

**IN THE MATTER OF AN APPEAL BEFORE THE APPEAL BOARD OF THE
FOOTBALL ASSOCIATION**

B E T W E E N :

RISBOROUGH RANGERS FC

Appellant

- and -

THE FA LEAGUE COMMITTEE

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

CONTEXT

Introduction

1. This document sets out the decision with reasons of an appeal board (“the Appeal Board”) in the above proceedings (“the Appeal”) brought by the Appellant (“the Club”), following the hearing of the Appeal on 22.04.22 (“the Appeal Hearing”).
2. The Appeal was brought by the Club against a decision (“the Decision”) of the Respondent that the Club shall not be permitted to either gain automatic promotion for the 2022-2023 season (from Step 5, up to Step 4) or to compete in the Inter-Step Play-Offs (“the Play-Offs”) in an attempt to gain such a promotion, following non-compliance with the applicable ground-grading requirements.
3. The Appeal Board was made up of Simon Lewis (chair), Daniel Mole, and Bob Purkiss MBE. Michael O’Connor acted as secretary to the Appeal Board. The

Appeal Hearing took place via Microsoft Teams. It completed without any significant technical or other difficulties.

4. In the Appeal Hearing, the Club was represented, principally, by Karim Bouzidi. Mr Bouzidi is a litigation partner in a law firm and practises in the field of sports law (including football) among other areas. However, in the context of the Appeal, he was not appearing as a lawyer formally instructed by the Club. Mr Bouzidi, in his spare time, is involved in one of the Club's youth teams and, given that connection, appeared before the Appeal Board in a pro-bono capacity. We were grateful for his thoughtful and considered contributions. The Club's first-team manager, Mark Eaton, was in attendance and also made submissions on behalf of the Club. The Appeal Board would like to record its gratitude to Mr Eaton, too. His submissions were intelligent, succinct and made with conviction. Finally, the Club's chair, Richard Woodward, a retired civil servant, was also present. Mr Woodward helpfully assisted the Appeal Board with one or two matters.
5. The Respondent was represented by Mark Ives. In addition, the Respondent brought along three other individuals: Mr Edkins, National League System Manager; Mr Earl, National League System Manager; and Mr Harris, chair of the ground-grading sub-committee.

Documents

6. The Appeal Board had been provided, in advance, with a bundle of documents relevant to the Appeal ("the Bundle"). Numerical references in square brackets below are to page numbers within the Bundle.
7. The Bundle included the following:
 - (a) a letter/email, dated 11.04.22, setting out the Decision ("the Decision Letter") [70];

- (a) documentation before the Respondent at the time it made the Decision [72-108];
 - (b) the Club's grounds of appeal and cover letter ("the Grounds") [3-9];
 - (c) appendices in support of the Grounds ("the Appendices") [10-62];
 - (d) the Respondent's response to the Grounds [9-11] ("the Response"); and
 - (e) correspondence relating to the Appeal [110-112].
8. In addition, the Appeal Board was provided and/or referred to various additional documents, including but not limited to: (a) a ground-grading inspection report following an inspection at the Club's ground ("the Ground") on 03.07.21; and (b) documents relating to planned works at the Ground.

Relevant Principles and Regulations

9. The general aims and objectives of the National League System ("the NLS") are set out at reg 2 of the NLS Regulations ("the NLS Regs") (to be found within the FA Handbook):

THE NLS SHALL BE OPERATED IN ACCORDANCE WITH THE REGULATIONS

The aims and objectives of the NLS are to provide:

- 2.1 Clubs with a level of competitive football appropriate to their playing ability, stadium/ground facilities and geographical location.*
- 2.2 A framework for discussion on matters of policy and common interest to Leagues and Clubs.*
- 2.3 The seasonal movement of Clubs.*
- 2.4 A co-ordinated approach between Leagues regarding the final date of the Playing Season.*

All Leagues are bound by the Regulations. A Club is bound by the Regulations from the date it has qualified for placement into the NLS until such time as it leaves the NLS for whatever reason.

10. There is, therefore, an important general principle that the NLS and the NLS Regs are there, in part, to ensure that clubs are playing at the right level, having regard not just to their playing ability/performance but to their stadium/ground facilities (and their location). In other words: it is not enough for a club to perform well on the pitch: it also needs, in parallel, to have the right facilities.

11. More specifically within reg 5, the NLS Regs provide (as far as relevant):

5.8 Ground grading requirements will be in accordance with the Rules. In order to be considered for promotion, the following requirements will apply ...

Step 5 – Clubs competing at Step 5 must comply fully with the requirements of Grade F ...

12. Within reg 9, the NLS Regs provide (in full):

CRITERIA FOR THE PARTICIPATION IN PLAY-OFF MATCHES

In order to qualify for Play Off Matches and Inter-Step Play Off Matches a Club must comply with:

- *Security of Tenure – see Standardised Rule 2.3.2*
- *Solvency - see Standardised Rule 13.B.2*
- *Ground Share requirements, i.e. not ground share in order to gain promotion – see 5.7 of these Regulations*
- *Ground Grading – see 5.8 of these regulations and the relevant criteria document*

13. Within reg 8, the NLS Regs provide (as far as relevant):

PROCEDURES FOR THE DETERMINATION OF ANY MATTER, DISPUTE OR DIFFERENCE BY THE COMMITTEE

8.1 The Committee may adopt such procedures for the determination of any matter, dispute or difference as it considers appropriate and

expedient, having regard to the aims and objectives set out at Regulation 2. The Committee may require the attendance at a meeting or the written observations of any League or Club, as it considers appropriate to assist its determination.

8.2 (a) ...

(b) ... any decision of the Committee shall be subject to a right of appeal to an Appeal Board. The decision of that Appeal Board shall be final and binding on all parties. All referrals of appeals shall be conducted in accordance with the Appeal Regulations save for (i) appeals in relation to Ground Grading decisions where the procedures are outlined in Regulation 8.2(c) below ...

(c) Procedures for Ground Grading Appeals

- (i) The ratification of the Ground Grading decision must be sent in writing within 14 days of the final decision date, currently 31st March.*
- (ii) Appeals in relation to Ground Grading Appeals must be submitted to The Association's Judicial Services Department within seven days from the date of the written decision outlining the Grounds of Appeal, with a copy to The Association's National League System Department.*
- (iii) The Committee will appear before an Appeal Board with the Appellant to respond to the application and there is no requirement to make a formal response in writing.*
- (iv) In all cases the Committee will submit any documentation including the Ground Grading report that was considered by the Committee in relation to the Ground Grading decision (which the appellant would already have received).*
- (v) Dates would be set annually in advance by the Judicial Services Department for the hearing of Ground Grading*

appeals and details of the dates would be notified to all Clubs in the correspondence from the Committee notifying the decision of the Ground Grading assessment

...

8.3 *The Committee may, at its discretion, delegate the resolution of any matter, dispute or difference arising under these Regulations to anybody it considers to be appropriate (including a sub-committee ...)*

14. The Standardised Rules (also to be found within the FA Handbook) provide (so far as material):

2.3.3 *A Club's Ground must comply with the Criteria Document for the step in the National League System at which the Club is playing*
...

2.6 *The Competition and the FA shall determine a time scale whereby all Clubs in membership must attain the grade provided for in the Criteria Document. The grade applicable for each Club for the commencement of a Playing Season shall be that existing at the previous 31st July (or by a later date which was agreed at the sole discretion of The FA's Alliance League Committee (Steps 1 to 4) or Leagues Committee (Steps 5 & 6) such grading to be ascertained by an inspection carried out on or before 31st March or as soon as practicable thereafter. Any Club not maintaining the grade set for the Competition may be relegated at the end of the Playing Season to a step determined by The FA.*

15. Within reg 2 of the part of the Disciplinary Regulations dealing with appeals (also to be found within the FA Handbook), four permissible grounds of appeal are set out. They are that the relevant decision-making body:

- (a) failed to give the player/club a fair hearing; and/or
 - (b) misinterpreted or failed to comply with a relevant rule or regulation; and/or
 - (c) came to a decision that no reasonable such body could have come to; and/or
 - (d) imposed a penalty, award, order or sanction that was excessive.
16. In order for any appeal to succeed, at least one of the above grounds must be made out by the appellant.
17. Under reg 12 of the same part: an appeal shall be by way of a “review” on documents only.
18. Under reg 21 of the same part, an appeal board shall have power to (among other things): (a) exercise any power which the decision-making body could have exercised, whether the effect is to increase or decrease any sanction originally imposed; or (b) remit the matter for re-hearing.
19. Reg 4 of the general provisions of the Disciplinary Regulations emphasise that the Appeal Board is not a court of law but a disciplinary body and that, in the interests of achieving a just and fair result, procedural and technical considerations must take second place to the paramount object of being “just and fair to all parties”.
20. Under reg 5 of the same part, all parties involved in such proceedings shall act in a “spirit of cooperation”, to ensure such proceedings are conducted expeditiously, fairly and appropriately, having regard to their sporting context.
21. And under reg 6 of the same part: the applicable standard of proof will be the civil standard of the balance of probabilities.

Background

22. In or around May 2021, the Club was elevated to Step 5, for the 2021-2022 season, following the restructure of the NLS.
23. The Club has therefore been competing at Step 5 during the 2021-2022 season; specifically, in the Spartan South Midlands League Premier Division (“the League”). It had played the previous season in the Hellenic League Division 1 (at Step 6).
24. As a consequence of the Club’s elevation, it needed to comply with the relevant ground-grading requirements which applied to clubs moving up to Step 5. Such requirements are set out in the NLS Regs (see above). In essence: as a minimum, the Club’s stadium/ground facilities (“the Ground”) needed to comply with the Grade F requirements by 31.03.22.
25. There is no dispute between the parties on a central point: it is common ground that, as a matter of objective fact, the Ground did not comply with the Grade F criteria by 31.03.22.
26. According to the Response:
 - (a) The relevant leagues were/are, at Step 5, responsible for managing the ground-grading process. The League asked the FA for a meeting on 24.02.22. At the meeting, the FA was informed that there were potential issues concerning a planning application that the Club had submitted in August 2021. The FA told the League to ask the Club to set out relevant matters in writing so that the same could be considered by the FA ground-grading sub-committee (“the Sub-Committee”). The Club provided its response.
 - (b) On 08.03.22, the Sub-Committee considered the Club’s correspondence and the situation. The minute from that meeting recorded:

It was acknowledged that the Club was highly likely to be promoted, given that they had lost one game in two seasons. The Club had acknowledged that it was behind schedule with regards to meeting the F Grade, mainly because of a protected planning issue.

The Sub-Committee acknowledged however that the Club were awaiting planning for the stand on the far side of the field of play and not other items such as the hard-standing or perimeter fencing. A discussion followed and the Club were asked to supply:

- 1. Confirmation if any of the required works will be completed by 31 March (for example with the pitch perimeter barriers/hardstanding be installed by this date?)*
- 2. Some photos/videos of what the ground looks like at this point (e.g. if works have been/are being carried out then to provide information in relation to this and/or where things are to be installed)*

Furthermore, there was to be no extension to the 31 March deadline at this stage in relation to the possibility of promotion or inclusion in the Inter-Step Play-Offs. However, M Edkins was to report back to the Sub-Committee with any information in relation to points 1 & 2 above. It may be that an independent inspector joined colleagues at the Spartan South Midlands League for any re-inspection on or around 1 April.

- (c) Details relating to (b) above were relayed to the Club on 10.03.22 [73]. On 14.03.22, the Club responded [72]. It confirmed that no work had started as the funding from the Football Stadium Improvement Fund would not be released until the planning permission had been granted and that latter remained outstanding.

- (d) The Club waited for planning approval, which arrived on 30.03.22. According to clause 4 of the planning permission document [97], it appeared to the Respondent that works could not yet start:

No works (other than demolition) shall begin until a surface water drainage scheme for the site, based on sustainable drainage principles has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed ...

- (e) On 04.04.22, the Sub-Committee met again to consider, among other things, whether or not the Club had complied in full with the Grade F criteria by 31.03.22. The minute of that meeting recorded as follows:

The matter of the Club has been discussed at the previous meeting and it was acknowledged that that [sic] the club had been waiting for approved planning permission before releasing the funds from the FSIF and undertaking the necessary works. The Sub-Committee discussed this case again but it was a matter of fact that the club was not compliant as at 31 March 2022. It would appear to be unfair of those Clubs who are compliant by this date if a non-compliant Club were taken as the champion club or for them to participate in the play-offs. The Sub-Committee confirmed that the proposal to the Leagues Committee ... is that they do not meet the F Grade and so cannot be considered for promotion. It would be a matter for the Leagues Committee ... as to the Clubs [sic] Step level status.

- (f) On 11.04.22, Respondent met to discuss the position. It agreed that, in the circumstances, the Club would not be eligible for automatic promotion or inclusion within the Play-Offs. It also noted that there was a jurisdiction to relegate the Club: however, the Respondent decided that, due to the mitigating circumstances, the Club would not be relegated. It duly sent

out the Decision Letter, communicating the outcome and confirming that the deadline for the Ground to comply fully with the Grade F criteria would be revised to 31.03.22 (along with a warning, in effect, that the Club would be relegated should it fail to meet the criteria by the revised date).

- (g) Overall: the Respondent submits, in seeking the dismissal of the Appeal, that it operated within the relevant rules and regulations, delivered a fair process (for all of the clubs in the League), and arrived at a reasonable decision.

27. The Club appealed.

ANALYSIS

Submissions

- 28. At the outset of the Appeal Hearing, the Appeal Board, being keen to make sure that the Club had a fair hearing, set out each of the four potential grounds so that the Club had a full opportunity to properly advance its case.
- 29. In its oral submissions, the Club focused on the question of whether, in all the circumstances, the Decision was reasonable. However: while focusing on that ground, Mr Bouzidi invited the Appeal Board to take a broad view of the underlying merits and fairness of the case, in particular in relation to whether the 31.03.22 deadline could have been and could still be extended, and invited the Appeal Board to work together with the parties to reach a fair outcome.
- 30. Mr Bouzidi submitted that that the Club deserved to be promoted, given its stellar performances on the pitch (not just this season but in recent seasons, including its widely-reported and record-breaking unbeaten run). He submitted that the Club had done all it reasonably could to impact those things within its control and to achieve the ground-grading requirements. Mr Bouzidi also

referred, among other things, to the importance and significance of promotion and progress; not just for the Club's first team but for those involved in the wider Club.

31. Mr Eaton made some powerful submissions. He spoke passionately of the sheer hard work invested by many people within the club – both on the playing field and on the administrative side of the Club.
32. Between them, and with Mr Woodward making some additional contributions, the Club submitted: that, in essence, it would be unfair to be denied (or “robbed”) of promotion; that the Club's ambitious “project” would be derailed; that a denial of promotion would have a substantial detrimental impact on the Club. The Club submitted that the only reason the Ground was not fully compliant by the deadline was because of factors outside its control (chiefly the issue regarding planning permission). All, now, however, was in place: the planning permission; the finance; the contractors; etc. The necessary work would be “expected” – and was “scheduled” – to be completed by 31.05.22. The Decision included a penalty that was, in effect, disproportionate.
33. In the Grounds, the Club had made many of the same points, in what was a well-crafted document. The Club mentioned the impact of a serious health issue regarding Mr Woodward and of a personal issue for another administrative figure within the Club. It referred to the fact and impact of what was said to be a relatively late notification of the Club's elevation in summer 2021. It went into further detail about the significant delays in the council's planning process – attributable to the council's acts or omissions, to a disruptive late request by the council for a water drainage report, and to the adverse impact on the council of the Covid pandemic; emphasising, at the same time, the promptness with which the Club said it had made its planning application after learning about its elevation. It explained its position in relation to the Football Stadia Improvement Fund (“FSIF”), and the link between that funding and the planning approval. It set out further information relating to the club's long history, its more recent

history of promotions and on-field success, its structure, and its role within the local community. It highlighted the adverse financial and other impacts (e.g. relating to sponsorships and/or a loss of talent) on the Club if promotion was to be denied. It highlighted the adverse psychological impact on the playing staff and others within the Club. And it contended that the Decision was inconsistent with wider FA values.

34. The Club provided a significant amount of supporting documentation, in the Appendices and elsewhere. This included documentation relating to: the works at the Ground; the planning approval process; the Football Stadium Improvement Fund; a “Go Fund Me” initiative; supportive letters from the council, the Club’s first-team captain, a sports psychologist.
35. On behalf of the Respondent, Mr Ives made a number of oral submissions building on the content of the Response. Among other things, he sought to draw a distinction between the effects of non-compliance with ground-grading requirements. On the one hand: such non-compliance would not automatically lead to relegation but, rather, it would trigger the opportunity for the Respondent to exercise a discretion as to whether or not to relegate a club. On the other hand: such non-compliance would automatically prevent promotion, whether automatic or via participation in the Play-Offs. In the alternative: even if the Respondent had a discretion to permit the Club to be promoted (or to seek promotion via the Play-Offs) notwithstanding such non-compliance, the Respondent had not been unreasonable in deciding not to do so.

Potential Ground 1: Unreasonable Decision

36. This ground is not, generally, an easy ground for an appellant to succeed on. The bar is set relatively high. The Appeal Board is not permitted to substitute its own view on what decision it would have made (or what it thinks the Respondent ought to have done). Instead, the Appeal Board needs to review the Respondent’s decision, objectively, in light of the relevant circumstances and

the information before it at the time, and consider whether that decision falls within a range of reasonable options. In other words: the Decision, in order for this ground to succeed, needs, in essence, to be an irrational or perverse one.

37. The Appeal Board was not satisfied that the Decision was unreasonable, within the meaning of the relevant regulations. It was not in dispute that the Club had failed – as a matter of fact – to meet the relevant ground-grading requirements by the relevant deadline. There was, in this case, a substantial amount of what might be called “mitigating factors” which the Club could and did seek to rely on. But the bare fact remained: irrespective of the level of any applicable culpability or blameworthiness, the Club had failed to meet the essential criteria. As a consequence of that failure, the Respondent had an option to exercise a discretion whether to use its express power to relegate the Club. The Respondent, in light of the (above-mentioned) mitigating factors, elected not to relegate the Club. In doing so, it exercised that discretion in favour of the Club. In effect: it could be said that it provided the Club with a one-year extension to comply fully with the criteria. If the Respondent had decided to relegate the Club, there might be more force to the Appeal. But the Appeal Board agreed that there was a distinction to be properly drawn between a promotion and relegation scenario, in relation to a non-compliant club. In order to be promoted, whether automatically or through participation in the Play-Offs, a club must achieve the core minimum requirements in relation to ground-grading. For whatever reason, the Club had not been able to do that. Even if there was a residual discretion for the Respondent to permit promotion or participation in the Play-Offs – or, alternatively, to provide a short extension designed to enable the Club to meet the ground-grading criteria – it was not, in the Appeal Board’s judgment, an “unreasonable” decision (within the narrow meaning of that word which applies to the Appeal) to not exercise it in favour of the Club.
38. The Appeal Board was satisfied that the Decision by the Respondent was one that it was entitled, on reasonable grounds, to make. Other such decision-making bodies might – reasonably – have selected a different option which was

more generous to the Club. But that in itself does not render the Decision one that was “unreasonable”. The Appeal Board was satisfied that the Decision was within a range of reasonable options properly open to the Respondent.

39. In coming to its view, the Appeal Board reflected on the essential and wider purpose of the relevant rules and regulations. Among other things, the Respondent had, as a legitimate aim, the objective of ensuring that clubs had the right and appropriate ground facilities to match the level they were to play at. The Appeal Board was also conscious of the need for the Respondent – and indeed the Appeal Board – to come to decision that was reasonable and fair not just when viewed from the Club’s perspective: its decision needed to be fair to all of the other clubs in the league/structure (including those, of course, who had managed their affairs well and invested the necessary monies in order to achieve the ground-grounding standards required). Further, the Appeal Board took into account the likely and/or potential adverse impact of delays and extensions beyond the deadline of 31.03.22, to other clubs and to the efficient administration of the overall NLS structure. A reasonable level of certainly was required, by the deadline, in order for the FA (and leagues and clubs) to manage the yearly cycle of promotion and relegation, and the practical implications of the same.
40. The Appeal Board therefore was not satisfied that this ground was made out. The Decision was not one that could properly be said to be “unreasonable”, within the meaning of the relevant regulations.

Potential Ground 2: Excessive Sanction

41. For similar reasons, the Appeal Board was not satisfied that this ground was made out. The sanction was expressly or impliedly set out as being the sanction that would apply, should and once the Respondent concluded that the relevant ground-grading requirements had not been met by the Club. It appeared to the Appeal Board to be a reasonable and proportionate sanction for the Respondent

to apply, in all the circumstances of the case and at the material time. It was entirely foreseeable that the Club – indeed any club – may well be denied a promotion or an opportunity to participate in the Play-Offs for non-compliance with what were and are well-established and well-known ground-grounding criteria.

Potential Ground 3: Misinterpreted/Failed to Comply with a Relevant Rule

42. The Club did not pursue this potential ground. If it had, the Appeal Board would not, on the material before it, have been satisfied that the Respondent had materially misinterpreted or failed to comply with a relevant rule or regulation.

Potential Ground 4: Unfair Hearing

43. The Club did not pursue this potential ground. If it had, the Appeal Board would not, on the material before it, have been satisfied that the Club had a materially “unfair hearing”, within the meaning of the regulations.

CONCLUSION

44. The Appeal Board felt some considerable sympathy for the Club. It took a view that there were indeed some strong mitigating factors, which supported the Club’s position.
45. However: in all the circumstances, for the reasons set out above, and having due regard to the wider purpose of the relevant regulations and the efficient administration management of the wider game, the Appeal Board decided (unanimously) that the Appeal should be dismissed.
46. In the circumstances, the Appeal Board decided (again unanimously) that no order should be made (against the Club, or anyone else) in relation to costs; but that the appeal fee ought to be forfeited.

47. Under the applicable FA rules and regulations, the Appeal Board's decision is final.

SIMON LEWIS

DANIEL MOLE

BOB PURKISS MBE

26.04.22