

18 August 2017

Ms Bennoune  
Ms. Izsák-Ndiaye  
Professor Deva  
Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10  
SWITZERLAND

By post and e-mail: [registry@ohchr.org](mailto:registry@ohchr.org)

Your Ref: AL OTH 13/2017

Dear Ms Bennoune, Ms. Izsák-Ndiaye and Professor Deva

**Joint communication from Special Procedures (Reference AL OTH 13/2017)**

Thank you for your letter dated 21<sup>st</sup> July 2017 concerning the redevelopment and compulsory purchase order ("the Order") process in relation to the site at Seven Sisters in the London Borough of Haringey. Grainger plc and Grainger Seven Sisters Ltd ("Grainger") have considered your letter carefully and welcome this opportunity to respond.

**Summary of Grainger's response**

The allegations, assertions and concerns expressed in your letter are based upon fundamental misunderstandings as to the factual background and the relevant decision-making processes. For example, your letter variously: (i) refers to there being a "planned expulsion and demolition of the Seven Sisters Indoor Market... for a regeneration initiative, announced to start in July 2017"; (ii), claims that this will "threaten the livelihood and cultural life of the residents and shop owners"; and (iii) asserts that there has been no full impact assessment and no inclusion of or consultation with concerned people.

These claims are misconceived for the following central reasons:

1. The site has recently been subject to a public inquiry ("the Inquiry") into the Order, which has been made by the local planning authority, London Borough of Haringey ("the Council"). This will culminate in a decision to be taken by the Secretary of State for Communities and Local Government as to whether to confirm the Order. No building works – whether demolition or anything else – will occur on the site until this process has been fully completed and unless the Secretary of State decides to confirm the Order
2. This Order process (including the Inquiry) involves a full examination of all relevant matters, including human rights considerations, to identify whether there is a compelling case in the public interest that the Order be confirmed.
3. There will be no "expulsion" of the market traders at any stage.
4. There have been detailed and careful impact assessments carried out by both Grainger and the Council at various stages throughout the planning process.
5. There has been extensive consultation and engagement with concerned and affected persons, including market traders.
6. There is a detailed and substantial package of guaranteed measures for the benefit of traders.

### **The Order process**

It may assist to explain the Order process currently taking place.

On 22<sup>nd</sup> September 2016, the Council made the Order in relation to 0.9 hectares of land located above the Seven Sisters Underground Station, under section 226(1) of the Town and Country Planning Act 1990 (as amended). The Council made the Order to enable the development of this land in accordance with a planning permission ("the Permission") which had been granted by the Council on 12<sup>th</sup> July 2012 pursuant to a planning application submitted on behalf of Grainger.

The Permission authorises the demolition of existing buildings and the erection of mixed use development, comprising residential and retail uses (including, importantly, a requirement to re-provide the existing Seven Sisters Indoor Market ("the Market") on its present site) with access, parking and associated landscaping and public realm improvements ("the 2012 scheme").

The Order requires the authorisation of the Secretary of State for Communities and Local Government. To this end the Inquiry has been held. It commenced on 11<sup>th</sup> July 2017 and ended on 27 July 2017. It was chaired by an independent Inspector, Mr [REDACTED], who will report to the Secretary of State in due course with his recommendation as to whether the Order should be confirmed. The Secretary of State will then make the final decision to confirm or reject the Order.

During the Inquiry Mr [REDACTED] received detailed and wide-ranging written and oral evidence from the Council, Grainger and third party objectors. These objectors included a number of traders working at the Market, who were represented during the Inquiry by a team of three Legal Counsel one of whom was a specialist in Human Rights. The traders' concerns have been fully voiced and aired during the Inquiry process and will no doubt be carefully considered by the Inspector and the Secretary of State in due course.

As part of the planning application process and the ongoing Order process, there is a comprehensive domestic legal framework to ensure that a full and careful consideration of human rights issues is undertaken. Domestic case law has confirmed that the Order process fully accords with consideration of human rights under the European Convention of Human Rights and that such an Order can be confirmed without breaching those rights (see, for example, *Tesco Stores Ltd v Secretary of State & Wycombe District Council* (2000) P. & C.R. 427 at p. 429; *Bexley London Borough Council v Secretary of State* [2001] EWHC Admin 323 at [46]; and *R. (Hall) v First Secretary of State* [2008] J.P.L. 63).

### **Evidence presented at the Inquiry**

The Inquiry has received significant quantities of detailed evidence from objectors, the Council and Grainger addressing human rights matters, all relevant factual aspects of the situation including those set out in your letter, and also a number of factual allegations including all of those contained in your letter (such as issues of relocation of the traders, allegations of deliberate neglect of the site, lack of consultation and representation in the steering group (as established by Grainger and the Council) and, failure to conduct full equality impact assessments).

There is a website dedicated to the Inquiry which makes publicly available all of the documents before the Inspector (<http://seven-sisters.persona-pi.com/>). It would have been helpful if you had read and considered these publicly available documents before repeating the unfair and baseless allegations contained in your letter. Grainger invites your attention, in particular, to the following documents on that website in which you will find answers to all the questions posed in your letter. Please let us know if you require hard copies of any of this information.

1. The Council's Opening Submissions (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/council-documents/app-0-2.pdf>)
2. The Council's Legal Submissions (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/council-documents/app-0-3.pdf>)

3. The Council's Supplementary Legal Submissions: Note on Interference with Article 8 and Article 1 of Protocol 1 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/council-documents/app-0-5.pdf>)
4. The Council's Statement of Reasons (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd6/cd6-3.pdf>) and Statement of Case (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/council-documents/soc/statement-of-case.pdf>)
5. Equality Impact Assessment 2015 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd5/cd5-1.pdf>)
6. Equality Impact Assessment 2017 Update (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd5/cd5-4.pdf>)
7. The section 106 agreement between Grainger and the Council, dated 11<sup>th</sup> July 2012 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd4/cd4-28.pdf>)
8. The deed of variation to the section 106 agreement, dated 25 July 2017 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd4/cd4-38.pdf>)
9. The relevant planning documents and guidance including:
  - a. The London Plan 2016 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd2/cd2-2.pdf>)
  - b. The Council's Local Plan Strategic Policies 2013-2026 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd2/cd2-4.pdf>)
  - c. The Draft Tottenham Area Action Plan 2016 (on Monday 24<sup>th</sup> July 2017 this plan was formally adopted in a slightly amended form but this is not yet available on the dedicated website). (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd2/cd2-5.pdf>)
  - d. The Wards Corner/Seven Sisters Underground Development Brief 2004 (<http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/core-docs/cd2/cd2-3.pdf>)
10. The proof of evidence and related appendices of Ms [REDACTED] of the Council, in particular Appendix 9 containing a chronology of local engagement and consultation ([REDACTED].pdf and [http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\]-appendices.pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED]-appendices.pdf))
11. The proof of evidence and related appendices of Ms [REDACTED] of the Council ([http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\].pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED].pdf) and [http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\]-appendices.pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED]-appendices.pdf))
12. The proof of evidence and related appendices of Mr [REDACTED] of Grainger ([http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\].pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED].pdf) and [http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\]-appendices.pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED]-appendices.pdf))
13. The proof of evidence and related appendices of Mr [REDACTED] of CBRE ([http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\].pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED].pdf) and [http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\]-appendices.pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED]-appendices.pdf))
14. The proof of evidence and related appendices of Mr [REDACTED] of Saunders Markets Ltd ([http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\].pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED].pdf) and [http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-\[REDACTED\]-appendices.pdf](http://bailey.persona-pi.com/Public-Inquiries/seven-sisters/proofs/haringey/poe-[REDACTED]-appendices.pdf))

As will be apparent from the documents listed above, it is clear that:

- i) Members of the public and those affected by the Order (including, in particular, the traders) have been repeatedly consulted and their concerns taken into consideration by both Grainger and the Council throughout the planning application and Order processes. Moreover, those concerns will no doubt be carefully taken into account by the Inspector and the Secretary of State in due course.
- ii) The impact of the Order and the 2012 scheme on (amongst others) the Latin American Traders in the Market and other ethnic minorities has been carefully considered by the Council, under the domestic legal framework provided by the Equality Act 2010, the Human Rights Act 1998, the relevant planning acts and related guidance. Again, the impact on traders and others will no doubt be carefully taken into account by the Inspector and the Secretary of State.
- iii) The 2012 scheme and the Order (including, importantly, measures to ensure the full re-provision of the Market and detailed accompanying protections for traders) do not constitute an interference with the human rights of the traders or users of the Market for the reasons set out in the detailed legal submissions that were presented to the Inquiry by the Council. In particular, there is a detailed and substantial package of guaranteed measures for the benefit of traders, to ensure that they and their businesses continue to thrive both during the construction period and in the new market that will be provided on the site (as part of the 2012 scheme) if the Order is confirmed and the 2012 scheme goes ahead. These measures are contained in the deed of variation listed above and are considered in detail in the evidence of Mr [REDACTED] (listed above). These measures are aimed at the retention and protection of traders' businesses as part of the Market. There are also financial compensation provisions should any trader choose to leave before the relocation process begins.
- iv) Suitable and sufficient measures have been put in place to address and/or mitigate any remaining residual impacts of the Order by both Grainger and the Council.

**Response to factual allegations**

Grainger does not accept the allegations contained in your letter and, regrettably, there are a number of matters which are factually incorrect. Grainger's position on these matters is set out in the evidence contained in the dedicated Order website (as above). In particular, we would invite you to read the evidence of Mr [REDACTED], Mr [REDACTED] and Mr [REDACTED].

For the avoidance of doubt, however, we set out below the correct position in relation to some of the more significant errors in the material reported in your letter, in the order in which they occur:

1. The Market contains approximately 38 businesses spread out over 60 "units" or stalls. The traders' use and occupation of these units is governed by a licence that is granted by the operator of the Market.
2. The individual "mezzanines" have been built over individual units without authorisation and are in breach of both health and safety regulations and the traders' contractual licences.
3. In December 2008 Grainger was granted planning permission for the demolition of existing buildings on the site and erection of mixed use development including retail and residential uses ("the 2008 Permission"). The 2008 Permission was accompanied by an agreement between the Council and Grainger under s.106 of the Town and Country Planning Act 1990, which (among other matters) required Grainger to take identified steps to re-provide the Market. Whilst the 2008 Permission therefore permitted the demolition of the existing buildings onsite, it also envisaged the re-provision of the Market and accompanying public spaces.
4. Market Asset Management Seven Sisters Ltd ("MAMSSL") is an independent company responsible for managing the Market under a lease from the freehold owner of the building, Transport for London ("TfL"). MAMSSL is not a real estate company nor connected to Grainger. TfL is a public authority and is not connected to Grainger.

5. The Market comprises units and relatively narrow corridors: there is limited communal or "open" space within the Market. The unauthorised mezzanines comprising the "second floor" are small unconnected rooms over individual stalls.
6. It is incorrect to state that the "Haringey authorities" submitted a planning application: all relevant applications have been submitted on behalf of Grainger to the Council for determination in accordance with the domestic legal framework.
7. Following the Court of Appeal's judgment in June 2010, pursuant to which it quashed the 2008 Permission, the Council re-determined the related planning application in August 2011. On this second consideration, the Council rejected the application on two grounds. Grainger appealed this decision but withdrew its appeal. This is because a second scheme was submitted in May 2012 and was granted permission on 12<sup>th</sup> July 2012: this is the 2012 scheme that is subject to the Order process. This grant of permission in 2012 was wholly in accordance with local and national planning policy documents and related guidance.
8. TfL, as explained, is the present freehold owner of the Market building and is a separate and independent entity from Grainger. Grainger understands that the lease of the Market was assigned to MAMSSL by the previous market operator, Mrs [REDACTED]. TfL and MAMSSL concluded a lease in early 2015. This was entirely separate from the Order process and Grainger had neither an interest in nor any control over MAMSSL's acquisition of the lease.
9. It is incorrect to state that the steering group did not include representatives selected by traders. At an open meeting for all traders on 9<sup>th</sup> June 2016, Grainger's representative (Mr [REDACTED]) explained that Grainger would like to set up a market traders' steering group with around eight representatives of the traders, to meet with Grainger, the Council and MAMSSL to discuss the Market's current and future needs. He asked for volunteers to represent the traders' collective views. On 6<sup>th</sup> July 2016, Grainger wrote further in English and in Spanish to all traders individually, to invite anyone interested to indicate that they wished to join the steering group. Subsequently, two further traders were selected by the traders themselves, to ensure that the different groups within the Market were appropriately represented. Grainger also invited traders to individual one-to-one meetings to discuss their specific businesses and to provide individual support.
10. It is incorrect to state that the current residents and shop owners will be unable to remain in the area. Grainger has guaranteed rents for traders at levels which are: very close to the present rent levels payable for the first five years after the redevelopment begins; and well within the range of rents payable in comparable London markets. With regard to other businesses on the site, Grainger has undertaken to provide for rents consistent with those for units in the vicinity of a similar size and nature. These matters are guaranteed in the deed of variation.
11. As set out in the documents listed above and, in particular the 2015 and 2017 Equality Impact Assessments, it is wrong to state that the potential impacts of the 2012 scheme on the social, economic and cultural lives of those living and working on the site were not considered. Moreover, as set out in the 2015 and 2017 Equality Impact Assessments, there are significant positive equality impacts which arise from the 2012 scheme. Any negative impacts are either suitably mitigated by measures contained in the s.106 Agreement (as augmented by the deed of variation) or are outweighed by the overall benefits of the 2012 scheme.
12. Grainger has not engaged in any deliberate neglect of any buildings in which it has an interest on the site. In particular:
  - a. Grainger owns three properties on Suffield Road, numbers 22, 24A and 24B, which were acquired in 2004, 2005 and 2006 respectively. Around that time, these properties were occupied by squatters, causing significant damage to the properties. In July 2006, Grainger "bricked up" these properties in order to secure the damaged properties and prevent them from attracting further criminal activity to the area. In 2006, it was judged that restoring these properties to a rentable standard would cost far more than was recoverable in rent before the planning process had been completed. In 2014 Grainger installed new hoarding in the properties in order to improve their appearance. It was certainly not envisaged in 2006 that the planning application process and the Order process would not yet be completed by 2017. Had this 11 year delay been foreseen,

the decision to refurbish the properties in order to maintain occupancy and rental income until the completion of the Order process would doubtless have been different.

- b. When further residential properties were acquired onsite, Grainger has sought, wherever economically possible, to ensure that these properties were occupied and were not left vacant (such as 28A and 28B Suffield Road). Other properties onsite have been refurbished after Grainger's acquisition, to ensure that they continue to be occupied until the Order process has been completed (such as 10 and 30 Suffield Road).
13. You refer to the director of MAMSSL being the subject of a TfL investigation for inappropriate behaviour. For the avoidance of doubt, MAMSSL is, as already stated, an independent company with no connection to Grainger, and Grainger is not responsible for the alleged behaviour of its director.
14. In the light of the above, it is therefore entirely incorrect to state that the current shop owners will be expelled from their place of work or that the 2012 scheme would have a deleterious impact on the cultural life of the area. In particular, the Market is to be re-provided in a new building on its present site and with significant improvements. These include more space; more and better planned communal areas; improved visibility and access from the street; and modern facilities compliant with current health and safety regulations. These improvements are designed to encourage and enhance the Market's continuing role as a cultural and communal centre for the Latin American and wider community. Traders will enjoy rent guarantees comparable to their current rents and of similar markets, lasting for five years from when the redevelopment commences, as well as a purpose-built temporary location across the road from the site, from which to trade during the redevelopment period. There is therefore no reason whatsoever why the Market should not continue to provide its valued cultural and social function to the community as part of the redevelopment.
15. As set out above, and contrary to the assertions in your letter, there has been a full social and equality impact assessment of the 2012 scheme's long term and short term impacts which has identified positive impacts of the 2012 scheme. The Council has demonstrated that there will be no indirect discrimination against any protected group nor will there be any breach of the applicable domestic legal framework. The positive equality effects that have been identified include increased provision of family and other housing; an improved Market with better facilities and visibility for traders and an improved environment for visitors including children; the creation of additional employment; opportunities for Latin American/Hispanic stallholders and other BAME businesses to share in the economic benefits; and an improved public realm in terms of safety, crime and accessibility.
16. Again contrary to the allegations in your letter, there have been numerous and lengthy consultation exercises conducted by both Grainger and the Council throughout the Council's planning policy processes, the 2012 scheme planning application process and the Compulsory Purchase Order process, as set out in the chronology appendix 9 to Ms [REDACTED]'s proof of evidence which was submitted to the Inquiry. Furthermore, the views of the public and of objectors have been heard and considered as part of the Inquiry process.

We trust that the above information and that on the dedicated website referenced above addresses your concerns and demonstrates that they are either founded on a misunderstanding of the factual position, or that they have been considered and mitigated in the various measures agreed between Grainger and the Council. We would invite you to retract the factual errors in your letter and to consider a correction to your press release dated 27 July 2017 and any other such publications.

Confirmation of Order, if that is the Secretary of State's ultimate decision, would allow the achievement of a comprehensive regeneration scheme with wider community benefits that promotes and improves the economic, social and environmental well-being of the area. Careful consideration has been given as to whether these objectives could be achieved by other means and it has been demonstrated that they cannot. It is important to emphasise that the 2012 scheme is part of the Council's overall plan to alleviate the high levels of deprivation and social disadvantage in this part of its borough. As explained at the beginning of this letter, the Inquiry has received significant quantities of evidence

in which all aspects of the Order, including human rights concerns, were considered in detail. The Inspector's report of his recommendations on whether to confirm the Order, and the Secretary of State's decision, will include a review and analysis of the evidence. In addition to the fact that this domestic process is already underway, we should point out that it is only if the Order should be confirmed by the Secretary of State that the 2012 scheme will proceed. We would suggest, therefore, that it would be most appropriate for you and your colleagues to await the Inspector's report and Secretary of State's decision before taking any further action.

**The Special Procedures process followed in this case**

Your letter of 21 July 2017, which set out a number of allegations, asked for a response within 60 days. Your letter also claimed that you did "not wish to prejudice the accuracy of these allegations". Notwithstanding this, on 27 July 2017 you issued a press release which variously asserted that: "...if granted, the Compulsory Purchase Order under review would result in the expulsion of the current residents and shop owners from the place where they live and earn their livelihoods, and would have a deleterious impact on the dynamic cultural life of the diverse people in the area"; "the regeneration project ... has a disproportionate impact on people belonging to minorities and their right to equal participation in economic, social and cultural rights"; and "no suitable alternative to expulsion and the destruction of the market has been identified or meaningfully discussed with the affected people". This press release repeated the unfair allegations as if they were matters of fact and expressed concluded views on the allegations. You have further publicised your position since the issue of the press release notwithstanding Grainger's request that you refrain from making any further public comment until it has had an opportunity to comment in full on your letter. This is deeply prejudicial to Grainger and, as you will appreciate, causes Grainger considerable concern.

We understand that mandate-holders such as yourselves are required to adhere to a Code of Conduct. In particular, we note that:

- (i) Article 3 of the Code of Conduct provides that mandate-holders shall "*(a) act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts ...; (e) uphold the highest standards of efficiency, competence and integrity, meaning, in particular, though not exclusively, probity, impartiality, equity, honesty and good faith; (f) neither seek nor accept instructions from any Government, individual, governmental or non-governmental organisation or pressure group whatsoever; ... (h) be aware of the importance of their duties and responsibilities, taking the particular nature of their mandate into consideration and behaving in such a way as to maintain and reinforce the trust they enjoy of all stakeholders.*";
- (ii) Article 6 of the Code requires mandate-holders to "*(a) always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources, that they have duly cross-checked to the best extent possible*" and "*(b) take into account in a comprehensive and timely manner, in particular information provided by the State concerned on situations relevant to their mandate*";
- (iii) Article 8 emphasises that mandate-holders shall, in their information-gathering activities, "*(a) be guided by the principles of discretion, transparency, impartiality, and even-handedness*"; "*(c) rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up*"; and "*(d) give representatives of the concerned State the opportunity of commenting on mandate-holders' assessment and of responding to the allegations made against this State, and annex the State's written summary responses to their reports*"; and
- (iv) Article 12 requires mandate-holders to "*base their conclusions and recommendations on objective assessments of human rights situations*" and "*show restraint, moderation and discretion so as not to undermine the recognition of the independent nature of their mandate or the environment necessary to properly discharge the said mandate*".

Grainger is concerned that: these requirements have not been complied with to date; the process which has been pursued thus far has not been guided by transparency, impartiality or even-handedness; there

has been no attempt to establish or verify the facts objectively before publicly making assertions as to the consequences and impact of the Order; there has not been a professional, thorough and impartial assessment of the facts; and, contrary to the aspiration in your letter of 21 July, you have prejudged the accuracy of the allegations. All this has been done without waiting for Grainger's response to these matters and without even having afforded Grainger sufficient and reasonable time to respond.

If there is anything in the above which is unclear please do contact me on the numbers below.

Yours sincerely



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