

FAO: Beatriz Balbin
Chief Special Procedures Branch
Office of the High Commissioner on Human Rights

By email to ohchr-registry@un.org

5th May 2023

Dear Sir / Madam

Your Ref: AL OTH 15/2023

I am writing in response to the 12 page communication sent to us on 7 March 2023 (“the Letter”) on behalf of various Independent Experts and Rapporteurs regarding the development of land at Hurlingham Retail Park in London (“the Property”).

My name is Nicholas Mee and I hold the position of Managing Director, Development within Rockwell Properties Limited. I am grateful for the opportunity to respond to the Letter and to reassure you and the authors of the Letter as to the true facts and matters of this case.

Summary

Your letter proceeds on the basis that the redevelopment project ongoing at the Property gives rise to a real risk of threatened or actual forced evictions of vulnerable social housing tenants. Before going further let me reassure you that is not the case.

- **No threats of ‘forced eviction’ have ever been made and no resident will ever be asked to vacate their property without alternative accommodation being made available.**
- **English law protects the tenants such that they cannot be required to vacate any property without either their willing agreement or by an order of the English Courts following stringent due process. In other words, Rockwell has no intention to, nor the legal ability to, unilaterally and forcibly remove tenants from their properties.**
- **A key deliverable of the redevelopment project is to advance the right to adequate housing by relocating existing tenants into superior, modern accommodation and by building more affordable housing units on the same site, so a greater number of people in the local area can access affordable housing.**
- **All social housing tenants affected by the development will have a brand new, fully equipped, and energy efficient apartment made available to them within the development, at no cost to them. All social housing tenants are entitled to remain in their existing homes until their new permanent on-site accommodation is provided. They will enjoy ‘assured tenancies’ in those new homes, giving them security of tenure in accordance with the Housing Act 1988.**
- **Given the disruptive nature of the construction process, all tenants have been offered (but are not required to accept) temporary alternative accommodation off-site for the duration of the development. More detail on this is provided in the attached Schedule of responses.**

- **Rockwell has at all times put the wellbeing of residents at the forefront of their development process and has gone beyond statutory requirements in attempting to safeguard this. All tenants have been extensively consulted throughout the development process.**
- **Rockwell as a business takes corporate social responsibility extremely seriously, including the protection and advancement of those most vulnerable members of society. Our charitable partners include the Patchwork Foundation, a charity focussed on improving the prospects of underrepresented communities and individuals; and the Kerlake Robshaw Foundation, who seek to improve the outcomes of disadvantaged children's lives through improving access to music and sport. Rockwell has provided significant financial support to both institutions whilst running our own in-house hospitality training initiative through the London Training Centre, as part of a recent hotel development project.**
- **Rockwell is conscious of its responsibility to respect human rights, including avoiding infringing on the human rights of others and addressing adverse human rights impacts with which they are involved.**

In preparing this letter and the accompanying Schedule, I have had regard – in particular – to General Comments 4, 7 and 11 of the Committee on Economic and Social Rights, and to the UN Guiding Principles on Business and Human Rights. I am confident that Rockwell's redevelopment project at the Property has not violated, or failed to respect, any person's right to adequate housing or right to health.

Below I explain the following in more detail.

1. The nature of the Property.
2. The roles of the relevant organisations that are involved with the development of the Property.
3. A brief description of the Property as it was at the time it was purchased.
4. The works of development that will be undertaken.
5. The nature of the 16 apartments which make up the social housing currently existing either on the site or on land immediately adjoining the site (the **Affordable Housing**) and how the proposed development will improve and enhance the provision of such housing at the Property and in the general area along with an explanation of the property rights of such persons under English law.
6. The contractual obligations that the developers are under to ensure the proper and appropriate provision of such housing and the relocation of affected persons.
7. The consultation process with existing tenants.

I then attach, in schedule form, answers to the specific queries raised in your letter.

1. The nature of the Property

The Property is shown on the plan below edged in blue and also edged/hatched red. Promontoria (as defined in Section 2) owns the land shown by the blue edging.

The land shown edged/hatched in red is the on site Affordable Housing (as defined above) and consists of 8 apartments. The Affordable Housing land is owned by the Council (as defined in Section 2), as to the freehold interest under English law, and by Co-Op (as defined in Section 2) as to a long leasehold interest.

The other 8 apartments of Affordable Housing are on land immediately adjoining the site (owned by Thames Water Utilities Limited) and are not part of the Property, nor the redevelopment (see Section 5).

So, to be clear, Promontoria is not the owner of any of the land on which the Affordable Housing is situated. The Council will transfer the land hatched red to Promontoria upon the relocation of residents into their new designated property to be provided within the redevelopment (as governed by the Tripartite Agreement, see Section 6). This will then allow the demolition of the existing 8 apartments on site, and release the remaining land required to complete the redevelopment (see Section 4 for more detail on phasing).



2. The roles of the relevant organisations involved with the development of the Property

There are numerous bodies involved in this project. To aid your understanding I detail those bodies and explain their roles as follows:

Organisation	Role
The London Borough of Hammersmith & Fulham (the Council)	<p>The Council is involved in this development as:</p> <ul style="list-style-type: none"> • Local planning authority with the responsibility to assess and grant permission for development of the Property in accordance with all relevant planning law and local guidance; and • Owner of the freehold to Affordable Housing. The leasehold interest in the Affordable Housing is owned by Co-Op.
The Royal London Mutual Insurance Society Limited (Royal London)	The original owners of the Property who first obtained planning permission for the development of the Property and the Affordable Housing
Promontoria Hurlingham Limited (Promontoria)	This is an English registered company which owns the Property and which is a joint commercial venture entity owned by Rockwell Properties Limited and companies ultimately owned by investment funds managed by Cerberus Capital Management L.P. or its affiliated managers.
Co-Op Homes (South) Limited (Co-Op)	This is another English registered company that is the leasehold owner and operator of the Affordable Housing. It is recognised under English law as an authorised statutory provider of affordable homes. The apartments comprised in the Affordable Housing are let to individual tenants at below market rents on long term tenancies.
Rockwell Properties Limited (Rockwell)	<p>This is also an English registered company and has two roles in the development:</p> <ul style="list-style-type: none"> • As a shareholder in Promontoria, and • As the manager/operator of the development at the Property
Thames Water Utilities Limited (TWL)	This English registered company owns the freehold land to 8 of the affordable apartments alongside the Property, and the leasehold interest in those 8 apartments is held by Co-Op.

3. The Property as it was at the time it was purchased by Promontoria

Promontoria acquired the property in February of 2022 and at the time of purchase the 3.2-acre site consisted of a c.50,000sq.ft. retail warehouse with 200 surface car parking spaces, as well as 8 social housing units operated by Co-Op Homes (South) Ltd adjoining the retail building to the southwest of the site. The aerial image below shows the site prior to Promontoria's acquisition. The on-site Co-Op Housing apartments are bound and shaded red for clarity.

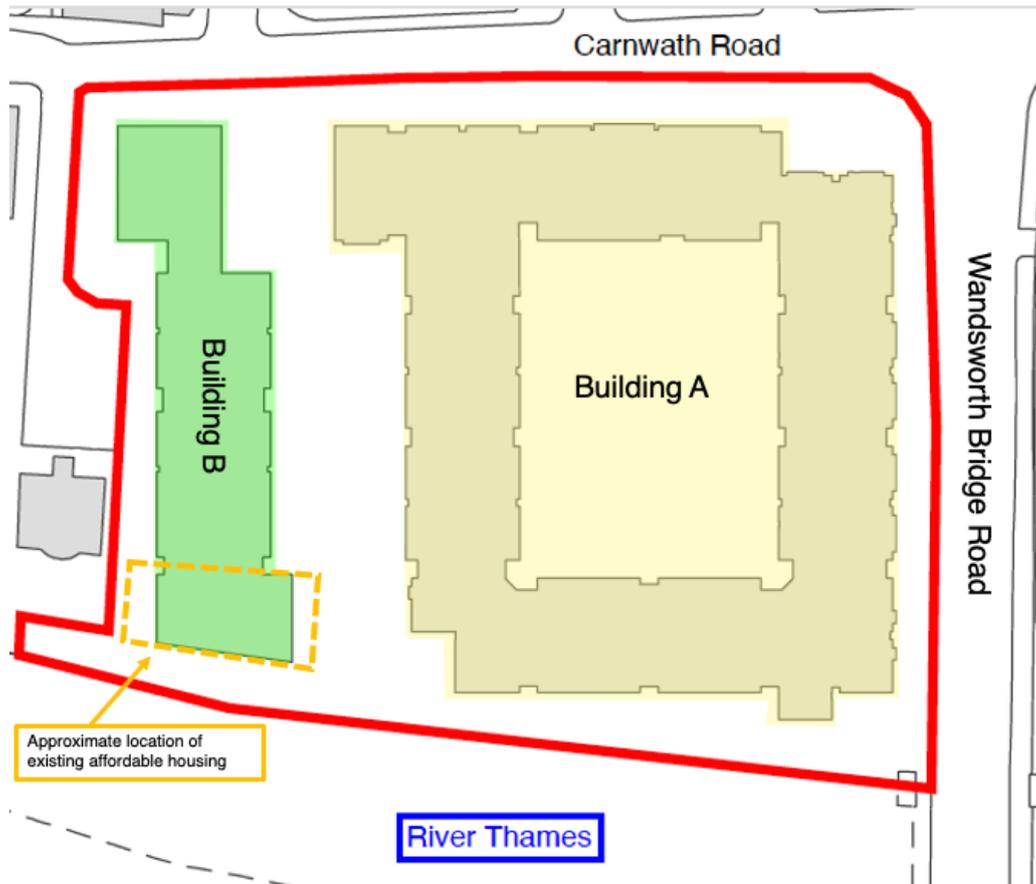


4. The proposed development

The extant planning consent is for the redevelopment of the site to provide a residential-led, mixed use scheme comprising a total of 269 residential dwellings; together with flexible commercial floorspace; upgraded Thames Path, works of repair and alterations to the river wall, associated hard and soft landscaping, public and private open space, new public realm, pedestrian and cycle routes, vehicular access and servicing facilities, 116 car parking spaces and cycle parking.

A total of 45 of the 269 residential units will be affordable, delivered as 40 social rented and 5 shared ownership homes.

The proposal is split into 2 main buildings as shown in the plan below. Building A can be completed without demolishing the existing social housing on site. This building will contain 13 of the 45 new affordable homes, 8 of which are contractually designated for Co-Op Homes (South) Limited, to accommodate existing residents on site. Building B will be constructed once the residents from the on-site social housing have taken occupation of their new homes in building A. Building B will contain the remaining 32 affordable homes, 14 of which are contractually designated for Co-Op Homes (South) Limited (see Section 6).



5. Affordable housing provision at the Property

As referred to above there are 16 apartments currently providing affordable housing of which 8 are situated on the Property and 8 alongside the Property as shown in the image below. It is worth noting that the existing affordable housing stock is reaching the end of its useable lifespan given its age and condition.



All of these apartments are owned by Co-Op as long leaseholder and are let to low income tenants. Those tenancies are known under English law as “Assured Tenancies” and the landlord has limited rights to end those tenancies.

Promontoria is legally obliged, as part of the legal agreement (which is explained in more detail in Section 6) to provide at no cost to Co-Op, 22 affordable apartments within the new development. This is specifically to allow the 16 existing Affordable Housing tenants in the current units to be re-housed in new apartments; and also provides 6 additional apartments to Co-Op to be let to new tenants.

There is a clear, wider benefit in providing another 6 affordable housing units, so allowing Co-Op to accommodate 6 families from its “waiting list” of tenants.

Beyond the units to be handed over to Co-Op, Promontoria is obliged (again explained in Section 6 in more detail) to provide an additional 23 affordable housing apartments within its development. Those additional apartments may be sold by Promontoria but only to a statutorily registered affordable housing provider. Again, this extends the overall affordable housing provision at the Property and so creates a wider societal benefit.

This means that:

1. All 16 current existing social housing tenants will have new, high quality, modern apartments made available to them.
2. 29 additional new affordable housing units will be constructed, making new homes available to new tenants.

6. The contractual obligations relating to relocation of social housing tenants

The obligations concerning Affordable Housing that legally bind Promontoria have been imposed in three documents:

- An agreement dated 23 May 2014 made between the Council (1) Co-Op (2) and Royal London (3) (the **Tripartite Agreement**); and
- An English law planning agreement (which sets out the legal parameters for a development) dated 19 December 2014 and made between the Council (1) Royal London (2) and Co-Op (3) as varied by a further agreement dated 1 December 2020 (the **S106 Agreement**)
- An agreement dated 2 December 2022 between Co-Op (1) and Promontoria (2) which sets out precise obligations on Promontoria to relocate the Affordable Housing tenants during the works (the **Relocation Agreement**)

Please note that:

- Promontoria is bound by the Tripartite Agreement (even though it was not originally a party to it) by virtue of entering into novated obligations with the other parties to that agreement.
- Similarly Promontoria is bound by the S106 Agreement even though it is not a party to it. Under English law these types of agreements bind the owners and occupiers of land so as a matter of law Promontoria must fulfil the obligations in the S106 Agreement when it builds its development.
- The S106 Agreement is a public document and we attach a copy of both the original and varied version with this letter.

- The Relocation Agreement is a public document and is contained within the Schedule of responses at Annex 09.
- The Tripartite Agreement is not a public document and Promontoria may not disclose their terms without the approval of the other parties to it. However, a summary of the key provisions is provided below.

Tripartite Agreement

- Promontoria must build 22 new affordable housing apartments as part of its development at no cost to Co-Op
- When the apartments are constructed and habitable it must grant Co-Op a lease of the 22 flats for no payment and no rent.
- When the on site affordable tenants have been relocated into their new flats within new development the Council and Co-Op will jointly transfer the title to the Affordable Housing land to Promontoria – which is required to allow it build the remainder of its development on this part of the Property.
- The relocation of the tenants of the Affordable Housing must be dealt with by Co-Op. Co-Op is entitled under English law to relocate its tenants where it offers them equivalent or better housing and/or where it is redeveloping its land. This is set out in Schedule 2 to the Housing Act 1988 a copy of which is attached, with the relevant provisions highlighted. This is a right that Co-Op enjoys under English law and it is a right to which its tenants are subject automatically as a matter of law.
- If tenants oppose being relocated Co-Op cannot forcibly relocate them without an order from an English court permitting them to do so. The Court will not grant such an order if it believes that Co-Op has acted unlawfully
- Tenants will receive:
 - Any statutory compensation that is due to the affordable housing tenants when they are relocated (each of the affordable tenants is entitled to a payment from Co-Op Homes (South) Limited for the disruption caused to them); and
 - The removal costs for each tenant to cover the cost of moving furniture and possessions from the existing apartments to the new apartments

Section 106 Agreement

The principal obligations which relate to the Affordable Housing are:

- Promontoria must build 45 affordable housing apartments in the development (including those to be granted to Co-Op).
- The 45 affordable units may not be used for private housing
- If the development (when all of the new apartments are sold) produces a greater profit/return for Promontoria than initially envisaged, it must pay a profit related sum to the Council that the Council must use in connection with the provision of affordable housing generally. This payment is capped and cannot be more than £10.927 million

Relocation Agreement

This agreement was entered into to add more detail to the Tripartite Agreement concerning the relocation of the affordable tenants and the costs of doing so.

- Promontoria must cover the costs of both (a) any short term hotel accommodation where the tenant does not wish to be alongside the Property when construction work is being carried out, and (b) the cost of relocating any tenant where it wants to be relocated for the full development programme pending relocation into one of the 22 new apartments.
- The tenants do not have to move and it remains open to them to stay in their existing accommodation until they are lawfully required to move as a result of any court order, lawfully obtained by Co-Op via the statutory processes.
- The agreement sets out a consultation process and Co-Op must approach the relocation in accordance with its own relocation (“decant”) strategies. Co-Op also has a complaints procedure that its tenants are aware of and it must deal with any complaints arising from the relocation in accordance with that internal procedure

7. Consultation / engagement process

The letter from the Special Rapporteurs raises concerns over the extent to which existing tenants have been consulted and/or engaged on the redevelopment plans. Promontoria acquired the Property on 4 February 2022. It was not therefore responsible for the consultation and engagement process that pre-dated that date. Nonetheless, we recognise that the consultation and engagement process during that period forms an important part of the context for the current redevelopment.

We are satisfied that there was extensive consultation and engagement prior to Promontoria’s acquisition of the Property and we provide a summary of that consultation in **Annexures 1 and 2** of the attached Schedule. Close consultation has continued beyond Promontoria’s acquisition of the Property, as evidenced in **Annex 8**. Stakeholder engagement has been a priority for Promontoria, as evidenced by **Annex 10** as well as **Annexures 3 – 7 and 9**.

Conclusion

I trust that the above and the **attached Schedule** adequately address all of your concerns, demonstrating that matters are not quite as they had been reported to you, and has reassured you that this development is being undertaken in compliance with all applicable laws and statutes, and consistently with the right to adequate housing and the UN Guiding Principles of Business and Human Rights. Addressing the key allegations that underlie the letter from the Special Rapporteurs:

- There has been ongoing consultation and engagement with existing tenants since the plans for redevelopment were first proposed in 2013. Since Promontoria acquired the Property in February 2022, that consultation and engagement has continued.
- While existing housing will be demolished as part of the redevelopment, no tenant is subject to, or has been threatened with, forced eviction. Instead, in accordance with the statutory scheme and pursuant to contractual obligations, all existing tenants will be provided alternative, superior accommodation immediately adjacent to their existing homes prior to any demolition taking place. In addition, the redevelopment will increase the number of affordable housing units on the site to advance the right to adequate housing for more people.
- All existing residents will be provided with a new home suitable for their individual needs, irrespective of their age, social status or any disability.
- As construction is necessarily disruptive, all existing tenants have been offered (but not required to accept) temporary alternative accommodation for the duration of construction at no cost to them.

- Moreover, while Promontoria is the developer of the land, it does not presently own the property where existing tenants reside, nor is it primarily responsible for any relocation.

Promontoria is confident that it has done everything within its control to minimise any potential impacts of the development on the residents in an inclusive manner and in line with UN Guiding Principles. We look forward to continuing our proactive engagement with residents throughout the project, with a view to delivering vastly improved accommodation for their occupation.

Yours sincerely,



Nicholas Mee

List of Attachments

Attachment 1 – Schedule of Responses

Attachment 2 – Original S106 Agreement

Attachment 3 – Deed of Variation to S106 Agreement

Attachment 4 – Housing Act (1998), Schedule 2