

Householder planning appeal of APP/20/00867 Prior Approval for the enlargement of a dwellinghouse consisting of the construction of an additional storey.

Statement of case - 76 London Road, Cowplain, Waterlooville, PO8 8EW

**Prepared by ATP Design Ltd. On behalf of the appellant Mr. Matthew Barnes.
Issue date: 22nd February 2021**

- 1. Introduction**
- 2. Main issues**
- 3. Principal of development**
- 4. Conformity of proposal with Class AA – enlargement of a dwellinghouse by construction of additional storeys**
- 5. History of planning application to appeal**
- 6. Post validation engagement**
- 7. Planning policy context**
- 8. Planning considerations**
- 9. Conclusion**
- 10. Appendices**
 - 10.1. Emails between agent and LPA**

1. Introduction

- 1.1. This planning appeal is made under s.78 of the Town and Country Planning Act 1990 against Havant Borough Council's ("the Council") decision of 3rd December 2020 to refuse prior approval through sub- Class AA (enlargement of dwellinghouse by additional storeys) for "the enlargement of a dwellinghouse consisting of the construction of an additional storey" at 76 London Road, Cowplain, Waterloooville, PO8 8EW with planning application reference APP/20/00867.
- 1.2. This statement of case has been prepared by ATP Design Ltd. On behalf of Mr. Matthew Barnes ("the appellant"), who was also the applicant.
- 1.3. This planning appeal is for refused application APP/20/00867 which sought prior approval to raise the principal part of the existing roof by 1.6m. This was agreed at the early stages of pre-planning design between the agent and appellant as a modest proposal under the new Class AA (enlargement of dwellinghouse by additional storeys), as an alternative for a householder planning application.
- 1.4. The appellant's justification of the proposal was to utilise and extend the existing property to meet the changing needs of the family over the lifespan of the building.
- 1.5. This appeal hopes to demonstrate that the proposal is compliant under sub- Class AA (enlargement of dwellinghouse by additional storeys) and should be granted prior approval consent

2. Main issues

- 2.1. In this appeal the appellant sets out what he considers to be the main issues based on the Council's reasons for refusal as set out in their Decision Notice dated 3rd December 2020.
- 2.2. The appellant feels the policy CS16 used to justify the refusal is subjective and does not relate to the legislation/conditions of Class AA – enlargement of a dwellinghouse by construction of additional storeys.
- 2.3. The case officers concern relates to paragraph AA.2.(3)(ii)(aa) of Class AA. Whilst this deals with the principal elevation, it is vague on the extent of consideration and makes no reference to street scene, context, surrounding buildings, or the relationship in height with surrounding buildings/the pattern of development in the street scene.
- 2.4. As a comparison, paragraph AA.1.(g)(i)(ii) deals with semi-detached and terraced houses and specifically draws attention to adjoining property heights. In these circumstances an increase in height and differences in height, compared with adjoining properties, is permitted and limited at 3.5m.
- 2.5. It could be speculated that no comparison is given in relation to surrounding properties when concerning a detached dwellinghouse, as this might have less impact than a similar development for a semi-detached or terrace property.
- 2.6. By virtue of Class AA an increase in roof heights and alterations to street scenes is an unavoidable effect of the PD rights. In most cases a householder will be unable to utilise Class AA if the relationship of the proposal subject to the prior approval, is assessed and refused based on the impact to street scene.

3. Principal of development

- 3.1. APP/20/00867 sought prior approval for the increase in height by 1.6m to the principal part of the existing roof, facilitating an additional storey immediately above the topmost storey of the existing dwellinghouse.
- 3.2. The proposals include a new master bedroom with walk in wardrobe and ensuite shower room, along with an additional single bedroom.
- 3.3. The height increase is modest at 1.6m, well within requirements of paragraph AA.1.(e), (f)(ii).

4. Conformity of proposal with Class AA – enlargement of a dwellinghouse by construction of additional storeys

- 4.1. Permission to use the dwellinghouse as a dwellinghouse has not been granted by virtue of Class M, N, O, P, PA or Q of Part 3.
- 4.2. Dwellinghouse is not on article 2(3) land or a site of special scientific interest.
- 4.3. The dwellinghouse was constructed between 1st July 1948 and 28th October 2018.

- 4.4. The existing dwellinghouse has not been enlarged by the addition of one or more storeys above the original dwellinghouse, through any type of permission or otherwise.
- 4.5. Following the development, the height of the highest part of the roof of the dwellinghouse would not exceed 18 metres.
- 4.6. Following the development, the height of the highest part of the roof of the dwellinghouse would not exceed the height of the highest part of the roof of the existing dwellinghouse by more than 7 metres, as the existing dwellinghouse consists of more than one storey.
- 4.7. The floor to ceiling height of the additional storey, measured internally, is 2.4m and would not exceed the floor to ceiling height of any existing storey of the principal part of the dwellinghouse, which is 2.5m.
- 4.8. The additional storey is proposed to be constructed only on the principal part of the dwellinghouse.
- 4.9. The development would not include the provision of visible support structures on or attached to the exterior of the dwellinghouse upon completion of the development.
- 4.10. The development would not include any engineering operations other than works within the curtilage of the dwellinghouse to strengthen its existing walls or existing foundations.
- 4.11. The materials used in the exterior work would be of a similar appearance to those used on the exterior of the existing dwellinghouse.
- 4.12. No windows are proposed in any wall or roof slope forming a side elevation of the dwelling house.
- 4.13. The roof pitch of the principal part of the dwellinghouse following the development would be the same as the roof pitch of the existing dwellinghouse.
- 4.14. Following the development, the dwellinghouse would be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose.
- 4.15. The appellant applied to the local planning authority for prior approval as to:
 - 4.15.1. The impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light.
 - 4.15.2. The external appearance of the dwellinghouse, including the design and architectural features of:
 - 4.15.2.1. the principal elevation of the dwellinghouse
- 4.16. there is no side elevation of the dwellinghouse that fronts a highway.
- 4.17. There are no air traffic and defence asset impacts of the development.
- 4.18. The development will not impact on a protected view identified in the Directions Relating to Protected Vistas.
- 4.19. The appellant would have complied with the requirements of paragraph AA.2.(b)(c)(d)(e).

5. History of planning application to appeal

- 5.1. Application received by Havant Borough Council – 18th September 2020.
- 5.2. Application invalid by Havant Borough Council due to incorrect forms being submitted and agent advised that at present there is currently no fee applicable to these applications, refund was offered – 7th October 2020.
- 5.3. Correct forms issued by agent to Havant Borough Council - 7th October 2020.
- 5.4. Application validated by Havant Borough Council – 9th October 2020.
- 5.5. Application acknowledgement letter issued by Havant Borough Council – 13th October 2020.
- 5.6. Decision issued by Havant Borough Council – 3rd December 2020.
- 5.7. Appeal submitted – 22nd February 2021

6. Post validation engagement

- 6.1. Email sent by agent making initial contact with case officer - 28th October 2020.
- 6.2. Return email by case officer stating this was the first prior approval application relating to the recent GPDO changes, and would be discussing with supervisor the following week - 28th October 2020.
- 6.3. Subsistent return emails agreeing the brand-new nature of the application and arranging a phone call to discuss - 28th October 2020.
- 6.4. Phone call between case officer and agent discussing application and that a street scene would be provided to support the application– 4th November 2020.
- 6.5. Additional documents on street scene sent to case officer, concerns raised by agent on interpretation of legislation – 18th November 2020.

- 6.6. Case officer confirmed GPDO criteria was vague and did not directly reference height comparisons or context of street scene. Verified application as likely to get refused – 18th November 2020.
- 6.7. Agent reply raises disagreement with interpretation and requests justification whilst outlining applicants' case for prior approval consent based on GPDO legislation – 18th November 2020.
- 6.8. Final email reply from case officer stating agents' case had been considered and reviewed with supervisor, no explanation given. Recommendation still stands for refusal and again states there is disagreement in interpretation and that legislation is particularly vague, which may have to be resolved via appeal – 26th November 2020.
- 6.9. Final email from agent outlining intention to submit an appeal in due course – 1st December 2020.

7. Planning policy context

- 7.1. Application refused on policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.
- 7.2. Policy CS16 High Quality Design - Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:
 1. Responds to, draws inspiration from and respects local context and:
 - a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;
 - b) Integrates with existing local landscape features, promotes wildlife and biodiversity and/or applies characteristics of the local area into the design of a scheme wherever possible to create variety and interest;
 - c) Uses the characteristics of the locality to help inform the design of the new development including heights, massing, existing buildings lines, plot widths and depths, materials and proportions of windows and doors;
 - d) Is well connected to and integrates with the immediate local area and the wider area by linking to existing pedestrian and cycle routes and encouraging people to use public transport where possible; and
 - e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.
 2. Produces a positive relationship between buildings, street and spaces both existing and proposed, where:
 - a) The layout of the development reduces opportunities for crime and antisocial behaviour; contributes to improving community safety; and makes provision for the management and maintenance of the development;
 - b) New streets are not dominated by vehicular traffic;
 - c) The layout of the development is legible, meaning it is easy to orientate oneself and move through.
 3. Contributes to the improvement of the public realm close to the development, particularly sites close to town, district and local centres and other priority regeneration areas by using high quality hard and soft landscape material and street furniture; and where development is of a significant scale or prominence makes provision for public art.
 4. Is inclusive by considering the needs of those with disabilities, ensuring safe and convenient access for all; and integrating affordable and supported housing with market housing through tenure blind design to minimise social exclusion and promote social integration.
 5. Maximises opportunities for mixed use developments, particularly in town and district centres; and encourage higher densities (50+ dwellings per hectare) where appropriate.
 6. Mitigates negative environmental impacts through sustainable design and construction methods, resource efficiencies, particularly water and the provision of facilities for waste recycling.
 7. Adapts to the changing needs of the users and the changing climate over the lifespan of the building.

8. Planning considerations

- 8.1. The LPA considered development acceptable and criteria met for instances where development is not permitted under Class AA and all its sub conditions, apart from the Impact of the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation of the dwellinghouse – as highlighted in case officers report.

9. Conclusion



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Gosport
PO13 0UG
tom@atpdesignltd.co.uk

- 9.1. The appellant feels the proposal for the additional storey is compliant with the conditions and legislation of Class AA – enlargement of a dwellinghouse by construction of additional storeys of the GPDO.
- 9.2. The legislation makes no reference to street scene and the context of the proposal's surroundings.
- 9.3. The Council are satisfied that all other conditions for Class AA have been met by the appellant, apart from the issues raised around AA.2.(3)(ii)(aa).
- 9.4. This appeal is made against the Councils' decision to refuse prior approval of APP/20/00867 based on the increase in height and the impact on the street scene.

10. Appendices

- 10.1. Emails between agent and LPA

tom@atpdesignltd.co.uk

From: tom@atpdesignltd.co.uk
Sent: 01 December 2020 07:22
To: 'Donophy, Selina'
Cc: 'Matthew Barnes (WMFTG Biopure)'
Subject: RE: APP/20/00867

Hi Selina

Many thank for your response.

It is unfortunate but not surprising that it will be going to refusal. We will however be submitting an appeal in due course.

Many thanks for your assistance on this application.

Kind Regards,

Tom Peters
Director
07590 762966

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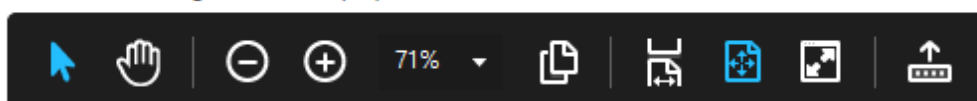
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From: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Sent: 26 November 2020 10:02
To: 'tom@atpdesignltd.co.uk' <tom@atpdesignltd.co.uk>
Subject: RE: APP/20/00867

Hi Tom,

Apologies for the delay I thought I'd replied to this. Thanks for sending this across and for articulating your view on this, which I have considered and discussed with my supervisor. At this moment in time I'm not sure what else I can add moving forward from what we've already discussed in that there is some disagreement in the interpretation which I think would be fair to say is particularly vague and therefore creating gaps in interpretation which ultimately may have to be ironed out after some appeals have been decided.

Whilst I note the addition is fairly modest in terms of scale, it would make quite a stark alteration to the appearance of the property which is judged to be visually harmful and not subservient in appearance as an addition and for this reason we would still be looking to refuse this proposal.



tom@atpdesignltd.co.uk

From: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Sent: 26 November 2020 10:02
To: 'tom@atpdesignltd.co.uk'
Subject: RE: APP/20/00867

Hi Tom,

Apologies for the delay I thought I'd replied to this. Thanks for sending this across and for articulating your view on this, which I have considered and discussed with my supervisor. At this moment in time I'm not sure what else I can add moving forward from what we've already discussed in that there is some disagreement in the interpretation which I think would be fair to say is particularly vague and therefore creating gaps in interpretation which ultimately may have to be ironed out after some appeals have been decided.

Whilst I note the addition is fairly modest in terms of scale, it would make quite a stark alteration to the appearance of the property which is judged to be visually harmful and not subservient in appearance as an addition and for this reason we would still be looking to refuse this proposal.

Kind regards,

Selina Donophy
Planning Officer
Planning Services
Havant Borough Council
Public Service Plaza, Civic Centre Road, Havant PO9 2AX
e-mail: Selina.donophy@havant.gov.uk
Telephone no 02392 446698
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www.facebook.com/havantboroughcouncil
www.twitter.com/havantborough
I am working from home today but contactable by email

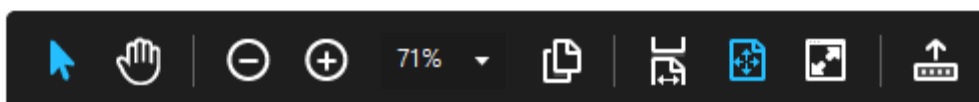
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From: tom@atpdesignltd.co.uk [mailto:tom@atpdesignltd.co.uk]
Sent: 26 November 2020 09:25
To: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Cc: 'Matthew Barnes (WMFTG Biopure)' <Matthew.Barnes@wmftg.com>
Subject: FW: APP/20/00867

Hi Selina

Hope you are well.
Have you had a chance to review my last email or discuss with your line manager?

Kind Regards,





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Gosport
PO13 0UG
tom@atpdesignltd.co.uk

tom@atpdesignltd.co.uk

From: tom@atpdesignltd.co.uk
Sent: 18 November 2020 18:28
To: 'Donophy, Selina'
Cc: 'Matthew Barnes (WMFTG Biopure'
Subject: RE: APP/20/00867

Selina

Thanks for your response.

I don't quite agree on the interpretation as this Class is solely intended for extending upwards and raising the ridge height, no reference to street scene is made or in relation to neighbouring properties. I believe the intention of the line *"the external appearance of the dwelling house, including the design and architectural features of—the principal elevation of the dwelling house"* is to secure the general design and materials used are in keeping with the existing building which is backed up in the conditions section AA.2.(2) (a) and (c) relating to pitch and exterior materials.

"AA.1.(g) the dwellinghouse is not detached and following the development the height of the highest part of its roof would exceed by more than 3.5 metres— (i) in the case of a semi-detached house, the height of the highest part of the roof of the building with which it shares a party wall (or, as the case may be, which has a main wall adjoining its main wall); or (ii) in the case of a terrace house, the height of the highest part of the roof of every other building in the row in which it is situated;" if this was semi detached or terraced the LPA wouldn't be able to justify a refusal based on the ridge being higher than neighbouring/adjoining properties, so my question is how can you justify this on a detached proposal where the "harm" caused in disruption of existing street scene by increase in ridge line is much less? And I must add this is a modest proposal compared to the 7m allowance under this Class.

I trust this is also being reviewed based on the fact that next to 78 London Road are retirement properties of which the ridge line is exceptionally higher, and towards the south the ridge lines raise up due to the gradual incline of London Road.

Kind Regards,

Tom Peters
Director
07590 762966

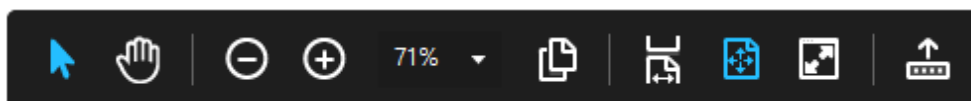
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From: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Sent: 18 November 2020 15:18
To: 'tom@atpdesignltd.co.uk' <tom@atpdesignltd.co.uk>



tom@atpdesignltd.co.uk

From: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Sent: 18 November 2020 15:18
To: 'tom@atpdesignltd.co.uk'
Cc: 'Matthew Barnes (WMFTG Biopure'
Subject: RE: APP/20/00867

Hi Tom,

Thank you for sending this across and for the neighbour letter – I have added these to the file. I have also had a look at your streetscene drawing which shows the height comparison with the two neighbouring properties .

As you say in your email and as we discussed on the phone really this comes down to the interpretation of (3)(ii)/(aa) *the external appearance of the dwelling house, including the design and architectural features of—the principal elevation of the dwelling house,*

Although the GDPO criteria as noted above is vague and does not reference height comparisons specifically , nor does it specify the context of the streetscene specifically , when interpreting *the external appearance of the dwelling house, including the design and architectural features of—the principal elevation of the dwelling house,* I am of the mind that the external appearance of a building really can only be judged within the context of its surroundings.

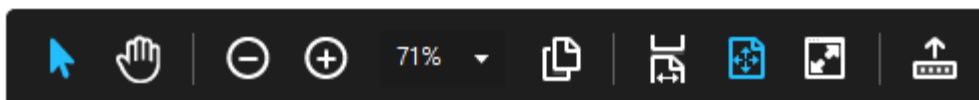
The reasoning for putting this criteria in by the government can only be for reason of protecting the character of the streetscene / area otherwise I don't see why it would be included in the criteria in the first place and from a planning perspective it would be judged that the external appearance as proposed would be harmful in appearance.

For the reasons above I would still be looking to refuse this unfortunately and I hope the above clarifies the LPA's position on this. As we have discussed this is fairly new ground and as I suggested previously that an appeal may be an option to pursue . I can't really comment on any further developments for this kind of application as we just don't know at this point in time and this may be something that gets further clarified following some appeal cases.

Kind regards,

Selina Donophy
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www.twitter.com/havantborough
I am working from home today but contactable by email

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tom@atpdesignltd.co.uk

From: tom@atpdesignltd.co.uk
Sent: 18 November 2020 09:35
To: 'Donophy, Selina'
Cc: 'Matthew Barnes (WMFTG Biopure'
Subject: RE: APP/20/00867
Attachments: 76LondonRd200820A-STREETSCENE_A201_A3.pdf

Hi Selina

Following on from my previous email, please see attached street scene. Apologies the photo image isn't great quality, but it demonstrates the street scene and ridge heights. You had mentioned when we discussed this application that you had no great concerns on the impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light. You did have concerns however on how the extension would disrupt the street scene, please forgive me if I'm missing something but I cannot see any reference in the legislation for Class AA in either development not permitted, conditions, procedure for applications for prior approval or interpretation of Class AA which makes reference to effect on the street scene in relation to neighbouring property heights.

I agree that condition (3)(ii)/(aa) *the external appearance of the dwelling house, including the design and architectural features of—the principal elevation of the dwelling house*, makes comment on the principal elevation i.e. which fronts the highway in relation to design, features and through other conditions, materials – but no reference to heights other than what is permitted on a detached house being up to 7m.

Again, forgive me if I'm interpreting it incorrectly, but how does the LPA expect home owners to make use of the new PD class allowing upwards expansion, if the PA apps will get refused based on the relation to neighbouring property heights which isn't specifically mentioned within the legislation? Does this not mean a raft of applications getting taken to appeal, potentially overturned by the inspectorate all at cost to the LPA?

As we discussed this is a new application and format for both parties, so would appreciate fully understanding the LPA's position on this. if you wish to discuss further prior to a decision being issued, that would be great.

Kind Regards,

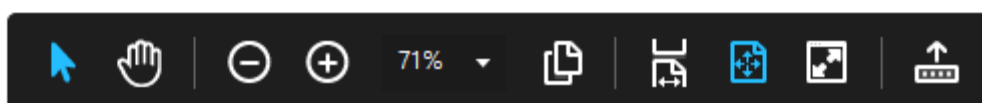
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Director
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tom@atpdesignltd.co.uk

From: tom@atpdesignltd.co.uk
Sent: 17 November 2020 07:42
To: 'Donophy, Selina'
Subject: RE: APP/20/00867

Hi Selina

Following on from our previous discussion, I went to site last week to take detail for the street scene.
I will hopefully be sending this over tomorrow for you.

Kind Regards,

Tom Peters
Director
07590 762966

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From: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Sent: 28 October 2020 11:29
To: 'tom@atpdesignltd.co.uk' <tom@atpdesignltd.co.uk>
Subject: RE: APP/20/00867

Hi Tom,

Brilliant, I'll be in touch next week.

Kind regards,

Selina Donophy
Planning Officer
Planning Services
Havant Borough Council
Public Service Plaza, Civic Centre Road, Havant PO9 2AX
e-mail: Selina.donophy@havant.gov.uk
Mobile no : 02392 446698
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I am working from home today but contactable by email

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From: tom@atpdesignltd.co.uk [<mailto:tom@atpdesignltd.co.uk>]
Sent: 28 October 2020 11:15
To: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Cc: 'Matthew Barnes (WMFTG Biopure)' <Matthew.Barnes@wmftg.com>
Subject: RE: APP/20/00867

Hi Selina

Thanks for the swift reply and yes keeping well thank you.

Yes it's a new one for me too! That would be great, I would appreciate a chance to discuss this one before any decision is made.

Mid next week works for me, just let me know a day and time and I'll be available.

Kind Regards,

Tom Peters
Director
07590 762966

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From: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Sent: 28 October 2020 10:58
To: 'tom@atpdesignltd.co.uk' <tom@atpdesignltd.co.uk>
Subject: RE: APP/20/00867

Hi Tom,

Thanks for your email I'm not bad thank you hope you are keeping well also?

I have had a look into this one actually this week – this is the first prior approval I've had through relating to the gpdo changes so it's an interesting one.





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Gosport
PO13 0UG
tom@atpdesignltd.co.uk

I just want to discuss it with my supervisor when he's back from holiday next week beforehand so if that's okay I'll give you a ring mid week next week ?

Kind regards,

Selina Donophy
Planning Officer
Planning Services
Havant Borough Council
Public Service Plaza, Civic Centre Road, Havant PO9 2AX
e-mail: Selina_donophy@havant.gov.uk
Mobile no : 02392 446698
www.havant.gov.uk
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www.twitter.com/havantborough
I am working from home today but contactable by email

Please note that the above comments are the opinion of an individual Planning Officer and are in no way binding upon the Council when determining an application for planning permission and nor will they prejudice the outcome of any application submitted.

From: tom@atpdesignltd.co.uk [mailto:tom@atpdesignltd.co.uk]
Sent: 28 October 2020 10:49
To: Donophy, Selina <Selina.Donophy@Havant.gov.uk>
Subject: APP/20/00867

Hi Selina

Hope you are well.
Just a quick one to see if you've had a chance to look at this one yet?
If you have any concerns, comments or would like to discuss please don't hesitate to get in touch.

It may be prudent to have a phone call on this application, when would be a good time for you?

Kind Regards,

Tom Peters
Director
07590 762966

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