

BPB Appeal No. A1208

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:	1 April 2014 at [omitted]
Appeal heard by:	Chris Preston, Deputy Chairman Brian Nightingale, Board Member Colin Orchiston, Board Member Mel Orange, Board Member
Appearances by:	[The Appellant] [Omitted] (Witness and Support Person)

1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry 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 3 October 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board ("the Board").
- 1.3 On 14 November 2013 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 Carpentry 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 1 and 4 for the grant of a Carpentry licence.

Carpentry Licence Competencies:

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

Competency 4: Carry out carpentry 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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

- "[The Appellant] has worked in the construction sector for many years. He now works solely as a window manufacturer and installer, and does not undertake a full scope of construction work.
- He was interviewed twice regarding the regulatory knowledge questions and was unable to answer them at either time.
- [The Appellant] confirmed that he has not built a house in 15 years, or carried out framing work within the last 10. As part of the process of window installation he has supervised the construction of conservatories, decks, concrete slabs and the like. This process also means that [the Appellant] can show a familiarity with E2/AS1 regarding weathertightness around windows.
- His referees had both known [the Appellant] in a professional capacity for 18 and 13 years respectively, and had not seen him carry out carpentry work in that time. They both considered him very knowledgeable in regard to window installation.
- [The Appellant] did not provide further referees who could support his having carried out a sufficient range of carpentry work."

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 assessors report and [the Appellant's] application.
- 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 At the appeal hearing, the Appellant tabled four additional references.

5.2 Through questioning from the Board, the Appellant explained his work experience within the industry and specifically that, prior to the purchase of his aluminum window business, he had been involved in all aspects of residential and light commercial construction.

⁷ clause 10 and 11 of the Rules

- 5.3 The Appellant, in describing the work that his aluminum business carried out, explained that the work included conservatories and additions and alterations to existing houses.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for a Carpentry licence:

Carpentry Licence Competencies:

Competency 2: Demonstrate knowledge of current building and trade practice.

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

- 6.2 The Board then considered Competencies 1 and 4 for a Carpentry 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.
- 6.4 The Board considered that the Appellant's work on residential additions, alterations and conservatories sufficiently demonstrated current competence.

Board's findings

- 6.5 The Board considered how the Appellant's experience related to current building technology and compliance documents. For previous appeals, the Board has considered experience that may have fallen outside the five-year guidelines relied upon by the Registrar. The Board has also previously considered the experience an appellant has in related fields of work. The Board accepted that, in this appeal, the Appellant's earlier experience, coupled with his work experience in related areas outside the construction industry, were helpful in assessing his current competence.

7.0 Board's Decision

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [the Appellant] with a Carpentry Licence.
- 7.2 The Board directs the Registrar to issue a Carpentry Licence to [the Appellant] as soon as practicable.

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 4 April 2014



Chris Preston
(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."*