



Appeal Decision

Site visit made on 19 May 2026

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2026

Appeal Ref: APP/C3620/X/25/3362325

Recreation Ground, Barnett Wood Lane, ASHTEAD, KT21 2BZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ashtead Football Club against the decision of Mole Valley District Council.
 - The application ref MO/2024/0986, dated 28 June 2024, was refused by notice dated 15 November 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended) ('the Act').
 - The development for which a certificate of lawful use or development is sought is Commencement of planning permission reference MO/2020/2167, by virtue of the following acts of development: Demolition of existing fence; Demolition of existing MUGA surface; Excavation of drainage channel; Implementation of drainage system in compliance with details approved via application MO/2024/0295.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Applications for costs

2. An application for an award of costs has been made by the Appellant against the Council. This is the subject of a separate decision.

Preliminary Matter

3. A number of third-party representations were received. Many of these made arguments on the planning merits of the development that is the subject of the application, covering topics such as its visual impact, its use of artificial materials and loss of public open space. As this appeal is against the refusal to issue a certificate of lawfulness, those matters can play no part in my decision-making. The comments made that are pertinent to the lawfulness of the development are addressed in my reasons, below.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.

Reasons

5. The clubhouse for Ashtead FC ('the Appellant') lies towards the northwestern corner of an area of largely open public land, the recreation ground. It lies adjacent to a small skate park with a number of ramps. Immediately to the southeast of this is a small hard surfaced play area that is surrounded by a chain link fence. Just to

the southwest of this hard surfaced area, close to the boundary with residential development beyond, is a shallow drainage ditch. To the northeast and southeast of the hard surfaced area is open, grassed land that is used for sport and recreation.

6. In 2020, the Appellant made an application (Council reference MO/2020/2167) for planning permission for 'Replacement of existing concrete sports pitch, floodlights and fencing with new artificial grass pitch, fencing and floodlighting'. The 'existing concrete sports pitch' is the hard surfaced area I refer to, above. The resultant artificial grass pitch or Multi-Use Games Area ('MUGA') would be formed on the site of the existing hard surfaced area and some of the open, grassed land.
7. Planning permission for this development was granted on 26 November 2020, subject to 10 conditions. Four of these required the submission of further details for the Council's approval prior to the commencement of development, whilst condition 1 required the commencement of the development within 3 years of the date of the decision. Therefore, to make a timely commencement would have required the four pre-commencement conditions to be discharged and a material commencement to be made on the development by 26 November 2023 ('the relevant date').
8. The Council acknowledges that the pre-commencement conditions were submitted in a timely manner, that they were approved, and that the development that the Appellant undertook was carried out before the relevant date. Its stance is that work undertaken did not amount to the commencement of the development.
9. The Appellant points to acts that it states amounted to, taken either individually or cumulatively, the commencement of the development and that these have kept the permission alive, allowing for its completion in the future. Broadly speaking, these were: works associated with the provision of a surface water drainage scheme; and works to a fence on the land.
10. In a certificate of lawful development case, the onus lies with the Appellant to make its case on the balance of probability.
11. Condition 3 of the 2020 permission was a pre-commencement condition that required the submission of surface water drainage details for approval, and the implementation of the approved details prior to the first occupation of the development. It is not an issue between the parties, but I read "first occupation" as first use.
12. The Appellant provided the details required by condition 3, as well as information required by the other conditions precedent, Nos 7, 8, 9 and 10, in application MO/2024/0295. The Council agreed that those parts of the conditions that might be discharged were by way of a decision notice dated 12 June 2024.
13. Amongst the details approved in respect of condition 3 was Drawing 02 Revision 02 of Project SSL2728, produced by SSL, a sports pitch consultancy. Amongst other things, this shows how the pitch would allow for the storage of water within its sub-surface and its attenuated flow to the drainage ditch via drainage pipes. Those pipes would run variously within and without the MUGA.
14. Given what has been carried out by the Appellant, I need only refer in detail to the northwest corner of the proposed MUGA. This would utilise most, but not all of the

hard surfaced area. It would stop short of the drainage ditch and, for the most part, short of the skate park, too. The exception being a small area of a goal mouth that would extend right to the boundary with the skate park.

15. Drawing 02 Revision 02 shows a straight run of drainage pipe from a manhole outside the northeast corner of the MUGA to another, again outside the MUGA, at the northwest corner of the site, between it and the drainage ditch. The latter, referred to as 'manhole 1' would fall within the existing hard surfaced area. Manhole 1 would also receive a drainage pipe with a fall running southeast to north-west, roughly parallel to the drainage ditch.
16. In terms of the drainage works referred to in the application, the Appellant has undertaken work in the northwest corner of the existing hard surfaced area. The question to be addressed is, was the work was in accordance with the approved details?
17. The Appellant, using a mini digger, dug a straight trench within the existing hard surfaced area. The parties say this was 3m long. I did not accurately measure this but estimated its length to be nearer to 5m, though this is not a determinative factor in my decision.
18. Using the definition of development in s55(1) of the Act, further explained in s55(1A), I find this to be a building operation.
19. S56 of the Act sets out the time when development is begun. Amongst its terms, s56(1) says "development of land shall be taken to be initiated—(a) if the development consists of the carrying out of operations, at the time when those operations are begun". S56(2) and (3) provide that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. There is a list of material operations that might begin a development in s56(4), but this should not be held to be definitive; other operations might commence a development, if they are material and part of the development that has planning permission.
20. Paragraph 4.7 of the Drainage Strategy produced by SSL, which was part of the approved condition 3 submissions, refers to "UPVC perforated corrugated plastic carrier drainage pipes to EN1401-1:1998 laid into geotextile lined, gravel-filled trenches". That is not what is shown, however, in the section on Drawing 02 Revision 02, again produced by SLS and part of the approved condition 3 submissions. There, a section through the MUGA, the 'AGP Make Up Section', shows the geotextile layer running over the top of the trench in which the drainage pipes are laid, rather than within it. It simply shows that the provision of a trench in which the pipes would be laid and is otherwise filled with "construction make up and materials" with the drawing indicating infill with rock that would allow for "natural filtration".
21. The Council say that the trench dug by the Appellant was partially filled with shingle, on which a pipe was laid, and the trench was then filled in on top. This appears to be borne out in photographs submitted by the Appellant.
22. In assessing whether this would accord with the approved scheme, it is not enough to list or measure any differences between what is on the ground and on the plans. The significance of the differences plus the similarities between what was done and approved must also be considered. The degree of compliance with

the plans is relevant, as is the degree to which the works are substantially usable in the permitted development. These judgements will be made as a matter of fact and degree.

23. Measurements of the actual position of the length of pipe that has been laid were taken by the Council, and these were compared to the position of the pipe shown on the drawing. It is common ground that the pipe is in the order of 1m closer to the nearest skateboard ramp than shown on the 1:500 'Drainage Scheme' element of Drawing 02 Revision 02. This shows, amongst other things, a plan view of the MUGA with its drainage pipes and associated manholes. The AGP Make Up Section shows the construction of the pitch and its sub-surface, including a drainage pipe, as well as the surrounding fencing; this is not to scale.
24. The Council's position is that the pipe should be positioned in accordance with the 1:500 scale drawing. The upshot, it says, is that the MUGA would be commensurately closer to the skate park, with three of its goals actually in the skate park.
25. The Council also says that the position of the pipe that has been laid would not allow it to meet up with manhole 1. Water from the pitch would not, therefore, run to the drainage ditch in the manner of the scheme approved under condition 3. Further, the Council notes that the length of pipe that has been installed was neither corrugated nor perforated, and has been installed under concrete, rather than artificial grass.
26. It is clear from its terms, and those of the reason for applying it, that the purpose of condition 3 was to ensure that the MUGA would not have adverse effects by way of surface water run-off. A critical factor in my assessment is whether, in its present position, the pipe would provide the same level of surface water drainage as shown in the scheme in Drawing 02 Revision 02.
27. For its part, the Appellant has submitted a technical assessment of the suitability of the installed pipe. This was produced by Simon Dent Associates ('SDA'), consultant engineers, and dated 4 February 2025.
28. In its Statement of Case, the Appellant says that the "location of the pipes below [ground] is immaterial". SDA's technical assessment confirms that the position of the pipe "in no way dictates the location of the edge of the artificial-grass pitch surface, or of the fence enclosing the pitch". The pipe, it says, would still serve the purpose for which it is designed. SDA makes the point that, in their experience, it is entirely common for installers of drainage using a drawing of 1:500 scale to position drainage pipes to such tolerances as is the case here and that the "relocation of the pipe is a matter which is technically inconsequential".
29. Therefore, whilst I take the point made by the Appellant that there can be a degree of tolerance to be afforded when scaling from plans at a scale of 1:500, there is no evidence to support the Appellant's contention on the location of the pipes in its Statement of Case.
30. SDA's technical assessment further states, and this is of fundamental importance, that in its current position the length of pipe that has been installed would serve the purpose for which it is designed. The technical assessment sets out that in its location, "the pipe should be solid wall and need no geotextile to perform. If a

perforated pipe were running to the ditch, it may cause issue to the footpath construction and/or trees, is unnecessary and not recommended”.

31. It acknowledges that there has been a slight alteration to the angle of the run of the pipe and, as a result, its position *vis-à-vis* with manhole 1. However, the technical assessment sets out that the “pipe would simply collect the infiltration drainage which can connect [to manhole 1] with a max 45 deg bend” and that the “Infiltration drainage is fully accessible from the catchpit manhole”. It also provides the option of relocating manhole 1. The latter option would have a visual impact, unlike the pipes which run underground; however, given that the manhole would only protrude from the ground to a very minor degree, if at all, the effect of this would be negligible.
32. That the pipe was installed under concrete, rather than artificial grass, when the trench was backfilled is, as a matter of fact and degree, immaterial. It is commonplace for trenches dug to commence a development to be infilled afterwards for safety purposes. Removing the concrete that has been used as part of this backfilling and then providing the porous macadam and artificial surface shown on the AGP Make Up Section on Drawing 02 Revision 02 would be easily done.
33. I am mindful of the quote in the Officer report into the certificate application attributed to the Council’s Drainage Consultant. This said “the works appear to accord with the design” and, thus, I have two pieces of evidence produced by technical experts that support the Appellant’s position.
34. It is suggested by a third-party objector that the pipe that has been laid has an incorrect diameter and has not been laid deep enough. I cannot reach this conclusion from the photographs that have been submitted and, in any event, I am led to a significant degree by the evidence of the technical experts.
35. Overall, my finding is that the difference between the position of the installed pipe and that shown on Drawing 02 Revision 02 is negligible and that the work carried out is sufficiently similar to what was shown on the drawing. Importantly, the evidence shows that, as a matter of fact and degree, the works are usable in the development and would achieve the requirements of condition 3. Furthermore, condition 3 simply required the implementation of the approved drainage scheme before, as I have interpreted it, first use. It did not use the words precisely or exactly, or some similar adverb, that might have limited the degree to which works carried out to commence a development might differ from those in the approved scheme.
36. In the light of the above reasons, I find that a material operation that resulted in the commencement of the development allowed by planning permission MO/2020/2167/PLA was undertaken. This was done in a timely manner and has the effect of keeping the permission alive.
37. Notwithstanding my finding on the work related to the pipe, for the sake of completeness I shall address the other aspects put forward by the Appellant in support of his case.
38. In order to provide access for a mini-digger to carry out the excavation for the channel to accommodate the pipe that was installed, the Appellant disconnected the existing chain-link fence that surrounds the pitch from the supporting pole at

the northwest corner of the hard surfaced play area. The fence was rolled back and connected to another supporting pole a few metres away. On completion of the work to install the pipe, the fence was reconnected with ties to the corner pole, though those ties had failed thereafter.

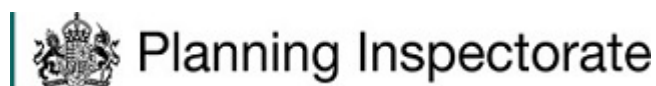
39. The description of development in planning permission MO/2020/2167/PLA allowed for the removal of the existing fence and the erection of a replacement fence. The work carried out has been described by the Appellant as the demolition of part of the fence, and that this would also commence the development. In support of this, the Appellant cites the case of *Malvern Hills DC v Secretary of State for the Environment* [1982] JPL 439, saying that this shows that “very little needs to be done to begin a development”.
40. In *Malvern Hills* it was held that the pegging of the lines of part of a new estate road was an operation in the laying out or constructing of a road. That was a deliberate operation and part of the approved development. I find that this was not the case with the works to the fence. The temporary disconnection of the fence was, to my mind, an act to allow a mini-digger onto the site to carry out the trenching works, which were part of the development. I understand that a smaller digger might have accessed the land via another entrance, so there was no necessity to undertake the works to the fence, but this does not alter my view on the matter.
41. What occurred was a *de minimis* operation for which planning permission would not have been required. I do not equate the temporary disconnection of a portion of fence with its demolition in a manner that might constitute commencement of the development.
42. The other aspect of the Appellant's case is that the trenching works for the drainage pipe amounted to the part-demolition of the existing hard surfaced area. Its replacement is specified as part of the development approved under planning permission MO/2020/2167.
43. I have found this to be part of the drainage works that have commenced the development. However, I find those works to be *de minimis* and are not part of the demolition and replacement of the hard surface.

Conclusion

44. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Commencement of planning permission reference MO/2020/2167, by virtue of the following acts of development: Excavation of drainage channel; Implementation of drainage system in compliance with details approved via application MO/2024/0295 is not well founded. The appeal should succeed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Curnow

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 28 June 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence provided is sufficiently precise and unambiguous to show that, on the balance of probability, the works undertaken on site were in accordance with those approved by the Council in its decisions on applications MO/2020/2167 and MO/2024/0295 and that a material and timely commencement was made on the development allowed by planning permission MO/2020/2167.

Signed

R Curnow

Inspector

Date: 8 July 2026

Reference: APP/C3620/X/25/3362325

First Schedule

Commencement of planning permission reference MO/2020/2167, by virtue of the following acts of development: Demolition of existing fence; Demolition of existing MUGA surface; Excavation of drainage channel; Implementation of drainage system in compliance with details approved via application MO/2024/0295.

Second Schedule

Land at Recreation Ground, ASHTEAD, KT21 2BZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 July 2026

by R Curnow

Land at: Recreation Ground, ASHTEAD, KT21 2BZ

Reference: APP/C3620/X/25/3362325

Scale: Not to Scale

