

**BPB Appeal No. A1067**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	17 September 2012 at [omitted]
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Appeal heard by:	Brian Nightingale Jane Cuming William Smith Richard Merrifield	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted], witness and support for the Appellant  The Registrar, Mark Scully, was available by teleconference
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## 1. Introduction

- 1.1 The Appellant of [omitted] applied for Carpentry, Site Area of Practice (AOP) 3 and Design AOP 3 Licences under s 288(2) of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined Carpentry and Site AOP 3 applications and notified his decision by letter dated 28 May 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 The Registrar declined the Appellant’s Design AOP 3 Licence application and instead granted a Design AOP 2 Licence. This licence is not part of the appeal.
- 1.4 On 29 June 2012<sup>2</sup>, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.5 At a pre-hearing teleconference on 5 September 2012, the Presiding Member of the Board informed the parties of the procedural matters for the appeal.

## 2. Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.<sup>3</sup> The minimum standards are set out as “competencies” in Schedule 1 to the Rules. In determining whether a person met a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1<sup>4</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>5</sup>

## 3. Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>6</sup> however the Board will not review matters outside the scope of the appeal<sup>7</sup>.
- 3.2 The appeal seeks the following relief:  
*To be granted a*
  - 1) *Carpentry licence*
  - 2) *Site AOP 3 licence or failing that an AOP 2.*

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> Received by Board Secretary on 29 June 2012.

<sup>3</sup> S286 of the Act and rule 4 of the Rules.

<sup>4</sup> Clause 4(2) of the Rules

<sup>5</sup> S330(1) (a) of the Act.

<sup>6</sup> S335(2) of the Act

<sup>7</sup> S335(4) of the Act

- 3.3 In light of s335(4) and the Registrar's decision letter, the Board interprets its inquiry as being restricted to consideration of following Competencies:

**Carpentry Licence**

*Competency 3: Carry out planning and scheduling for carpentry work*

*Competency 4: Carry out carpentry work*

**Site Area of Practice 3 Licence**

*Competency 3: Organise and manage building projects*

*Competency 4: Manage personnel*

*Competency 5: Provide technical supervision*

**Site Area of Practice 2 Licence**

*Competency 3: Organise and manage building projects*

*Competency 4: Manage personnel*

*Competency 5: Provide technical supervision*

**4.0 Registrar's report**

- 4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>8</sup>. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.
- 4.2 In making the recommendation to decline the Carpentry licence application, the Registrar noted the following reasons recorded by the Assessor:
- The Appellant completed a carpentry apprenticeship in 1977 and has progressed within the industry over a 35 year period.
  - Neither referee could confirm the Appellant carrying out any actual carpentry work or in a direct supervision role.
  - Both referees confirmed that the Appellant has been involved in an architectural design role for the last 15 or more years.
  - The Appellant also advised that he has not worked in any carpentry role during the last 15 years with and confirmed his role as an architectural designer.
  - The assessor considered the Appellant has not achieved Competencies 3 and 4 of the Carpentry licence.

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<sup>8</sup> clause 10 and 11 of the Rules

- 4.3 In making the recommendation to decline the Site AOP 3 licence application, the Registrar noted the following reasons recorded by the Assessor:
- The Appellant had good trade skills with a career progression within the building sector where he had carpentry supervision roles on a number of large commercial buildings.
  - The Appellant provided acceptable answers to the project records questionnaire, with the answers underpinning his skills and knowledge of the Cat 1 and 2 AOP Category.
  - Neither project nominated was a Category 3 building. Both were constructed in the early 1990's. The Appellant last worked in a site supervision role in 1993 for [omitted].
  - Both referees were generally positive about the Appellant but also confirmed that the Appellant has not worked in a supervision role since the mid 1990's.
  - The Appellant's current role, for the last 15+ years, is as an architectural designer only and does not involve any site based supervision role.
  - The Appellant has not met all five competencies of the Cat 3 AOP Licensing Category.

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

- 4.4 The Registrar noted that the Assessor indicated that Competencies 1, 2, 3, and 4 had been met at Site 3. The Registrar considered this to be inconsistent with the text of the Assessor's report and that this was probably an error.
- 4.5 The Registrar did not agree that Competency 3: Organise and manage building projects, nor Competency 4: Manage personnel, were met for Site (Area of Practice 3).
- 4.6 The Registrar noted that the Appellant is not working in a Site role, has not done so since 1993, and his nominated projects from the early 1990's were not Category 3 buildings.

## **5.0 Appellant's Submissions**

- 5.1 The Appellant drew the Board's attention to the differences between "should" and "may" and "shall" and "must".
- 5.2 The Appellant tabled copies of email communications between himself and the Assessor requesting examples of projects completed in the last 5 years and also between himself and the Building and Housing Group requesting clarification on the 5 year period and submitted that neither the Act nor the Regulations specifically required a potential Practitioner to have worked on jobs in the past 5 years.

- 5.3 The Appellant gave oral submissions, describing in more detail his role on the project at [omitted], submitted as evidence in his appeal.
- 5.5 The Appellant submitted that in his role as a designer he was on site weekly observing construction and resolving details and had therefore maintained his observations skills.
- 5.6 [omitted] (himself a Licensed Building Practitioner in Carpentry and Site AOP 2) gave evidence stating that he had known the Appellant for 28 years.
- 5.7 [omitted] advised that he has full confidence in the Appellant as a Carpenter, Site Supervisor and also left him to look after his business when he was away recently for a period of 10 days.
- 5.8 [omitted] submitted that as a qualified LBP he was confident to employ the Appellant as a carpenter, supervisor and to run his company, however confirmed that over the last 18 years the Appellant primarily worked as an Architectural Designer.

## **6.0 Board's consideration**

### *Carpentry Licence*

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met Competencies 3 and 4 for the Carpentry Licence.
- 6.2 The Board then considered Competencies 3 and 4. 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 his competency.
- 6.4 A key element of the LBP scheme is its focus on 'current competence'. The assessment of current competence is evidence based, and whilst not restricted to the past 5 years, relies on the applicant being able to provide examples of recent work, and demonstrate sufficient understanding of the changes in technical requirements since the date of the example.
- 6.5 In the Boards view, the Appellant has failed to demonstrate that he has met a sufficient number of performance indicators in Competencies 3 and 4 of the Carpentry Licence.

### *Site AOP 3 / 2 Licence*

- 6.6 The Board noted that the Registrar was not satisfied that the Appellant met Competencies 3, 4 and 5 for the Site AOP 3 Licence.
- 6.7 The Board then considered Competencies 3, 4 and 5. These Competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

- 6.8 The LBP scheme is competency based, and it is up to the Practitioner to demonstrate his competency.
- 6.9 A key element of the LBP scheme is its focus on 'current competence'. The assessment of current competence is evidence based, and whilst not restricted to the past 5 years, relies on the applicant being able to provide examples of recent work, and demonstrate sufficient understanding of the changes in technical requirements since the date of the example.
- 6.10 The Board considers that site observation in the role of a Designer does not meet the specific performance indicators of the Site Licence.
- 6.11 The Board considers that the Appellant has failed to demonstrate that he has met a sufficient number of performance indicators in Competencies 3, 4 and 5 of the Site AOP 3.
- 6.12 The Board then considered Site AOP 2 Licence, Competencies 3, 4 and 5. These Competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.13 In the Boards view, the Appellant has failed to demonstrate that he has met a sufficient of AOP 2 performance indicators in Competencies 3, 4 and 5.
- 6.14 The Board notes that the Appellants evidence demonstrated past experience in both the Carpentry and Site Licence Competencies and encourages the Appellant to update his record of work experience to assist in demonstrating current competency and assist him in any future application.

#### *Board's findings*

- 6.15 The Board, concluded that the Appellant did not meet the competency requirements for a Carpentry licence.
- 6.16 The Board, concluded that the Appellant did not meet the competency requirements for either a Site AOP 2 or 3 licence.

#### **7. Board's Decision**

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Carpentry Licence. The appeal is therefore declined.**
- 7.2 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Site Area of Practice 3 Licence. The appeal is therefore declined.**
- 7.3 Pursuant to s335(3) of the Act, the Board has resolved not to license the Appellant with a Site Area of Practice 2 Licence. The appeal is therefore declined.**

**8. 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 invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 8.3 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..... 2012.

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Brian Nightingale  
(Presiding Member)

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**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.”*