Iver Neighbourhood Plan
Second Application for Area Designation
February 2016

SUPPORTING STATEMENT

Introduction and background

1. Planning Progress Limited (“PPL”) is engaged by Iver Parish Council (“IPC”) to provide professional support for the Iver Neighbourhood Plan (“INP”).

2. IPC, as the qualifying body for the INP submitted the first application for designation of the Iver Neighbourhood Area (“INA”) to South Bucks District Council (“SBDC”) by letter dated 24 September 2015 (“First Application”).

3. SBDC gave due notice on its website of the First Application having been received on Wednesday 27 October 2015 and stated that a four-week consultation period was to conclude at 5pm on 27 November 2015 (although four weeks from 27 October 2015 ends on Wednesday 24 November).

4. Following guidance from SBDC, the area applied for in the First Application was the whole of the Parish of Iver and the ‘Supporting Statement’ contained within IPC’s letter of 24 September 2015 provides clear justification for that.

5. On 16 December 2015, almost three weeks after the end of the First Application consultation period, SBDC informed IPC of a representation submitted by Turley (“Turley’s Report” or "TR") on behalf of Pinewood Studios Ltd (“PSL”) seeking the exclusion of PSL land (“the PSL Land”) from the INA.

6. The question obviously arises as to whether Turley’s Report, dated 27 November 2015, was received by SBDC by 5pm on 27 November 2015. It was certainly not submitted within four weeks of 27 October.

7. Notwithstanding what appears to be a late representation on behalf of PSL, and prior to having any knowledge of the content of Turley’s Report or any opportunity to comment on it, IPC were told by email of 16 December that SBDC intended to accede to Turley’s request to exclude the PSL Land from the INA.
8. SBDC's 16 December email gave IPC an ultimatum to withdraw the First Application or SBDC would refuse it and exclude the PSL Land from the INA.

9. SBDC gave IPC until 10am on 21 December 2015 - in effect, two working days - to submit comments on the late PSL representations or else SBDC would refuse the First Application and declare the INA excluding the PSL Land, even though at this time SBDC had had no discussion with IPC about this.

10. In the unreasonably short time period given by SBDC, IPC was not able to respond substantively to the PSL representations (Turley's Report is 39 pages long), so IPC had no option but to withdraw the First Application.

11. Turley's Report and the representations it makes on behalf of PSL are fundamentally flawed for the reasons set out below. This is the Supporting Statement to IPC's second application for the INA ("the Second Application").

12. The Second Application is made by IPC as the qualifying body for the INP, and the local council with administrative jurisdiction for the Parish of Iver, on the same basis as the First Application. That is, for the whole of the Parish to be designated as the INA as was originally supported by SBDC.

13. Paragraph 3, Schedule 4B, Town and Country Planning Act 1990 (as amended) imposes a statutory duty on all LPAs to "give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for neighbourhood development [plans] in relation to neighbourhood areas within their area".

14. SBDC owes this duty to IPC, not to PSL or any other business or landowner. Contrary to this duty, SBDC has so far refused to share with IPC the Counsel's opinion it sought and which, SBDC claims, supports PSL's position. So even now, IPC, as the qualifying body owed a statutory duty by SBDC, does not have access to all the information that previously inclined SBDC to grant PSL's request.

**Planning significance of PSL Land**

15. As we understand it, PSL is a corporate landowner of some 83 hectares - the PSL Land - entirely within the Parish of Iver, and on some of that land operates a number of businesses collectively known as Pinewood Studios. That in itself does not suggest any particular planning significance.

16. We are of course aware of the planning appeal (APP/N0410/A/13/2199037) that TR refers to as the PSDF - 'Pinewood Studios Development Framework' - appeal. As the Inspector notes at para. 14 of the Appeal Decision of 11 April 2014, 'Pinewood Studios Development Framework' is PSL's own term, not to be confused with SBDC's statutory Local Development Framework or any other designated status.
17. The economic significance of the businesses that comprise Pinewood Studios is obvious, and duly recognised by the appeal Inspector and the Secretary of State. However, "the national, regional and local strategic significance of Pinewood Studios" may be a "given" as far as Turley is concerned but as far as we are aware the PSL Land has no strategic planning designation nor any national, regional or local 'strategic significance' in planning terms.

18. 'Pinewood Studios' is covered by a planning policy in the South Bucks District Local Plan, adopted in 1999 and consolidated in 2007 and 2011. Saved 'Policy E2' is a policy intended to protect the 'employment' use of the site. This is referred to in para. 52 of the Appeal Decision but not in Turley's Report; maybe because the Local Plan does not refer to or characterise 'Pinewood Studios' as a strategic site.

19. What must be considered in this context is an 83 ha area of land under single ownership, but with a more complicated pattern of use and development, that is subject to a single outline planning permission with a long list of conditions attached to it. Inevitably, the proposed development and the outline permission will create wider transport impacts (as the existing site already does) but there is nothing inherently strategic or strategically significant about this in planning terms.

20. Even if the PSL Land is considered of strategic significance, that is no reason for it to be "inappropriate" or not "desirable" to include in the INA.

Statutory Rules on Area Designation

21. Section 61G, Town and Country Planning Act 1990 (as amended) sets out the scheme of regulations under which a 'neighbourhood area' is designated. The LPA has what is expressly referred to as a 'power of designation' but only where a 'relevant body' has applied to have a 'neighbourhood area' designated; s.61G(1).

22. A 'relevant body' can only be a 'parish council' or an 'organisation or body which is, or is capable of being, designated as a neighbourhood forum'; s.61G(2). The two types of 'relevant body' are clearly different and are therefore treated differently under this legislation; a 'parish council' is an integral part of the 'government family' with existing jurisdiction over its parish area. A 'neighbourhood forum' has to establish it credentials to be designated as such via a separate application process.

23. The distinction between a 'parish council' and a 'neighbourhood forum' is maintained in the all-important definition of 'the specified area' at s.61G(3). which;

"(a) in the case of an application by a parish council, must be one that consists of or includes the whole or any part of the area of the council, and

(b) in the case of an application by an organisation or body, must not be one that consists of or includes the whole or any part of the area of a parish council."
24. Section 61G(4)(a) provides that "in determining an application the [LPA] must have regard to the desirability of designating the whole of the area of a parish council as a neighbourhood area."

25. Section 61G(5) then sets out that; "If ... (a) a valid application is made to the authority, (b) some or all of the specified area has not been designated as a neighbourhood area, and (c) the authority refuse the application because they consider that the specified area is not an appropriate area to be designated as a neighbourhood area, the authority must exercise their power of designation so as to secure that some or all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas."

26. Section 61G(6) goes on to provide that in determining an area designation application the LPA may "modify designations already made; but if a modification relates to any extent to the area of a parish council, the modification may be made only with the [Parish] council’s consent."

27. Whilst a literal interpretation of these regulations appears to lead to some inconsistencies and ambiguities, the rationale is clear; "the authority must exercise their power of designation so as to secure that ... all of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas"; s.61G(5).

28. It is the words "some or" in s.61G(5) that cause confusion and should have been omitted from the subsection. This is tested by reinserting "some" and deleting "or all" so that s.61G(5) reads; "the authority must exercise their power of designation so as to secure that some ... of the specified area forms part of one or more areas designated (or to be designated) as neighbourhood areas". This becomes an absurdity because it would mean that the 'power of designation' only need apply to a very small part of 'a specified area' and in that case would be a meaningless concept.

29. In our view the combined effect of s.61G(3) - (5) is not as clear as it should be but the 'power of designation' is intended to be, and only makes any sense if it is considered, an inclusive power and the overall effect of these provisions is to establish a universal and interlocking network of neighbourhood areas.

Planning Policy Guidance

30. The approach summarised in paragraph 29 above is endorsed by paragraph 032 of the Government's Planning Policy Guidance ("PPG");

"In a parished area a local planning authority is required to have regard to the desirability of designating the whole of the area of a parish or town council as a neighbourhood area (see 61G(4) of the Town and Country Planning Act 1990). Where only a part of a parish council’s area is proposed for designation, it is helpful if the reasons for this are explained in
the supporting statement. Equally, town or parish councils may want to work together and propose that the designated neighbourhood area should extend beyond a single town or parish council's own boundaries."

31. The local planning authority is required to have regard to the desirability of designating the whole [parish] area; this is a clear statutory duty on the LPA. The normal, default position is clearly for a parish council to apply for the whole of its parish area, and only where it does not - and instead applies for only part of its parish area - do reasons for that need to be given in the supporting statement.

32. Furthermore the pre-text for PPG para. 033 is in the second part of PPG para 032:.

"In areas where there is no parish or town council those wishing to produce a neighbourhood plan ... must put forward a neighbourhood area using their understanding and knowledge of the geography and character of the neighbourhood."

33. In those cases, where an area application is not being made by a parish or town council, para. 033, PPG, then suggests that;

"the following could be considerations when deciding the boundaries of a neighbourhood area:

- village or settlement boundaries, which could reflect areas of planned expansion
- the catchment area for walking to local services such as shops, primary schools, doctors’ surgery, parks or other facilities
- the area where formal or informal networks of community based groups operate
- the physical appearance or characteristics of the neighbourhood, for example buildings may be of a consistent scale or style
- whether the area forms all or part of a coherent estate either for businesses or residents
- whether the area is wholly or predominantly a business area
- whether infrastructure or physical features define a natural boundary, for example a major road or railway line or waterway
- the natural setting or features in an area
- size of the population (living and working) in the area"

34. The inclusive approach to designation set out in the s.61G is further emphasised by para. 035, PPG, as follows.

"A local planning authority must designate a neighbourhood area if it receives a valid application and some or all of the area has not yet been designated.

The local planning authority should take into account the relevant body’s statement explaining why the area applied for is considered appropriate to be designated as such.

The local planning authority should aim to designate the area applied for. However, a local planning authority can refuse to designate the area applied for if it considers the area is not
appropriate. Where it does so, the local planning authority must give reasons. The authority must use its powers of designation to ensure that some or all of the area applied for forms part of one or more designated neighbourhood areas.

When a neighbourhood area is designated a local planning authority should avoid pre-judging what a qualifying body may subsequently decide to put in its draft neighbourhood plan or Order. It should not make assumptions about the neighbourhood plan or Order that will emerge from developing, testing and consulting on the draft neighbourhood plan or Order when designating a neighbourhood area."

35. In the context of PSL's objection to the First Application, PPG para. 036 should also be considered here.

"Can a neighbourhood area include land allocated in the Local Plan as a strategic site? A neighbourhood area can include land allocated in a Local Plan as a strategic site. Where a proposed neighbourhood area includes such a site, those wishing to produce a neighbourhood plan [in this case Iver Parish Council] should discuss with the local planning authority the particular planning context and circumstances that may inform the local planning authority’s decision on the area it will designate."

36. It is absolutely clear from s.61G, TCPA, and the PPG guidance on how neighbourhood area designations should be handled by LPAs that the 'power of designation' is a positive, inclusive power and that "the local planning authority should aim to designate the area applied for". The PPG para. 033 criteria are of no relevance where a parish council has made the area designation application. Where those criteria are relevant they should be considered in the context of extending, not diminishing, the area applied for; this is made very clear in PPG para. 035.

37. Moreover, "a neighbourhood area can include land allocated in a Local Plan as a strategic site"; and where such an issue exists it is clearly for the parish council (rather than the landowner) to "discuss with the [LPA] the particular planning context and circumstances that may inform the [LPA’s] decision on the area it will designate". It is self-evident from PPG para. 36, that the LPA must have identified and designated the land as a strategic site before it can even be considered as such.

38. The PPG does not deal with situations where a landowner considers its own site as 'strategic' because such a situation should not undermine the statutory process or the LPA's power of designation in any way.

39. PPG para. 035 also makes very clear that when designating a neighbourhood area the "local planning authority should avoid pre-judging what a qualifying body may subsequently decide to put in its draft neighbourhood plan ... It should not make assumptions about the neighbourhood plan .. that will emerge from developing, testing and consulting on the draft neighbourhood plan ... when designating a neighbourhood area." This too supports the fundamental principle that the power of designation is inclusive in its operation because the merits of neighbourhood plan policies are for separate and distinct consideration.
PSL submissions on First Application

40. Turley’s Report (”TR”) on the above rules appears misconceived. At the top of its third page, TR confuses the "desirability of designating the whole of the area of a parish council" (s.61G(4)(a)) with NPPF guidance (para. 18 and elsewhere) on policy-making. As PPG para. 035 says, assumptions about the neighbourhood plan that may emerge - by way of policy-making - should not interfere, or be confused, with the area designation (see para. 38, above), yet this fundamental misconception runs throughout the TR and is at the heart of the submissions on behalf of PSL.

41. TR is also misconceived in its analysis of PPG paras. 032 and 033 (p.3, TR). To say as it does about halfway down its page 3, that "The list in 033 ... provides a number of key considerations in the instant case ... etc", is a misinterpretation of what paras. 032 and 033 actually say and how they should be applied.

42. When considered together with para. 032 as it is obviously intended to be, it is clear the para. 033 criteria will only be relevant "In areas where there is no parish or town council [because] in a parished area a local planning authority is required to have regard to the desirability of designating the whole of the area of a parish .. council as a neighbourhood area” (para. 032, PPG).

43. The PPG para. 033 criteria are clearly not, therefore, "key considerations in the instant case” as TR suggests. In fact, they are irrelevant considerations in the instant case, where the qualifying body and area designation applicant is a parish council.

44. Unfortunately, the “Summary of the NP Application by Iver Parish Council” at the bottom page 4, TR, perpetuates the above misconceptions by trying to forecast what the Iver Neighbourhood Plan may contain. The reasons why the supporting statement for the First Application is brief are twofold; first, because the First Application was for the whole parish area and that is clearly the default position under the statutory rules, so no further reasoning is required, and; secondly, the First Application supporting statement was submitted on SBDC’s standard template for that purpose and was presented as such to IPC by SBDC.

45. The TR “Representations” (p.4, TR) are also misconceived. PSL's view of its own significance is irrelevant here, as is its economic significance and even its wider environmental impact. What is relevant is the planning significance of the PSL Land. Even if it were a strategic Local Plan site, which it is not, the statutory presumption supported by PPG is still to include it in the INA.

Turley’s Report Summary and Conclusions (re First Application)

46. The “Summary and Conclusions” on pages 5, 6 of TR are as flawed as the preceding submissions on which they are based. First of all, it is not for PSL or any other landowner or business to request “the refusal and amendment” of an area
designation application. There is no provision in the TCPA or the PPG guidance for such a request. The 'power of designation' applies to secure all of the specified area within one or more designated neighbourhood areas; s.61G(5); only already designated areas may be modified to achieve that; s.61G(6).

47. There are four bullet points on page 6, TR;

- **Planning decisions regarding the future of an internationally and nationally significant facility such as Pinewood Studios should not be dealt with through a local / community level planning tool** (1).

- **The unique circumstances of the Studios are best met through the Pinewood Studios Development Framework and the emerging SBDC Local Plan** (2).

- **The failure of the application to assess wider planning considerations (such as the role of the studios) which would strongly support an alternative boundary which did not include the entire Parish** (3).

- **The failure to consult with PSL as a major landowner, and an apparent pre-determination of the future direction of the NP (based on meeting the needs of residents, as stated in the application documentation). Failing to engage with PSL is highly likely to result in an NP which does not reflect its requirements and provides a significant constraint on its ability to remain at the forefront of its industry** (4).

48. The above points again reflect a misunderstanding of the principles to be applied;

- (1) Any international and national significance of Pinewood Studios, however that is judged, is irrelevant here. The PSL Land must, as a matter of law, be dealt with under the statutory development plan. If the INP proceeds to be made it will become part of the statutory development plan; it is not for PSL or any other landowner to unilaterally exclude itself from the planning system.

- (2) There are no cogent reasons to support this assertion. The "Pinewood Studios Development Framework" is not part of the development plan; it simply refers to an outline planning permission. The PSL Land will indeed be subject to the emerging **Chiltern and South Bucks Local Plan**. PSL should not be able to choose which parts of the development plan will apply.

- (3) There was no "failure" on the part of the First Application; PPG para. 035 makes clear that an area application **should not assess "the wider planning considerations"**. Section 61G and PPG prescribe how an area application should be considered; there are no legitimate grounds in this case to "support an alternative boundary" or one that does not include the entire Parish.

- (4) Consultation on the INP has not started yet so there has been no "failure to consult with PSL". There is no need or requirement for consultation prior to an area designation application.
49. The TR cites two ‘precedents’; *Middleton St George* and *Daw’s Hill*. Neither are precedents for this case. We deal with each in turn.

*Middleton St George*

50. Turley opposed this area designation on behalf of its client Peel Airports, which like PSL, is a subsidiary of the Peel Group; a large corporate landowner with far deeper pockets than Middleton St George Parish Council and IPC. Whilst Peel Group may consider it has a right to exclude its holdings from neighbourhood areas, that is certainly not the case. Landowner apart, there are no similarities with the INA.

51. The facts are entirely different to those in Iver. Turley simply managed to persuade the LPA to exclude the airport from the neighbourhood plan. That decision was not challenged, or endorsed, in law. It may well be wrong in law. What is certain is that it creates no precedent, legal or otherwise, for this case.

*Daw’s Hill*

52. In the Daw’s Hill case, every material consideration can be distinguished from the circumstances in Iver and from this Second Application;

- the area applied for included two brownfield sites designated as strategic housing sites in the adopted Core Strategy - therefore these strategic sites were identified as such by the LPA (the PSL Land is not in this category);
- the area applied for was unparished and the applicant was not a town or parish council (this brings into play quite different considerations under s.61G and PPG, as explained above - see paras. 30-33 incl.);
- the applicant for the area designation was a group of residents who had to first apply to be recognised as a neighbourhood forum; the Daw’s Hill Neighbourhood Forum (“DHNF”);
- the residents in question lived outside the two areas ultimately excluded, and set up the DHNF and embarked on a neighbourhood plan with the express intention of limiting development on the two areas designated in the local plan as strategic sites for development;
- therefore those areas, over which the DHNF sought ‘jurisdiction’ were outside their immediate neighbourhood so there was no direct connection between the DHNF and the two areas in question.

53. It is clear from the decision report of the LPA, Wycombe District Council (“WDC”) (TR, Appendix 3), that although it had considered representations from the landowners, WDC made its own decision to exclude the areas in question because they were outside of the neighbourhood the DHNF actually represented and if the two areas had been included it would have given the resulting neighbourhood plan an influence beyond the neighbourhood. This was an unusual set of circumstances with no material similarities at all with the INA designation.
54. *Daw's Hill* went to the Court of Appeal ("CA"). There will be many who consider the CA decision wrong and its reasoning insufficient. This is because it would appear that the Court did not properly consider the significance of the 'power of designation' and what that means in practice. Neither does the CA reasoning deal with the query posed by DHNF's Counsel, that if the LPA has an unrestricted discretion to exclude any part of an area applied for, as the CA seemed to suggest, s.61G(5) clearly provides that the LPA can exclude only a part of the area applied for. Therefore, as there is nothing to stop repeat applications, if a series of area designation applications were made the LPA would ultimately only be able to exclude an increasingly small and diminishing part of the area it first excluded. This is referred to as the 'salami slicing' approach (though from a plan perspective a 'jigsaw' may be a better analogy); this leads to an absurd conclusion that the legislation could not have intended. (Logically, each tier of the development plan is intended to be at least capable of universal coverage; there is a presumption in favour of universal interlocking coverage - of jigsaw pieces - both at local plan and neighbourhood plan level. It was clearly not the intention of s.61G to give the LPA an unfettered discretion to exclude areas from the neighbourhood plan jigsaw, and certainly not at the behest of individual landowners.)

55. However, the CA judgement does make clear that the decision is confined to its particular facts, that of a neighbourhood forum applying for an area that forms no part of a parish under s.61G(3)(b). The Daw's Hill decision is not a precedent for an application by a parish council for the whole of its parish area under s.61G(3)(a) and has no application or relevance to the very different facts of the INA designation.

56. The recently published DCLG 'Technical consultation on implementation of planning changes' February 2016 ("the DCLG Consultation") currently open for responses seeks to clarify any anomalies caused by the CA decision in Daw's Hill and confirm beyond any doubt the intended purpose behind the power of designation.

57. Paragraph 5.6 of the DCLG Consultation proposes that "a local planning authority must designate all of the neighbourhood area applied for, with no discretion to amend the boundary... when a parish council applies for the whole of the area of the parish to be designated as a neighbourhood area, or applies to enlarge an existing designation of part of the parish to include the whole of the parish area; or [where] a local planning authority has not determined an application for designation of a neighbourhood area within the current time periods described above." This is in our view what is currently intended by the admittedly slightly ambiguous s.61G and this is likely to be confirmed by a statutory amendment due course.

58. Paragraph 5.8 of the DCLG Consultation continues that "the designation should be made as soon as possible, once the authority is satisfied that the application is valid and complete." This is because no consultation is necessary, and so that communities are not disadvantaged by delays of the type currently experienced. This provides clear guidance for the INA and the Second Application.
Conclusions to support this Second Application

59. The Second Application for the designation of the INA applies for the designation of the whole parish as the INA, just as the First Application did. The Second Application is necessary only because IPC was effectively forced to withdraw the First Application by SBDC's ultimatum of 16 December 2015 (see paras. 8-10 above).

60. The Second Application for the designation of the whole parish is not only consistent with, but is encouraged and intended by, s.61G(3) and (4), TCPA, and PPG paras. 032 and 035. It therefore needs no further supporting information; IPC as the parish council for the whole of the area applied for is quite properly applying for the entire parish area. This approach is confirmed as correct by the DCLG Consultation.

61. Furthermore, IPC is the only body that can apply for designation of any part of the Parish of Iver as a Neighbourhood Area and is the only organisation that (according to s.61G and the PPG) SBDC should be in discussion with on the INA application (albeit that anyone can make representations on it).

62. Turley's representations in support of PSL's desire to exclude the PSL Land appear to be based on PSL's own, rather exaggerated, view of the planning status of the PSL Land and on an incorrect interpretation of the rules on area designation.

63. The PSL Land has no planning designation as a strategic site (and even if it did, PPG para. 036 makes clear that "a neighbourhood area can include land allocated in a Local Plan as a strategic site"). The PSL Land is not a strategic site for neighbourhood area designation purposes because SBDC has not identified, designated or allocated it as such. WDC had allocated the land in question as strategic sites in the Daw's Hill case; a crucial and fundamental distinction.

64. The PSL Land is an area of land with a conditional outline planning permission; that is no reason to exclude it from the INA.

65. Furthermore, PSL's representations are evidently pre-occupied with what the Iver Neighbourhood Plan may contain. On this, PPG para. 35 is very clear; "When a neighbourhood area is designated a local planning authority should avoid pre-judging what a qualifying body may subsequently decide to put in its draft neighbourhood plan ... It should not make assumptions about the neighbourhood plan ... that will emerge from developing, testing and consulting on the draft neighbourhood plan ... when designating a neighbourhood area."

66. It goes without saying that under no circumstances should SBDC designate the INA based on PSL's assumptions.

67. To exclude the PSL Land from the INA would be unlawful. It would also set a precedent for landowners and large businesses to unilaterally demand the exclusion of their land from the statutory development plan; an outcome entirely contrary to fundamental principles of neighbourhood planning and the wider planning system. In our view, any such decision by SBDC would be susceptible to legal challenge.
68. Were the potential future effects of the Iver Neighbourhood Plan ("INP") to have any bearing on this area designation decision, then logically there is no reason to exclude and every reason to include the PSL Land in the INA;

- the INP will not be able to interfere with or undermine the PSDF outline planning permission;
- the INP will have to be in general conformity with the strategic objectives of the emerging CSBLP which the PSL Land will also be subject to;
- IPC will always be a statutory consultee on any planning determinations relating to the PSL Land so it is logical for any such IPC representations in future to be based on the INP and its evidential foundations and their implications, if any, for the PSL Land;
- were the PSL Land to be excluded from the Iver Neighbourhood Area, there would be no justification for including PSL in any INP consultations;
- the PSL Land is within the Parish of Iver and should therefore logically be included in the consultations, deliberations and, ultimately, the planning policies of the INP because the PSL Land has an impact throughout the Parish and on all those living within it, and vice versa.

69. There is no doubt that as a matter of law, by reference to all relevant planning principles, policy and guidance and by virtue of common sense, the whole of the area applied for in the Second Application, that is the whole of the Parish of Iver, should be designated as the Iver Neighbourhood Area.

Planning Progress Limited

February 2016