



# Appeal Decision

**by Ken McEntee**

**a person appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 September 2016**

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**Appeal ref: APP/U2235/C/16/3152977**

**Land at Monk Lakes, Staplehurst Road, Marden, Tonbridge, Kent TN12 9BS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Mr Morgan Jones against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 19 May 2016.
- The breach of planning control as alleged in the notice is "Without planning permission, the use of a building as a dwellinghouse".
- The requirement of the notice is (i) Stop using the building edged red on the attached Plan as a dwellinghouse".
- The period for compliance with the requirements of the notice is "Six months".
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

**Summary of decision: The appeal is dismissed and the enforcement notice is upheld but with correction.**

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## Procedural matters

1. I note that the notice does not stipulate when the time for compliance begins from. Therefore, for the avoidance of doubt I shall correct the notice to show that it begins after the notice takes effect. I am satisfied that no injustice would be caused by this correction.

## Reasons for the decision

2. The basis of the appellant's case is that he would like more time to comply with the notice in order for a topographical survey to be carried out and to submit a revised application. He also contends that he would like more time for the fishery manager to find alternative accommodation should the application be unsuccessful. The appellant requests that the time for compliance be extended to 12 months. While the case made by the appellant is noted it has to be weighed against the stated harm caused by the unauthorised development to the surrounding area. I am also mindful that some 3 months have elapsed since the appeal was submitted with enforcement action effectively suspended. As the compliance period will begin again from the date of this decision, the appellant will effectively have had 9 months in which to arrange a topographical survey and to submit a revised planning application. I consider this period to be both

proportionate and reasonable and achieves an appropriate balance between the need to bring the harm caused by the unauthorised use to an end and the need of the tenant to look for alternative accommodation.

3. In these circumstances, I am not satisfied there is good reason to extend the compliance period further and consider the 6 months given is sufficient to meet the requirements of the notice. The ground (g) appeal fails accordingly.
4. Nevertheless, while I am dismissing the appeal, should the appellant experience any genuine difficulties, the Council have the power, under section 173A (1) (b) of the amended 1990 Act, to extend the compliance period themselves, if they see fit. Whilst this is entirely a matter for the Council's discretion, it would be open to the appellant to ask for a further short extension of time, should that prove necessary.

### **Formal decision**

5. Under the powers of section 176 (2) (a) of the amended 1990 Act, it is directed that paragraph 5 of the enforcement notice be corrected under 'Time for compliance' to read '**Six months after this notice takes effect**'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

*K McEntee*