

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

B E T W E E N :

WELWYN GARDEN CITY FC

Appellant

- and -

THE FA ALLIANCE COMMITTEE

Respondent

WRITTEN REASONS OF THE APPEAL BOARD

CONTEXT

Introduction

1. This document sets out the decision with reasons of an independent appeal board (“the Appeal Board”) in the above proceedings (“the Appeal”), following a hearing on 22.04.22 (“the Appeal Hearing”) and a subsequent request for written reasons.
2. The Appeal was brought by the Appellant (“the Club”) against a decision (“the Decision”) of the Respondent that the Club would be relegated (from Step 4, down to Step 5) for the 2022-2023 season, following non-compliance with the applicable ground-grading requirements.
3. Following the Appeal Hearing, the Appeal Board noted – and, for completeness, records – that the email/letter communicating the Decision, dated 08.04.22, was silent as to any potential additional or alternative sanction in relation to any prohibition on the Club being promoted or participating in the play-offs; the

same perhaps having been rendered irrelevant, in effect, by the decision to relegate the Club.

4. The Appeal Board was made up of Simon Lewis (chair), Bob Purkiss MBE, and Daniel Mole. 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.
5. In the Appeal Hearing, the Club was represented by David Coates, the Club's Vice-Chair. The Respondent was represented by Mark Ives. The Appeal Board was grateful to them both for their contributions. In addition, the Club brought along two other individuals: Mr Fiveash, the Chair; and Mr Corbit, the Treasurer. And 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"). The Appeal Board read and considered the Bundle with care. Numerical references in square brackets throughout the rest of this document are to page numbers within the Bundle.
7. The Bundle included the following:
 - (a) a ground-grading inspection report [21-23], following inspections on 15.08.18, 22.03.19 and 01.04.19 ("the First Report");
 - (b) a ground-grading inspection report [17-20], following subsequent inspections on 12.01.21 and 30.03.21 ("the Second Report");
 - (c) the email/letter, dated 08.04.22, setting out the Decision ("the Decision Letter");
 - (d) the Club's grounds of appeal ("the Grounds") [3-5]; and
 - (e) the Respondent's response to the Grounds [11-13] ("the Response").

Relevant Principles and Regulations

8. 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.

9. There is, therefore, a 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.

10. 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 4 – Clubs promoted to Step 4 must comply fully with the requirements of Grade E by 31st March in the year following promotion and comply fully with the requirements of Grade D by 31st March in the year following that. Clubs competing at Step 4 must comply fully with the requirements of Grade D ...

5.9 If a Club is relegated for not achieving the required Grade for the Step at which it is playing it will not be eligible for promotion again until it has attained the required Grade for the Step to which it wishes to be promoted. The Club must have that Grade at 31st March in the year in which it seeks promotion ...

5.11 In the event of any question arising regarding the interpretation of these Regulations it will be decided by The Association in its sole discretion.

11. 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 ...).

12. 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.*

13. 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.

14. In order for any appeal to succeed, one of the above grounds must be made out.

15. Under reg 12 of the same part: an appeal shall be by way of a “review”.
16. 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.
17. 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”.
18. 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.
19. And under reg 6 of the same part: the applicable standard of proof will be the civil standard of the balance of probabilities.

Background

20. On completion of the 2017-2018 season, the Club was promoted to Step 4, from Step 5.
21. Since that promotion, the Club’s ground (“the Ground”) was inspected on 15.08.18, 22.03.19 and 01.04.19. By 01.04.19, as the First Report makes clear, the Ground was declared to be fully compliant with the requirements of ground-grading requirements at Grade D. The Club was “congratulated on the works carried out to ensure compliance”. More specifically, no material issue was identified in relation to either the terrace stand or the size of the match officials’

room. In relation to the latter, the First Report recorded: “All dressing room areas fully compliant with the increased requirements of Grade D”.

22. In the Response, the Respondent acknowledged that it had assessed the Club as being fully compliant at Grade D, stating that it did so on “face value” of the First Report.
23. The Club was inspected again on 12.10.21, by a different inspector, with the outcome documented in the Second Report. The Second Report stated that: (a) a new covered stand was required to provide additional capacity of at least 51 (“the Stand Issue”); and (b) the match officials’ room was not size compliant (“the Officials’ Room Issue”). An issue was also identified in relation to “unfinished works to spectator walkway areas by floodlight pylons on the far-side of the ground” (“the Walkway Issue”).
24. The Appeal Board noted that there were two significant errors in the heading of the First Report. First, it stated that the Club was applying for (and/or being assessed at) Grade C (when, in fact, it was Grade D). Second, the date of the second inspection was recorded as 30.03.21 when in fact it was 30.03.22.
25. The Club appeared – not surprisingly given the contents of the First Report – to have been taken by surprise by that first version of the Second Report following the inspection on 12.10.21, most specifically by the identification of the Stand Issue and the Officials’ Room Issue. The Club was then left with only around 5 months to remedy significant issues in order to become compliant at Grade D.
26. The Respondent has argued, in the Response, that an “error” on the part of the grading inspector in her application of the ground-grading criteria should not mean that the Club is permitted to remain non-compliant where the Respondent has subsequently become aware of the non-compliance.

27. In the Response, the Respondent stated that the league the Club was playing in, the Southern League Division One Central (“the League”), did not have jurisdiction to offer an extension to the ground-grading deadline of 31.03.22.
28. In the Response, the Respondent asserted that it had discussed and considered the updated version of the Second Report and had “duly taken action in accordance with the [relevant] Rules and Regulations”. The Response does not refer to any more detail.

ANALYSIS

Submissions

29. The Appeal Board was conscious that Mr Coates was not a lawyer and noted that the Club had not expressly made clear, in the Grounds, which of the four potential grounds of appeal it sought to rely on. As such, and in order to make sure that the Club had a fair appeal hearing, the Appeal Board explained each of the potential grounds to Mr Coates so that he had the opportunity to properly advance the Club’s case.
30. The Appeal Board gave Mr Coates time to make oral submissions, in addition to the written submissions already provided. He took that opportunity, making some relatively detailed oral submissions. Following that, the Appeal Board heard from Mr Ives. Mr Ives developed the points set out in the Response and responded to matters raised orally by Mr Coates. The Appeal Board also provided Mr Coates with an opportunity to respond to anything that had arisen from Mr Ives’s submissions. Throughout the hearing, the Appeal Board asked questions of both representatives as it sought to understand, test and challenge their respective positions and contentions.
31. Taking the Grounds and the oral submissions together, the Club’s key submissions could be summarised as follows:

- (a) The Club recognises the need for and the importance of the ground-grading arrangements and the associated deadlines. The Club takes such things very seriously.
- (b) The Club was shocked by the identification in the Second Report of two significant issues, having operated under a legitimate expectation that the Ground was compliant following the First Report.
- (c) The Club was left with what turned out to be an inadequate amount of time, in all the circumstances as they transpired, to complete the required work by the 31.03.22 deadline. In addition to the unexpected requirement to raise finance and manage the projects: there were complications relating to the Officials' Room Issue, which took some time to become clear and resolve; there were major issues relating to the availability of contractors (due to the impact of the pandemic: e.g. periods of furlough, the issue of backlogs, cancellations); there were significant weather issues at crucial points in time (e.g. storms, waterlogging) which hampered progress. In addition: the Club's Chair, who had been co-ordinating the Club's efforts, experienced serious health issues; and replacements had to balance the demands with full-time employment.
- (d) The Club had completed various other work, to improve the Ground, during the material time.
- (e) The Club contacted the League to raise and discuss the difficulties it was experiencing in relation to getting the relevant works done.
- (f) The latest/current status, in relation to the three matters highlighted as outstanding in the updated 30.03.22 version of the Second Report, was as follows. First, in relation to the Walkway Issue: that is completed and resolved. Second, in relation to the Stand Issue: the foundation/concrete

is now in place; a contractor is agreed and expected to complete the work next week or the week after next (i.e. by 06.05.22). Third, in relation to the Officials' Room Issue: a contractor is agreed and is expected to start the work next week and complete by 06.05.22 at the latest.

32. Mr Ives, on behalf of the Respondent, made a number of submissions:

- (a) Among other things, he submitted that: while the Respondent's earlier error (or that of the previous assessor) was unfortunate, the fact remained that the Ground was not compliant by the deadline; the Club was relegated as a result of that undisputed fact; and the Club had been aware of the material issues since at least October 2021.
- (b) Mr Ives emphasised the importance and wider purpose of the relevant rules and regulations; and the related need for certainty for clubs, the leagues and the FA more generally, in terms of the efficient administration of the game. He emphasised the importance, as a consequence, of the 31.03.22 deadline. He also referred to the end of May 2022 as being significant: i.e. that any ongoing uncertainty beyond then would have particularly serious consequences for the efficient administration of the leagues.
- (c) Mr Ives indicated that any request for extra time made to the League would have been made to the wrong body. It did not have the necessary jurisdiction. Such a request would need to be made or conveyed to the Respondent. The Club could have contacted relevant individuals such as Mr Edkins.

33. Mr Coates made some submissions in response. He argued that, from the Club's perspective, the process that it was expected or required to follow in relation to the decision-making procedure –and/or the people it was supposedly meant to engage with – was far from clear; and that the opportunities to explain a club's situation to the decision-making body were limited. Moreover: Mr Coates

asserted that he and his colleagues had conveyed to the inspector who had produced the Second Report, as well as to the League, the relevant issues that the Club had been experiencing in terms of remedying the Ground issues (i.e. those which, broadly, were later set out in writing within the Grounds) and had requested further time in which to complete the required work.

34. Mr Ives maintained that there had been a fair hearing/process: that the same process has been used with other clubs without difficulties); that it was consistent and fair. He maintained that the Decision was a “reasonable” one (emphasising the high threshold for that particular ground), that the associated sanction was not “excessive”, and that there was no other reason for the Appeal Board to interfere with the Decision.

Potential Ground 1: Unfair Hearing

35. The Appeal Board considered this ground with some particular care.
36. The Appeal Board sought to consider and review the procedure that had been followed and the decision-making process in this particular case.
37. As recorded above, Mr Coates, who the Appeal Board considered to be a highly credible and reliable individual, told the Appeal Board that he had told the assessor who authored the Second Report the relevant reasons for the delays/issues in the works at the Ground and had asked for more time.
38. The assessor then produced the Second Report. It did not contain the level of information that one would expect if it was meant to record adequately the position of the Club as apparently set out to him by Mr Coates. It was brief. Mitigating factors were largely if not completely absent. There was no reference to a request for some additional time to complete the necessary work (nor any comment on the likely timeline for such work). In relation to the Stand Issue, it stated (with a photograph attached): “An area ... has been dug out awaiting a

concrete apron and foundations for a ... stand. But work has proceeded no further. The ground is therefore still short of 51 covered spaces.” In relation to the Officials’ Room Issue, it stated: “No works done. We again discussed how this room could become size compliant and the club said they could now open a wall into a kit cupboard, move the officials WC into there and then achieve compliance”.

39. The Appeal Board doubted that such a report was likely to be a proper or sufficient place to record relevant matters relating to a club’s wider or overall position in order for a decision-making body such as the Respondent to make an adequately-informed decision on all the matters it needed to. But that, it seemed, was, in practice, the only opportunity provided within the process for the Club to get across its position to the Respondent before it made its decision. There appeared to be no obvious opportunity, for instance, within the procedure for the Club to make direct written representations to the Committee. And, of course, there was no opportunity provided for the Club to attend in person and make oral representations. The Club was, in this way, dependent on the assessor to adequately capture the relevant points in order to then convey them – indirectly – to the Respondent.
40. The Respondent then received the Second Report and, it appeared to the Appeal Board, came to the Decision based on that document and that document alone. The inspector was not present, for example, to expand orally on the document. There is no evidence – or suggestion – that the Respondent went back to the inspector or to the Club to ask any follow-up questions or seek further information (e.g. about how much additional time might be required to obtain compliance).
41. On the basis of the evidence in the Second Report, the Respondent decided – reasonably – that the Club had, as a fact, failed to meet the ground-grading criteria by the deadline.

42. As a consequence of that finding, the Respondent then needed to consider whether to exercise a **discretion** to apply the sanction of relegation. It had options. It did not need to relegate the Club. The relevant provisions simply give it a power to do so. Although at one point Mr Ives mentioned the lack of any exceptional circumstances (i.e. to point away from applying the sanction of relegation), there is nothing in the regulatory provisions which indicates that exceptional circumstances are required for a club to avoid the sanction of relegation. It was entirely open to the Respondent to, for instance, permit the Club to remain at its current step and revise the deadline for, for example, another 12 months.
43. In order to fairly consider whether to exercise that discretion properly and fairly, it seemed to the Appeal Board that the Respondent would need to give sufficient consideration to any and all relevant matters (including any reasons for the default/non-compliance, which would include the various mitigating factors referred to above, the latest status in relation to the necessary works, and whether those works could/would be completed within a reasonable period of additional time).
44. The Appeal Board came to the view that the Respondent, because of weaknesses in the procedure followed in this particular case (or the way in which it was followed in practice), simply did not have the information that it should have had and which it required in order to do that fairly. The Appeal Board came to the view that a fair procedure/hearing would have been one which had enabled the points made by the Club to the assessor to be put before the Respondent so that it could then properly and fairly consider them when exercising its discretion in relation to sanction. There appeared to be no fair way for the Club to do that in this particular case, it being dependent on the assessor who, it appeared to the Appeal Board, did not do so or only did so in an overly limited way.

45. Further, there were no reasons provided in the Decision Letter for the Respondent's decision to exercise its discretion in relation to the sanction of relegation. The failure of the Club to comply with ground-grading requirements triggered the opening up of the option to exercise the discretion. But nothing was advanced in the Decision Letter as being the reason for then exercising that discretion against the Club by selecting what is a relatively draconian sanction, perhaps especially for a club competing for a place in the play-offs.
46. Further, no notes or minutes have been provided in relation to the meeting at which the Decision was taken – to record the factors considered, or the effective reasons for the overall decision. That, combined with the lack of reasons in the Decision Letter and when viewed against the overall procedure followed in this particular case, did not appear to the Appeal Board to be consistent with a fair hearing/process. In any event, it made it difficult, if not impossible, for the Appeal Board to properly and fairly assess whether the Decision was “reasonable”, whether the hearing/process was “fair” in other ways, whether the Respondent had misinterpreted or failed to comply with a relevant rule/regulation, and/or whether the Respondent had come to a sanction that was “excessive”.
47. In coming to its decision on this ground, the Appeal Board reminded itself of the wider importance of (both it and the Respondent) coming to a decision that is just and fair to all parties and of the spirit of co-operation between the parties in proceedings such as these.
48. For these reasons, the Appeal Board concluded that the Respondent had not, in this particular case, provided the Club with a “fair hearing” within the meaning of the regulations.

The Other Potential Grounds

49. Strictly, the Appeal Board did not need to consider these, given its conclusion above. Its ability to do so was impaired, as explained above, by the lack of information/evidence about the Decision, the factors considered (or not) by the Respondent, and the effective reasons for the crucial part(s) of the Decision.

CONCLUSIONS

50. For the reasons set out above, the Appeal Board decided (unanimously) that the Appeal should succeed.
51. The Appeal Board then considered how best to dispose of the matter. After considering the various options, the Appeal Board concluded that, in all the circumstances, the matter ought to be **remitted** back to the Respondent for a re-hearing. It, ultimately, remains best placed, in the Appeal Board's judgment, to make the decision, once it has considered properly the relevant factors. It may then, of course, come to the same decision or to a different one: that will be a matter for it in exercising (properly and fairly) the discretion provided to it under the regulatory provisions. Either way: at least then the Club will have had a fair opportunity to adequately put before the decision-making body relevant matters so that the Respondent can then take them into account when exercising its discretion.
52. The appeal fee shall be returned. No order as to costs.
53. Under the applicable FA rules and regulations, the Appeal Board's decision is final and binding on all parties.

SIMON LEWIS
BOB PURKISS MBE
DANIEL MOLE
27.04.22