

IN THE MATTER OF THE APPEAL BOARD OF THE FOOTBALL
ASSOCIATION

BETWEEN

KENDAL TOWN FC

Appellant

and

THE FA LEAGUES COMMITTEE

Respondent

DECISION AND WRITTEN REASONS OF THE APPEAL BOARD

1. The Appeal Board conducted a hearing on Wednesday, 12 June 2024, to determine an appeal by the Appellant against a decision of the Respondent, dated 17 May 2024.
2. This hearing was conducted by Microsoft Teams (video-conferencing).
3. The Appeal Board consisted of Mr Tony Rock (Chairperson), Mr Robert Purkiss MBE, and Mr Keith Allen. Mr Conrad Gibbons, the Senior Judicial Services Officer, acted as Secretary to the Appeal Board.
4. The Appellant was represented by the attendance of Mr Michael O'Neill, with Mr Craig Campbell observing. The Respondent was represented by Mr Mark Ives, with Mr Mark Frost, Mr Matt Edkins and Mr James Earl observing.

The Hearing

5. The Respondent, on 17 May 2024, notified the Appellant of their decision that the Appellant was to be laterally moved from the North West Counties League Premier Division to the Northern League Division One for the 2024/25 season.
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 thanks both parties for the manner in which they made their submissions.
8. The Appeal Board noted that the Appellant was appealing on the following ground:
 - a. Came to a decision to which no reasonable such body could have come.
9. The Appeal Board unanimously dismissed the appeal on this ground.
10. The Appeal Board reached this decision considering the following:
 - 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 Appellant first asked for clarification in regard to the ‘test’ which the Appeal Board applied in each case. The Chair explained that the test is whether or not the Respondent acted irrationally, perversely or made a decision that was so unreasonable that no other such body would have made that decision (the Wednesbury test in public law). The Appellant explained that due to the decision they were now in a state of flux.
 - c. Whilst accepting that the additional mileage was not overly excessive, the Appellant’s issue was in regard to the time taken to complete each journey, particularly given the constraints of the main route to games, the A66. Welfare of the playing squad and also those who supported their administrative function was also a major concern. The economic impact of having to find an additional £10K a year was significant and made football for Kendal Town a very expensive hobby. The Appellant felt that the decision was so unreasonable because other clubs were in a better financial situation and better placed geographically to move to the

Northern League. Essentially, there would be far less impact for those clubs.

- d. The loss of players and administrative staff was a problem for the Appellant, and they categorised this ‘human element’ as just less than 50% of the overall problems they faced as a result of the Respondent’s decision. On a daily basis they were reliant on volunteers. The Appellant said that they had invested much time and money into ensuring their stadium and pitch were of a really good standard. As a result, only 2 games were postponed last season. It was more likely that games next season would be postponed because travel routes were closed rather than anything to do with the state of pitches.

- e. The Appellant had no issue with the number of teams in each league nor the fact that teams were not playing every week. It was often the case that teams would postpone a league fixture because their opponents were involved in a cup competition. The Appellant thought that clubs should be open minded about fixtures and to deal with each situation as it arose. Whilst the aim was for each league to finish its fixtures on the same day, this was not always the case. The Appellant acknowledged that the Respondent’s decision was part of a process and had they been in the Respondent’s position they may have made the same decision. But for the Appellant this was about the future existence and survival of Kendal Town FC.

- f. The Respondent said that such decisions are not taken lightly. They explained that, whilst there is a system for calculating the mileage to each game, it is very time consuming, given the number of possible permutations, to calculate the travel time to each fixture. They had done some work in this area and calculated that the time taken for the Appellant to travel to the two furthest away fixtures next season is about the same as it took the Appellant to travel to the furthest two fixtures this season. The Respondent made reference to the integrity of the competition and their policy, wherever possible, of having an even

number of teams in each league at the same Step. They accepted that there was possible alternatives to laterally moving Kendal Town, but this was not an unreasonable decision and was one that they were entitled to make.

- g. When asked about the balance between survival of a club and the need to have an even number of teams in a particular league, the Respondent said that it was a very fine line. They did not want to put clubs in a position where they are not able to participate. Whilst they strive to have 18-22 teams in each league, this is not always possible. Last season the North West Counties League ran with 24 teams, and it will be the same number of teams next season. It was impractical for a league to run with 25 teams.
- h. The Appeal Board took careful consideration of the grounds for appeal including geographical location, impact on staff and players, likely mileage to be travelled in the forthcoming season, difficulty of the travel routes involved and the availability of an alternative solution proposed by the Appellant. The Appeal Board reminded itself that it is unable to impose its own preferred solution in such cases and is only empowered by the FA Appeal Regulations to review the original decision of the Respondent. When looking at league allocations objectively, the Respondent must exercise objective discernment when placing clubs. While there were arguments for leaving the Appellant in the North West Counties League Premier Division, placing them in the Northern League Division One, was not perverse, irrational, unreasonable or wrong. Others may have made a different decision, but it was a decision the Respondent was entitled to make. On that basis the Appeal Board was not able to find in favour of the Appellant and dismissed the appeal.
- i. Whilst determining the outcome of the appeal, the Appeal Board expressed enormous sympathy and empathy with the Appellant. Often the Respondent has to make difficult decisions when placing clubs, and given the geographical issues faced by a number of leagues in the NLS,

an individual decision may, on occasions, be the ‘least worst’ option available.

11. The Appeal Board considered the matter of costs and decided that there would be no order as to costs.
12. The Appeal Board order that the appeal fee be forfeited.
13. The Appeal Board’s decision is final and binding.

Tony Rock
Keith Allen
Robert Purkiss MBE

12 June 2024