

BPB Appeal No. A1329

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 [REDACTED] against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	Monday, 11 May 2020, by videoconference
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Appeal heard by:	Chris Preston (Presiding) Richard Merrifield, LBP, Carpentry Site AOP 2 David Fabish, LBP, Carpentry Site AOP 2 Bob Monteith, LBP Carpentry and Site AOP 2
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Appearances by:	[REDACTED]
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1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Rotorua applied for a Bricklaying 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 29 October 2019. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 18 November 2019 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 of the Rules. In determining whether a person meets a Competency, regard must be given 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 Bricklaying 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 3, 4 and 5 for a Bricklaying and Blocklaying Licence.

Bricklaying and Blocklaying Licence Competencies:

- | | |
|---------------|--------------------------------------|
| Competency 3: | Carry out planning for masonry work. |
| Competency 4: | Work Safely |
| Competency 5: | 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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph **20 and 22**, the following from the Assessor's recommendations, and the subsequent peer review:

- While this application is quite limited in actual activity required for a license, I believe the applicant has enough knowledge and skill to carry out the trades of Bricklaying and Blocklaying.
- My decision is based on the applicant having twenty five years experience laying bricks and blocks in the United Kingdom, gaining his City of Guilds, London which has been assessed by the NZ Qualifications Authority to National Certificate Level 4.
- While there is nil or very little brickwork experience in New Zealand, he assures me that he will consult any relevant NZ Standards or ask questions if necessary before doing any brickwork in New Zealand.
- As for his Masonry skills, he does provide one job which meets the criteria and is supported by both referees.

[...]

22. The peer reviewer disagreed with the judgement of the assessor. In summary, he noted the following:

- The required competencies, jobs and referees were not presented
- The evidence did not ensure that all competencies were covered
- The evidence was not sufficient to show repeatability of performance

4.3 The Registrar concluded:

- I have been delegated under S312 (1) to review the assessment report and make a decision about [REDACTED] application.
- I reviewed the assessors report, the peer review and [REDACTED] application.
- I based my decision to overrule the recommendation of the assessor on the following factors:
 - Although [REDACTED] City and Guilds qualification has been recognised as equivalent to National Certificate Level 4, that is not the same as verifying the qualification is equivalent to one of the Recognised Qualification in Schedule 2 Licensed Building Practitioners Rules 2007. Therefore the Qualified application pathway could not be used. The application therefore needed to meet the requirements of a standard application.

⁷ clause 10 and 11 of the Rules

- The projects provided for the Veneer AOP were from the United Kingdom and were not considered recent or current (they were carried out in 2009 and 2012). There is some flexibility around considering relevant overseas experience and older projects. However in this case these projects were not considered suitable as evidence of current competence and repeatability.
- Only one of the projects for the Structural Masonry AOP met the criteria for assessment. For a standard application two projects are required. The peer reviewer shared my doubts that the evidence provided by these projects was enough to warrant granting a licence in this AOP.
- It is my view that the applicant therefore lacked suitable projects and referees to establish evidence for competencies 3, 4 & 5.
- Although the applicant may have some level of competence, there was not sufficient evidence in this application to meet the assessment criteria. The assessment process is reliant of evidence the applicant has worked competently, not has the potential to work competently.

5.0 Appellant's Submissions

- 5.1 The Appellant included with his appeal all of the original material which he provided for his application, and an additional reference.
- 5.2 The Board asked questions of the Appellant.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies 1 and 2 for the Bricklaying and Blocklaying licence:

Bricklaying and Blocklaying Licence Competencies:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.
- Competency 2: Demonstrate knowledge of current bricklaying and blocklaying trade practice.

- 6.2 The Board then considered Competencies 3, 4 and 5 for a Bricklaying 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.

Board's findings

- 6.4 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 3, 4 and 5 for a Bricklaying and Blocklaying Licence.

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 [REDACTED] with a Bricklaying and Blocklaying Licence.

- 7.2 The Board directs the Registrar to issue a Bricklaying and Blocklaying Licence to [REDACTED] as soon as practicable.**
- 7.3 The Board took the opportunity to remind the Appellant that he must only undertake restricted building work that aligns with his competency.**
- 7.4 He must also ensure that he is fully aware of his regulatory obligations in regards to restricted building work especially the requirement to provide records of work.**
- 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 15th day of May 2020



Chris Preston
(Presiding Member)

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.”*