

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL
ASSOCIATION

BETWEEN

Lymington Town FC

Appellant

and

The FA Alliance Committee

Respondent

DECISION AND WRITTEN REASONS OF THE APPEAL BOARD

1. The Appeal Board conducted a hearing on Wednesday, 26th April 2023, to determine an appeal by the Appellant against a decision of the Respondent, dated 13th April 2023.
2. This hearing was conducted by Microsoft Teams (video-conferencing).
3. The Appeal Board consisted of Mr Paul Tompkins (Chairperson), Mr Robert Purkiss MBE, and Mr Glenn Moulton. Mr Conrad Gibbons, the Judicial Services Officer, acted as Secretary to the Appeal Board. Mr Paddy McCormack, Judicial Services Manager, attended as an observer.
4. The Appellant was represented by the attendance of Mr Ian Loveless, Club Chairman. The Respondent was represented by Mr Mark Ives, The FA Alliance Committee/Ground Grading Sub-Committee Member, Whilst Mr Matt Edkins, National League System Manager, attended as an observer.

The Hearing

5. The Respondent, on 13th April 2023, notified the Appellant of the decision that their ground did not comply with the Grade 4 criteria by the 31st March 2023 deadline. This decision was taken in line with the National League System Regulations, found on pp.441-445 of the FA Handbook 2022/23.

6. The Appeal Board, having taken into account the submissions of the parties and having given the Appeal Bundle careful consideration, noted the following.
7. The Appeal Board considered all grounds of appeal open to the Appellant, namely:
 - a. The Appellant was not afforded a fair hearing.
 - b. The Respondent misinterpreted or failed to comply with the Rules and/or regulations of The Association relevant to its decision.
 - c. Came to a decision to which no reasonable such body could have come.
 - d. Imposed a penalty, award, order or sanction that was excessive.
8. At the hearing, the Appeal Board was invited to consider an application of the Appellant to adduce new evidence in accordance with the Non-Fast Track Appeal Regulations 2022/23 ('the Regulations'). The Appeal Board, considering the submissions of the parties, allowed the application.
9. In reaching its decision:
 - a. The following is a summary of the primary considerations of the Appeal Board, however the absence in these reasons of any particular point, or submission, should not imply that the Appeal Board did not take such point, or submission, into consideration when it considered the matter and reached its findings.
 - b. The Appeal Board had due consideration to FA Regulations, in particular General Appeal Regulation 12, which states:

"An appeal shall be by way of a review on documents only. The parties shall however be entitled to make oral submissions to the Appeal Board. Oral evidence will not be permitted, except where the Appeal Board gives leave to present new evidence under paragraph 10 above."

Appellant's Submissions

10. The Appellant was represented by Mr Ian Loveless.
11. The Appellant accepted that the ground grading regulations were understood as was the cut-off date of the 31st of March 2023. Furthermore, the Appellant understood the rationale behind the decision of the Respondent. The Appellant

drew attention to the apparent shortness of time and lack of ability to prepare themselves for its promotion to Step 4.

12. The site at which they play has constrictions and challenges. The site is shared with a cricket club and has a tennis club immediately adjacent. Construction work cannot be undertaken during the football season. Also, all planning applications have to be made through the local authority and not by the Appellant itself. In addition, the ground is located within a conservation area.
13. Plans for the development of the ground have been submitted through the local authority but the application had not yet been given a determination date nor was there any indication as to when planning consent might be granted nor when the work could commence.
14. The Appellant accepted that the whole process had been challenging and problematic. In its defence, the Appellant explained they had been transparent in all their dealings and the club had had difficulties moving on from its promotion, not helped by the cost of living crisis which has had a financial impact on the club in this season.
15. Enforced relegation would have an adverse impact upon the club such as the loss of sponsors, loss of players and would make funding for improvements harder to come by. The site is currently shared with the Cricket Club and for development to be successful needs to be focused fully on football. The Appellant expressed confidence that the required ground grading could be delivered very quickly and by 31st July 2023 but no evidence or letters of comfort were produced to support this.
16. In reply to questions, the Appellant accepted it had not initially been familiar with Step 4 ground grading requirements but once they had been made aware, they felt they could undertake the necessary work through a 24 month cycle. In July 2021 there was doubt as to whether the Appellant was compliant with Step 5 regulations but work had been done to achieve that.
17. As for funding, an application for Football Foundation funding would be made but that application could not be submitted until planning permission has been granted and the application has only just been made.
18. In reply to questions on why the planning problem had not been identified earlier, the Appellant admitted to having been somewhat distracted but also constrained at the need to work with the council. The planning application had

not being regarded as an obstacle as Mr Loveless felt confident it could be achieved but also appreciated that without planning permission the club could not proceed.

Respondent's Submissions

19. Mark Ives, for the Respondent, accepted the integrity and sincerity of the Appellant but emphasised that the Appellant club is a member of the National League system. The Respondent has a responsibility for fairness to all clubs in the National League system and also for fairness to the Appellant which is why the Respondents took no exception to all four grounds of appeal being considered by the Appeal Board.
20. Mr Matthew Edkins, on behalf of the Respondent, had written to the Appellant outlining the potential jeopardy in which it found itself in order to give the Appellant the best chance to take action and to respond. The appeal is not simply about the Appellant; the Respondent needs to be fair and to allow every club to progress through the National League system. The date by which compliance with the appropriate ground grading regulation is fixed well in advance to allow clubs to make improvements and unless exceptional circumstances exist regulations need to be applied with all clubs in mind.
21. For the Respondent not to follow the appropriate regulations would run the very real risk of failing to save a club which is compliant with the ground grading regulations at the expense one which is not
22. The short time allowed to the Appellant and cost of living difficulties, as claimed in its submissions, has faced every club and not just the Appellant and the Alliance Committee has to apply regulations with impunity and with all clubs in mind. The Appellant was aware when to Step 4 that they would have to have a compliant ground by 31st of March 2023.
23. The apparent absence of a live planning application and the uncertainty of its outcome allied to the questions surrounding the financing of the necessary works meant there was a real risk that by September 2023 there could be a non compliant club commencing its second season at Step 4. The Respondent was unable to grant a short extension because of the lack of certainty. While it may very well be the case that a planning application has been submitted, that can

only have been very recently and there was no indication of when or if planning permission will be granted nor when works will commence.

24. In the submission of the Respondent, the question for the Appeal Board is whether this was a decision which the Respondent was entitled to make. This was not outside the realm of reasonableness given the need to be fair to everybody and not just the Appellant. The Respondent submitted that this was not only a possible decision to which it could have come but was actually the correct decision.
25. The Appeal Board asked whether submissions from the Appellant had been placed before the sub committee of the Respondent when taking its decision. It was confirmed at this had been done and the sub committee was fully aware of all information which had been submitted by the Appellant. The point was made that the Appeal Board could have done with seeing the minutes of that meeting as otherwise there is no record of how the decision has been reached.
26. In response to further questions the Respondent stated that the possibility exists for a short extension but only in circumstances where that is a genuine, acceptable reason for delay such as unexpected poor weather, a very recent takeover with clear funding in place or substantial work currently being undertaken but such circumstances should pose very little risk to the Alliance Committee that the club will remain non compliant. The evidence has to be significant and convincing. There is a balance to be struck but the Respondent would not want clubs to think that there is a general right to additional time, which there is not.

Closing Submissions

27. In closing submissions, the Appellant stated that the planning application has been submitted, in their estimation there is a 60 day turn around for all the required works and the process was described as painless and uncomplicated. Evidence of planning, building plans and funding had not been submitted as the Appellant had not understood the need to provide the further detail.
28. Having had flexibility in delivering the required works for its first season at Step 4 the Appellant did not realise the constrictions under which they were working.

29. The site at which the Appellant plays is unique and even if planning permission were in place the club would still face the same challenges. Mr Loveless conceded that maybe he didn't understand the importance of Mr Edkins's e-mail and could have responded better. The club would still welcome an extension of time in which to comply. Once planning permission is granted the Appellant is confident that it will have an operational ground fit for Step 4.

Deliberation and Determination of the Appeal

30. The Appeal Board took due notice of the written and oral submissions of both parties. It was clear that:

- a. The planning application has only just been submitted and is far from being granted
- b. Nothing can be done until planning permission has been granted
- c. Although the Appellant has an appreciation of the steps which need to be taken, funding is not yet in place for the required works
- d. No evidence of planning or funding had been provided
- e. The Appellant faces many challenges in addressing ground grading issues but there are no exceptional circumstances
- f. There have been delays in taking necessary action, delays which were not satisfactorily explained to the Appeal Board
- g. The process adopted by the Respondent had been fair even if the Appeal Board would like to have seen more transparency.
- h. The Appellant was aware of the risk it faced and have been written to by the Respondent on this very point.

31. The Appeal Board considered, amongst other things, that the Respondent had not misinterpreted or failed to comply with the rules and regulations relevant to its decision, nor did it come to a decision to which no reasonable such body could have come. The decision to relegate the Appellant was the appropriate outcome according to the regulations and therefore the order of the Respondent was not considered excessive.

Decision

32. The Appeal Board therefore unanimously dismissed the appeal.

33. The Appeal Board considered the matter of costs and decided that there would be no order as to costs.
34. The Appeal Board order that the appeal fee be forfeited.
35. The Appeal Board's decision is final and binding.

Paul Tompkins

Glenn Moulton

Robert Purkiss MBE

10th May 2023