



From brown envelopes to community benefits: The co-option of planning gain agreements under deepening neoliberalism



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ABSTRACT

The provision of physical and social infrastructure in the form of roads, green spaces and community facilities has traditionally been provided for by the state through the general taxation system. However, as the state has been transformed along more neoliberal lines, the private sector is increasingly relied upon to deliver public goods and services. Planning gain agreements have flourished within this context by offering another vehicle through which local facilities are privately funded. Whilst these agreements reflect the broader dynamics of neoliberalism, they are commonly viewed as a tool which can be employed to challenge these very dynamics by empowering local communities to secure more just planning outcomes. This paper counters such claims. Based on evidence gathered from 80 interviews with planners, councillors, developers and community groups in Ireland, the paper demonstrates how planning gain agreements have been strategically redeployed by the holders of political and economic power to serve their own ends. In seeking to understand why and how this has occurred, specific consideration is given to the changing power dynamics between the state and private capital under neoliberalism. The paper highlights how institutional arrangements have enabled developers to infiltrate the political sphere in more subtle and implicit ways than ever before. We conclude by arguing that planning gain must be understood as a mechanism which has been manipulated in ways which essentially work to preserve and enhance, rather than redress, existing power imbalances in the planning system by facilitating large scale transfers of wealth upwards in society.

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1. Background

In recent years the use of planning gain agreements has become an increasingly prevalent feature of the urban development process, particularly in cases where developments are especially large, complex or contentious. Although the specific machinery by which planning gain is achieved can vary internationally,¹ it generally involves an arrangement whereby planning and other community benefits are provided to a community at the expense of a developer. This somewhat general definition has been adopted by prominent actors such as the Property Advisory Group who consider that “planning gain accrues when, in connection with the obtaining of a planning permission, a developer offers, agrees or is obliged to incur some expenditure, surrender some right, or concede some other

benefit which could not, or arguably should not, be embodied in a valid planning condition” (Property Advisory Group, 1981: 4). Common examples include the provision of infrastructure or public amenities, the rehabilitation of buildings, and payments of money. Indeed, Cass et al. (2010) have attempted to distinguish different categories of benefits, namely: (1) ‘community funds’ where developers contribute lump sums or regular payments to residents; (2) ‘benefits in kind’ where improvements to community facilities are directly provided or paid for by a developer; (3) ‘local ownership’ where a facility or shares in a project are handed over to a community; and (4) ‘local contracting’ where attempts are made by the developer to employ local residents. The rationale underlying the concept of planning gain varies but typically surrounds notions that such benefits serve to: (1) facilitate the implementation of a development; (2) mitigate or compensate the impacts emanating from a particular scheme; and (3) provide communities with a share of the developer’s profits, otherwise known as planning gain or ‘betterment’ (see Healey et al., 1996; RTPI, 2000).

As planning gain agreements have increased in terms of their frequency and their scope (see Campbell et al., 2000; O’Faircheallaigh, 2013) a plethora of empirical enquiries have

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¹ For instance, in the UK planning gain is delivered through Section 106 agreements, otherwise known as ‘planning obligations’. In the US, planning gain is negotiated through Community Benefit Agreements (CBAs).

emerged which seek to explore the merits of such agreements. While several analysts argue that planning gain agreements provide opportunities for community empowerment and the delivery of better public goods and services (Baxamusa, 2008; Parks and Warren, 2009; Saito, 2012), others have been more sceptical. For instance, concerns are being raised regarding the extent to which planning gain agreements facilitate the 'buying and selling' of planning permissions (Crow, 1998; Campbell et al., 2000; Miner, 2009), whilst others raise issue with the fact that they silence opposition from concerned members of the general public and in many ways can be perceived as bribes (Crow, 1998; Cass et al., 2010). Moreover, there has been evidence to suggest that planning gain agreements are leading to 'the marketisation of planning' as the gains offered are becoming material considerations in the evaluation of proposals (Campbell et al., 2000), a phenomenon which is being exacerbated by the austere financial situation currently facing many local governments.

Despite the growing body of literature on this topic in such diverse fields as environmental economics, urban planning and legal studies, significant gaps remain which this paper seeks to address. First, the focus of existing studies to date has largely centred on examining how community gain agreements distort the balance of power in the planning process to favour developers relative to members of the general public and local authority officials. However, little research has been conducted to investigate how planning gain agreements are being negotiated between other actors, most notably developers and politicians. This is an important matter which warrants attention given the levels of controversy and disquiet surrounding the links between the political and economic spheres which have brought the planning system into disrepute in recent years (Collins and O'Shea, 2003; An Taisce, 2012; Government of Ireland, 2012; Kitchin et al., 2012). Second, it is apparent that there has been a reluctance to analyse the growing trend towards community gain agreements through the lens of neoliberalisation. In particular, there has been no critical examination of how community gain agreements have been co-opted by powerful interests as the state and the planning system have been transformed along neoliberal lines through the promotion of deregulation, privatisation and reduced welfare provisions. This paper seeks to address these gaps by critically analysing how the neoliberalisation of the state and its institutions has opened up new opportunities for development interests to exert power in the planning process, namely through the strategic use of planning gain agreements. In more specific terms, it aims to explore the extent to which planning gain agreements are being deployed by developers to infiltrate the political sphere. In doing so, the paper attempts to elucidate *how* and *why* this occurs in practice, paying specific attention to the changing power dynamics between the state and capital in an era of deepening neoliberalism. Consideration is also given to the substantive outcomes generated through the use of this policy tool and the degree to which the agreements reached are symptomatic of the inherent power disparities between stakeholders within the planning system. We argue that this analysis is necessary in light of the level of rhetoric that surrounds planning gain as an instrument for empowering communities and achieving more equitable planning outcomes; and is timely given the growing popularity of these agreements as a means of infrastructure delivery as neoliberalism becomes more deeply embedded in state institutions.

2. Planning in a neoliberal age: from betterment to planning gain

During the post war period the provision of physical and social infrastructure in the form of roads, green spaces and community

facilities was traditionally provided for by the state through the general taxation system. The overall approach was linked to the broader idea of a centrally planned welfare state underpinned by a Keynesian model of economic policy. However, by the late 1970s the idea of a strong managerialist state began to erode in response to the broader political economic environment which was marked by a growing concern amongst economic elites about their declining share of wealth and the growing power of labour which had transpired during the 'golden age of capitalism' (Harvey, 2005; Peck et al., 2009; Mercille and Murphy, 2015). In retort, a political project designed to restore class power and redistribute wealth and power back upwards in society emerged through a series of regulatory experiments which to varying degrees promoted the ideas espoused by neoliberal theory, namely deregulation, privatisation and reduced levels of welfarism (Brenner et al., 2010). This experimental phase of neoliberalism has been dubbed 'disarticulated' or 'nascent' neoliberalism by commentators such as Brenner et al. (2010) and Mercille and Murphy (2015).

Neoliberalisation is increasingly understood as a geographically uneven, variegated and path-dependent process (Brenner and Theodore, 2002a, 2002b; Brenner et al., 2010; Sager, 2011). As such, neoliberalism as it has been implemented has manifested itself in different ways depending on local conditions, thus undermining the notion that some "pure, prototypical form of neoliberalisation" exists (Brenner et al., 2010: 330). That said, there nevertheless has been an identifiable shift towards the deregulation of markets, the privatisation of the public sector and the withdrawal of the state from the direct delivery of public goods and services (Peck and Tickell, 2002; MacLaran and Kelly, 2014). Such trends have come to be reflected in various state institutions, not least the planning system which has been transformed from a robust regulatory institution, to one which is increasingly entrepreneurial, flexible and competition-led in terms of its overall approach. Associated with the neoliberalisation of planning is the growing reliance of local government on the private sector marked by the emergence of Public Private Partnerships (PPPs), quangos and other forms of collaborative governance arrangements between the public and private sphere.

Planning gain agreements have also emerged within this overall context as a means by which local infrastructure and other facilities can be provided for at the local level through the activities of private developers rather than the state. The general idea underpinning these agreements is that they provide a mechanism to ensure that "development pays its way, mitigates the harms it causes, and provides benefits to the communities it burdens" (Been, 2010: 35). In this regard, the introduction of planning gain agreements in various semblances has been largely justified on the basis that it provides a more negotiable and flexible alternative to traditional ideas surrounding the taxation of 'betterment' which was once a strong feature of the post-war planning system. The concept of betterment resides in the moral argument that developers should provide communities with a share of the developer's profits which amass from the rising value of development land which takes place on the foot of favourable planning decisions whereby significant levels of wealth are conferred upon landowners and developers through a public decision making process in the absence of any productive investment being made. However, in line with the general transformation of the planning system along more neoliberal lines, betterment tax has been largely abolished² and in its place more flexible arrangements in the form of planning gain agreements have since emerged. In many respects, this shift

² Betterment tax in the UK was abolished in the UK and Ireland in the early 1950s (Healey et al., 1995; Grist, 2012).

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