



Appeal Decision

Site visit made on 15 March 2022

by **Anthony J Wharton** BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/A2335/C/21/3283349

Addington Road, Nether Kellet, Carnforth LA6 1DZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (The Act), as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Adrian Gott against an enforcement notice issued by Lancaster City Council.
 - The enforcement notice (EN), Ref: 21/00029/ENF, was issued on 3 September 2021.
 - The breach of planning control as alleged in the notice is: The erection of 5 grain silos and support frames in the approximate position hatched blue at Appendix A and identified as numbered 1-5 on the photograph at Appendix B.
An earlier notice for the same breach, dated 3 August 2021, had been withdrawn by the LPA due to service not complying with Section 172 of the Act
 - The requirements of the notice are as follows:
 - (a) Remove the grain silos (numbered 1-5 on the photograph at Appendix B) and frames that support them and
 - (b) Remove all resultant materials arising from step 5.1(a) away from the land.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on grounds (a), (d) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. See formal decision below.

Matters of clarification and introduction

2. The address in the heading above, which is taken from the Appeal Form, is not the correct postal location of the site or the correct postcode. This address appears to be another property at the farm which is to the west of the site, close to the junction of Addington Road and Birkland Barrow Road. The correct address is Lower Addington Farm, Birkland Barrow Road and the postcode is LA6 1FJ. A submitted location plan indicates three areas of land related to the farm: the appeal site poultry building and silos (5 No large, plus 4 No small); a second poultry building and silos (2 No) to the north of Birkland Barrow Road and a group of smaller buildings between the appeal site and Addington Road to the west. In a report produced for the Appellant, the appeal poultry building is referred to as FR1 and the second one, to the north-west, as FR2.

3. There is a pending Lawful Development Certificate (LDC) application with the LPA (21/01120/ELDC) for 3 of the 5 large silos (see *Planning History* below), whereby it is contended that they were lawful by virtue of the fact that they are buildings which were erected in excess of 4 years before the date of the LDC application. Although I am not empowered to deal with this pending LDC application, some of the evidence before me in this appeal, (in the form of Statutory Declarations (SDs) and e-mails), has been submitted as part of the ground (d) appeal. The SDs are made by the Appellant, the Managing Director of the mobile milling business (Harbro) and by the farm manager at the farm.

Commented [WT1]:

4. The LPA has responded in detail to these submissions. Therefore, in the ground (d) appeal, I have considered whether or not it has been demonstrated precisely and unambiguously and on the balance of probability that these 3 large silos (Nos 1, 2 and 3) were immune from enforcement action on the date the notice was issued, 3 September 2021. In dealing with the ground (d) appeal in this manner I am satisfied that no injustice will be caused.

5. It is accepted that the other 2 large silos were not installed at the site until 2018. It follows that these could not have been lawful at the time of the LDC application and were not immune from enforcement action when the notice was issued. It is also the case, therefore, that the substantially complete development of all 5 silos, used in the milling operations could not have been lawful at that time. I refer to the 3 large LDC application silos as Nos 1, 2 and 3 and to the other 2 as Nos 4 and 5. These contain the different ingredients which are milled to provide the feed for the poultry (see below). The other smaller silos are stated to be feeder silos for FR1.

Background information

Introduction

6. The appeal site is at Lower Addington Farm, a large established egg producing business, and is located to the east of Nether Kellet, in between Birkland Barrow Road and Kirkby Lonsdale Road. The large, relatively low, poultry building FR1 sits detached from other agricultural buildings to the south of Birkland Barrow Road. It lies within the open countryside and is surrounded by open fields. It is approximately 0.5km from the boundary of the Forest of Bowland Area of Outstanding Natural Beauty (FBAONB) which is to the south-east. There is also a public footpath to the east (The Lancashire Way), approximately 400m away from the site. The nearest private dwellings are located 230m to the north-east in the small hamlet known as Swarthdale and 295m to the west, close to the other farm buildings.

The 5 Silos

7. The 5 large appeal silos are located adjacent to the eastern elevation of the large poultry building FR1 and sit immediately next to 2 of the 4 smaller silos. It is indicated that these 2 smaller silos were constructed as part of planning permission, 09/00554/FUL, for the poultry building FR1, granted in 2009. The 5 silos are fixed to a concrete plinth with a floor area of 80m². Each silo contains a different raw ingredient (maize, oats, soya, barley and wheat). They are 11.2m high and 3.35m in diameter and are coloured brown, with stainless steel, grey frames to their outer edges. The two smaller silos to the south are adjacent to the southern part of FR1.

The Milling and Grinding operation

8. For part of my site visit, the mobile milling/grinding vehicle was in operation. The farm manager explained the physical process taking place and this is also set out in

detail in the report prepared in support of the retrospective planning application (now withdrawn) for the 5 silos. Basically the 5 different ingredients (maize, oats, soya, barley, and wheat) are taken from each of the 5 silos into the mobile milling and grinding vehicle. Fine grit is then added and the contents are milled, ground and mixed. This forms the feed product for the poultry which is fed into the smaller silos to serve the shed FR1. It is also confirmed that the resulting milled feed, from the contents of the 5 silos, is transported to the poultry shed FR2 to the north-west, where there are two other smaller silos adjacent to the building.

9. Third parties, in representations relating to this appeal, contend that the mobile milling unit should be considered as a separate operation to the egg production operation and complaints have been made regarding its effects on residential amenity. It is contended that a material change in use of the land has occurred. References are made to a Council officer's comments in relation to the application for a third poultry shed (20/00019/FUL) whereby the Council's stance is that the milling and grinding is separate from the egg production unit. The Council accepts that the grain silos are required *'for the manufacturing of feed on site and serve the agricultural activities'*. However, the Council has not made any representations regarding a change of use and the enforcement notice only relates to the operational development for the *'erection of 5 grain silos and support frames'*. The Council did not respond to my request for comments on the third party representations.

10. It is evident that the milled feed from the 5 appeal silos also supplies the second poultry shed FR2. Reference is also made by third parties to the previous Appeal decision (APP/A2335/X/20/3261623) where the Inspector referred to the milling operation and indicated that it had not been explained whether or not the raw materials could be imported directly into the milling process; whether or not other forms of storage might be appropriate and that the 5 silos were not considered to be an integral part of the egg producing activities.

11. From my own visit, from the retrospective application report and from the on-site demonstration of the milling and grinding operation, I agree with the third parties, the Council officer and the previous Inspector that the milling operation is separate from the egg producing element of the Appellant's operations which had clearly existed for several years without using any of the 5 large silos for on-site milling. Clearly the milling has become part of the overall agricultural activities at the farm and is used for the supply of finished feed to both of the Appellant's poultry sheds FR1 and FR2. In this respect I consider that the milling use can be described as being an ancillary use to the two poultry sheds FR1 and FR2. Again, this appears to be agreed on behalf of the appellant in the retrospective planning application report.

12. The farm site is subject to an Environment Agency (EA) permit (QP3436DQ) and, following complaints about the new milling operation, including the noise it generated, EA carried out an inspection of the site. The EA report found that all checks were satisfactory but at the time of the inspection the milling operation was not in use. Any sound readings taken did not, therefore, include any noise generated by the mobile mill. The EA report also noted that the company's Noise Management Plan (NMP) did not refer to the milling process and that it did not indicate all noise sources and noise receptors for any sensitive properties within 400m of site. As a comprehensive NMP is required as part of the permitting determination, the EA requested the completion of a NMP template. It is unclear whether or not this was submitted but there is no evidence before me of any completed or revised NMP.

13. The Council has not raised any issues of noise relating to the use of the 5 silos. And, as referred to above, nor does it appear to claim that there has been a material change of use caused by the use of the silos for milling and grinding. However, from the submissions and the demonstration during my inspection, it seems to me that the use of the poultry shed FR1 alone and the combined use of it, plus the milling operation, must have resulted in a different overall character of usage of the appeal site. As well as the issues about noise generation, which I noted during my site visit, the comings and goings of the milling vehicle must have also added to these changes in the character of usage of the site at FR1.

Planning History

14. In July 2021 an appeal (APP/A2335/X/20/3261623) against the refusal of a Lawful Development Certificate (LDC) for all 5 silos at FR1 was dismissed. This had been made on the basis that the silos were permitted development under Schedule 2, Class A, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). A retrospective application (20/00121/FUL) for the retention of the 5 silos was withdrawn on 19 March 2021.

15. A planning application (20/00019/FUL) for the 'Erection of an agricultural building for free range hens with associated parking' was refused by the LPA. This was allowed on appeal (APP/A2335/W/20/3265416), on 31 August 2021. Earlier applications at Lower Addington farm are as follows:

- 16/01351/FUL Erection of an agricultural building for free-range hens and creation of a new access point. Refused.
- 16/00606/FUL Erection of an agricultural building for free-range hens and creation of a new access point. Refused.
- 14/00492/FUL Erection of a poultry shed including 4 silo grain stores with associated access and landscaping. Approved.
- 12/00947/FUL Erection of an agricultural workers dwelling in connection to the adjacent Poultry Farm. Approved.

Relevant Policy

16. Section 38(6) of the Planning and Compulsory Purchase Act states that, for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise.

17. The development plan comprises the Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD [2020] (SPLA) and Part Two: Review of the Development Management DPD [2020] (DMDPD). The most relevant Policies are DM29 (Key Design Principles), DM46 (Development and Landscape Impact) and DM47 (Economic Development in Rural Areas) of the DMDPD and these are the most relevant policies. Policy SP4 (Priorities for Sustainable Economic Growth) of the SPLA is also relevant.

18. The National Planning Policy Framework (NPPF) is a major material consideration and the most relevant sections are Sections 12 (Achieving Well-Designed Places) and 15 (Conserving and Enhancing the Natural Environment). Clearly all of the basic principles of the NPPF in ensuring sustainable development are relevant. In reaching my conclusions decision I have had regard to all of the detailed NPPF paragraph references referred to in the parties' submissions and I have also had regard to relevant Planning Practice Guidance (PPG).

The Appeal on ground (d)

The gist of the case for the Appellant

19. It is stressed that the silos are buildings and that section 171(1) of the Act states:

'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.'

20. Reference is made to Section 191(2) of the Act which provides that any use and operations are lawful at any time if: (a) no enforcement action may be taken in respect of them and (b) they do not contravene any requirement of any enforcement notice then in force. In this case the date of the first EN was 3 August 2021 and it is contended that the 5 silos had been substantially completed by 3 August 2017 and are, therefore, lawful for planning purposes.

21. In support of this, copies of documents, submitted with the pending LDC application (21/01120/ELDC) are included as part of this appeal on ground (d). These are as follows:

- Statutory Declaration of Adrian Gott (Owner, Addington Investments Limited) confirming the delivery and erection of 3 of the silos on the appeal site on 29 November 2016,
- Statutory Declaration of Glenn Haggart (Farm Manager, Lower Addington Farm) confirming the delivery and erection of 3 of the silos on the appeal site on 29 November 2016,
- Statutory Declaration of Christopher Baxter (Managing Director, Habro) confirming the delivery and erection of 3 of the silos on the appeal site on 29 November 2016, and,
- Despatch Note of Collinson Plc dated 29 November 2016 confirming the delivery of 3 of the silos.

22. On behalf of the appellant the aerial photography submitted by the LPA has been reviewed and it is stressed that the images are dated July 2016 (4 months before the contended erection of the silos) and then not until June 2018 (19 months after their erection). There is no interim aerial photograph available which would show them soon after their erection in November 2016.

23. Notwithstanding this, it is contended that the documents submitted with the pending LDC application confirm that the 3 silos identified on the Site Location Plan were delivered to the site and erected on 29 November 2016. The Council does not have any evidence to the contrary and, therefore, it is argued that these 3 silos (Nos 1, 2 & 3) are immune from enforcement action. It is accepted that the remaining two silos (4 & 5) have not been on the appeal site for the requisite 4-year period, as they were erected on 31 January 2018.

24. With regard to the contradictory dates referred to by the LPA, it is accepted that the submitted applications refer to the silos having been installed on 29 January 2018 and completed on 9 February 2018. However, it is explained that these dates had been supplied to the appellant's Architect agent who used them in good faith for application 20/0121/FUL and that they were subsequently used in the later application and in relation to this appeal.

25. It is indicated that the agent has now submitted a statement by e-mail to clarify the situation regarding the error in the submitted dates. It is stressed that the two silos erected in 2018 had caused the confusion. E-mails from the silo supplier were supplied by the appellant, confirming delivery and installation dates of the silos and it was also stated that milling at the site commenced in 2016. This evidence is considered to demonstrate that 2 of the 3 units were delivered and installed in October 2016 and 1 unit on 21 October 2016.

The gist of the case for the Council

26. It is stressed that the burden of proof rests entirely with the appellant to provide sufficient evidence to show the 3 silos (Nos 1,2 & 3) had been substantially completed and in place for 4 years or more prior to 3 August 2021 and that test to be achieved is 'on the balance of probability'.

27. The Council stresses that there is a considerable amount of conflict with the 29 November 2016 date set out in the SDs and the dates given on previous applications. It stresses that the application, 20/00121/FUL, for the retention of the 5 silos, was submitted on 4 February 2020 and that question 5 on the application form (Appendix A) stated that works had been completed at the time the application was submitted and that works to install the silos were started on 29 January 2018 and were completed on 9 February 2018.

28. This timeline of events was also stated in paragraph 4 of the Planning and Supporting Statement which accompanied the application. This stated that *'In January/February 2018 the applicant Stonegate Farmers Ltd erected 5 No. 11.2m tall feed storage silos in front of the poultry unit Free Range 1 to provide additional storage capacity for feed on the site.'*

29. It is further stressed that the LDC application (20/00689/ELDC) also indicated on the application form that the works were substantially completed on 1 October 2016. At the time the applicant/agent provided a statement of case which amongst other things, provided a description of the site and which stated in *'that the 5 no. silos were erected in early 2018 and each silo contains different raw ingredients which are fed into a milling machine'*.

30. The Council argues that none of the dates, provided for these applications (20/00121/FUL & 20/00689/ELDC) and appeal (APP/A2335/X/20/3261623), match what has now been submitted with this current appeal. While the dates provided within these applications have some discrepancies between them, there is a general consistency with the January/February 2018 date in which it is stated that works were started and completed. It is not clear as to why there are so many discrepancies between the applications and this casts a degree of uncertainty over the accuracy of dates provided by the applicant for this appeal under Ground (d).

31. Given the lack of evidence and contradicting information it is contended that the evidence under this ground (d) appeal is inconclusive. It is not accepted that, on the balance of probability, it has been demonstrated on behalf of the appellant that 3 (Nos 1,2 & 3) of the 5 silos have been in place for the necessary 4 year period or more. The previous inconsistent dates are stark and must cast significant doubt over the accuracy and reliability over the dates provided within this appeal. Subsequently, this evidence should carry little weight in support of the appeal on ground (d).

32. With regard to the 3 SDs, the Council stresses that these are lacking in any significant detail. It is also indicated that it is not clear if the individuals were witness to the delivery themselves, or if the information was obtained by other sources. If

the source of the evidence is other records, then one would have expected these to be produced as part of this ground of appeal. In addition, the SD made by the Harbro Managing Director states he has been in his role for 4 years and this would result in him starting his role in September 2017 almost 1 year after the apparent installation date. Again, information is lacking, and it is not clear as to how it was concluded that the silos were in situ in November 2016.

33. Reference is made to the despatch note dated 29 November 2016. This note refers to 'County Silo Body 67° Centre-57.7m³-Galv+Chisel Cone' x 3 and a 'Galvanised Support Structure-Outlet Height 1.4m Above Base' x 3. The invoice address is 'Harbro Ltd, Markethill, Turriff, Aberdeenshire, and its delivery address is 'W A Agriculture Ltd, Addington Lodge, Addington Road, Nether Kellet, Carnforth, Lancashire, LA6 1DZ'. The note is by Collinson plc. It is accepted that appears that on delivery the Note was signed and dated 29 November 2016.

34. While the despatch note supports the contention that 3 silos were purchased and delivered in 2016, it is not conclusive evidence to support the notion that the silos have been in situ since November 2016. The delivery address suggests the silos were not delivered to the appeal site. In addition, this information continues to directly conflict with the dates given in the previous applications and statements by the appellant which have been highlighted in the Council's Appeal Statement.

My assessment of the appeal on ground (d)

35. To be successful on this ground of appeal (but only in relation to part of the alleged breach of control), the onus is upon the appellant to demonstrate, on the balance of probability, that silos 1, 2 and 3 (as buildings) had been erected and substantially completed 4 years or more before the notice was issued on 3 September 2021.

36. Turning to the Statutory Declarations (SDs), all three refer to the silos having been delivered and erected on 29 November 2016. However, the e-mail (dated 14 December 2021, timed 14:55) provided by the Architect agent who submitted the retrospective planning application (reference 20/00121/FUL), refers to different dates. The e-mail refers to the applicant having produced further evidence to demonstrate that '3 of the 11.2m high silos were delivered in October (2 units on 14/10/16, 1 unit 21/10/16) and refers to the suppliers (Collinson) e-mail to the appellant dated 28/9/16. A later (timed 15:19) internal e-mail of the same date to the appellant asked the question 'Have we a plan of where they need to go?' and, 'Can we delay them for a week or so?' There is no e-mail evidence to follow up the answers to these questions. There was clearly a plan of where the silos were to be positioned but there is no further information relating to any delay in their substantial completion at the site.

37. I accept that the above discrepancies in dates, could well be due to the delivery being delayed and the delivery address was clearly the farm property to the west of the appeal site. However, there is still no other conclusive corroborating evidence to that set out in the SDs as to the exact details of delivery, erection, or commencement of usage which confirms their substantial completion within the required 4 year period. Having seen the milling/grinding operation demonstrated physically on the site, it is not clear to me how just 3 silos could have been used to provide the necessary 5 different raw ingredient mix of maize, oats, soya, barley, and wheat which are now provided in the mobile milling process by all 5 of the silos. The use of all 5 silos appears to be fundamental to the milling process and this was

set out in the retrospective planning application report. Again, in my view, this casts doubts on the exact dates regarding the substantial completion of silos 1, 2 and 3.

38. With regard to the SDs, I agree with the Council that these are lacking in any significant detail and that it is not clear if the individuals were witness to the delivery, erection, substantial completion and operations themselves. I acknowledge that additional evidence (in the form of the e-mail trails) have been submitted since the LDC application and this appeal were made but, again, I do not find that these are sufficient to conclusively demonstrate that silos 1, 2 and 3 had been delivered, erected, and were substantially completed to start the milling operation (as stated by the appellant) in November 2016.

39. There is also the point made by the Council that the Harbro Managing Director was not in position on 29 November 2016 and, therefore, it is difficult to understand how he reached a conclusion that the 3 silos were delivered, erected and substantially completed on that date. The SD simply confirms that Harbro was *'actively on site'* when the silos were delivered and erected. It is not clear exactly what Harbro's milling activities were on site at that time; how the various silos were used in the milling operation; which poultry sheds were being supplied and exactly what *'activities'* were being carried out at Lower Addington Farm by Harbro in November 2016.

40. There is also no evidence to link the use of the 3 silos to the on-site milling process at that time. One would normally have expected daily records to have been kept but no such information has been made available. There is simply a statement in one of the e-mails from the appellant (11 August 2021 06:59) indicating *'So we started milling back in 2016'*. It is not evident as to exactly what *'milling'* was taking place and, whilst accepting that Harbro were on site in 2016 and actually carrying out some activities, it is not clear whether or not this was directly related to the 3 large silos, Nos 1, 2 and 3 or any to any of the other silos at the two poultry shed sites.

41. Thus, whilst accepting that Harbro were on site at that time and that some additional information has been provided in support of the dates given in the SDs, at this stage I do not consider that this is so precise and unambiguous to demonstrate, on the balance of probability, that that silos 1, 2 and 3 were substantially completed for the required 4 year period prior to the issue of the EN. It follows that, on the basis of the evidence before me, I do not consider that the appeal on ground (d) can succeed in relation to just silos 1, 2 and 3. In any case the allegation in the notice also relates to silos 4 and 5, and clearly it is already agreed that all 5 silos had not been substantially completed for the necessary 4 year period.

42. Although I have found against the Appellant on this issue, it may well be that there is further evidence available to corroborate the SDs and other information already submitted. In these circumstances the Appellant would not be precluded from submitting further evidence in relation to the pending LDC. This evidence may or may not demonstrate that silos 1, 2 and 3, as operational development, were immune from enforcement action. Whether or not the use of the silos in relation to the separate milling and grinding operation was also lawful could be a different matter. However, as referred to above, the LPA has not considered whether or not a material change of use has occurred at the appeal site. Any further matters relating to the pending LDC must now be between the Appellant company and the LPA. I now turn, therefore, to the appeal on ground (a)

The appeal on ground (a)

The gist of the case for the Appellant

43. It is indicated that the open countryside location is situated close to, but outside of, the boundary of the FBAONB and that the Council's Landscape Character Assessment describes the area as the Docker-Kellet-Lancaster Drumlin Field (DKLDF), noted for large rolling fields and drumlins formed by glacial activity.

44. Reference is made to the location of the silos. It is stressed that, together with the poultry building FR1, they lie within a depression between large rolling agricultural fields; that the surrounding rolling fields are in agricultural use and that the planting along Kirkby Lonsdale Road to the north and Birkland Barrow Road to the south creates a treed screening corridor. It is indicated that a wooded hill (to the west of the silos and the poultry shed FR1) protrudes higher above the tip of the silos and offers substantial screening from this aspect.

45. It is also stated that the trees along Kirkby Lonsdale Road and Birkland Barrow Road offer screening of the silos from these locations. To the east, it is indicated that the land begins to rise away from the appeal site and is peppered with groups of trees and small woodland areas which also screen the appeal site.

46. It is stressed that the silos are used in connection with the agricultural activities on the appeal site and, therefore, are an acceptable type of development in the open countryside (Policy DM47). It is accepted that at 11.2m in height they are taller than the poultry shed FR1. However, it is stressed that they are specifically designed to serve modern agricultural practices and are identical in design (albeit taller) than the 2 approved silos on the appeal site, as well as those allowed in the recent appeal scheme (20/00019/FUL) which will be located to the south-east of the appeal site.

47. It is argued that the silos provide fit for purpose, weather-tight and secure storage for the raw ingredients that form the nutritious feed for the poultry on the farm. They are buildings with a type and form which is characteristic of the agricultural use of the site and the wider area and visually they are not considered to be an unexpected or alien feature within the landscape. It is also indicated that there are many examples of agricultural buildings with much larger footprints and of similar height within the open countryside.

48. These other buildings are considered to have a greater impact upon the landscape than the 5 silos, which are slimline in construction and less bulky in form than a typical agricultural storage building. However, it is also indicated that such larger agricultural buildings do not have a negative landscape impact, as they are features commonly encountered within countryside locations.

49. Reference is made to the recent appeal decision (APP/A2335/W/20/3265416) in which the Inspector stated that there are other poultry buildings along Birkland Barrow Road which have a '*more industrial appearance*'. It is strongly contended that the silos do not appear incongruous within this landscape, are appropriate and essential agricultural buildings to serve the requirements of the business on the appeal site and are fully compliant with Policies DM29 and DM46 of the DMDPD.

50. Reference is made to the '*fallback position*' whereby if the company were to remove the silos from the appeal site it could subsequently proceed to apply for the Council's prior approval of their construction under Schedule 2, Part 6, Class A of the GPDO. It is indicated that not only would the silos adhere to the height restriction, but they would also meet with the other criteria specified in Schedule 2,

Part 6, Class A of the GPDO and would be permitted development. This is considered to be a realistic fallback position.

51. Taking all the above into consideration, it is contended that the silos are an appropriate form of development within the countryside, are characteristic of a countryside area and that their siting, within a low point within the rolling topography around the appeal site, ensures that they are as discreet as possible within this landscape. Furthermore, upon the construction of the poultry shed and silos allowed under the recent appeal decision, these 5 silos will be further contained and concealed.

The gist of the case for the Council

52. The Council refers to paragraph 126 of the NPPF which states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. This is further reinforced by paragraph 130 c) which states that decisions should ensure that developments are sympathetic to the local character and history, including the surrounding built environment and landscape and paragraph 174 b) which states planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

53. It also refers to Policies DM29 and DM46 of the DMDPD. The first of these states that new development should be as sustainable as possible and make a positive contribution to the surrounding landscape. The second considers development and landscape impact and states that the Council will support development that is in scale and keeping with the landscape character and is appropriate to its surroundings in terms of siting, scale, massing, design, materials, external appearance and landscaping.

54. The Council accepts that the silos are used for the manufacturing of feed on site and consequently serve the agricultural activities taking place at the site. However, by reason of the location, number, height and bulk of the silos, it is considered that they result in harm to the character of the landscape. It is stressed that the silos are considerably greater in height than the ridge of the poultry shed. It is indicated that, when viewed from the public footpath to the east and from Birkland Barrow Road to the north-east, they break the skyline, and that this highlights their prominence and bulk. It is contended that when compared to the smaller silos and lower buildings on the site, they appear overly dominant within the landscape.

55. It is further considered that the views from Birkland Barrow Road are more harmful, given the closer proximity from public vantage points and the difference in levels, between the site and road. It is emphasised that these levels raise quite significantly from east to west and from north to south. From this vantage point the existing poultry building and smaller silos are relatively well-screened, whereas the silos appear as standalone structures unrelated to the wider agricultural development. As a consequence they are considered to be out of keeping with the character of the area. It is stressed that the number of silos compounds this harm.

56. It is contended that the development of the 5 silos in this location is contrary to Policies DM29 and DM46 of the DMDPD, and Sections 12 and 15 of the NPPF.

The gist of the case for interested persons

57. All of the third party submissions refer to issues around the milling/grinding operations in connection with the use of the 5 silos. In all cases it is contended that

the milling operations are separate from the original egg producing use at FR1; that there has been a material change in use of the land and that there are noise issues with regard to the mobile milling/grinding operations. Arguments are also put forward which support the Council's case with regard to the harmful visual effects of the 5 silos on the character and appearance of the DKLDF landscape.

58. References are made to the previous Inspector's comments regarding the 5 silos and that they were not '*intrinsically connected*' to the poultry operation; that they stand '*physically apart from the poultry business adjacent*' and that they are not '*an integral part of the agricultural activities*'.

59. The representations refer to the fact that the silos were erected without planning permission and that the appellant had been informed that if a retrospective application were to be made for their retention, '*it would be unlikely to be granted*'. It is, contended that the erection of the silos and the combined use of the egg production within FR1 and the milling and grinding is not a lawful use of the land.

My assessment of the appeal on ground (a)
Introduction

60. In the appeal on ground (d) and on the basis of the evidence before me, I have concluded that the submissions in support of the appellant's case are not sufficient, on the balance of probability, to demonstrate that silo Nos 1, 2 & 3 were immune from enforcement action on the date the notice was issued. The allegation in the EN relates to the erection of 5 grain silos and support frames and, under this ground of appeal, I must consider, therefore, whether or not planning permission should be granted for this development which has been carried out without planning consent.

61. As referred to above, submissions at this appeal stage have included several made by third parties and/or interested persons. Neither of the main parties had initially referred to these representations in their appeal statements. Therefore, through the Planning Inspectorate Case Officer, I requested comments on these submissions from both the Appellant and the Council. Although comments have been received on behalf of the Appellant, for whatever reasons the Council has not responded to my request. In reaching my conclusions on this ground of appeal I have taken into account the third party representations and the Appellant's response to those comments.

Main issues

62. Following on from the above I consider, therefore, that the main issues in this appeal are as follows:

- Firstly the effect of the 5 silos (Nos 1, 2, 3, 4 and 5) on the character and appearance of this part of the open countryside in the DKLDF and, secondly,
- The effect of the milling and grinding operation, with particular reference to its character of usage and its effect on the living conditions of residents who are within 400m of the appeal site.

The first issue: the effect on character and appearance

63. During my site visit, as well as inspecting the 5 silos from within the site and seeing them at close quarters from the access road, I was able to view them from more distant viewpoints from the north-east, the east and partially from the south east. This included views from Birkland Barrow Road and Kirkby Lonsdale Road, as well as from a small section of the public footpath to the east. However, due to the

topography, I noted that there were no views of the silos when walking or driving along Aldington Road to the west.

64. I acknowledge that the silos are not within the FBAONB. However, the development is in the open countryside and is within a recognised part of the Landscape Character Area known as the Docker-Kellet-Lancaster Drumlin Field (DKLDF). This area is noted for its large rolling fields and its drumlins which were formed by glacial activity. The fields surrounding the site and the nearby areas of higher rounded hillocks are noticeably characteristic of these glacial features. The resulting landscape character in this part of the countryside is, therefore, distinctly noticeable and ranges from being open and expansive, to being partially wooded and partially undulating. Overall it is typically distinctive of this part of the DKLDF.

65. I acknowledge that the appeal site lies generally within, and close to, the side of a depression and to the east of the wooded hill. As referred to above this means that neither the silos nor the poultry shed FR1 are visible from the west. At the time of my visit I also noted that, although the trees close to Kirkby Lonsdale Road and Birkland Barrow Road are positioned to offer some screening of the large silos from these locations, there were still clear views of them through the trees. Whilst accepting that these views would be less later in the year and in the summer months, there are still locations to the north-east, east and south-east from where the silos will still be able to be clearly seen throughout the year. This is also the case when viewed from sections of the public footpath.

66. From the higher ground to the east and from along sections of Kirby Lonsdale Road, the whole of the development is clearly noticeable. The long low poultry shed (FR1) stretches across the lower part of the site towards the bottom of the depression. However, the 9 silos (4 small and 5 large) are still distinctly visible in the foreground to the shed. Because of their proximity to each other and whilst clearly separate structures, the 2 small plus the 5 large silos are perceived as being a continuous 'wall' of development. The 4 smaller silos are noticeable as being slightly taller than FR1 but the angle of view from this higher ground still results in them being seen as projecting above its ridge line.

67. The bank of 2 silos plus the 5 appeal silos, in my view, is perceived as a large obtrusive installation. The 5 large silos tower above the ridge height of FR1 appearing almost as a solid wall of built form. The scale and massing of this development dominates the overall landscape in this particular location. Again, from the slightly higher ground to the east, although the poultry shed is only partially visible due to it being sunk slightly into the depression, the opposite is the case for the 5 silos. From these significant viewpoints the 5 silos are seen to project much higher than the low poultry shed and the smaller silos. They are also seen against the backdrop of the open countryside landscape far beyond in the north-western part of the DKLDF.

68. From parts of the public footpath; from the road entrance to the site and from some points on Birkland Barrow Road close to the entrance, although the 2 lower silos are hardly noticeable, the 5 silos are perceived as large, bulky, obtrusive and alien features in the landscape. Whereas the poultry shed is seen against the background of the trees to the east, the 5 silos tower above the trees and, in my view, break the skyline in a most visually harmful manner.

69. In doing so it is my view that due to their height, massing and the number involved, they are perceived as some form of heavier industrial installation as

opposed to that of a typical agricultural development. I acknowledge that the silos are used in connection with agricultural activities; that they have been designed to serve the agricultural practice carried out at the site (egg production and milling and grinding) and that silos can generally be an acceptable type of development in the open countryside. In this case however, I do not consider that they are perceived as typical agricultural buildings.

70. In my experience of similar agricultural enterprises, I have noted agricultural silos as tall, or even taller than the appeal silos. However, in most cases silos have not normally been installed in such numbers or as a multiple bank of units resulting in an overall industrial, rather than an agricultural appearance. I acknowledge that the silos may well be fit for purpose and provide weather-tight and secure storage for the raw ingredients that form the feed for the poultry on the farm. However, as installed, I do not consider that they are typically characteristic of the agricultural use of the site or the wider area. In this particular case I do not agree with the argument put forward on behalf of the Appellant that they are not an *'unexpected or alien feature within the landscape'*.

71. In fact I find the opposite to be the case. Due to their height, massing and overall bulk I consider that from the main viewpoints referred to above they are most unexpected, alien and obtrusive within this part of the DKLDF landscape. I agree with the LPA that they appear overly dominant in the landscape. I accept that there must be many examples of agricultural buildings with much larger footprints and of similar height within the open countryside and indeed within the locality. I also acknowledge that such larger agricultural buildings do not necessarily result in a negative landscape impact and that silos are features commonly encountered within countryside locations.

72. However, each installation must be considered on its merits and in this case my conclusion is that the 5 silos are significantly visually harmful in this particular location. Although each silo, in itself, is slimline in construction and less bulky than many typical agricultural storage buildings, the visual harm in this case is a result of their height and the fact that the multiple unit installation exacerbates their overall visual effect on the character and appearance of this part of the DKLDF.

73. I note that the previous appeal decision has been referred on behalf of the appellant and that in that decision the Inspector had noted that there are other poultry buildings along Birkland Barrow Road which have a *'more industrial appearance'*. Having travelled along the road the only 'buildings' I saw that meet this description are the 5 appeal silos and I have already referred to their industrial appearance above. The only other silos which I noted along this section of the road were the 2 smaller silos to the north of the road adjacent to the Appellant's other poultry shed FR2. These two silos looked typically agricultural and can hardly be described as being *'industrial in appearance'*.

74. Having considered all of the submissions, including those of the third parties, I share the Council's concerns about the detrimental effects that the 5 silos have had on the character and appearance of this part of the DKLDF. Policy DM29 of the DMDPD seeks to ensure that new development is as sustainable as possible and that it makes a positive contribution to the surrounding landscape. Policy DM46 seeks to ensure that development is in scale and keeping with the landscape character, that it is appropriate to its surroundings in terms of siting, scale, massing, design, materials, external appearance and landscaping.

75. For the reasons set out above, I conclude that the 5 silos do not meet these policy aims and objectives and that they are significantly harmful and overly dominant within the landscape. Thus they are contrary to Policies DM29 and DM26 of the DMDPD, as well as to sections 12 and 15 of the NPPF. With regard to these sections I consider that due to their bulk and massing and their physical relationship with the low lying poultry building FR1 the 5 silos do not meet the standards of achieving good design. Neither do they contribute to, or enhance, the natural local environment. Instead they are harmful to, rather than protecting, the valued landscape in this part of the DKLDF. I conclude, therefore, that the appeal must fail on ground (a) on this first issue.

The second issue: the effects of the milling and grinding operation
Introduction

76. I have already referred to the fact that this part of the appellant's operations are agreed as being ancillary to the primary use of the land, that is, the agricultural egg producing enterprise. I consider that there is a single planning unit at the appeal site whereby there is one primary use (egg production) and that the milling and grinding is an ancillary use to that primary use. It is on this basis that I have considered this second issue.

77. Depending on the character of usage and any material differences with the primary use, an ancillary use could possibly require planning permission. In this case it is evident that nearby residents have experienced the noise generated by the milling vehicle. It is also the case that the milling operation has resulted in the comings and goings of the milling vehicle and that it serves both FR1 and FR2.

78. To a certain extent, therefore, I can understand the arguments that a change of use has occurred. However, the notice before me only relates to the erection (operational development) of the 5 silos. The LPA has not enforced against a separate material use of the 5 silos. The authority does not appear to consider that the milling and grinding operation amounts to a material change of use and has not commented on any of the third party complaints regarding the noise generated.

79. With regard to the generation of noise, during my visit, I heard the milling machine in operation and at close quarters found it very loud indeed. However, there are no noise reports submitted to indicate what levels of noise are generated at the source of the milling machine or at any of the sensitive receptor properties of the third parties. However, even though the EA did not take any measurements of the noise generated at these properties, residents are not precluded from making formal complaints to the Council's Environmental Health team to establish whether or not the noise levels are unacceptable on environmental health grounds.

80. In conclusion on this issue and at this stage, there is no conclusive evidence before me to demonstrate that the milling and grinding operation has resulted in any significant or unacceptable disturbance for nearby residents. On this second issue, therefore, and irrespective of whether or not a material change in use of the land has occurred, I can only conclude that the effects of the milling and grinding operation are not so detrimental to dictate against such an ancillary use at the appeal site. On this second issue, therefore, I find in the Appellant's favour.

Other Matters

81. With regard to all other references to development plan policies and the NPPF, I have taken into account all of the points raised on behalf of the Appellant. In particular I acknowledge that the use carried out at Lower Aldington Farm accords

with the general aims and objectives of Policy SP4 of the SPLA (Priorities for Sustainable Economic Growth) and Policy 47 of the DMDPD (Economic Development in Rural Areas). I have also noted all of the detailed references to the NPPF at section 5.2 of the appellant's appeal statement and in particular references to paragraphs 81 and 83 which support the Appellant's case.

82. With reference to the '*fallback position*' I accept that if the company were to remove the silos from the appeal site it could proceed to apply for the Council's prior approval for the construction of the 5 silos under Schedule 2, Part 6, Class A of the GPDO. However, irrespective of whether or not the silos adhere to the height restriction and could meet with the other criteria specified in Schedule 2 Part 6 Class A of the GPDO, the erection, extension or alteration of a building is only permitted subject to conditions.

83. Before beginning any new development an application would have to be made to the LPA for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. Secondly, before beginning the development a developer must be in receipt of a written notice of the LPA's determination that prior approval is not required. Thus although I accept that this would be a '*fallback position*' it would be subject to the conditions.

The planning balance and my overall conclusion on ground (a)

84. I have found in the appellant's favour in relation to the second issue and accept that the development accords with other development policies, as well as with some of the principles of NPPF policies. However, all of these advantages, as material considerations, are far outweighed by my conclusions regarding the effects of the erection of the 5 silos on the character and appearance of the DKLDF in this part of the open countryside.

85. In this particular case the key development plan policies are Policies DM29 and DM26 of the DMDPD and I have found the 5 silos to be contrary to these policies. It follows that I consider that the decision should be made in accordance with the plan and that none of the other material considerations indicate that the decision should be made otherwise than in accordance with it. The appeal, therefore, fails on ground (a) and planning permission will not be granted for the retention of the 5 silos (Nos 1, 2, 3, 4 and 5) as erected adjacent to the poultry shed FR1.

The appeal on ground (g)

The gist of the case for the appellant

86. In support of this ground of appeal it is contended that 4 months falls well short of what should reasonably be required for the removal of the silos. It is indicated that to adhere to the relevant DEFRA best practice guidelines, the different raw ingredients cannot be stored near to each other. Therefore, if not to be stored in the silos, the feed materials would have to be stored in a sizeable building.

87. It is stressed that such an alternative facility is not currently available on the site and that, the appellant would either have to (a) locate a suitable building nearby to the site that might be available for rent or, (b) apply for the prior approval from the Council for an agricultural storage building on the appeal site, to accommodate these displaced ingredients. It is indicated that neither of these potential storage solutions would be achievable within 4 months and, therefore, that a period of a minimum of 18 months would be reasonable timescale to achieve this aim.

The gist of the Case for the Council

88. The Council contends that 4 month is considered a sufficient amount of time in order to remove what are relatively lightweight structures from the site and restore the land to its former condition. It is considered that this work would not require a significant amount of time and that alternative storage solutions could be explored to relocate the existing feed preparation operations. To prolong the harm beyond 4 months is considered to be unjustifiable and, in addition, it is argued that no evidence has been provided why removal would need to take longer than 4 months.

My Assessment

89. I agree that the removal of the 5 silos would be quite a simple operation and that 4 months is an adequate period for these works to be physically carried out. However, it is evident that if the 5 silos are not able to remain in place to continue producing the finished milled feed, then the whole operation could be at risk. Despite the fact that silos were erected and used without first obtaining planning permission, the fact remains that permission is in place for the operations of FR1, FR2 and a third poultry shed. It is also the case that the enterprise benefits the rural economy.

90. It is accepted on behalf of the appellant that there are clear options to providing an alternative to the use of the 5 silos for milling. As indicated above either of these options is likely to take more than just 4 months to organise. I therefore agree with the appellant that the compliance period in the notice is too short.

91. But I also acknowledge the point made by the LPA that any prolonged period will continue to harm the character and appearance of the DKLDF. Clearly this identified harm has already been continuing for some time and, in my view, to allow it to continue for a further 18 months would exacerbate the harm.

92. However, having considered the issues it is my view that the 4 month period is too short overall and that it is reasonable to consider an extension of time. Based on the suggestions and options made on behalf of the Appellant I consider that a 12 month period would be appropriate and reasonable in these particular circumstances.

93. I shall, therefore, vary the enforcement notice to this extent and the appeal succeeds to this limited degree on ground (g).

94. In reaching my conclusions on all three grounds of appeal I have taken into account all of the submissions made on behalf of the Appellant, by the Council and by third party/interested persons. These include the initial documents; the full statements; the planning history; all submitted plans and photographs and the final submissions. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

95. The appeal succeeds to a limited degree on ground (g) only and I direct that the enforcement notice be varied by deleting the figure/number '4' in Part 6 of the notice (TIME FOR COMPLIANCE) and by substituting therefor the figure/number '12'.

96. Otherwise, the appeal is dismissed, the notice is upheld as varied and the application deemed to have been made under Section 177(5) of the Act is refused.

Anthony J Wharton

Inspector