

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

B E T W E E N :

YORKSHIRE AMATEUR AFC

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 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 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. 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.

4. In the Appeal Hearing, the Club was represented by Gareth Senior. Mr Senior had only recently (within the last two or three weeks) been appointed as the new chair of the Club. He had previously acted in the role of secretary, but only from or around September 2021. The Appeal Board was impressed with the passionate manner of Mr Senior's submissions and his clear commitment to the Club. The Respondent was represented by Mark Ives. The Appeal Board was grateful for the contributions of both during the Appeal Hearing. In addition, the Respondent brought along three other individuals: Mr Edkins, National League System Manager; Mr Earl, National League System Manager; and Mr Hains, chair of the ground-grading sub-committee.

Documents

5. 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 below are to page numbers within the Bundle.
6. The Bundle included the following:
 - (a) the Club's grounds of appeal ("the Grounds") [3-6]; and
 - (b) the Respondent's response to the Grounds [9-11] ("the Response").
7. The Bundle also contained the following documents relating to the Decision:
 - (a) a ground-grading inspection report [19-20] dated 07.07.21 ("the First Report");
 - (b) a ground-grading inspection report [15-16] dated 08.03.22 but updated on 30.03.22 ("the Second Report");
 - (c) a letter/email, dated 08.04.22, setting out the Decision ("the Decision Letter"); and
 - (d) correspondence [22-25].

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, 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.

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

5.7 Clubs are not allowed to enter into a ground share agreement in order to gain promotion or to retain membership at a particular step where the Club has failed to attain or maintain the relevant Grade.

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, at least one of the above grounds must be made out by the appellant.
15. Under reg 12 of the same part: an appeal shall be by way of a “review” on documents only.
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. In or around May 2021, the Club was elevated/allocated to Step 4, for the 2021-2022 season, following the restructure of the NLS. The Club had consented to that elevation/allocation.
21. The Club therefore has competed at Step 4 during the 2021-2022 season; specifically, in the Northern Premier League – Division 1 East.

22. 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 4. 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 E requirements by 31 March 2022.
23. The First Report was produced following an inspection of the Ground on 29.06.21. The First Report recorded that the Ground did not meet the relevant ground-grading requirement. Various issues were identified. However, the First Report recorded that the Club had indicated an intention to remedy the relevant deficiencies before 31.03.22. A further inspection would be required to assess whether the Club had managed to do so.
24. The Second Report followed further inspections in March 2022. It was updated on 30.03.22. It was recorded within the Second Report that various issues remained and that, as of 30.03.22, the Club had indicated the "discrepancies" would "not be done". Among other things: the away dressing room did not meet the minimum size requirement; and the match officials changing room did not meet the minimum size requirement. In addition, according to the Second Report: the Ground appeared, generally, to have "lacked preventative maintenance over the years which has resulted in several items within this report being critical"; the pitch perimeter barrier required repair and infill throughout; access to seats was "currently prohibitive for any 'normal person'", with steps that are "too steep" and a bottom row being "hampered by two strips of wood fastened to the floor which does not provide a safe footing".
25. According to the Response, the Respondent's ground grading sub-committee met on 04.04.22 to consider the Second Report. The relevant minute of that meeting was said to read as follows:

It was acknowledged that there were significant areas of non-compliance with the required Grade (indeed with a number of Grades). In late-March the Club had approached the League with suggestions of a ground sharing and it was acknowledged that this would constitute ground sharing to remain at the Step level – something that is contrary to NLS Regulations. The Club have also confirmed in writing that they will not be undertaking required works to the ground. After a discussion, the Club were failed against the E/D Grades. As a result, this will be referred to the Alliance Committee (and/or League Committee) for them to consider the Clubs Step level status.

26. According to the Response, the Respondent duly held a meeting at which it concluded that the Club had not complied with “at least an E Grade” by 31 March 2022. The Respondent is said to have formed a view that the Club appeared to have done “very little work” to the Ground since it was elevated. Taking “everything into consideration”, the Respondent decided, in the same meeting, that the Club would be relegated, with the matter to be passed to the FA Leagues Committee to consider its placement for the 2022-23 season.

ANALYSIS

Submissions

27. The Appeal Board was conscious that Mr Senior 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 being keen to make sure that the Club had a fair hearing, the Appeal Board explained each of the potential grounds carefully to Mr Senior so that he had a full opportunity to properly advance the Club’s case.
28. The Appeal Board gave Mr Senior time to make oral submissions, in addition to the written submissions already provided. He took that opportunity, making

relatively detailed oral submissions. As already mentioned, the Appeal Board was impressed with his level of commitment and passion. 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 Senior. The Appeal Board also made sure that Mr Senior had a full 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.

29. Mr Senior made a number of submissions on behalf of the Club. The key submissions could be summarised as follows:

- (a) First, while acknowledging that the Club had fallen "behind off the pitch", the Club had new people running it now and ought not to be "penalised" for any failures of the "old regime" and/or the adverse impact of COVID and/or the challenges arising from back-to-back promotions. Relegation was an "over the top" measure, even if the Club had had "fair warning" and had "overlooked" the original notification of ground improvements and had "not progressed them as they should have been".
- (b) Second, over the "last couple of months", the Club had worked with various stakeholders to try to secure a more suitable home for the Club, having come to the view that it had "outgrown" the Ground. In particular, the Club was in discussions with a rugby league club, and with Leeds City Council (with a view to agree a lease), in relation to a potential ground-share at the South Leeds Stadium. If such a move could not be achieved in time for the next football season, the Club said that it had (as a fall-back arrangement) a "ground-sharing agreement" in place with Guiseley FC (for 13 weeks, or more if required).
- (c) Third, if the Respondent or the Appeal Board was not satisfied in relation to the ground-sharing proposals, the Club now sought, in the alternative,

“a few more weeks” (to the end of June 2022) to carry out (most/some/all of the required) work at the Ground. The changes to the changing rooms appeared, however, to present a particular challenge to the Club.

(d) Fourth, relegation would have an acutely adverse impact on the Club. Mr Senior submitted, on paper, that it would result in the Club losing the “whole squad”, its management and that “in all probability” the Club would “fold”. On being tested, however, he appeared to roll back on that pessimistic prediction to a more measured position that there was a real concern (or similar) that the same could happen. The Appeal Board noted, however, among other things, that the Club does not have any significant debt.

30. In support of point (b) above, Mr Senior explained, with what appeared to the Appeal Board to be genuine enthusiasm, the hopes and aspirations that the Club had to progress further up the football pyramid and to benefit the wider local community, describing the Club as being “on the cusp” of doing amazing things. He attached an email from the rugby club, which confirmed that it was committed to “ongoing discussions” about a “ground share” and a wider “partnership”.

31. At the same time, Mr Senior had candidly conceded (in the Grounds) that the Club had “broken the rules”. He sought to appeal to the Appeal Board’s “sporting” and “human side”.

32. Mr Ives made a number of lucid points in response to the Club’s submissions and more generally. In essence, in seeking to have the Appeal dismissed, he submitted (with detailed arguments in support) that the Respondent had operated within the relevant rules/regulations, had delivered a fair process for all of the clubs in the league, and had arrived at a reasonable decision. More specifically, albeit among other things, Mr Ives submitted that what, in essence and in effect, the Club had sought to do (irrespective of any other subjective intentions) was

to seek to maintain its position in the NLS structure (in light of its failure to reach/maintain the ground-grading requirements) by ground-sharing – and that was expressly impermissible under the relevant rules/regulations.

Potential Ground 1: Unreasonable Decision

33. The Appeal Board agreed with Mr Ives that this ground is not, generally, an easy ground to 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. Instead, it 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 the ground to succeed, needs, in essence, to an irrational or perverse one.
34. 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. 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 did not need to relegate the Club. It had other options. But relegation was one of the potential options available to it when exercising its discretion. Having considered the matter very carefully, the Appeal Board was satisfied that relegation was, in all the relevant circumstances, a reasonable option open to the Respondent at the relevant time.
35. The Appeal Board agreed that, in effect, and despite its protestations to the contrary, the Club had and/or was proposing a ground-sharing option to – or, at least, in part to – avoid the potential consequences (i.e. relegation) of having failed to meet the applicable ground-grading requirement. That was certainly the case in relation to the Guiseley FC option and, on balance, also in relation to

the South Leeds Stadium option. Such a proposal was expressly prohibited by the relevant rules/regulations (see para 10 above).

36. Further, the South Leeds Stadium had not itself been subject to ground-grading assessment, as it was a rugby ground rather than one presently subject to the FA's jurisdiction. Moreover, it seemed to the Appeal Board that the Club's plan in relation to a potential ground-sharing arrangement with the rugby club was still just that: a plan; and, objectively viewed (even now on the latest evidence before the Appeal Board), a rather ambitious one. Crucially, but among other things too, the Club had no lease agreement with the council and such things can be difficult and take time to secure. There was nothing before the Appeal Board – or the Respondent at the time of the Decision – from the council and, on an objective analysis, not much persuasive evidence from the rugby club about the relevant plans.
37. The Club had not, at the time of the Decision, presented the option to, in the alternative to any ground-sharing arrangement, make the necessary investment and do the work required at the Ground. Even now, there appeared to the Appeal Board to be problems and issues in relation to putting right all of the relevant deficiencies in the Ground, particularly within a reasonable period of additional time.
38. The Appeal Board reflected on the essential 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.
39. 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).

40. Further, the Appeal Board took into account the likely/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 consequences of the same.
41. The Appeal Board therefore was far from 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

42. For similar reasons, the Appeal Board was far from satisfied that this ground was made out. The sanction of relegation was expressly set out as being within the options available – indeed it was *the* option available – to the Respondent, should and once it concluded that 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. It was entirely foreseeable that the Club – indeed any club – may well be relegated for non-compliance with the well-established and well-known ground-grounding criteria.

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

43. To the extent that the Club sought to pursue this ground: the Club was not, in the judgment of the Appeal Board, able to identify any specific rule or regulation that the Respondent misinterpreted or failed to comply with in making the

Decision. Mr Senior appeared to accept, towards the end of the Appeal Hearing, that the ground was not being relied on.

Potential Ground 4: Unfair Hearing

44. 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 an “unfair hearing”, within the meaning of the regulations.

CONCLUSION

45. For the reasons set out above, 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
BOB PURKISS MBE
DANIEL MOLE
26.04.22