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## Appeal Decision

Site visit made on 13 June 2017

**by JP Roberts BSc(Hons) LLB(Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 August 2017**

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**Appeal Ref: APP/R0335/W/17/3169204**

**Land at Woodbine Close, Sandhurst, Bracknell GU47 9AE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Wanda March Campbell against the decision of Bracknell Forest Borough Council.
  - The application Ref 16/00085/FUL, dated 26 January 2016, was refused by notice dated 12 September 2016.
  - The development proposed is the erection of 1 no. 3 bed detached dwelling with associated parking and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 no. 3 bed detached dwelling with associated parking and landscaping on land at Woodbine Close, Sandhurst, Bracknell GU47 9AE in accordance with the terms of the application, Ref 16/00085/FUL, dated 26 January 2016, subject to the conditions set out in the Annex to this decision.

### Procedural matters

2. The appellant has submitted a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 which undertakes to make financial contributions to mitigate the effect of the development on the SPA. I shall refer to this in more detail below.
3. The ownership of a small part of the application site is unknown. The applicant duly completed Certificate C as required by the Town and Country Planning ((Development Management Procedure) (England) Order 2015. The Council has pointed out that the appellant did not correctly advertise the application as required by Article 13(2) of the Regulations. In such circumstances, Section 65(5) of the Town and Country Planning Act 1990 provides that the local planning authority "shall not entertain the application". However, the Council did entertain the application, leading to the refusal against which this appeal is made.
4. The purpose of the requirement to publicise applications is to ensure that an owner's rights are not prejudiced. In this case, there were two irregularities, in that firstly the applicant's wife gave notice of the application rather than the applicant, and secondly, the notice was published in a local newspaper more than 21 days before the date of the application, in fact 37 days before the date of the application. In my view, neither of these irregularities is likely to have prejudiced any owner making representations in response to the

advertisement; the Council has not indicated that any representations were received which were discarded, and I consider that it would be most unlikely for that to have occurred. I therefore consider that the procedural irregularities are not a reason to prevent to me from determining the appeal.

5. The application proposes the felling of a tree, necessary to provide access to the site. That tree is located on the land outside the appellant's ownership or control. The Council maintains that the tree cannot be felled, but this is a private matter and not one which can affect the outcome of the appeal. A condition can be imposed to require that the access be provided prior to construction of the dwelling, and it would be a private matter for the development to ensure compliance with private land law.

## **Main Issues**

6. The main issues are:

- i) the effect of the proposal on the character and appearance of the surrounding mainly residential area;
- ii) the effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA), and
- iii) the overall planning balance.

## **Reasons**

### *Character and appearance*

7. The appeal site is located within the development limits of Sandhurst where there is no objection in principle to new residential development. The site of the proposed dwelling lies at the end of a private drive leading from Yorktown Road, with houses lining the western side of the road, whilst the rear gardens of houses on St Johns Road and Weaver Moss back onto the western and southern boundaries of the plot. On the eastern side of the drive is the Sandhurst Memorial Park.
8. The site of the proposed dwelling is the subject of an area Tree Preservation Order, made in 1995. Most of the area covered by the Order has been developed since it was made. Even so, the trees that line the edge of the Memorial Park are tall, mixed species, which complement the open greenery of the park, form a green backdrop to dwellings to the south and west, and make an attractive contribution to the amenity of the area.
9. The proposed plot is lined by tall trees on the eastern boundary, one of which, T6, an ash tree, would need to be felled to provide vehicular access to the site. This tree is part of a large group, which can be seen from the adjacent park, from Yorktown Road and the residential roads to the west. The T6 ash tree can be readily distinguished from the rest of the group of trees, mainly oaks, by its height and slightly different foliage pattern and colour.
10. Whilst its loss would be noticeable, it would not have a significant impact on the overall contribution that the large numbers of substantial trees make to local character. However, although it is not proposed for removal, an adjacent oak (T9) has a bifurcated trunk which has a distinct split, and the Council argues that it would need to be removed, whereas the appellant's arboriculturalist recommends further investigation and remedial work to

prevent failure. In either event, I consider it likely that the tree would either need to be felled or that it would require a substantial work, which would reduce its canopy. Thus, the loss of tree T6 and the likely work needed to tree T9, would leave a partial gap, which would be harmful to the amenity value of the tree group. However, the gap would be a localised one, and in the context of substantial group of trees, I consider that the harm that would be caused would therefore be moderate.

11. Although not featuring in the reason for refusal, the Council also raised concerns about tree protection during construction. Whilst I acknowledge that the site is highly constrained by the presence of trees, careful construction work in accordance with the guidance in BS5837 would ensure adequate protection and the conditions suggested by the Council would provide an appropriate mechanism to control construction work.
12. The proposed dwelling would be sited so as to have the main habitable rooms facing the tall trees lining the eastern boundary. In this respect the proposed siting would be very similar to the siting of the chalet bungalow at 4 Woodbine Close, which also faces a tall oak tree on its eastern boundary, which has clearly not led to pressure to fell the tree. Moreover, all the habitable rooms except for one small bedroom in the proposed dwelling would have windows in at least one other elevation, and the principal ground floor rooms, the lounge and the kitchen/diner would have windows in two additional elevations. Good levels of light and an open aspect are present to the west and south. I consider that this would give the rooms a very light and airy feel, which would offset what might otherwise be an oppressive sense of enclosure resulting from the presence of the boundary trees.
13. There would be some inconvenience from leaf fall, but measures can be taken to protect gutters, and in my view, such a concern would be an insufficient reason to allow protected trees to be felled or significantly lopped, and I consider that there would be likely to be good reasons to resist any future pressure to carry out works harmful to the amenity value of the nearby trees.
14. This moderate harm that I have found has to be balanced against the benefit that would result from the presence of a dwelling at the end of the lane, which currently suffers from unsightly flytipping, which I saw on my visit. I consider that because the area where flytipping occurs would be overlooked to some extent by the new dwelling, it would act as a deterrent to future occurrences. The harm caused by flytipping is very localised and small.
15. Balancing these considerations, I consider that the harm to trees would result in moderate to low harm to the character and appearance of the area, which would not be wholly outweighed by the benefit I have identified. I therefore find a degree of conflict with saved Policies EN1 and EN20 of the Bracknell Forest Borough Local Plan (BFBLP) which respectively deal with important trees and hedgerows and design considerations. It would also conflict with Policy CS7 of the Core Strategy Development Plan Document (CS) which deals with design.

#### *The effect on the SPA*

16. The site is located within 5km of the SPA, so designated because it is the habitat of three European-protected species of bird, the Dartford Warbler, the nightjar and the woodlark. There is no dispute that the proposal would require

mitigation of the effects of additional recreational pressure on the SPA arising from additional residential development. Having regard to the Conservation of Habitats and Species Regulations 2010, Policy NRM6 of the otherwise revoked South East Plan, which deals with the SPA, and saved BFBLP Policy EN3 and CS Policy CS14, which respectively deal with nature conservation and the SPA, I consider that it is necessary to do so.

17. The Council has published its Thames Basin Heaths Special Protection Area Avoidance and Mitigation Supplementary Planning Document (SPD) 2012, which sets out a mechanism for providing financial contributions to offset the increased recreational pressure on the SPA, to fund infrastructure through Community Infrastructure Levy contributions and non-infrastructure measures through planning obligations.
18. The appellant has submitted a unilateral undertaking which undertakes to pay the sums sought by the Council to mitigate the effect of the proposal. The obligation does not bind the small part of the application site which is not owned by the owner of the remainder. The Council takes the view that this renders the obligation unenforceable. However, the trigger for the payment of contributions is the commencement of development; all of the proposed dwelling would be on land subject of the obligation and therefore if development were to be commenced on the house without the contributions having been paid, the Council could apply to enforce the obligation's provisions. I see no practical necessity to bind the totality of the application site in these circumstances.
19. I therefore consider that the obligation would overcome the relevant reason for refusal, and is reasonable, necessary and relevant to the development proposed, and otherwise meets the tests set out in the Community Infrastructure Levy Regulations 2010. The proposal would therefore not have an adverse effect on the SPA or conflict with the policies to which I have referred above.

#### *Planning balance*

20. The appellant contends that the Council cannot demonstrate a 5 year supply of housing land, and that the supply position has worsened since an appeal decision in 2016<sup>1</sup>. This has not been disputed by the Council, in which case the provisions of paragraph 14 and 49 of the National Planning Policy Framework (the Framework) come into play. Their effect is to provide that where a 5 year supply cannot be demonstrated, the policies for the supply of housing are out of date, and therefore permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies in the Framework indicate that development should be restricted.
21. There are no Framework policies that indicate that development should be restricted, and therefore the "tilted balance" applies. There would be benefits of providing an additional dwelling at a time when the Council is unable to meet the identified needs of the Borough, and this would contribute to the social dimension of sustainable development. Bearing in mind that one dwelling would not make a significant difference to reducing the shortfall, I attach only

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<sup>1</sup> Ref: APP/ R0335/W/15/3131136

moderate weight to this. The proposal would also result in some modest economic benefits through the construction of the dwelling and the payment of Council Tax, which would help to fulfil the economic dimension of sustainable development. Weighed against this is the moderate to low harm that would be caused to character and appearance, part of the environmental dimension of sustainability.

22. This matter is finely balanced, but I find that the harm, although tangible, does not significantly and demonstrably outweigh the benefits of the proposal. I therefore conclude that the appeal should be allowed.

### **Conditions**

23. The Council has suggested a number of conditions which I have considered in the light of national guidance. A condition to require the development to be carried out in accordance with the approved plans is needed to ensure certainty. Conditions in respect of materials, landscaping and means of enclosure are needed in the interest of appearance. The Council has suggested a number of very detailed conditions in respect of tree protection, which under normal circumstances, I would consider to be unduly onerous. However, because of the sensitivity of the site in relation to protected trees, in this case I consider that they are justified. For the same reason, the withdrawal of permitted development rights is justified, although I see no reason not to allow alterations to the dwelling. Conditions relating to drainage and flood mitigation are required to ensure that the site is satisfactorily drained and to minimise flood risk.
24. Conditions relating to the provision of the access and parking and the provision of facilities during construction are needed principally for highway safety reasons. Cycle parking is needed to promote travel other than by car. Conditions relating to the timing of site clearance, the provision of biodiversity enhancements, and restrictions on external lighting are justified to protect and enhance biodiversity.
25. The submitted details already show sufficient levels information, and having regard to the small change in levels across the site, the submission of further details would be unduly onerous.

### **Conclusion**

26. For the reasons given above, I conclude that the appeal should be allowed.

*JP Roberts*

INSPECTOR

## **ANNEX**

### **CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A-02-100 Rev P2, A-03-100 Rev P4, A-03-001 Rev P, A-03-101 Rev P1, A-05-101 Rev P2, A-05-100 Rev P2, 12-074-101 Rev C, 12-074-102 Rev B, 12-074-103 Rev B and 12-074-104 Rev B.
- 3) No development shall take place until samples of the materials to include brick sample panel, roof tiles, windows, doors, boundary enclosures and other hard surfaces to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local planning authority. The development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not be occupied until details of a scheme of walls, fences and any other means of enclosure have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the occupation of the building approved in this permission.
- 5) During the construction phase, no deliveries shall be taken at or dispatched from the site outside the hours of 8:00 am and 6:00 pm Monday to Friday; 8:00 am and 1:00 pm Saturday and not at all on Sundays and Public Holidays.
- 6) No development (including initial site-clearance) shall commence until a detailed scheme for the protection of existing trees, hedgerows and groups of mature shrubs to be retained, in accordance with British Standard 5837 (2012) 'Trees In Relation To Construction Recommendations' (or any subsequent revision), has been submitted to and approved in writing by the local planning authority. Protection measures shall be phased as necessary to take into account and provide protection during site clearance works. Details shall include an approved development layout plan at a minimum scale of 1:200, showing the following:
  - a) Accurate trunk positions and canopy spreads of all existing trees within the site and on adjoining land adjacent to the development within influencing distance of the development.
  - b) Positions and spreads of existing hedgerows and groups of mature shrubs.
  - c) All proposed tree, hedge or shrub removal, shown clearly with a broken line.
  - d) The proposed location/s of 2.4m high protective barrier/s, supported by a metal scaffold framework, constructed as a minimum in accordance with Section 6 (Figure 2), to include appropriate weatherproof tree protection area signage (such as "Keep Out - Construction Exclusion Zone") securely fixed to the outside of the protective fencing structure at regular intervals.



- e) Illustration/s of the proposed protective barriers to be erected.
- f) Proposed location/s and illustration/s of site specific ground protection measures within the main root protection areas of retained trees, designed as necessary for pedestrian light traffic or heavy plant machinery, as necessary to prevent contamination and ground compaction.
- g) Annotated minimum distances between protective barriers and trunks of retained trees at regular intervals.
- h) All fenced off areas clearly annotated as Tree Protection Areas/Construction Exclusion Zones.
- i) Notes regarding restrictions which apply to Tree Protection Areas/Construction Exclusion Zones.

The development shall be carried out in full accordance with the approved scheme.

- 7) The protective fencing and other protection measures specified by condition 6 shall be erected in the locations agreed in writing by the local planning authority prior to the commencement of any development works, including any initial clearance, and shall be maintained fully intact and (in the case of the fencing) upright, in its approved locations at all times, until the completion of all building operations on the site (unless agreed otherwise in writing by the local planning authority). Where phased protection measures have been approved, no works shall commence on the next phase of the development until the protective fencing barriers and other protective measures have been repositioned for that phase in full accordance with the approved details. No activity of any description shall occur at any time within these areas including but not restricted to the following:
- a) Mixing of cement or any other materials.
  - b) Storage or disposal of any soil, building materials, rubble, machinery, fuel, chemicals, liquids waste residues or materials/debris of any other description.
  - c) Siting of any temporary structures of any description including site office/sales buildings, temporary car parking facilities, porta-loos, storage compounds or hard standing areas of any other description.
  - d) Soil/turf stripping, raising/lowering of existing levels, excavation or alterations to the existing surfaces/ground conditions of any other description.
  - e) Installation/siting of any underground services, temporary or otherwise including drainage, water, gas, electricity, telephone, television, external lighting or any associated ducting.
  - f) Parking/use of tracked or wheeled machinery or vehicles of any description.
- In addition to the protection measures specified above,
- i) No fires shall be lit within 20 metres of the trunks of any trees or the centre line of any hedgerow shown to be retained, and
  - ii) No signs, cables, fixtures or fittings of any other description shall be attached to any part of any retained tree.

- 8) No development (including initial site clearance) shall commence until a programme of supervision/monitoring for all arboricultural protection measures, has been submitted to and approved in writing by the local planning authority. Details shall include: -

- a) Induction and personnel awareness of arboricultural matters.
- b) Identification of individual responsibilities and key personnel.
- c) Statement of delegated powers.
- d) Timing and methods of site visiting and record keeping.
- e) Procedures for dealing with variations and incidents.

The program of arboricultural monitoring shall be undertaken in full compliance with the approved details. No variation of the approved monitoring program shall take place without the prior written agreement of the local planning authority. A copy of the signed inspection report shall be sent to the local planning authority following each visit.

- 9) No development shall commence until a detailed site specific construction method statement for all hard-surfaced areas of any description within the minimum root protection areas of retained trees calculated in accordance with British Standard 5837:2012 'Trees In Relation To Construction Recommendations', or any subsequent revision, has been submitted to and approved in writing by the Local planning authority. Details shall be based on a porous 'No-Dig' principle of construction, avoiding any excavation of existing levels in all areas concerned, and shall include: -

- a) An approved development layout plan identifying all areas where special construction measures are to be undertaken.
- b) Materials including porous surface finish.
- c) Construction profile/s showing existing /proposed finished levels together with any grading of levels proposed adjacent to the footprint of the proposed dwelling.
- d) Program and method of implementation and arboricultural supervision.

The Construction Method Statement shall be implemented in full accordance with the approved scheme, under arboricultural supervision, prior to the occupation of the dwelling. The No-Dig structure shall be retained in perpetuity thereafter.

- 10) No development (including any initial site-clearance works) shall commence until details of the foundation structure/s, of the approved building/s, so designed as to minimise their adverse impact on tree roots, have been submitted to and approved in writing by the local planning authority. Details shall be site-specific and include: -

- a) An approved layout plan at a minimum scale of 1:200 scale, showing the accurate trunk positions and branch spreads of existing retained trees in relation to the proposals.
- b) Layout and construction profile drawing/s.
- c) Engineering/Arboricultural construction method statement.



- d) Implementation method statement including timing/ phasing of works.

The foundation structure shall be implemented in full accordance with the approved details.

- 11) No development shall commence until:

- (i) a site layout plan at a minimum scale of 1:200 showing the proposed layout of all underground services and external lighting and

- (ii) a programme for the phasing and timing of works

have been submitted to and approved in writing by the local planning authority.

Details of the site layout plan shall include: -

- a) Accurate trunk positions and canopy spreads of all retained trees/hedgerows and mature groups of shrubs.
- b) Surface water/ foul drainage and associated inspection chambers (existing reused and new)
- c) Soak-aways (where applicable)
- d) Gas, electricity, telecom and cable television.
- e) Lighting columns and all associated ducting for power supply.
- f) Phasing and timing of works.

The development shall be carried out in full accordance with the approved site layout and the approved programme.

- 12) No development shall take place until:

- (i) details have been submitted to and approved in writing by the local planning authority of all proposed alterations to the ground levels within the site within 5 metres of the minimum 'Root Protection Areas' calculated in accordance with BS 5837 (2012) recommendations (or any subsequent revision), for all existing retained trees within the site and on neighbouring land adjacent to the approved development. The details shall include:

- a) Existing and proposed finished levels.
    - b) Any proposed soil level re-grading in relation to existing retained trees, hedges and other vegetation.
    - c) Proposed retaining structures required to address level differences adjacent to retained trees and hedges and other vegetation, and

- (ii) a programme and method of implementation have been submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved site layout plan and the approved programme.

- 13) No development shall take place until comprehensive details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. These details shall include: -

- a) Comprehensive planting plans of an appropriate scale and level of detail that provides adequate clarity including details of ground

preparation and all other operations associated with plant and grass establishment, full schedules of plants, noting species, and detailed plant sizes/root stock specifications, planting layout, proposed numbers/densities and locations.

- b) Details of semi mature tree planting.
- c) Comprehensive 5 year post planting maintenance schedule.
- d) Underground service and external lighting layout (drainage, power, communications cables, pipelines etc. indicating lines, manholes etc.), both existing reused and proposed new routes.
- e) Means of enclosure (walls and fences etc)
- f) Paving including pedestrian open spaces, paths, patios, proposed materials and construction methods, cycle routes, parking courts, play areas etc.
- g) Recycling/refuse or other storage units, play equipment
- h) Other landscape features.

All planting comprised in the soft landscaping works shall be carried out and completed in full accordance with the approved scheme, in the nearest planting season (1st October to 31st March inclusive) to the completion of the development or prior to the occupation of any part of the approved development, whichever is sooner, or as may otherwise be agreed in writing by the local planning authority. All hard landscaping works shall be carried and completed prior to the occupation of any part of the approved development. As a minimum, the quality of all hard and soft landscape works shall be carried out in accordance with British Standard 4428:1989 'Code of Practice for General Landscape Operations' or any subsequent revision. All trees and other plants included within the approved details shall be healthy, well-formed specimens of a minimum quality that is compatible with British Standard 3936:1992 (Part 1) 'Specifications For Trees & Shrubs' and British Standard 4043 (where applicable) or any subsequent revision. Any trees or other plants which within a period of 5 years from the completion of the development, die, are removed, uprooted, are significantly damaged, become diseased or deformed, shall be replaced during the nearest planting season (1st October to 31st March inclusive) with others of the same size, species and quality as approved, unless the local planning authority gives written consent to any variation.

- 15) the areas shown for soft landscaping purposes on the approved plans shall thereafter be retained as such and shall not be used for any other purpose without the prior written permission of the local planning authority. If, within a 5 year period of the completion of the development any soft landscaped area which is removed, uprooted, or is destroyed or dies shall be replaced by plants of the same species and size as that originally planted at the same place, unless the local planning authority gives its written consent for any variation
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) no enlargement or addition, improvement or other alteration permitted by Classes A, B, C,

- D, E and F of Part 1 of the Second Schedule of the 1995 Order shall be carried out (other than alterations permitted under Class A).
- 17) The development shall incorporate surface water drainage that is SuDS compliant and in accordance with DEFRA "Sustainable Drainage Systems - Non-statutory technical standards for sustainable drainage systems" (March 2015). It shall be operated and maintained as such thereafter for the lifetime of the development.
  - 18) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) dated November 2015, received by the Council on 18 February 2016 reference 32852/4001 and finished floor levels shall be set no lower than 58.38m above Ordnance Datum as stated within section 5.1.3 of the FRA.
  - 19) No development (other than the construction of the access) shall take place until the access has been constructed in accordance with the details to be submitted to and approved in writing by the local planning authority.
  - 20) The dwelling hereby approved shall not be occupied until the associated vehicle parking and turning space has been surfaced and marked out in accordance with the approved drawing. The space shall thereafter be kept available for parking at all times.
  - 21) The dwelling hereby approved shall not be occupied until secure and covered cycle parking has been provided in accordance with details which have been submitted to and approved in writing by the local planning authority. The cycle parking shall thereafter be retained.
  - 22) The development hereby permitted shall not be begun until a scheme has been submitted to and approved in writing by the local planning authority, to accommodate:
    - (a) Parking of vehicles of site personnel, operatives and visitors
    - (b) Loading and unloading of plant and vehicles
    - (c) Storage of plant and materials used in constructing the development
    - (d) Wheel cleaning facilities
    - (e) Temporary portacabins and facilities for site operatives (where appropriate). No other areas on the site, other than those in the approved scheme shall be used for the purposes listed (a) to (e).
  - 23) No site clearance shall take place during the main bird-nesting period of 1st March to 31st August inclusive, unless a scheme to minimise the impact on nesting birds during the construction of the development has been submitted to and approved by the local planning authority. Development shall take place in accordance with the approved scheme.
  - 24) The demolition shall not be begun until a scheme for the provision of biodiversity enhancements (e.g. bird and bat boxes, native plants) including a plan or drawing showing the location of these enhancements and a timetable for their implementation, has been submitted to and approved in writing by the local planning authority. The approved enhancements shall be carried out as approved.

- 25) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking and re-enacting that order, no external lighting shall be installed on the site or affixed to any buildings on the site except in accordance with details set out in a lighting design strategy for biodiversity that has first been submitted to and approved in writing by the local planning authority. The strategy shall:
- a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
  - b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and thereafter shall be retained in accordance with the strategy. No other external lighting shall be installed.