

<b>APPLICATION NO.</b>	<a href="#">P22/V1129/FUL</a>
<b>SITE</b>	29 Colley Wood Kennington Oxford, OX1 5NF
<b>PARISH</b>	KENNINGTON
<b>PROPOSAL</b>	Change of use of the existing 6-person House in Multiple Occupation (HMO) (Use Class C4) to an 8-person HMO (Sui Generis) facilitated the extension of the dropped kerb.  (Amendment to description agreed 03.08.22)
<b>WARD MEMBER(S)</b>	Diana Lugova Bob Johnston
<b>APPLICANT OFFICER</b>	Tom Rourke Nathaniel Bamsey

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#### **RECOMMENDATION**

Officers recommend that planning permission is granted subject to the following conditions:

##### **Standard**

1. **Commencement 3 yrs - Full Planning Permission**
2. **Approved plans**

##### **Prior to occupation**

3. **HY2[I] - Access in Accord.with Specified Plan (F)**
4. **HY8[I] - Car Parking Spaces (Det.not shown) (Full)**
5. **HY20[I] - Bicycle Parking (Full)**
6. **RE29 - Refuse Storage (Full)**

##### **Compliance**

7. **Occupancy Condition**

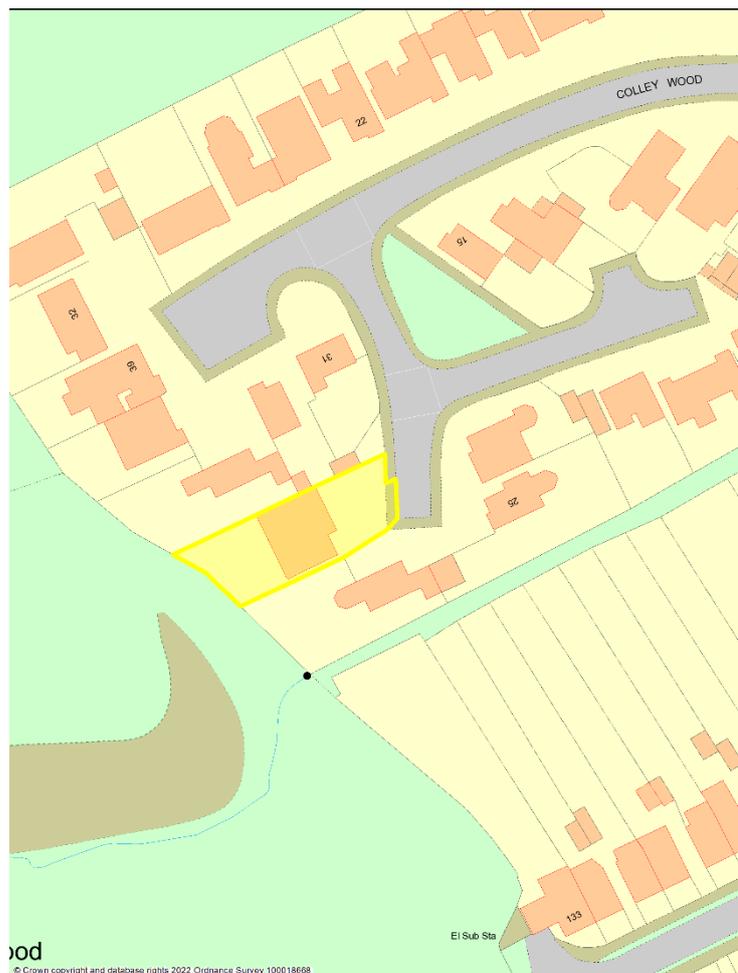
##### **Informatives**

8. **INF17 - Works within the Highway**
9. **HMO Licence Informative**

#### **1.0 INTRODUCTION AND PROPOSAL**

- 1.1 This application is referred to Planning Committee at the request of Councillor Diana Lugova.
- 1.2 The application site, 29 Colley Wood, has lawful use as a House in Multiple Occupation (HMO) authorised under Use Class C4. This authorises a HMO with occupation by up to six persons. The current application is for change of use to from Use Class C4 to an eight-person HMO, which is a *sui generis*, or unique, use. Four parking spaces will be provided, together with cycle and bin storage, and the existing dropped kerb will be extended for vehicular access.

- 1.3 The application site contains a detached house fronting the hammerhead at the end of a cul-de-sac in the village of Kennington. Neighbouring detached houses are to the north (nos 31, 33 and 35), south (no 27) and east (nos 23 and 25). There is a marked local slope down towards the south.
- 1.4 This application follows a refused application for change of use to a nine-bedroom HMO (P21/V1821/FUL). An appeal against this decision was dismissed by an Inspector on 7 April 2022.
- 1.5 The application description has been amended by agreement from that given on the application form. The form refers to an eight-bedroom HMO whereas the C4 use class, for which the house has lawful use, refers to six occupants rather than bedrooms. Therefore, as amended, permission is sought for an increase in the number of occupants from six to eight. The change to the description was agreed with the agent.
- 1.6 A site location plan is provided below, and the plans are **attached** at Appendix 1. The previous appeal decision is **attached** at Appendix 2



2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

2.1 A summary of the responses received is set out below. Comments made can be viewed in full online at [www.whitehorsedc.gov.uk](http://www.whitehorsedc.gov.uk).

<p><b>Kennington Parish Council</b></p>	<p><b>Objects</b> on the following grounds:</p> <ul style="list-style-type: none"> <li>• Lack of parking</li> <li>• Potential for up to 15 residents</li> <li>• Parking in the highway in this location would be dangerous</li> <li>• Use as a HMO would be harmful to character due to increased activity and vehicular movements.</li> </ul>
<p><b>Vale - Highways Liaison Officer (Oxfordshire County Council)</b></p>	<p><b>No objection</b> subject to conditions</p> <ul style="list-style-type: none"> <li>• ‘This current application proposes the change of use of an existing 6-bed HMO to an 8-bed HMO facilitated with an extension to the dropped kerb to accommodate 4 on-plot car parking spaces. It should be noted that in the planning inspectorate’s decision for the previous application (ref,APP/V3120/W/21/3285789), specifically para 9 of the notice, a parking ratio of 0.5 spaces per room was adopted. On this basis, the provision of 4 on-plot parking spaces is deemed acceptable.’</li> <li>• ‘Oxfordshire County Council as statutory consultee have liaised with the Local Planning Authority with regard to the number of occupants per room and have received confirmation that a condition limiting 1 occupant per room will be stipulated in the event where planning permission is granted.’</li> </ul> <p><b>Subsequent comments in response to residents’ highways consultant’s comments</b></p> <ul style="list-style-type: none"> <li>• The letter states that whilst the applicant for this 8-bedroom HMO application has heeded the inspectors finding in relation to the on-site spaces and provided only four on-site parking spaces. This does not account for visitor parking.</li> </ul> <p>Section 2.3 of the currently adopted car parking standards states that HMOs shall be considered as a single dwelling for the purposes for assessing the required number of spaces. A dwelling with 4 or more bedrooms would require a maximum number of 2.1 parking spaces (as quoted within the previous appeal decision). This translates to a parking ratio of 0.5 spaces per room which is consistent with what the planning inspectorate had deemed appropriate. It</p>

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	<p>should be noted that section 2.4 of the adopted parking standards states that “Parking for visitors and operational needs are included in the figures.” It is therefore clear that the County Council’s adopted standards of 0.5 spaces per room takes into account visitors to the site.</p>
<b>Environmental Protection Team</b>	<b>No observations</b>
<b>Waste Management Officer</b>	<p><b>No objection with comment</b></p> <ul style="list-style-type: none"> <li>The bin store plan shows 6 x 180L bins. Our recycling bins are 240L so are slightly wider. Refuse bins are 180L.</li> </ul>
<b>Private Sector Housing Team</b>	<p><b>Comments</b></p> <ul style="list-style-type: none"> <li>Most HMOs occupied by five or more people living in more than one household will require a HMO licence from the council and will be required to meet higher safety, facilities and amenity standards in order to comply with the conditions of the licence.</li> <li>It should be noted that there is potential for the proposed 8-bedroom HMO to be occupied by up to 16 people. Any bedrooms with a floor area of 10.22 square meters or more could be occupied by two adults.</li> <li>HMO licensing is only concerned with assessing the safety and suitability of a property for the proposed number of tenants, and cannot make provisions for broader environmental impacts a HMO may have on neighbouring properties and a neighbourhood (e.g. parking).</li> </ul>
<b>Neighbours</b>	<p><b>Objection (27 households)</b></p> <ul style="list-style-type: none"> <li>Insufficient parking</li> <li>Displaced parking into the highway</li> <li>Access to cycle store is not practical</li> <li>Harm to character of the area</li> <li>Bin store is not large enough</li> <li>Noise and disturbance</li> <li>HMO licence could be issued for 15 people</li> <li>Surface water flooding</li> </ul>
<b>Jake Collinge (Planning consultant representing local residents)</b>	<p><b>Object</b></p> <ul style="list-style-type: none"> <li>The development could be occupied by 15 people</li> <li>A condition limiting the number of occupants would not be enforceable</li> <li>Insufficient parking</li> <li>Harm to the character of the area</li> </ul>

	<ul style="list-style-type: none"> <li>• Questions over the lawfulness of the works to the house and the validity of the lawful development certificate</li> <li>• Hardstanding to the front required planning permission.</li> </ul>
<p><b>David Mason (Highways consultant representing local residents)</b></p>	<p><b>Objection</b></p> <ul style="list-style-type: none"> <li>• Application description has been amended unilaterally by the local planning authority.</li> <li>• Occupancy condition is not enforceable</li> <li>• Inspector underestimated number of residents and the number of parking spaces required</li> <li>• There is no provision for visitors</li> <li>• Access to cycle parking is impractical</li> <li>• Displaced parking will hinder access by refuse, servicing and emergency vehicles</li> <li>• Flooding</li> </ul>

**3.0 RELEVANT PLANNING HISTORY**

3.1 [P21/V1821/FUL](#) - Refused (31/08/2021) - Appeal dismissed (07/04/2022)  
Change of use of the dwellinghouse (Use Class C3) to a 9-bed HMO (Sui Generis) facilitated the extension of the dropped kerb (Amended bin storage plan received 02 August 2021)

[P21/V1022/LDP](#) - Approved (03/06/2021)  
Certificate of lawfulness of proposed use to convert an existing dwelling (C3) to a small House in Multiple Occupation (C4) to accommodate a maximum of 6 people.

[P21/V0088/HH](#) - Approved (04/03/2021)  
Two storey rear extension and fenestration change (Amended plan received 3 February 2021- changing red boundary line amended) (Car parking plan received 4 March 2021)

**4.0 ENVIRONMENTAL IMPACT ASSESSMENT**

4.1 The proposed development is not Schedule 1 or 2 development as defined by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, so an Environmental Impact Assessment is not required.

**5.0 MAIN ISSUES**

The main material planning considerations are the following:

- Principle of the development
- Access and parking
- Impact on character and appearance of the area
- Residential amenity
- Waste and recycling
- The proposed occupancy condition

5.1 **Principle of the development**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

5.2 The Local Plan does not have any policies specifically relating to a change of use to a HMO. However, the site is within the built-up area of Kennington, a village defined by policy CP03 as a Larger Village where there is a presumption in favour of sustainable development in Larger Villages as per policies CP01 and CP04. Therefore, provided there is no harm arising from the development and subject to the compliance with the development plan as a whole, officers consider the principle of the development is acceptable.

5.3 **Traffic, parking and highway safety**

Policies CP33, CP35, and CP37 of LPP1 and policy DP16 of LPP2 require development to provide safe and convenient access, sufficient car and cycle parking in line with Oxfordshire County Council standards and adequate provision for loading, unloading, circulation, servicing and vehicle turning. Development must also minimise the impact on the highway network and promote more sustainable modes of transport where appropriate.

5.4 Paragraph 110 of the NPPF states that applications for new development should take up appropriate opportunities to promote sustainable transport modes and provide safe and suitable access to the site. Paragraph 111 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.5 The previous application was refused on the basis that insufficient parking had been provided to serve the proposed nine-bedroom HMO and this would lead to displaced parking on the hammerhead which is subject to verified on-street parking congestion. For a HMO, the County Highways Officer requires 0.5 parking space per bedroom, rounded up where necessary to the nearest whole number. In dismissing the appeal, the Inspector considered five spaces would be required for the nine-bedroom HMO.

5.6 The current application is supported by a parking plan showing four spaces to serve the eight residents. The Highways Officer does not object to the development as he considers the level of parking provision would accord with the approach of the Inspector to the appeal, ie 0.5 space per resident.

5.7 Local residents have appointed planning and highways consultants to examine the application and they have raised concerns regarding the response of the Highways Officer. They point out that the Inspector referred to a nine-person HMO when the application description was for a nine-bedroom HMO. This distinction is important because each room of a HMO could potentially be licensed to be let out to two people provided it meets a minimum size as set out in the Housing Act 2004 (as amended). Therefore, the effect of an unrestricted permission for an eight-bedroom HMO on the application site would be that up

to 15 residents could live there, because all but one of the rooms meets the minimum size to be licensed for two people. Consequently, following the Inspector's reasoning, 0.5 space for each resident would require seven and a half spaces, rounded up to eight in total.

- 5.8 This application's description refers to an eight-person HMO but without a condition restricting the number of residents, as per the court decisions in *I'm Your Man Ltd v SSE & North Somerset DC* [1999] and *Wood v SSCLG & the Broads Authority* [2015], a breach of planning control would not occur unless the number of residents resulted in a material change of use of the building through intensification. This is likely to mean significantly more than eight persons before a material change of use is triggered. Therefore, for the number of residents to be limited to eight, officers consider a condition must be imposed.
- 5.9 Officers are of the opinion that, in this instance, a condition restricting the rooms to single occupancy does meet the six tests for the use of a planning condition from the NPPF. This is explained in more detail towards the end of this report. With this recommended condition applied the number of residents would be limited to eight.
- 5.10 The local residents' highways consultant states that the parking requirement of 0.5 space per resident does not account for visitor parking. However, in response the Highways Officer states that the current adopted standards treat a HMO as a single dwelling, and the standards include provision for visitors, so visitors have been accounted for. On this basis, the Highways Officer has maintained his position that the parking provision is acceptable.
- 5.11 Officers consider that, subject to the recommended occupancy condition, four car parking spaces would be sufficient. This is consistent with the Inspector's decision on the appeal. As sufficient parking would be provided there should be no harm to highway safety through displaced parking within the highway, notwithstanding the on-street parking issue.
- 5.12 Concerns have also been raised by local residents that the extended dropped kerb will mean that parking for no 27 is lost. However, the Highways Officer has not raised any objection to this aspect and, as the road is not classified, planning permission for an extended kerb would not be required.
- 5.13 Cycle storage is shown to the rear of the property. A condition requiring details of this cycle parking is recommended to ensure it complies with standards. Concerns have been raised that access to the rear of the property, alongside the house, is restricted such that it would be impractical to bring a bicycle through to the proposed store. The width of the side path is approximately 1m and officers consider this is sufficient to allow for relatively easy movement of bicycles to and from the cycle store. Therefore, subject to the agreement of the cycle parking storage details, officers consider sustainable modes of transport will be encouraged.

- 5.14 To conclude, in the absence of an objection from the Highways Officer, and subject to the recommended conditions, officers consider the application complies with policies CP33, 35, 37 and DP16 as adequate and safe access is achieved, adequate parking is proposed, the local highway network will not be harmed and sustainable modes of transport are encouraged.
- 5.15 **Design and character**  
Policy CP37 of LPP1 requires development to be of high quality, visually attractive design that responds positively to the site and its surroundings with appropriate scale, height, details and materials.
- 5.16 There are no changes proposed to the house itself, so the assessment as to the impact on design and character rests on the impact of the change of use and the ancillary development of the parking area and the bin and cycle stores.
- 5.17 There is approximately 10% more hardstanding proposed on the frontage than in the appeal scheme, to allow for the less constrained parking layout. Almost all of the site frontage is shown to be surfaced. Currently, approximately 65% of the existing frontage is surfaced. In the appeal scheme this would have risen to approximately 85% of the frontage. The extent of hard surface was not criticised by the Inspector in the appeal and, in consequence, the inference is that it was considered to be acceptable. Given the comparatively small amount of additional hard surface now proposed, officers do not consider that the impact of the extent of proposed hard surface on the character and appearance of the area is sufficient to be harmful.
- 5.18 Details have been provided of the proposed bin store. This is a relatively simple structure and its size and position, beside the detached garage of the neighbouring property, will prevent it being harmful to the local area. The cycle store is to be located within the rear garden which will prevent any harm to visual amenity.
- 5.19 Comments have been received claiming that the extension to the driveway is already implemented and the extension to it requires planning permission as it is an engineering operation that goes beyond what is permitted by the GPDO. However, having visited the site, and made comparisons with the former frontage, officers are satisfied that the works are not an engineering operation. This is because only a relatively small amount of levelling is required, and officers consider this falls within the rights given by Class F of the GPDO. Therefore, officers consider weight should be given to this fallback position.
- 5.20 Therefore, for the reasons explained above, officers consider the proposal does not cause harm to the character or appearance of the area, and so complies with policy CP37.
- 5.21 **Residential Amenity**  
The impact of development on neighbouring properties is controlled by policy DP23 of the Local Plan. This policy requires development proposals to demonstrate that they will not result in significant adverse impacts on the amenity of neighbouring uses

- 5.22 There are no changes proposed to the house itself so, given the low height of the proposed bin and cycle stores, officers consider there will be no harm to neighbours through overshadowing, overdominance or visual intrusion. The first-floor windows will be left as existing so there will be no additional overlooking and no harmful loss of privacy caused.
- 5.23 The use of the building as an eight-person HMO will increase the activity generated by the building as there will be more comings and goings than the existing lawful use for a six-person HMO. However, this consideration was not a problem identified by the Inspector with the nine-person appeal scheme, and so officers consider harm is unlikely to occur, subject to the recommended single occupancy condition.
- 5.24 The use of the HMO will require a licence from the council. This licencing regime controls matters including that sufficient space and amenities are provided for the residents. Therefore, it would not be reasonable to impose higher standards than required for a licence and, in the absence of an objection from the private housing team, officers consider that the internal layout will provide sufficient amenity for the intended residents. The property benefits from a rear garden of approximately 150 sq.m, which will provide an acceptable private amenity space for the intended occupiers.
- 5.25 Officers consider both neighbouring residents and the future occupiers of the HMO are likely to enjoy an acceptable level of amenity, and as such it is considered that the development accords with policy DP23.
- 5.26 **Waste and recycling**  
Policy DP28 of LPP2 states that all development proposals will be expected to be consistent with the Council's Waste Planning Guidance. Development proposals for residential use must ensure sufficient space is provided for the storage of individual or communal recycling and refuse containers, and access is provided that is safe for residents and for refuse and recycling collection vehicles. Development will not be permitted if appropriate recycling and refuse provision cannot feasibly or practicably be provided.
- 5.27 The application plans feature a bin store to the front of the property. The council's Waste Management Officer was consulted on this application, and has identified that the bins shown on the plans do not match the size of the bins provided by the council. Therefore, officers recommend a condition requiring details of the bin store to be submitted prior to the first use of the development to ensure the bin store can adequately store the bins to be provided.
- 5.28 Comments have been received raising concerns about access for refuse vehicles being blocked, but as it is considered that sufficient parking has been provided for the development, officers consider access for waste collection is acceptable. Overall, the proposal complies with policy DP28.

5.29 **The Proposed Occupancy Condition**

The Highways Officer does not object to the development on the grounds of lack of parking subject to the rooms being occupied by no more than one person. The planning and highways consultants representing local residents have stated that they do not consider that such a condition would meet the six tests for conditions from the NPPF and they have included an appeal decision where an Inspector concluded the same.

5.30 The recommended condition shall read as follows:

**Each bedroom within the development hereby permitted shall be let to one person only and there shall be no double occupancy.**

5.31 The six tests for conditions from the NPPF are that they must be:

- Necessary
- Relevant to planning
- Relevant to the development
- Enforceable
- Precise
- Reasonable in all other respects

Officers consider the condition would meet these tests for the following reasons.

5.32 Necessity

Officers consider the condition is necessary as, in the absence of the condition, the number of potential residents in the HMO would mean that the level of parking provided would be insufficient and this could lead to parking being displaced into the highway which has previously been found to be harmful by the council and an appeal Inspector.

5.33 Relevance to planning

The condition is considered to be related to planning as despite the fact there is a separate licensing scheme for HMOs, this cannot consider factors such as parking in determining whether to grant a licence. Therefore, restricting the number of residents in the interests of highway safety does not duplicate nor exceed the control given by the licensing regime and parking and highway safety are clearly factors material to planning.

5.34 Relevance to the development

The condition is relevant to the development as the additional parking required is directly related to the increased number of occupants caused by the proposed change of use.

5.35 Enforceability

The courts have held in *Bizony v SSE* [1976] JPL 306 and *Bromsgrove DC v SSE* [1988] JPL 257 that the test of enforceability of a condition is not whether it would be difficult but whether it would be impossible.

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- 5.36 Submissions from the independent planning and highways consultants both state that they consider it would not be possible to enforce against a condition requiring single occupancy. An appeal decision has also been provided where the Inspector did not consider it would be possible to sufficiently define and interpret the meaning of ‘occupant’ (Appeal ref APP/H2265/W/16/3165882).
- 5.37 Officers consider it would be possible to enforce a condition requiring the rooms to be let to a single person. This is consistent with a very recent appeal decision in Botley whereby an Inspector imposed such a condition in allowing an appeal against a refusal of planning permission (APP/V3120/W/21/3287016). In reaching this decision, the Inspector was clearly satisfied that this condition was enforceable. Officers are aware of at least one other recent appeal decision where the Inspector concluded that a restriction on the number of occupants of a HMO was enforceable (APP/N5090/C/19/3233746).
- 5.38 The council publishes a public record of licensed HMO properties. This register states the number of residents the property is licensed for, which would allow an enforcement officer to check the licensed number of residents against the requirements of the condition. Given this, and other investigatory measures that are potentially available, officers consider it is not impossible to enforce an occupancy condition.
- 5.39 Precision  
The condition is precise as it is clear that the rooms may only be let to one individual, and it is therefore obvious to the applicant as to how they must comply.
- 5.10 Is the condition reasonable?  
The condition is reasonable as it serves a clear planning purpose and it is not overly restrictive or onerous to the applicant, particularly given the planning statement submitted with the application indicates the applicant will accept such a condition.

## 6.0 CONCLUSION

- 6.1 The development is acceptable in principle and subject to the recommended condition officers consider there will be no harm to visual amenity, highway safety or neighbours. Therefore, officers conclude that the application accords with the development plan and the NPPF and recommend that planning permission is granted subject to the recommended conditions.

The following planning policies have been taken into account:

### **Vale of White Horse Local Plan 2031 Part 1 policies:**

- CP01 - Presumption in Favour of Sustainable Development
- CP03 - Settlement Hierarchy
- CP04 - Meeting Our Housing Needs
- CP33 - Promoting Sustainable Transport and Accessibility
- CP35 - Promoting Public Transport, Cycling and Walking

CP37 - Design and Local Distinctiveness

**Vale of White Horse Local Plan 2031 Part 2 policies:**

DP16 - Access

DP23 - Impact of Development on Amenity

DP28 - Waste Collection and Recycling

**National Planning Policy Framework (NPPF)**

**Planning Practice Guidance (PPG)**

**Joint Design Guide SPD (2022)**

**Equalities Act 2010**

The proposal has been assessed against section 149 of the Equalities Act. It is considered that no identified group will suffer discrimination as a result of this proposal.

**Human Rights Act, 1998**

The application has been assessed against Schedule 1, Part 1, Article 8, and against Schedule 1, Part 2, Article 1 of the Human Rights Act, 1998. The harm to individuals has been balanced against the public interest and the officer recommendation is considered to be proportionate.

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