

BPB Appeal No. A1268

IN THE MATTER OF

the Building Act 2004 (the Act)

AND

IN THE MATTER OF

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **[the Appellant]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	8 December 2016 at Auckland
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Appeal heard by:	Richard Merrifield, Deputy Chairman Catherine Taylor, Board Member Robin Dunlop, Board Member
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Appearances by:	[The Appellant]
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1.0 Introduction

- 1.1 [The Appellant] of Auckland applied for a Brick and Blocklaying Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 21 March 2016. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 19 April 2016 the Appellant lodged an appeal to the Board against the Registrar’s decision.

2.0 Licensing Scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.² The minimum standards are set out as “Competencies” in Schedule 1 to the Rules. In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1³.
- 2.2 Where the Registrar declines an application, the applicant has a right of appeal to the Board.⁴

3.0 Scope of the Appeal

- 3.1 An appeal proceeds by way of rehearing⁵. However, the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

“The grant of a Brick and Blocklaying Licence”
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3, and 4 for a Brick and Blocklaying Licence.

Brick and Blocklaying Licence Competencies:

- Competency 2: Demonstrate knowledge of current bricklaying and blocklaying trade practice.*
- Competency 3: Carry out planning work for masonry work.*
- Competency 4: Carry out masonry work.*

¹Incorporating amendments for 2008, 2009 and 2010.

²S286 of the Act and rule 4 of the Rules.

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(4) of the Act

4.0 Registrar's Report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁷. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *"There is lack of clarity about applicant's career progression in Bricklayin[g] and Blocklaying. The applicant has been in the construction industry many years and holds a LBP carpentry licence, but his structural masonry knowledge and application is incorrect.*
- *When asked some relevant questions applicant said that he pours grout at 1.2 meters but could not explain the required grouting methods for structural blockwork and also evaded the question of what is the maximum height a wall can be built for high lift grouting.*
- *The first referee (the engineer on the applicants own house) supported his application but the second referee [omitted] had no record of the applicant. When he was informed of this and asked to nominate another referee and a job, the applicant did not offer an alternative.*
- *With his limited bricklaying and blocklaying work history, limited scope of the job records provided and sufficient support from nominated referees, questions are raised.*
- *A face to face interview would not answer or solve the outstanding issues; the applicant says he has experience in the trade, but with unclear work history, limited scope of nominated jobs and lack of sufficient support from nominated referees the evidence is not there. The applicant does not meet all of the required competencies and in summary a decline for an LBP [Bricklaying] and Blocklaying licence in the Structural masonry area of practice would be appropriate at this point."*

4.3 The Registrar concluded:

The basis for the Registrar's decision to decline the application:

- *"I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.*
- *I reviewed the assessor's report and [the Appellant's] application.*

⁷ clause 10 and 11 of the Rules

- *I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."*

5.0 Appellant's Submissions

- 5.1 In the appeal application, the Appellant included a written response and a copy of a producer statement from 2007.
- 5.2 At the appeal hearing, the Appellant outlined his work experience for the Board. This included his work experience as a stone mason and his experience in blocklaying.
- 5.3 The Board asked questions to ascertain the Appellant's knowledge of Competencies 2, 3, and 4 which the Registrar declined him on.

6.0 Board's Consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for a Brick and Blocklaying Licence:

Brick and Blocklaying Licence Competency:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

- 6.2 The Board then considered Competencies 2, 3, and 4 for a Brick and Blocklaying Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency. In this respect the Board notes the provisions of section 314B(b), which requires the LBP to work only within his/her competence.

Board's findings

- 5.4 The Board found that the Appellant did not meet a sufficient number of the performance indicators for a Brick and Blocklaying Licence. The Appellant was unable to demonstrate any knowledge of the relevant technical information, e.g. New Zealand Standards and manufacturers' technical information. In particular, he was unable to describe how he would correct wrongly placed starter-bars, and did not demonstrate that he had sufficient knowledge of grouting techniques. The Appellant stated to the Board that he had undertaken very little brick-veneer work.

7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision and not license [the Appellant] with a Brick and Blocklaying Licence.**

8.0 Publication of Name

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this day of 15 December 2016



Richard Merrifield
(Deputy Chairman)

Advice Note (not part of Board's Decision)

Extracts from the Act:

“330 Right of Appeal

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
(a) *decline to licence the person as a building practitioner;*
...
- (2) *A person may appeal to a District Court against any decision of the Board—*
(a) *made by it on an appeal brought under subsection (1);*
...

331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.”*