Neutral Citation Number: [2025] EWHC 1178 (Admin)

Case No: AC-2025-LON-000507

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 May 2025

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

THE KING
on the application of
SIDERISE INSULATION LIMITED

Claimant

- and -

THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON & CHELSEA

Defendant

- -

Tom Hickman KC and **Anneliese Blackwood**
(instructed by **Squire Patton Boggs (UK) LLP**) for the **Claimant**
James Goudie KC and **Aliya Al-Yassin** (instructed by the
Royal Borough of Kensington & Chelsea) for the **Defendant**

Hearing date: 30 April 2025

- -

Approved Judgment

This judgment was handed down remotely at 2pm on 16 May 2025
by circulation to the parties by email and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. This is an application by Siderise Insulation Limited for permission to apply for judicial review of the decision made by the Royal Borough of Kensington & Chelsea on 11 December 2024 to prohibit the use of Siderise's products in its construction and maintenance projects. Two grounds are argued:

   1.1 First, Siderise argues that the decision was made in breach of the local authority's own policy and/or that it was irrational and premised on a mistaken reading of the Grenfell Tower Inquiry reports.

   1.2 Secondly, Siderise argues that the decision was unlawful in that it was inconsistent with the then applicable Public Contracts Regulations 2015 ("the Regulations").

BACKGROUND

2. Siderise is a specialist British manufacturer and supplier of passive fire solutions. It particularly specialises in the provision of firestop and cavity barrier products. Siderise claims a substantial share of the UK and Irish market.

3. Siderise supplied its Lamatherm cavity barriers for the ill-fated refurbishment of the Grenfell Tower between 2012 and 2016. Cavity barriers are designed to prevent a fire spreading within a building through spaces or gaps in the external walls that, if left open, might allow a "chimney" or draught effect and which could quickly allow the fire to spread from one part of the building to another. While Siderise's vertical barriers are designed to fill the gap completely when installed, its horizontal barriers leave a gap behind the cladding panel to allow rainwater to flow down the outside of the building and keep the cavity ventilated in normal operating conditions. These barriers feature an intumescent strip that is designed to expand when exposed to heat in order to fill the gap and thereby restrict the passage of fire vertically.

4. Following the fire at the Grenfell Tower on 14 June 2017, the Grenfell Tower Inquiry made no criticism of the design or performance of Siderise's products. Indeed, it found that the company's cavity barriers met the claims made in respect of integrity and insulation, but concluded that they had been negligently fitted by other contractors. Further, the Inquiry observed that if a rainscreen cladding panel becomes seriously distorted or dislodged, the cavity barrier is prevented from closing the gap and can no longer function as a barrier to the flow of air and smoke.

5. On 14 May 2021, Kensington & Chelsea decided to adopt a policy not to use or permit the council's contractors to sub-contract with the companies named in the Phase 1 report of the Grenfell Tower Inquiry nor to use their products in future projects. The 2021 policy stated that the council would review its position when the final outcome of the Inquiry was known. The 2021 decision did not place any prohibition on the use or specification of Siderise's products.

6. The Inquiry's Phase 2 report was published on 4 September 2024. By its public response to the Phase 2 report in November 2024, Kensington & Chelsea undertook to strengthen its existing ban on "contractors and products implicated in the Grenfell Tower fire from use

by the Council, and to maintain a complete ban on the use of any combustible materials in externals walls for all Council construction and refurbishment projects". Such policy required a review of the council's 2021 decision.

7. A report prepared for the meeting of the council's leadership team on 11 December 2024 recommended "a continuation of the current Policy and a widening of its scope to other companies criticised in the Phase 2 report". The paper set out the policy justification in the following terms at paragraph 4.7:

> "The Council's clear position is that it should not allow companies to be engaged (directly or indirectly) on its construction and maintenance projects, in the following circumstances where such companies:
>
> - are shown by the Phase 2 report to have been highly incompetent, or conducted themselves dishonestly or in a way which was misleading, when either marketing their products or in complying with legal or contractual requirements, and this contributed to the Grenfell Tower fire or its spread, or
> - were not candid before the Grenfell Tower Inquiry."

8. The council's report identified Siderise as a company that had been criticised in the Phase 2 Inquiry report and recommended that use of its products should be prohibited. A supporting background paper identified that such recommendation was based on the criticisms at paragraphs 27.27-27.29 of the Phase 2 report, which provided:

> "27.27 If the construction industry is to function effectively and safely it requires products that do the job expected of them and are marketed honestly. Although there is no evidence to suggest that, unlike Arconic, Kingspan and Celotex, Siderise set out in its marketing literature deliberately to mislead, it was suggested that its datasheet was in fact misleading because it suggested that its cavity barriers were effective when used in rainscreen cladding systems of all kinds, when the tests it had carried out did not support that claim. We think that the datasheet should have described more fully the nature of the tests it had carried out. The unqualified statement that the horizontal cavity barrier 'fully closes the ventilated air gap in the event of a fire' tended to suggest that it would do so regardless of the nature of the rainscreen panel against which it was to form a seal. On the face of it, that was misleading, because no test had been carried out in conjunction with any recognised form of rainscreen panel. However, it is unlikely that any competent designer reading the datasheet would have been misled about the suitability of the product for particular rainscreen applications.
>
> 27.28 The title of the datasheet, 'Cavity Barriers for Rainscreen Cladding', indicated no more than that the product had been designed for use in rainscreen cladding systems, which was indeed the case. Any competent fire engineer should have been aware of the warning in the second edition of BR 135 that small-scale tests on individual products had been found not to reflect the fire hazard associated with full-scale cladding systems and would have realised that the effectiveness of cavity barriers in any ventilated rainscreen system depends not only on the quality of the product itself but on whether the rainscreen panels remain in place during a fire. A competent fire engineer would also have asked for the underlying fire test

data to obtain a proper understanding of the tests that had been carried out on the product.

27.29 We recognise, however, that this kind of marketing literature would also have been read and relied on by a wide range of construction professionals, including architects, cladding designers and building control officers, some of whom might not have been familiar with test method BS 476-20. Although Siderise argued that anyone familiar with BS 476 Part 20 or BS EN 1366-4 would have been aware that tests on cavity barriers are carried out on the product held between concrete lintels, its marketing literature stated only that the tests had been carried out 'using the principles' of those methods. We do not think that some professionals, for example, reasonably competent cladding contractors, could be expected to be familiar with those fire resistance tests, although they should have appreciated that tests on cavity barriers are generally conducted with the product held between walls of fire resisting construction and that their performance in conjunction with rainscreen panels might be different. However, anyone with even a basic understanding of the principles underlying the use of cavity barriers who gave the matter a moment's thought would have realised that, if the rainscreen became distorted or dislodged for whatever reason, no cavity barrier of any kind could continue to be effective."

9. On 11 December 2024, Kensington & Chelsea's leadership team formally adopted the report's recommendations and decided that all contractors and consultants engaged on the council's construction or maintenance projects would be prohibited from naming certain companies as a sub-contractor or sub-consultant, or allowing their own sub-contractors or sub-consultants to do so. In addition, the council decided to prohibit the on-site use or specification of any products supplied or branded by five companies. Siderise was not named as a banned sub-contractor or sub-consultant, but the company was named as one of the prohibited suppliers and its products as one of the prohibited brands.

GROUND 1: BREACH OF POLICY AND/OR IRRATIONALITY

10. Siderise contends that Kensington & Chelsea's decision was unlawful because it was inconsistent with the council's own policy criteria, alternatively it was irrational and premised on a misreading of the Phase 2 report. Tom Hickman KC, who appears for Siderise together with Anneliese Blackwood, accepts that the Phase 2 report criticised certain aspects of Siderise's marketing materials but did not find any evidence of dishonesty on the company's part. He argues that, importantly, the report did not find that Siderise's conduct had contributed to the fire at the Grenfell Tower or its spread. Therefore, Siderise's exclusion from Kensington & Chelsea's projects was, he argues, inconsistent with Kensington & Chelsea's own stated policy criteria. Relying on R (Nadarajah) v. Secretary of State for the Home Department [2005] EWCA Civ 1363, at [68], and Mandalia v. Secretary of State for the Home Department [2015] UKSC 59, [2015] 1 W.L.R. 4546, at [29], he argues that the decision to prohibit the use of Siderise's products does not therefore need to be shown to be irrational and that the decision was arguably unlawful if it was in breach of the council's stated policy.

11. Mr Hickman argues that the decision was in any event irrational or based upon a misreading of the Phase 2 report. In support of that argument, he relies on the fact that Siderise was not named by the government when announcing on 26 February 2025 the seven companies that were being investigated for potential professional misconduct arising out of the Grenfell Tower tragedy with a view to including such companies on a debarment list under the new power vested in the Secretary of State under s.62 of the Procurement Act 2023 ("the Act").

12. James Goudie KC, who appears for Kensington & Chelsea together with Aliya Al-Yassin, rightly stresses the importance of not minimising either the Grenfell Tower fire or the Inquiry's reports. He argues that the Inquiry's finding that Siderise was responsible for misleading marketing materials was very significant. While accepting that there were "much bigger villains", he submits that Siderise "cannot escape from being amongst the guilty parties". He argues that the court should not take too narrow a view of the council's policy and that the council's decision to exclude Siderise's products was justified based on the criteria set out in the Phase 2 report.

13. In my judgment, it is clear that Siderise was criticised in the Phase 2 report and that, while acquitted of any dishonesty, the report concluded that the company's marketing had been misleading. There was, however, no finding that the cladding contractor had in fact relied on the misleading datasheet when designing the external wall at the Grenfell Tower. Further, the Phase 2 report concluded that it was unlikely that any competent designer reading the datasheet would have been misled about the suitability of Siderise's cavity barriers.

14. It is, in any event, properly arguable that the council's stated policy required a further matter to be established, namely that Siderise's misleading conduct had contributed to the Grenfell Tower fire or its spread, and that such further finding is not supported by the Phase 2 report. Accordingly, it is properly arguable that the council failed to follow its own policy, alternatively that it acted irrationally, in prohibiting the use of Siderise as a supplier and its products in the absence of any finding in the Phase 2 report that its misleading statements had contributed to the fire or its spread.

GROUND 2: INCONSISTENCY WITH THE REGULATIONS

15. Siderise argues that Kensington & Chelsea's decision to prohibit the use of its products was inconsistent with the Regulations which governed public procurement exercises at that time. Mr Hickman submits that it is at least arguable that the Regulations did not provide Kensington & Chelsea with the power to exclude Siderise from future procurement exercises. Regulation 57 set out detailed provisions for the mandatory and discretionary exclusion of economic operators from procurement exercises, but Mr Hickman submits that the then applicable statutory scheme did not allow for the blanket exclusion of a company based on the criteria applied by Kensington & Chelsea.

16. The council relies on regulation 70 which provided:

> "(1) Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are—

(a) linked to the subject-matter of the contract within the meaning of regulation 67(5), and

(b) indicated in the call for competition or in the procurement documents.

(2) Those conditions may include economic, innovation-related, environmental, social or employment-related considerations."

17. Regulation 67(5) provided that criteria were considered to be "linked to the subject matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their lifecycle…"

18. Mr Goudie argues that there is as yet no procurement exercise from which Siderise has been excluded and that any procurement exercise that is now launched will be subject to the Act and not the revoked Regulations. He submits that Kensington & Chelsea has not fettered the exercise of its future discretion as to the exclusion of Siderise and that this challenge is premature. Further, he argues in any event that there is no equivalent of reg. 70 under the Act and contends that the council therefore now enjoys a greater freedom to restrict Siderise's involvement in future projects.

19. Mr Goudie argues that Kensington & Chelsea's decision is consistent with the Regulations, which allow for the exclusion of economic operators based on specific criteria. Mr Goudie contends that the criteria applied in this case are aligned with the Regulations, as they aim to exclude companies whose conduct may have contributed to the Grenfell Tower fire or its spread. Kensington & Chelsea maintains that its decision is within the scope of the Regulations and is necessary to ensure the safety and integrity of future construction projects. Further, he relies on the council's general power of competence pursuant to s.1 of the Localism Act 2011.

20. Mr Hickman in reply denies that the claim is premature and argues that if the decision cannot be challenged as an unlawful restriction on Siderise's right to supply products for use in future procurement exercises, it is at least open to doubt – at least on the basis of the law under the Regulations as explained by Coulson LJ in International Game Technology plc v. The Gambling Commission [2023] EWHC 1961 (TCC), [2024] PTSR 65, at [174] – whether it would have standing to challenge a specific procurement exercise in which it is not itself a bidding party.

21. In my judgment, it is properly arguable that the council erred in law in concluding that it had the power to exclude Siderise from supplying products in future procurement exercises. That question is not straightforward and should, in my judgment, go forward to a full hearing for more detailed consideration.

LIMITATION ARGUMENT

22. Kensington & Chelsea seeks permission to amend its Acknowledgment of Service to include a limitation argument, contending that Siderise's claim is out of time under r.54.5(6) of the Civil Procedure Rules 1998. Regulation 92 of the Regulations provides that proceedings

must be started within 30 days beginning with the date when the economic operator knew or ought to have known that grounds for starting the proceedings had arisen. Rule 54.5(6) provides:

> "Where the application for judicial review relates to a decision governed by the Public Contracts Regulations 2015, the claim form must be filed within the time within which an economic operator would have been required by regulation 92(2) of those Regulations (and disregarding the rest of that regulation) to start any proceedings under those regulations in respect of that decision."

23. At my invitation, counsel did not waste the limited time available at the permission hearing by arguing the procedural merits of the council's late application but instead focused on the substantive merits of the limitation issue. Mr Goudie argues that the 30-day time period prescribed by reg. 92 of the Regulations and r.54.5(6) began on 12 December 2024 when Siderise first became aware of the decision, and that this claim, which was filed on 18 February 2025, is out of time.

24. Mr Hickman argues that the formal notification was not made until 18 January 2025 and that such date should be considered the starting point for the 30-day time limit since it was only then that Siderise was provided with the detailed reasons for the decision. In any event, he argues that this is not actually a claim in respect of a decision governed by the Regulations such that it is not in fact subject to either reg. 92 or r.54.5(6). Alternatively, he argues that the court should exercise its discretion to extend time.

25. At first blush, there is an obvious tension between Mr Goudie's primary submission that this challenge is premature and his limitation argument. Inevitably the argument proceeds, however, on the basis that the court rejects the prematurity argument as a "knockout blow".

26. The complication in this case is that the challenge is not to a specific procurement decision but rather to a broader policy decision by Kensington & Chelsea as to its approach to future procurement exercises. Given Coulson LJ's conclusion that a challenge under the former Regulations could only be brought by a bidding party, I consider that it is at least arguable for present purposes that this claim for judicial review is not therefore subject to the strict 30-day limit applicable to challenges to specific procurement decisions and that the local authority's limitation argument does not provide the "knockout blow" to Siderise's otherwise arguable public-law challenge. I should, however, make clear that the only issue at this stage is whether Siderise has established arguable grounds for judicial review with a realistic prospect of success that are not subject to a discretionary bar or other knockout blow. Accordingly, I do not purport to decide either Kensington & Chelsea's limitation argument or Siderise's argument that the court should in any event extend time. If such issues remain live, they should be decided at the final hearing on the basis of evidence and full legal argument.

CONCLUSION

27. For the reasons explained above, I grant Siderise permission to apply for judicial review on both grounds. I allow the council's application to amend its summary grounds of defence

although that is to some extent academic since it will now have the opportunity to reconsider the issue and serve its detailed grounds for contesting the claim.