Matter 3e: Housing/MJ Gleeson Group

1. This further Statement responds to a matter that has arisen since the Proposed Submission Core Strategy (PSCS) document was published by the Council in February 2011 and also affects matter nos. 6, 9 and 14.

2. Representations have been made on behalf of the MJ Gleeson Group PLC. (Gleeson) on the basis that the PSCS is unsound in failing to identify a satisfactory supply and spatial distribution of house building land, for the reasons set out in the submissions.

3. In September 2011, Gleeson submitted an outline planning application for up to 74 dwellings on land to the north of Stone Cross Road, Alderbrook, Crowborough. The proposed housing land is allocated for approximately 80 dwellings in the non-statutory version of the Local Plan, under the provisions of Policy CR4.

4. The details of the planning application (no. WD/2011/2085/MAO) are not in themselves material to the Examination (with the exception that any approval would contribute to the future 300 dwelling supply proposed by the Council at Crowborough). What is of considerable significance however, is that in terms overall housing land supply, Natural England has submitted a holding objection to the District Council on the basis that Suitable Alternative Natural Green Space (SANGS) must be made available to mitigate any impact upon the Ashdown Forest Special Protection Area (SPA)/Special Area of Conservation (SAC) and that other compensatory measures must be in place prior to the grant of planning permission (see holding objection letter dated 4th November 2011 contained in appendix 1 attached).

5. The Applicant has made it clear to the Council that the company is willing to provide mitigation in the form of a financial contribution towards SANGS and other measures aimed at visitor management within Ashdown Forest. Despite repeated requests, the representatives of the Planning Policy Team have refused to meet the Applicant to discuss this matter and appear to consider the application to be premature in advance of any strategic SANGS provision and other compensatory measures to be put forward by the Council in the form of a future policy that is not the subject of the Examination (see the consultation response from the Council's Policy Team contained (in appendix 2 attached).

6. It would appear from the Council's background document 'Assessment of the Core Strategy under the Habitats Regulations Submission Stage, August 2011', that even a single new dwelling within the proposed 7km radius drawn around Ashdown Forest, would have the potential to have an adverse effect upon the SPA/SAC if SANGS and other compensatory measures being put in place by the Council are not provided (see Table 6.3 on page 35). This affects not only development at Crowborough, but all housing development within most of the northern part of the District, including Uckfield.

7. Obviously, this has major implications for all housing development within the northern part of the District. The Council's failure to propose a draft policy for the provision of SANGS together with allied mitigation measures that can be costed and delivered as a basis for developer contributions, effectively places an embargo on *any* housing development within the whole of the proposed 7km catchment area. The Council has not made it clear when it will produce a detailed policy for site specific strategic provision and the detailed costing and timescale of other complimentary measures such as monitoring and managing visitor numbers at Ashdown Forest. There is no draft policy in the Council's draft Consultation Strategic Sites DPD (see paragraph 2.2 and the footnote of the Council's

letter to the Programme Officer dated 31st October 2011) and it is not clear whether this will be provided in the 'Delivery and Site Allocations DPD' which is not in any case due to be adopted until March 2015 (see pages 17, 18 and 31 of Appendix D of the Council's letter of 31st October 2011).

8. It is acknowledged that Gleeson has not previously submitted representations relating to SANGS (Matter 14) or the specific housing proposals at Uckfield (Matter 9), but this new issue which has only come to light with the submission of the outline application at Crowborough. It is a major constraint that strikes at the very centre of the Council's proposals for housing land supply in the District, both now and in the immediate future. This is therefore, a critical issue for joint consideration in relation to Matters 3, 6, 9 and 14, as the Council's housing proposals cannot be regarded as 'sound' without the Council also providing evidence that the SANGS and other contributory measures are both identifiable and deliverable.

List of Appendices

1. Natural England holding objection re: planning application no. WD/2011/2085/MAO dated 4th November 2011.

2. Wealden District Council's planning Policy Teams response to planning application no. WD/2011/2085/MAO.

Town and Country Planning Solutions

December 2011

APPENDIX 1

Date: 4 November 2011
Our ref: 34510
Your ref: WD/2011/2085/MAO

ENGLAND

Claire McIntyre
Development Control
Wealden District Council

Phoenix House
33 North Street
Lewes
East Sussex
BN7 2PH

By email only, no hard copy to follow

Dear Claire,

ASHDOWN FOREST SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI), SPECIAL PROTECTION AREA (SPA) AND SPECIAL AREA OF CONSERVATION (SAC)

Proposal: Proposed development of up to 74 dwellings, with Garages, Parking Spaces, Open Spaces And Means Of Access
Location: Land North Of Stone Cross Road, Alderbrook, Crowborough, TN6 3SQ

Thank you for your letter consulting Natural England on the above application. The application site is approximately 2km from habitats which form part of the Ashdown Forest Site of Special Scientific Interest (SSSI). This SSSI is part of the Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA). This letter and annex comprises our statutory consultation response under provisions of Town and Country Planning (Development Management Procedure (England) Order 2010 and Section 28 of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations').

Natural England objects to the above proposal on the following grounds:

- The information submitted with the application identifies that there will be a likely significant effect on Ashdown Forest SAC/SPA. We are pleased that the impacts have been fully evaluated and that contributions towards SANGS and access management has been identified as suitable mitigation. However, there is currently no strategic SANG available and access management measures on Ashdown Forest have not yet been identified and agreed.
- Until it can be demonstrated that the mitigation is deliverable and secured, we will need to maintain a holding objection to this application.

Under S28I of the Wildlife and Countryside Act 1981 (as amended) your authority must take Natural England's advice into account in deciding whether or not to grant permission for a proposal affecting a SSSI. If your authority resolves not to follow this advice then it must notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, it has taken our advice into account. You must then allow a further period of 21 days before the development can commence to allow us to consider any further action. For further details of these requirements, and a summary of the legislation protecting SSSI's and the duties that apply to planning authorities, please refer to Part II of Circular 06/2005[1].

European Protected Species (EPS)
The survey information provided by the applicants indicates that bats and dormice are utilising features that are to be affected by the proposed development. Natural England is satisfied that the avoidance and mitigation proposals set out in the application appear sufficient to mitigate any

potential impacts on these species. The proposals should therefore not be detrimental to the maintenance of the population of bats and dormice at a favourable conservation status in their natural range (as defined in Regulation 53 of the Conservation of Habitats and Species Regulations 2010)

Whilst we are satisfied that the favourable conservation status of these species is likely to be maintained, based upon the mitigation proposed, it is for the Planning Authority to conclude whether the carrying out of the development would be likely to offend Article 12(1) by, for example, causing disturbance to the species in question.

The issues raised in this correspondence represent Natural England's advice at the planning application stage and considers potential harm to populations of protected species from the proposed development. Bats and dormice are European protected species and as such a licence is required in order to carry out any works that involve certain activities such as capturing the animals or destroying their resting places. This licence is applied for after planning permission has been granted and is processed by Natural England's Wildlife Management & Licensing Team, rather than by the local Team (though the local Team will have an input at this stage). The later decision on a licence application is a more detailed assessment and may require additional survey information, population assessment and specific details relating to the effectiveness and workability of the mitigation proposals before works can proceed. This means that our comments on the application at a local level cannot provide a guarantee that a licence will be granted post planning permission, although it should indicate that in general the conservation issues are being handled effectively.

Other Protected Species
The information supplied in support of the application highlights the impacts resulting from this proposal upon other protected species that are protected by the Wildlife and Countryside Act (1981). Detailed advice on survey effort and mitigation requirements for these species can be found within our protected species standing advice available from http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/default.aspx. In accordance with our standing advice, we recommend that you consult the standing advice to establish whether sufficient survey effort has been undertaken to fully assess the impacts of this proposal along with the appropriateness of any necessary mitigation measures proposed in respect of these species.

Ancient Woodland
Natural England advises that the proposals as presented have the potential to adversely affect woodland classified on the ancient Woodland Inventory. Natural England refers you to our Standing Advice on ancient woodland
http://www.naturalengland.org.uk/regions/south_east/ourwork/standingadvice/default.aspx

We would be happy to comment further when the additional information regarding mitigation for recreational disturbance is submitted but in the meantime if you have any queries, please do not hesitate to contact Marian Ashdown at the above address, by telephone on 0300 060 4050 or by email to marian.ashdown@naturalengland.org.uk

Yours sincerely

Dominic Coath
Senior Adviser
Land Use Operations Team

APPENDIX 2

Non Statutory Wealden District Local Plan 2005

The site has been allocated within the Non Statutory Wealden District Local Plan (NSWLP 2005) for housing as CR4 'Land at Alderbrook' 80 dwellings (24 affordable and 16 small units).

NSWLP Policy CR4 Alderbrook

Policy CR4 (2) requires vehicular access to be taken from Brooklands Avenue. It is understood that the Highway Authority have found the applicant's alternative access off Stone Cross road to be 'acceptable in principle'. Subject to final confirmation, this is likely to be acceptable. Final access arrangements should be resolved through the eventual full planning application.

Policy NE10 (Pevensey Levels and Ashdown Forest)

This application will impact on the Ashdown Forest which is designated as a Special Protection Area and Special Area of Conservation. While the applicant has provided an Ecological Impact Assessment considerable work needs to be carried out before this policy and the Habitats Directive would be complied with. The policy states that "development which is likely to have an adverse effect on the nature conservation interest will not be permitted unless in accordance with international obligations."

Under Article 6 of the Habitats Directive, it is stated that competent authorities shall agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned. Without mitigation, it is considered that housing development of the quantum and the location proposed would adversely affect the integrity of the Ashdown Forest SPA and SAC. In order to ascertain that the adverse effect on the integrity of the Ashdown Forest is avoided, it is necessary for the applicants to detail mitigation and prove that this will, in fact, avoid the adverse affect on the integrity of the site concerned.

WDC are currently working on the Strategic Sites DPD, where specific mitigation for 300 dwellings in the Crowborough area will be identified. This mitigation will be specific to the location of development in Crowborough, which has yet to be determined. The applicants suggestion in paragraphs 3.72 to 3.73 that a financial contribution to mitigation that has not yet been determined for development in as yet unspecified location would not adequately cover the 'avoidance' measures necessary in this case at this time.

In order to comply with the Habitats Directive the application would need to determine mitigation necessary (in relation to SANGS provision) solely in relation to the development proposed at Alderbrook. This would have to consider the location of the proposed development, and consider the impacts and appropriate mitigation measures. It would need to look at existing areas of recreation or potential new areas, which would act as SANG for the purposes of the Alderbrook development. Importantly these areas would need to be assessed and considered in light of advice provided by Natural England regarding the suitability of SANGS.

Without the required information to determine what the impact would be, how and where it could be mitigated, it is impossible to reach an informed decision on whether a undefined financial contribution suggested by the applicant would be sufficient. Without the above information the applications does not comply with Policy NE10 or the Habitats Directive.