

Franchise United

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On 28 May 2002, an Independent Commission of Inquiry ("IC") appointed by the English Football Association ("F.A.") supported the proposed relocation by Wimbledon FC ("*the Club*") from their current base in South London to an area approximately 50 miles away in Milton Keynes. This decision was met with widespread condemnation from followers of the "Dons" and other members of the football community ranging from journalists, The Football League, the F.A., Supporters Associations to Members of Parliament.

As the Club hopes to move into the National Hockey Stadium in Milton Keynes, the physical relocation of the Club away from South London is imminent. The Club hopes to commence playing its fixtures at this temporary venue shortly (with a February fixture against Nottingham Forest FC tentatively pencilled in as the first game) and intends to have a permanent 25,000 all-seater stadium in Denbigh in place for the start of the 2004-2005 season.

This article will examine the background to the move, the rationale behind the IC's ground breaking decision and whether it really does represent the "doomsday scenario" many have predicted – that of opening up the proverbial floodgates to franchise football.

Wimbledon FC

In acknowledging the "exceptional circumstances" behind the IC's decision, it is necessary to understand a little about the character and background of the Club. Despite being formed in 1889 as Wimbledon Old Centrals, the Club was only elected to the English Football League in 1977. In the period 1982-1986, the Club rose from the English Fourth Division to what was then the First Division (now the F.A. Premier League). The Club has always been considered as a shining example for small teams and will forever be associated with its victory over the mighty Liverpool FC in the 1988 F.A. Cup Final. Having been one of the founding members of the F.A. Premier League at its inception in 1992, the Club played in the top flight on limited resources until 2000 when it was relegated to the First Division and where it has played ever since.

From 1912 to 1991, the Club played its home games at Plough Lane in Merton, South London. Plough Lane was an intimidating and spartan ground which suited the image of the "Crazy Gang" perfectly. However, the site did not meet the requirements of the Taylor Report following the Hillsborough disaster of 1989¹ and the Club sought temporary relocation whilst the Plough Lane site was modernised. The F.A. granted the Club permission to move to the ground of Crystal Palace FC, Selhurst Park in Croydon, South London since the ground was only 5 miles from Plough Lane and the Club would still be within its "conurbation"². However the move did not prove to be temporary. Plough Lane was not redeveloped and was sold to the supermarket chain, Safeway plc in 1994. The Club has now played its "home" games at Selhurst Park for over a decade.

The proposed relocation to Milton Keynes was not the first time that the Club had considered leaving Selhurst Park. In 1997, the Club investigated the possibility of relocating to Dublin in the Republic of Ireland. The initial response to the proposed move was in fact encouraging. When the Club's application to relocate was placed before the Premier League Clubs not one objected. However, any hope that the Club had was quickly dispelled as the Football Association of Ireland (the "FAI"), FIFA and UEFA all objected to the move.

Graham Kelly, the Chief Executive of the F.A informed³ the Club's then chairman Sam Hamman that it was bound by the principle of the "*Comite des nations*" and had to respect the views of its sister association (the FAI). The F.A would not undertake any action or assist the Club unless and until the FAI removed its objections. UEFA stated⁴ that it:

"does not support such a move, because of the damaging effect it would have on domestic football in European countries. Furthermore, UEFA emphasises that in accordance with its Statutes, football played within a national territory is the responsibility of the UEFA member association of the territory concerned. For this reason, UEFA is against any move to play domestic football outside a national territory."

The final "nail in the coffin" came at a meeting of FIFA's executive committee in Paris in June 1998. The congress ruled that it was "*neither desirable nor reasonable*" to allow clubs domiciled in the territory of one association to take part in competitions whilst in the territory of another. Following this final and fatal blow, the Club had to look elsewhere and was later linked to a move to Cardiff in South Wales but this bid also failed (coincidentally Sam Hamman, is now the chairman of Cardiff FC). Many Club officials hoped that Milton Keynes was a case of "third time lucky".

Why did the Club need to relocate from Merton?

The Club argued that unless it was permitted to relocate, it would be forced into immediate liquidation due to crippling financial losses and a lack of assets and Wimbledon FC would die. It highlighted the following factors:

- Financially unsustainable to construct a stadium at Plough Lane
- No land site in Merton or elsewhere in South London was viable
- Secondary tenant at Selhurst Park - a position at that time shared by no other professional club in the English Leagues
- The colours, branding and traditions at Selhurst Park remain those of Crystal Palace FC

¹ clubs in the top two divisions of the English Football League were required to play in all-seater stadia.

² the locality where the club was created and where the club has taken its name.

³ Letter dated 19 May 1998.

⁴ UEFA press release 9 February 1998.

- Under the terms of the sub lease 10 % of gate receipts⁵ are paid by way of rent
- The Club is liable for 50% of all expenses incurred in the maintenance and operation of the stadium
- The Club's image is not projected in any way as no branding can take place at hospitality and entertainment areas⁶ in the stadium;
- The Club is not receiving any income from the sale of concession products;
- Ticket prices are frozen at not less than 80% of the prices charged by Crystal Palace FC to prevent undercutting.

These factors have had a detrimental effect on the Club's bank balance and League position. Deloitte & Touche estimated that the Club loses £3-4 million per annum due to the fact it does not own its own stadium. The Club and its fans feel like visitors at their own home games and this has led to a steady decline in home attendances despite a general rise throughout Division One. The IC noted that in season 2001/2002 the Club won more away games than home games.

So why did the Club choose Milton Keynes?

In August 2000, Peter Winkleman of The Milton Keynes Stadium Consortium (MKSC)⁷ approached the Club. MKSC were seeking to build a major development in the Denbigh area of Milton Keynes, which included a modern, 28,000 all-seater stadium which could be expanded to a capacity of 45,000. Mr Winkleman highlighted some of the advantages of moving to the area:

- Site – affordable, accessible and available
- No foreseeable regulatory problems to the Club
- No significant capital cost to the Club
- Excellent road and rail infrastructure
- A large fan base – 2.2 million people within a 30 minute drive and 8 million within 1 hour's drive (Milton Keynes – a "new city" - is the largest population centre in Europe without a professional football team).

Following a Board of Directors Meeting in July 2001, the Club agreed to pursue the Milton Keynes option and agreed heads of terms with MKSC. Faced with arguably the most important decision in the Club's history, many Board members dissented. The Club then commenced the process of obtaining the approval of the Football League.

Application process

By a letter dated 2 August 2001, the Club made a formal application for the Football League's approval of the move to Milton Keynes. The Football League Board met on 16 August 2001 and unanimously rejected the application. The Club asserted that this decision was "*unfair, unlawful and procedurally flawed*."⁸ In response to this assertion and in accordance with Rule K of the Football Association Rules⁹, the Club and the Football League entered into an arbitration scheme. The

⁵ including revenue from season tickets and executive boxes.

⁶ this includes not being able to exploit rights in the stands, enclosures, suites, lounges, bars and corporate boxes.

⁷ a group of local business people who along with community groups have been working to secure the provision of professional football to Milton Keynes.

⁸ Paragraph 24 of the Summary of the Commission's Decision.

⁹ Rule K sets out the procedure necessary to commence an arbitration scheme in order to solve a dispute.

arbitration panel, which included Arsenal FC's Vice Chairman David Dein, unanimously decided on 22 January 2002 that the Football League Board's decision had *"not been properly taken in the legal sense and that the procedures had indeed not been fair"*.¹⁰

The matter was remitted back to the Football League Board which met on 17 April 2002. It was felt that the matter should be considered by a Commission appointed by the F.A. and so the Football League Board officially referred the matter to the F.A. in accordance with Regulation 76.1 of the Football League Regulations.

In accordance with F.A. Rule F6, the F.A. appointed the IC to hear and resolve the application. In considering the matter the IC had to apply the F.A. Rules and Regulations¹¹. Whilst these Rules provide that there is no absolute prohibition against relocation, if a club wishes to move outside its conurbation, the Football League Board has the discretion to approve or reject such a move.

The role of the IC in this instance was to make a judgment in place of the Football League Board and to exercise the discretion to approve or reject the application. The IC acknowledged that they had to act proportionately by balancing the arguments put forward by the Club, fans, the Football League and the F.A. The fact that permission had not been granted for a move of this nature before, or (for some) such a move would contradict the core principles of football's pyramid structure¹² were not sufficient reasons to refuse the application without due consideration.

The IC Decision

On 28 May 2002, the IC announced their decision. It found by a majority (2:1) that, in light of "its exceptional circumstances", the Club should be given permission to relocate to Milton Keynes. The IC was of the opinion that by giving the Club permission in this instance, the cherished and fundamental principles of football in this country in relation to the pyramid structure and promotion and relegation would not be circumvented. The IC believed that the pyramid structure would be better served by ensuring the survival of the Club, albeit in a different conurbation, than condemning it to liquidation and extinction in Merton.

In its decision, the IC referred to the geographical nature of the Club's fanbase. It noted that as the vast majority of the fans do not live in Merton or Wimbledon (20% of season ticket holders live in Merton and 10% in Wimbledon) the Club's links with the community in Merton are: *"not so profound, or the roots go so deep, that they will not survive a necessary transplant to ensure the Club's survival"*¹³. The IC contended that this relatively low Merton resident fanbase combined with its tenure at Selhurst Park did not suggest that the Club was at "the heart and soul" of its community.

As most professional football clubs own their own stadia and have strong fanbases within their immediate vicinity, the IC was of the opinion that its decision did not create a general precedent nor would the floodgates be flung open to franchise football. The IC further re-iterated that they could not conceive of a comparable club which shared with the Club the following characteristics¹⁴:

- The Club has no stadium of its own and has been a secondary tenant for some 11 years and its shareholders are not prepared to continue to finance its operation in its present financial circumstances

¹⁰ Paragraph 25 of the Summary of the Commission's Decision.

¹¹ Football League Regulation 76.3.

¹² The pyramid system is the structure of the English football system. At the bottom level, there are many amateur leagues with many teams and as you move up the pyramid, the number of leagues and teams decrease in size until you reach the pinnacle of the pyramid, the F.A. Premier League. The system is based on relegation form and promotion to each league purely on sporting grounds.

¹³ Paragraph 109 of the Summary of the Commission's Decision.

¹⁴ Page 2 of the Summary of the Commission's Decision

- The Club needs to relocate to have a commercially viable future or, given the level of losses it will continue to sustain, it will go into liquidation. There is no viable South London alternative
- Milton Keynes provides a suitable and deserving opportunity in its own right where none exists in South London
- The Club's links or roots in its community are of a nature that can be and are agreed should be retained by the Club and MKSC albeit in a new location. The Football League can ensure these links are put in place and reserved.

Following the decision of the IC, the F.A. stressed that the decision was binding on everyone under the Football League Rules. The F.A. and Football League also agreed in accordance with paragraph K5b of the F.A. Rules that the IC was the final forum for this matter and consequently there could be no appeal.

Reaction

The Club's fans have turned their back on the Club re-naming it "Franchise FC" and have created a trust which has funded the creation of an amateur club playing in the Seagrave Haulage Combined Counties League by the name of AFC Wimbledon (playing "home" matches at the ground of Kingstonian FC – Kingsmeadow). AFC Wimbledon is enjoying gates of 2,000 spectators or more (compared to the non-league's average attendance of approximately 200) while attendances at the Club's "home" matches at Selhurst Park have plummeted and on 5 November 2002 only 664 spectators watched the Club's victory over Rotherham FC in the Worthington Cup.

Many commentators have asserted that this decision represents the commencement of a franchise system of football, particularly that smaller sides living in the shadow of Premier League clubs will look now to relocate away from their roots and history to bigger catchment areas. Others highlight the possibility, similar to North American cities, where consortia will commence bidding wars to tempt clubs to move to their locality. The F.A. have sought to quell such fears by asserting that:

"The Commission has made it clear that their decision is based on exceptional circumstances particular to Wimbledon Football Club. They see Wimbledon FC as a one-off. This is not the beginning of a franchise system.

*The Football Association is greatly concerned that this decision should not in any way be seen as a precedent. The view of The Football Association is that for clubs to move is not in the best interests of the game. However, this is binding on everyone under the Football League rules - there is no appeal."*¹⁵

Is this a precedent?

The IC and the F.A. were at pains to stress that the relocation was approved due to exceptional circumstances. When one examines the background and history of the Club it is clear that the Club should be viewed as a "special case". To reinforce the stance adopted by the IC and the F.A. that the decision will not have fundamental implications for the game as a whole, it should be noted that relocations of football clubs have taken place since the dawn of the professional game. Queen's Park Rangers FC has moved an incredible 18 times (14 different locations) in and around London. Many teams relocated in the 1940's as a result of the second world war, with Manchester United FC playing their matches at Maine Road the home of their local rivals Manchester City FC. In recent times, the Football League has allowed several temporary relocations, many outside the particular club's conurbations. Examples include Bristol Rovers FC, Brighton & Hove Albion FC, Middlesbrough FC and Charlton Athletic FC.

¹⁵ Statement released by the F.A. on 28 May 2002

The IC decision concerns the permanent relocation of a club outside its conurbation. However, such a move is not without precedent in the British game. In 1996, the Scottish Football League allowed Meadowbank Thistle FC to permanently relocate from a site in Central Edinburgh to a "new town" Livingston over 18 miles away. The Club was also permitted to change its name to Livingston FC. This decision has had no discernible impact on the cherished and fundamental principles of football and has in fact proved to be an unqualified success. Before its relocation, Meadowbank Thistle FC was floundering in the bottom division of the Scottish Football League. Livingston FC is now competing in the upper echelons of the Scottish Premier League and in 2002 played for the first time in the UEFA Cup having finished third in the Scottish Premier League the previous season. Fans from Central Edinburgh are able to travel to home games relatively easily and the long term viability of the club and Scottish football generally has been improved following the relocation.

It should be noted that the extreme resistance of football fans to relocation – even when it is necessary to safeguard the continued existence of their club – has not been reflected in other sports and territories. Following the dawn of a professional area in the mid 1990s, many rugby union clubs – particularly those in and around London - have felt the need to relocate mainly to non Premier League football stadia. Wasps RUFC have relocated from their spiritual base of Sudbury in North West London to Loftus Road (the home of Queen's Park Rangers FC) and now play their matches at Adams Park (the home of Wycombe Wanderers FC). London Irish have relocated from their base in Sunbury in South West London and now play at Madejski Stadium (the home of Reading FC). These clubs have very proud histories and traditions (Wasps RUFC was formed in 1867) and a loyal, if small, fanbase. However their decisions to move have not caused the mass outrage which the Club's decision to relocate to Milton Keynes has. It may be the case that rugby fans are aware that the professionalism of their game comes at a price and the move from prime residential sites to pastures further afield is a financial necessity. Others may point to the sorry plight of rugby union's Richmond FC (formed in 1861) who were in the first wave of clubs to embrace the professional era in 1996, yet became insolvent three years later following the withdrawal of support from their financial backer.

In the US, the relocation of teams is a regular and largely non controversial¹⁶ occurrence. This is partly due to the professional leagues being set up on a franchise basis with the absence of a relegation/promotion pyramid system. Franchises were traditionally awarded to wealthy businessmen who based their teams in areas where they would be most profitable (a simple market forces principle). When/if the owner could secure better financial terms, the teams would simply relocate. The movements of the NFL's Raiders are fairly typical in this regard. The Raiders were based in Oakland between 1960-1981 - then decided to relocate to Los Angeles between 1982 – 1994 and have now moved back to Oakland!

One interesting example which may give hope to all involved in the Club's move to Milton Keynes (both for and against) is the case of the NFL's Cleveland Browns. The Browns were established in Cleveland in 1946 and were largely accepted as having one of the most fervent fanbases in the league. However, in 1996, their owner Art Modell (prompted by an outdated stadium and a decline in financial resources) made the unpopular decision to relocate the team to Baltimore renaming them the Baltimore Ravens. Following this move, the city authority struck a deal with the NFL to bring an expansion team (i.e. a new team) to the city and arranged for a \$240m reconstruction of the ageing stadium. This sum was partly raised by increasing alcohol and cigarette taxes in the county. Art Modell agreed to relinquish the name, colours and team history so that the Cleveland Browns could live again. Ironically the Baltimore Ravens went on to win Super Bowl XXXV.

¹⁶ Whilst the US Congress has considered the possibility of restricting the relocation of National Football League (NFL) teams, it was determined that any such restrictions would contravene anti-trust provisions, impair franchise values and lower revenues resulting in a threat to the financial viability of franchises.

Conclusion

As emphasised in the *Bosman*¹⁷ ruling, the peculiarities of football and those persons who operate therein are subject to basic principles of European law. If a club fails in its bid to relocate in order to seek a more prosperous future, it may raise an argument that a rejection of such an application would be contrary to the fundamental principles of European Law particularly (freedom of establishment: Art. 43 (52) EC Treaty). Whether such a highly speculative argument will be used remains to be seen. The writer of this article is inclined to agree with the views of the F.A., in that the facts surrounding the relocation of Wimbledon FC make this particular application so exceptional, that the decision cannot be regarded as having any precedential value. The Club is unlike any of the other professional clubs in the English Football League and consequently the decision made by the IC was a one-off. Until the next time.

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¹⁷ *Union Royale Belge des Societes de Football Association v Bosman C-415/93* [1996] All ER [EC] 97