where restrictive covenants and property values limits the potential candidates for homeownership. The result is the homogenisation of neighbourhoods. Whether the homogenising effect of privately governed communities is greater than that of conventional neighbourhoods is an empirical question, the answer to which will depend on local context. Not even centrally planned Russia or China could prevent socio-spatial segregation in cities. Market driven cities tend to filter people into well defined housing market areas by income. Micro-regulation by private covenant can make for a finer grain of segregation, which may or may not be of concern to society at large. In the well developed neighbourhood market in the States, home-buyers can opt to join golfing communities, retirement communities; city centre executive communities; communities with a swimming pool or a gym, tennis courts or a private school. There is even a case of a gated community for flying enthusiasts built around a private air strip. Partly as a result of their ability to sort people into preference-related groups, they are also likely to intensify income-related differentiation. In Los Angeles, the segregation levels observed in respect of age and

wealth in localities where there are many gated communities is 1.4 to 2.7 times higher than in other areas (le Goix 2005a). The true social value of this risk will depend on the functional and attitudinal patterns associated with spatial-social segregation and also the interaction of segregation effects at different spatial scales – higher homogenisation at very local level may mean more social mix at a district level. Is it better to have separation by distance, as we have become used to in most UK cities, or separation at a finer scale. The answer to this depends on how well closely packed but income-differentiated housing developments settle down as neighbours. London's experience will test this out over the coming years.

Second, is the risk of political fragmentation. Where homogeneous neighbourhoods seek autonomy, or act in an organised manner to secure their own interest, the conventional political economy of a city can be threatened. In the US, this has allegedly exacerbated problems of inner cities since it has disrupted the processes of redistributive taxation at the metropolitan level.

Third, where local authorities actively encourage private communities (this is common in US) they can be understood not so much as secession from public authority, but as a public-private partnerships. They provide the public authority with new tax payers at little cost, whilst the property owners association assumes responsibility for certain urban management functions. The relationship is not equal however and the give and take not necessarily balanced. Gated communities in the US can act as predators of public resources. In Los Angeles, 14 communities have been involved in the creation of *ad hoc* new municipalities since 1961. They can be expected to try and offset the burden of private governance by transferring costs to the municipal entity wherever possible (cherry-picking liabilities) and using public funds and federal grants for the exclusive use of private enclaves (le Goix 2005b). This points to the need for an explicitly articulated social contract to govern the relationship between the *small publics* and the wider public. This is gradually emerging in the countries of South and North America, Asia and Africa where many modern developments are organised as residential clubs. It is created as new

laws form and existing laws are adapted to address emergent problems with the private neighbourhood market.

Much of the regulative intervention in the US and elsewhere has focused on protecting the rights of those who move into private communities. This includes requiring developers to contribute a minimum sink-fund for re-investment to avoid potential catastrophic financial liability in later years. Leisure World, for instance, a retirement community built in 1968 accommodates 19,500 people over 55 years old. It now needs a long term strategy for its renewal to attract a new generation of residents and needs to make major infrastructure improvements in electricity, water supply, telephone and sewage systems. The current systems are between 25 and 36 years old and there were no laws governing the financial structure of private communities at the time. During the last decade this crisis has affected Leisure World's property values, which have fallen an average of 10.4 % a year, and operational costs, which have risen by 7 % a year.

State authorities have also addressed issues of good practice in Home Owner Association affairs. Indeed, one of the objectives of Britain's new Commonhold law is to do precisely this – to set up a standard set of proforma institutions that are designed to govern co-consumed resources in a fair and efficient manner. There has also been recent legislation in some US States to keep HOA litigation out of the public courts. Public courts, like city streets, are a congestible common resource and HOA cases in some states have been swamping them. The requirement that HOA disputes should be settled by private courts is a way of forcing the private governance industry to internalise its own litigation costs.

We have not yet seen a massive take up of privately governed estates in the UK. A very large number of new homes are due to be built in the next two decades, however, and it would be very surprising if what has become a popular style of modern living elsewhere did not find its own manifestation here. Atkinson et al (2004) found that developers and local authorities were predicting significant growth in the market. We view the modern renaissance of city centre living as one such manifestation. The enactment of a Commonhold form of tenure for the first time in Britain's long history of land law, makes



it even more likely that residential clubs will spread as an urban living solution. The state's response in the UK will be distinct from that in the US. The issue of secession is unlikely to make the headlines here (some large private communities in the US have sought, with success in a few cases, to become incorporated as separate local authorities). Given this country's strong and resilient state planning powers and tradition in municipal governance, it is more likely that the debates will focus on which urban management and planning powers should be decentralised to private or public-private partnership entities and how private governance relates to public laws, powers and functions. We predict that the devolution and localisation movement in government could take on a rather more fundamental manifestation if developers can find a way of translating condominium (literally, co-ownership) principles into suburban housing schemes.

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