

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL  
ASSOCIATION

BETWEEN

North Shields FC

Appellant

and

The FA Alliance Committee

Respondent

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DECISION AND WRITTEN REASONS OF THE APPEAL BOARD

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1. The Appeal Board conducted a hearing on Wednesday, 26 April 2023, to determine an appeal by the Appellant against a decision of the Respondent, dated 5 April 2023.
2. This hearing was conducted by Microsoft Teams (video-conferencing).
3. The Appeal Board consisted of Mr Paul Tompkins (Chairperson), Mr Keith Allen, and Mr Glenn Moulton. Mr Conrad Gibbons, the Judicial Services Officer, acted as Secretary to the Appeal Board.
4. The Appellant was represented by the attendance of Mr Steve Swinyard, First Team Coach, and Mr Sean Redford, Deputy Chairman and Club Secretary. 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 5 April 2023, notified the Appellant of the decision that their ground did not comply with the Grade 4 criteria by the 31 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 were 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 evidence in question was a letter from the Appellant dated 4<sup>th</sup> April 2023 appearing at pages 15 to 22 of the appeal bundle. 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 Steve Swinyard.

11. On the question of the failure of the Respondent to give the Appellant a fair hearing, it was suggested that the information submitted had not been properly considered, namely a change in the Appellant's circumstances at the 11<sup>th</sup> hour. There was no evidence that the letter of the 4<sup>th</sup> April 2023 had been considered by the subcommittee of the Respondent which had made the decision.
12. The decision letter referred to three ground grading reports but only two were exhibited, not three. The third report has been received subsequently. The Appellant's concern was that verbal comments were made to the ground grading inspector, Mr Ian Cox, during his visit. He had told the Appellant that those comments would not be noted by him and that the information would have to be submitted to the Respondent, which was done the following day. However, the outcome of the inspection was communicated to the Appellant less than 24 hours after the visit and before it had had the opportunity of submitting further written representations. The Appellant consequently did not consider its case had been properly considered.
13. The Appellant further contended that the decision of the Respondent was wrong and one to which no reasonable such body could have come. There was no evidence that a recent change of circumstances had been taken into account.
14. The Appellant requested the Appeal Board to consider other precedents to have allowed the club more time to comply. In particular the Appellant cited the recently decided cases of Peterborough Sports and Welwyn Garden City.
15. Having been promoted the Appellant had until 31<sup>st</sup> March 2023 to comply with the Step 4 ground grading for which something in the region of £90,000 to £100,000 would have been required - a tough task. Some progress had been made but COVID and the rise in the cost of living had made a difficult task even harder.
16. On the question of the Respondent having imposed a penalty award order or sanction which was excessive, it was submitted that relegation is not the only sanction in these circumstances. Were other options considered?
17. On considering regulation 5.8 of the National League regulations the Respondent had submitted that there was no choice but to relegate the club. However, the Appellant argued that it could have entered into an action plan,

for example. The need for regulations was clearly understood by the Appellant but there should be an option of a sanction which is not automatic relegation.

18. In the 2022/23 season the club had spent a considerable amount on travel, being the most northern club in the league and this had not helped their financial position. Nonetheless they had finished 7<sup>th</sup> in the league and demonstrated they were more than able to compete at this level. In the Appellant's contention, some grounds they have visited this season have been substandard.
19. It was further submitted that the ground grading procedure provides little scope for engagement and once reports are submitted clubs have little opportunity to argue.
20. In response to questioning by the Appeal Board, the Appellant addressed the absence of hard evidence of funding for the required ground improvements. The Appellant is reliant upon raising £100,000 and two funders have been found who will provide sufficient backing to allow an application to the Premier League Stadia Improvement Fund (PLSIF). The project has been costed and the Appellant would need to provide one third of the cost.
21. The timing is unfortunate. Had the money people come along earlier then the application for PLSIF funding could have been made sooner and a clear schedule of plans and costings provided to the Respondent. However, the Appellant admitted that until very recently it did not know that funding was available.
22. With relegation to Step 5 there is a real prospect that the investors may withdraw their offers of funding. The funders are a Mr Shaw and Monster energy drinks, neither of whom has paid any money and are awaiting the outcome of the appeal. Planning permission is not required for the work.
23. PLSIF require proof of funds before a grant application can be processed.
24. The Appeal Board inquired whether any works had been done at all, no matter how small. The Appellant accepted that no works had been undertaken even though some works are not expensive, as the club has been running close to budget throughout the season. Also, by carrying out works this will reduce the amount required and could therefore reduce the application which can be made to PLSIF.

25. Specific question was raised as to whether simple maintenance had been carried out. The Appellant stated that all necessary works were being looked at as a single complete job. The club runs from week to week and financially the club has found things a lot tougher than in the previous season. There is no spare cash in the club; it is run by volunteers. The club has difficulty with vandalism, with security being dealt with as a priority.
26. The works required to match ground grading were known all season, why had nothing been done? The Appellant stated that until Monster appeared with their offer of backing the club had had no hope. Without that hope neither individuals nor sponsors were prepared to part with cash.
27. The Appellant conceded that they have not yet secured the full financial package needed to undertake the necessary works.
28. No evidence had been provided of the PLSIF grant available as the Appellant did not think this was required. The letters of support which had been provided from Mr Shaw and from Monster were conditional upon the club's Step 4 status.
29. The willingness of Mr Shaw and Monster to invest in the club had been made known to the Respondent.
30. The Appellant considered there should be more flexibility within the rules. Regulation 5.8 of the National League system regulations, upon which the Respondent's decision had been taken, states that failure to meet the relevant ground grading by 31<sup>st</sup> March in any season means that a club "will be relegated". This contrasts with Standardised Rule 2.6 which states that in such circumstances a club "may" be relegated. Failure to meet the criteria by the given date did not make relegation inevitable.

### **Submissions of the Respondent**

31. In response, the Respondent stated it was happy for all four available grounds of appeal to be considered in order to be fair to the Appellant
32. 31<sup>st</sup> March in any season is a date cast in stone. All clubs have to comply by that date otherwise the regulations kick in. Criteria need to be met by that date otherwise there is a very real threat of relegation.
33. On the question of the new evidence which had been submitted, the Respondent did not dispute that the letter had been submitted but the

Respondent contended that this did not alter the position at all. The Appellant had not been compliant on the required date and there was no certainty when the works might have been completed. Not only had the work not being completed, but it also hadn't been started.

34. For the avoidance of doubt, the ground grading subcommittee had met on 3<sup>rd</sup> of April.
35. 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 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 for 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.
36. 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.
37. The Respondent can occasionally go out on a limb but they cannot risk reaching the start of the next season with a non-compliant club. Relegation cannot take place at that point which is why the approach is taken by the Respondent only to allow extensions to the deadline in very special circumstances.
38. The real question to be asked is whether there is a virtual guarantee that there will be compliance with the regulations by the start of next season. A short period of time for compliance can be considered but there must be safeguards otherwise that could prejudice other clubs. In this case there was no certainty that the funding from the PLSIF would be made available and there were too many factors outside the Respondent's control for genuine exception to be made.
39. Not only was this a decision to which the Respondent could have come, it remained the correct decision.
40. The Respondent was asked to clarify the question of dates. It was established that the ground grading subcommittee had met on 3<sup>rd</sup> of April to which it had been reported by the league representative on the sub-committee that the

inspection was due to take place on the following day but the verbal feedback at the meeting was that there was still a lot of work outstanding. The decision letter had been sent to the Appellant on 5<sup>th</sup> April.

41. Notwithstanding the inspection on 3<sup>rd</sup> April and the Appellant's letter of 4<sup>th</sup> April, nothing had been done to satisfy the criteria. The state of the ground had been checked and there was no doubt that the decision letter was accurate. There was nothing to suggest that any work had been done since the inspection to render the ground compliant.
42. In response to questions about what the subcommittee had actually considered, it was stated that both existing reports had been considered. There were indications of proposed financial support but nothing else. There was no indication of a grant application to PLSIF.
43. The subcommittee had been aware of the change in circumstances but didn't have sufficient detail upon which to make a decision. Mr Ives made it clear that he himself is a member of the subcommittee and had been in attendance at the meeting on 3<sup>rd</sup> April so was speaking from first-hand knowledge.
44. A specific question was raised of the Respondent relating to the case of Peterborough Sports and the possibility of the Respondent's decision in this case having set a precedent. In the case of Peterborough Sports there had been a change of owner very late in the day and although the club had not satisfied the required criteria by 31<sup>st</sup> March 2023 the subcommittee was satisfied that the financial position of the club had changed significantly. The required works have been paid for upfront and a clear timeline for the work was presented. Only a short extension until the end of April 2023 had been requested. A condition had been placed upon the extension that if the club qualified for the play offs they would not be permitted to play in those play offs whether the work had been completed or not. The club had accepted the position. Even now, should they not meet the criteria by the extended deadline Peterborough Sports will be relegated.
45. The case of Welwyn Garden City did indeed illustrate the fact that discretion could be applied if the circumstances allowed but those circumstances were not available in this case.
46. By way of clarification, the Respondent confirmed that a "suitable time frame" is one which does not impact upon a league's ability to move forward

to the new season with integrity. That was available in the Peterborough Sports case but was not here.

47. On the question of the potential conflict between NLS regulations and the Standardised Rules, the Respondent stated that it would err on the side of the participant if the opportunity arose. The intention is to have a discretion but there are also expectations from within the game, which are quite significant. If other clubs comply then there is an expectation that those that don't will be treated fairly. The discretion was exercised in the Peterborough Sports instance, subject to significant conditions.
48. Mr Ives emphasised that the Alliance Committee of the FA is a strong supporter of the National League system. Decisions are not taken lightly and any valid discretion is applied in each case where it is possible. However, that discretion has to be applied responsibly and in the interests of the wider game.

### **Closing Submissions**

49. In closing, the Appellant appreciated the need for fairness in the system but refuted any suggestion that they were "getting away with it" as they had worked hard to manage this situation and had received letters of support from financial backers.
50. The Appellant also considered it is difficult to supply information to the FA as it is a tight system.
51. On the question of certainty, the timing has been very difficult for the club and the landscape changed very late in the day. The Appellant was appealing to the FA to reconsider the matter in line with up-to-date information.
52. On the question of transparency, it would have been helpful had the FA explained to the Appellant that the meeting had considered all points which it was seeking to present.
53. The FA should consider whether it's potential to exercise discretion could be handled better. In this case the Appellant considered it had been forced to play up a Step having won their division the previous season.
54. Is the current approach to ground grading and the need for immediate improvement at this level of the game appropriate? There will be others in the same predicament. Winning a division at Step 5 now leads to mandatory promotion but if the Appellant seeks promotion in the future they will need to



meet the criteria before they are promoted. This questions the sustainability of the pyramid system.

### **Deliberation and Determination of the Appeal**

55. The Appeal Board took due notice of the written and oral submissions of both parties. The manner in which the Appellant had approached the appeal was to its credit and its presentation had been professional and sincere.
56. However, there were no exceptional circumstances and by its own admission the Appellant had made no progress at all with ground improvements.
57. Although there was an indication of financial backing to allow the club to move forward, this did not extend any further than letters of intent. Two thirds of the required funding was dependent upon the success of a grant application which had not yet been made.
58. There was nothing to indicate that the Appellant's ground would be compliant with the required grading by the commencement of the 2023/24 season.
59. On the question of being afforded a fair hearing, the Appeal Board was satisfied that the process is fair, although it could be more transparent. It would have helped the Appeal Board and also the Appellant to know how discretion was exercised by the subcommittee. However, there was an overriding duty to be fair to all parties firstly with the consistent application of the ground grading regulations but also with consideration for the impact of that application on other clubs within the pyramid.
60. The outcome of relegation was not excessive. The provision appears in the appropriate regulations and is known by all parties at the start of the season.
61. This was not a decision to which no reasonable such body could have come.

### **Decision**

62. The Appeal Board therefore unanimously dismissed the appeal.
63. The Appeal Board considered the matter of costs and decided that there would be no order as to costs.
64. The Appeal Board ordered that the appeal fee be forfeited.
65. The Appeal Board's decision is final and binding.

**Paul Tompkins**

**Glenn Moulton**

**Keith Allen**

10th May 2023