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**For the attention of Mr Ian Davis**  
Operations Director  
NHBC  
NHBC House  
Davy Avenue  
Knowlhill  
Milton Keynes  
Bucks MK5 8FP

13 February 2015

Our ref MW\GL\3554\11349\4144-0185-2162  
Your ref

Dear Sir

**THE USE OF KOOLTHERM K15 RAINSCREEN BOARD IN FACADES ABOVE  
18.0M**

We act for Kingspan Insulation Limited.

We refer to the above matter and, in particular, your letter to our client dated 5 February 2015.

As you will no doubt appreciate, our client is extremely concerned by the contents of your letter. The purpose of this response is to make clear our client's position both in terms of the incorrect statements made about the suitability of its Kooltherm K15 product and your stated intention to make statements to customers as to the suitability of K15 for use on buildings over 18m in height.

As we set out below, Kingspan strongly believes that it is being treated unfairly because by the operation of BCA Technical Guidance Note 18 ("Guidance Note") all cladding systems which incorporate any materials which are not regarded as being at least of "limited combustibility" need to demonstrate compliance in accordance with either Options 2 and Options 3 of the Guidance Note. So for instance, as is common on many projects, where the external cladding material is classified as being 'combustible', the entire cladding system will need to demonstrate compliance with Options 2 and Options 3 of the Guidance Note, regardless of whether the insulation material is Kingspan's K15, a mineral fibre product or some other insulation material. Yet it is only cladding systems

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which incorporate Kingspan's product that are being subjected to these testing requirements. That is unfair and gives other manufacturers of insulation products which should be subject to the same testing regime an unjust commercial advantage. If a particular regime is to be applied against Kingspan's products, it should also be applied against all insulation products in the market.

As regards the specific points made in your letter, we make the following points in relation to the use of K15 boards:

1. Our client's statement that the K15 product "*has been successfully tested to BS 8414: 2002, and can meet the criteria within BR135, which makes it acceptable for use above 180m...*" remains true and accurate. In support of this, our client relies upon fire tests undertaken. By way of example, we refer you to BRE test reports numbered 220876 and PN297099.
2. Cladding systems comprise a number of different components. Such cladding systems *as a whole* are tested and assessed against the acceptance criteria of BR135: not their individual components. As we understand the position, your concern is that a cladding system which includes (among numerous other components) Kingspan's K15 boards has failed a fire test. With respect that patently does not mean that K15 boards as a whole, whether (1) taken individually or (2) as part of any other cladding systems are unsuitable, and to make that leap and suggest that it does is plainly not a fair, sensible or appropriate conclusion to draw from the test undertaken. Indeed, it is a very surprising one.
3. As a result if you took the far reaching and extremely serious step of notifying your customers that NHBC will decline to accept buildings solely on the basis that K15 boards have been used or specified you would be singling out and condemning K15 as a component of the systems in the open market without any appropriate justification or basis for doing so.
4. Even where systems have not satisfied the acceptance criteria of BR135, it is clear that this has been as a result of the outer layer being combustible (we refer by way of example to test number PN293940). Systems incorporating non-combustible outer layers have been shown to comply with the assessment criteria. Accordingly, the insulating layer is not the determining factor in whether the system meets the acceptance criteria or not.

Given the above it is incorrect to state that the K15 boards have been the cause of systems failing to meet the assessment criteria, and it would clearly not be appropriate for you to inform any customers, bodies or any other third parties that K15 boards are not suitable for use in cladding systems - that would be an entirely incorrect statement.

If, notwithstanding the above, you are still minded to make any form of statement to customers, the only statement that would be reasonable and appropriate in the



circumstances would be to inform them that, where cladding systems incorporate combustible materials the contractor must be able to demonstrate compliance by reference to available test data or, in the absence of available test data, by reference to a desk top study carried out by an accredited testing body, in accordance Option 3 of BCA Technical Guidance Note 18.

## On-going work

As you are aware, various fire tests have been carried out in respect of various cladding systems using K15 boards as the insulating layer, and there is at present some disagreement as to whether the results of those tests meet the assessment criteria of BR135.

It is our client's primary position that all the test results (which show the tests were carried out for the full test duration) demonstrate the suitability of the various cladding systems, regardless of whether the component parts are combustible or non-combustible. Even if you do not accept this position, the appropriate course of action would be to request demonstration of suitability by way of desk top studies in respect of each of the systems, as envisaged by BCA Technical Guidance Note 18, an exercise our client is currently engaged in.

Further, compliance with fire regulations can also be demonstrated by the alternative means of fire safety engineering, a recognised method routinely used throughout the UK to demonstrate compliance of cladding systems. NHBC's current stance apparently takes no account of the fact that cladding systems incorporating Kingspan's K15 product routinely pass this alternative testing regime.

It is certainly not open to you to single out and condemn K15 as a component of cladding systems in the open market: to do so would be a serious and unsupportable misstatement of what the tests you are concerned about actually demonstrate.

In any event, as you are aware, our client has engaged Arup to undertake further assessments of systems using K15 boards. Those investigations are on-going, albeit they are now nearing a conclusion. To allow this technical analysis to be brought to a conclusion, our client requests your agreement to extend your current deadline of 19 February by 42 days to 2 April 2015, by which time our client anticipates being in a position to provide further confirmation by way of desk top studies.

Given what we have said above, it is clear that there is no justification for taking the steps outline in your letter of 5 February 2015. Taking such steps would cause our client very significant financial loss. They are not properly justifiable from the tests which have been carried out. They would amount to actionable negligent misstatements of the true position. Further, given that any such unjustifiable statements would clearly cause serious harm to our client's business resulting in serious financial loss, they would amount to





defamation under the Defamation Act 2013.

It is our client's position that neither NHBC or the market as a whole will suffer any detriment as a result of our client being given a further sensible period in which to demonstrate compliance. Further, given the seriousness of this matter, in particular the significant impact on our client's business in terms of damage to its reputation and serious financial loss that would clearly be suffered if you took the steps outlined in your letter, we would be grateful if you could confirm that no steps will be taken by the NHBC prior to 2 April 2015 to allow our client to further demonstrate the true position as set out above.

If we have not received such confirmation from you by 4 p.m. on Monday 16 February 2015, our client considers it will be left with no alternative but to protect its position by applying to the court for an injunction preventing the NHBC from making the statements you propose in relation to the K15 boards. Clearly, we would much prefer not having to do so.

We would urge you to confirm that no steps will be taken by NHBC as threatened by your letter of 5 February 2015 prior to 2 April 2015. We would also urge you to take immediate legal advice because the implications of NHBC refusing to agree to hold off from taking such steps until 2 April 2015 will be very serious indeed.

Finally, for the reasons set out at the beginning of this letter, we should be grateful for your confirmation that you require all manufacturers of insulation products for use in similar cladding system to demonstrate compliance with the assessment criteria within BR135.

We await hearing from you by no later than 4 p.m. on Monday 16 February 2015.

Yours faithfully

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