An Coimisiún Pleanála

Inspector's Report ACP-324005-26

Question	(1) Whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted development. [Class 14(h)] (2) Whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not exempted development. [Class 14(h)] (3) Whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development. [Class 20F]
Location	Shalom Nursing Home, Church Street, Kilcock, Co. Kildare

Declaration

Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED1305
Applicant for Declaration	Frostbreak ULC
Planning Authority Decision	No declaration. Referral to the Commission.

Referral

Referred by	Kildare County Council
Owner/ Occupier	Frostbreak ULC
Observer(s)	None
Date of Site Inspection	23rd June 2026

1.0 Introduction

1.1 This referral was lodged by Kildare County Council on 7th January 2026 under Section 5(4) of the Planning and Development Act 2000 (as amended) whereby a Planning Authority may refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Commission.

2.0 Site Location and Description

2.1. The subject site is located at 'Shalom' a former Presentation Convent, on Church Street, Kilcock, Co. Kildare. The overall site to which this referral relates is outlined in red on the accompanying Land Registry Map and associated drawings comprises an eleven-bay three storey detached building with two storey rear bays and a three storey return to the rear along with attendant grounds. The building fronts onto Church Street with St. Coca's Catholic Church to the side (south); St. Coca's National School to the rear (north-east) and Deans Court housing estate to the side (north). The subject site is in close proximity to the urban core of Kilcock which has a variety of businesses including retail, shops, professional services, restaurant/take aways, public houses and community services in addition to residential uses on the outskirts. The building on the subject site is a Protected Structure in the Kildare County Development Plan 2023-2029 (RPS Ref. B05-40) and is described as a Convent. This building is included on the National Inventory of Architectural Heritage (NIAH) with a Regional rating (Ref. No. 11802020).

3.0 The Question

3.1. Kildare County Council has referred the following questions to An Coimisiún Pleanála:

(1) Whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted development. [Class 14(h)]

(2) Whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not considered exempted development. [Class 14(h)]

(3) Whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development. [Class 20F]

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. The Planning Authority did not issue a declaration. The question has been referred from Kildare County Council to the Commission for a decision under the provisions of Section 5(4) of the Planning and Development Act 2000 (as amended).

4.2. Planning Authority Reports

4.2.1. The referral letter notes that a Section 5 Exempted Development Declaration Request was received by Kildare County Council on 01/12/2025 (Ref. ED1305) in respect of the aforementioned questions set out in section 3 of this report.

4.2.2. The Planning Authority noted that the building is a Protected Structure and listed on the NBHS as well as being in the Architectural Conservation Area of Kilcock.

4.2.3. The Planning Authority refer to Section 57(1) of the Planning & Development Act 2000 (as amended) regarding the carrying out of works to a Protected Structure and their exemption where such works would not materially affect its character. The Planning Authority note that there is a current planning enforcement file on the site (UD8830) with an Enforcement Notice issued in October 2025 relating to replacement and erection of gates/fences; provision of electrical cabinet to the northern side of property on northern stone boundary wall and provision of concrete base with water tanks to the rear of the property. Further reference is made to Article 9 of the Planning & Development Regulations 2001 (as amended) which outlines restrictions on exempted development with part viii stating the following restrictions regarding unauthorised development – *"consist of or comprise the extension, alteration, repair, or renewal of an unauthorised structure or a structure the use of which is an unauthorised use"*

4.2.4. The referral letter also states that Kildare County Council refused planning permission to Frostbreak ULC (Ref. 25/60841) on the site for temporary

permission to remove railings /gates and the erection of temporary security gates and fencing to the front/side and rear of the site. This decision has been appealed to the Commission.

4.2.5. It is also noted that a Section 5 declaration of exempt development was sought under ED1301 in which Kildare County Council determined that the installation of an ESB cabinet on the northern side of the property was exempted development under section 4(1)(g) of the Planning & Development Act 2000 (as amended).

4.2.6. Kildare County Council considers that the questions posed in the declaration request raise further considerations in this case:

- Can the applicant avail of two different planning exemptions, Class 14(h) and Class 20F, for proposed change of use on the same floor at the same time?
- Would the proposed change of use materially affect the character of (a) the structure and (b) any element of the structure, which contributes to its special architectural, historical, cultural or social interest?
- Is the development not exempt having regard to active planning enforcement on the subject site?

4.3 **Other Technical Reports**

4.3.1 None.

5.0 Planning History

5.1. The following planning history is associated with the subject site:

ABP Ref. PL-500056-KE (K.C.C Ref. 25/60841): Retention GRANTED by An Coimisiún Pleanála who overturned a decision by Kildare County Council to refuse retention for a period of 1 year for the removal of railings / gates and the erection of temporary security gates and fencing to the front (south western side) of the site; a gate and fencing to front, side and rear (south eastern and north eastern side) of the site; and, all associated ancillary works. Applicant: Frostbreak ULC.

26/60134 Application for retention permission for the removal of railings / gates to the front of the site (southwestern side). Permission is sought for the removal of existing unauthorised fences / gates and the erection

of new, permanent gates and fencing. This includes: - Gates to the front (southwestern side) and rear (northeastern side) of the site; - Fencing to front, side and rear (southwestern, southeastern and northeastern side) of the site; - Part demolition of the wall adjacent to front gate; and - All associated landscaping and ancillary works. Status: Further Information was requested on 2nd April 2026 and the application remains live.

09/643 Permission GRANTED for the construction of a single storey extension to the rear of the existing building consisting of a new living room with glazed link, refurbishment of the existing kitchen and stores, and the construction of a single storey extension to the rear of the existing garden store to form a new laundry. Applicant: Presentation Sisters.

01/1205 Permission GRANTED for internal work for conversion of 2nd floor of existing building to nursing use from residential use. Applicant: The Presentation Sisters.

94/931 Permission GRANTED for construction of a new vehicular entrance and for 2 enclosed external 3 storey staircases. Applicant: The Presentation Sisters.

89/1431 Permission GRANTED for 'alts and extension comprising new entrance porch, accommodation in the roof space and new windows and dormer windows in the community house etc.....'. Applicant: Presentation Sisters.

5.2. The following Section 5 Declarations are also noted:

ED1301 A declaration was sought as to whether the installation of ESB Cabinet on northern side of property at Shalom Nursing Homes is exempted development.

Kildare County Council deemed the development to be exempt.

ED1267 A declaration was sought as to whether the internal works carried out including redecoration; maintenance of dilapidated heating services; maintenance of existing dilapidated electrical services including light

fittings, fire alarms and lighting; replacement of shower/toilet sanitaryware and tiling in existing bathrooms; replacement of refrigerators with large walk-in fridge; replacement of broken fire glass and ironmongery to fire doors; and, whether the reinstatement of the cross to front facade (damaged in 2025 storm), is or is not exempted development.

Kildare County Council deemed the development to be exempt.

ED1233 Declaration sought in relation to 'Change of Use from Nursing Home to accommodation for International Protection Applicants'.

Kildare County Council deemed the development as being not exempt.

5.3. The following enforcement history is noted on the site:

UD6628 – Case Closed.

UD7755 – Case Closed.

UD8830 – An enforcement warning letter was issued on the 20/06/2025 in relation 1. "Replacement of gates to front of site, erection of fencing to front, side and rear of site. 2. Ongoing works to Protected Structure (Ref B05-40) to include but not limited to wall lining, electrical and plumbing works".

6.0 Policy Context

6.1. Development Plan

6.1.1. The Kildare County Development Plan 2023-2029 is the relevant Development Plan for the subject site.

6.1.2. Chapter 11: 'Built and Cultural Heritage' has an aim *'to protect, conserve and sensitively manage the built and cultural heritage of County Kildare and to encourage sensitive sustainable development so as to ensure its survival and maintenance for future generations'.*

6.1.3. Section 11.14: 'Architectural Heritage' notes the wealth of architectural and archaeological heritage in the urban and rural areas of County Kildare.

6.1.4. Section 11.5: 'Protected Structures' contains the following relevant policy and objectives:

Pol AH P6 *Protect, conserve and manage the archaeological and architectural heritage of the county and to encourage sensitive sustainable development in order to ensure its survival, protection and maintenance for future generations.*

Obj AH O20 *Conserve and protect buildings, structures and sites contained on the Record of Protected Structures of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*

Obj AH O21 *Protect the curtilage of protected structures or proposed protected structures and to refuse planning permission for inappropriate development that would adversely impact on the setting, curtilage, or attendant grounds of a protected structure, cause loss of or damage to the special character of the protected structure and/or any structures of architectural heritage value within its curtilage. Any proposed development within the curtilage and/or attendant grounds must demonstrate that it is part of an overall strategy for the future conservation of the entire built heritage complex and contributes positively to that aim.*

Obj AH O23 *Require an Architectural Heritage Assessment Report, as described in Appendix B of the Architectural Heritage Protection, Guidelines for Planning Authorities (2011), to accompany all applications with potential for visual or physical impacts on a Protected Structure, its curtilage, demesne and setting. This report should be prepared by a person with conservation expertise that is appropriate to the significance of the historic building or site and the complexity of the proposed works.*

Obj AH O32 *Ensure that new development will not adversely impact on the setting of a protected structure or obscure established views of its principal elevations.*

Obj AH O34 *Encourage high quality design in relation to planning applications that are made for the construction of extensions or new buildings affecting protected structures or older buildings of*

architectural merit not included in the RPS. The Council will have regard for the visual impacts on the setting and character of protected structures and/or buildings of architectural merit not included on the RPS, when considering applications on neighbouring sites.

Obj AH O41 *Promote the retention of original or early building fabric including timber sash windows, stonework, brickwork, joinery, render and slate. Likewise, the Council will encourage the re-instatement of historically correct traditional features.*

Obj AH O43 *Ensure that national guidelines and the principles of conservation best practice are followed in assessing the significance of a Protected Structure and in considering the impact of proposed development on the character and special interest of the structure, its curtilage, demesne and setting.*

6.1.5. Section 11.18: 'Architectural Conservation Areas' contains the following objectives and action of relevance:

Obj AHO65 *Ensure that any development, modifications, alterations, or extensions within an ACA are sited and designed appropriately and are not detrimental to the character of the structure or to its setting or the general character of the ACA and are in keeping with any Architectural Conservation Area Statement of Character Guidance Documents prepared for the relevant ACA.*

Obj AHO66 *Ensure that all planning applications for new developments within or immediately contiguous to an ACA include an Architectural Heritage Impact Assessment and Design Rationale addressing design considerations such as urban structure and grain, density and mix, scale, height, materials, landscape, views and landmarks and historic development.*

Action AH A23 *Have regard to DHLGH Guidelines and conservation best practice in assessing the character and significance of a historic town or urban area and the formulation of an ACA or in assessing development proposals relating to an ACA.*

6.1.6. Chapter: 'Development Management Standards' and provides criteria to ensure that development occurs in an orderly and efficient manner. Section 15.17 – 'Built and Natural Heritage' is of particular note with the following sub-sections deemed relevant:

- Protected Structures (15.17.1.);
- Works to a Protected Structure (15.17.1.1);
- Development Within the Curtilage, Attendant Grounds and Setting of Protected Structures (15.17.1.2); and,
- Development in Architectural Conservation Areas (15.17.2).

6.2. **Kilcock Local Area Plan (LAP) 2015-2021**

6.2.1. The Kilcock Local Area Plan 2015-2021 is expired, however it is indicated on Kildare County Council's website that the Planning Authority will continue to have regard to the adopted Local Area Plans until it is reviewed or another plan made. The subject site is zoned 'E' – 'Community and Educational' which has a stated objective *'to provide for institutional, community and educational facilities'.*

6.2.2. Chapter 10: 'Promoting Heritage and Culture' contains the following policies and objective of note in terms of promoting Sustainable Development in Conservation:

Pol HC 1 *To protect and conserve the town's built heritage sustaining its unique significance, fabric and character to ensure its survival for future generations.*

Pol HC 2 *To seek the preservation of the built heritage of Kilcock that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the town.*

Obj HCO 1 *To promote pride and awareness of the importance and value of Kilcock's architectural and archaeological heritage, and manage interventions in such a way as to retain its character and special interest*

6.2.3. Section 10.4.2: 'Protected Structures' contains the following relevant policies having regard to the protected status of the existing building on site:

Pol HC 4 *To maintain and enhance the potential of protected structures and other buildings of architectural/historic merit which contribute to the cultural character and identity of Kilcock.*

Pol HC 5 *To ensure that development proposals do not adversely affect the character of a protected structure or the setting of a protected structure, where the setting is considered to be of importance.*

Pol HC 6 *To require that any alterations or interventions to protected structures are executed to the highest conservation standards in order to protect their significance or value. Applications for development affecting a protected structure shall be accompanied by an assessment carried out in accordance with the Council's requirements, by an accredited conservation consultant.*

Pol HC 10 *To require the protection of the special interest and character of protected structures while carrying out interventions to comply with requirements of the building regulations and the necessity to provide universal access.*

Pol HC 12 *To encourage the protection retention, appreciation and appropriate revitalisation of the vernacular heritage of the town.*

6.2.4. Section 10.4.3: 'Architectural Conservation Areas' contains the following relevant policies having regard to the location of the site within the Kilcock Architectural Conservation Area:

Pol HC 13 *To protect the special interest and character of Kilcock's Architectural Conservation Area in the development management process.*

Pol HC 14 *To discourage any development that would adversely affect the character of the Architectural Conservation Area, and seek to prevent the demolition or partial demolition of any building or*

structure within the Architectural Conservation Area that contributes to its character

Pol HC 15 *To require new development proposals within the Architectural Conservation Area assimilates sensitively into the existing built fabric and utilises the highest quality materials.*

Pol HC 16 *To require that development proposals within the Architectural Conservation Area appropriately conserves and protects features of the townscape such as stone walls, pillars, piers, stiles, bridges, kerbing, cobbles, gates, railings, wells, post-boxes, memorials, milestones, benchmarks, streetlights, manhole covers, ventilation pipes etc.*

Pol HC 19 *To identify and implement positive measures for the enhancement and regeneration of the historic core, to improve its image and sustain its character and authenticity.*

6.3. Natural Heritage Designations

6.3.1. The subject site is not within or adjacent to any Natura 2000 sites. The nearest designated sites are Rye Water Valley/Carton Special Area of Conservation (Site Code: 001398) situated approximately 6.3km to the east; Ballynafagh Lake Special Area of Conservation (Site Code: 001387) is situated approximately 12.93km to the southeast; and, Ballynafagh Bog Special Area of Conservation (Site Code: 000391) which is situated approximately 13.26km to the southeast. The nearest proposed Natural Heritage Area (pNHA) is the Royal Canal (Site Code: 002103) which is approximately 0.15km from the subject site.

7.0 The Referral

7.1. Referrer's Case - Application for Section 5(1) Declaration to Kildare County Council

7.1.1. From the outset, whilst the Referrer of this Section 5 application to the Commission is Kildare County Council, for the purpose of clarity any references to the initial referrer should be taken to mean Frostbreak ULC who submitted the Section 5 application to Kildare County Council in the first instance. The referral, as presented, is stated as follows:

(1) Whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted development. [Class 14(h)]

(2) Whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not considered exempted development. [Class 14(h)]

(3) Whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development. [Class 20F]

7.1.2. The initial referrer is stated as being the 'owner' of the building subject of the application in the section 5 declaration Application Form. The primary points contained in the referral have been summarised from the submitted Cover Letter dated 1st December 2025. This document was appended with Kildare County Council's referral of the application to the Commission:

- This Section 5 is to establish whether the change of use of the building, Shalom Nursing Home, as accommodation for International Protection Applicants and protected persons is or is not exempted development.
- The site location and description of the subject site is provided. Reference is made to the building as a Protected Structure and its listing on the National Inventory of Architectural Heritage (NIAH).
- No works are required to facilitate the change of use that would materially impact the character of the Protected Structure and as such Section 57(1) of the Planning & Development Act 2000 (as amended) is not applicable.
- The site zoning as per the Kilcock Local Area Plan 2015-2021 is set out.
- Existing uses are referenced with the building built as a convent in the 1870s and permission was granted in 2001 to convert the second floor to a nursing home – the ground and first floor were never subject to planning permission.
- Reference is made to an appended HIQA report which states that the centre was established in 1994 with residents accommodated in 33 no. rooms.

- The Planner's Report under Ref. ED1233 acknowledges the existing use of the building and stated the building comprises a convent (ground and first floor) and a nursing home (on second floor only).
- The Planner's Report under Ref. ED1233 noted the second floor of the once convent building has permission for a nursing home and on the plans submitted this was for a total of 16 rooms, nurses station bathrooms, sitting room, office and utility.
- Regarding Question 1, Class 14(h) of the Schedule 2 of the Planning & Development Regulations 2001 (as amended) is stated. It is claimed the existing use at ground floor is a convent and the proposed use is to accommodate protected persons. There are no specific conditions or limitations under Class 14(h) but it is subject to the provisions of Article 9.
- With respect to Question 2 of the referral, reference is made to the Planner's Report under Ref. ED1233 and that the building has been in part use as a convent and nursing home. In 2001, permission was granted for the conversion of the second floor of the building to nursing home use.
- In the basis that a nursing home is considered to be a residential institution providing overnight accommodation, the second floor of the building can be considered for accommodation for protected persons and is exempt under Class 14(h).
- The applicant makes reference to the Health (Nursing homes) Act 1990 which defines a nursing home as an institution for the care and maintenance of more than two dependant persons.
- The proposes change of use at second floor level is considered to be exempted development under Class 14(h) of the Schedule 2 of the Planning & Development Regulations 2001 (as amended). There are no specific conditions or limitations under Class 14(h) but it is subject to the general provisions of Article 9.
- With respect to Question 3 of the referral, it is stated that in 2001 permission was granted and implemented for the conversion of the second floor level of the building to nursing home use.

- The provisions of Class 20F of the Planning & Development Regulations 2001 (as amended) are set out.
- It is claimed that the existing permitted nursing home meets the definition of 'other health and social care accommodation' as set out under Class 20F on account of its nature.
- The provides responses to the limitations/conditions of Class 20F and in this regard, the applicant confirms that the use would be by/on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support persons seeking international protection; that the use shall be discontinued when the temporary protection introduced by the council implementing the decision comes to an end; that the use for persons seeking international protection shall be discontinued no later than the expiry of the legislative provisions; the use shall continue for the purposes of accommodating persons seeking international protection in accordance with para. 3 of the class; the applicant will notify the local authority prior to commencement; the intended use for those meeting the meaning of 'displace persons' is confirmed; the intended use of the building for those requiring 'international protection' is confirmed; the intended use will be for persons requiring 'temporary protection' is confirmed and that if the Section 5 Declaration relies on Class 20F as the basis for a determination that the change of use is exempted development, it will comply with the conditions and limitations of Class 20F.
- The applicant refers to Article 9 of the Planning & Development Regulations 2001 (as amended). It is stated that the building was built in the 1870s prior to any planning permission. Kildare County Council confirmed in its assessment under Ref. ED1233 that the proposal would not contravene previous conditions.
- There are no changes that would warrant a re-assessment by the Planning Authority of the specific limitations referred in Article 9. If the Planning Authority was to depart from its previous position it would be irrational.
- The criteria of Article 9 are set out with a response to each item.

- In relation to Article 9 (viii) regarding extension, alteration, repair, or renewal od an unauthorised structure or a structure the use of which is unauthorised, it is claimed that unauthorised development on the site have no relevance to the change of use.
- Parts b, c, and d, and (2) and (3) of Article 9 not considered applicable.

7.2. **Planning Authority**

7.2.1. As previously indicated, the initial referral was submitted to Kildare County Council by Frostbreak ULC in the first instance (Ref. ED1305). The letter from Kildare County Council and submitted with their referral to the Commission notes that the subject building is a Protected Structure and that there is a current Planning Enforcement file on the site. The Planning Authority note a recent planning application (Reg. Ref. 25/60841) which refused retention permission and that a Section 5 declaration was issued under Ref. ED1301 in relation to the installation of an ESB Cabinet. Kildare County Council considers that the questions posed in the subject Section 5 declaration request raises further considerations and have set out three supplementary/additional questions which are briefly summarised as being - whether the applicant avail of two different planning exemptions at the same time; whether the proposed change of use materially affects the character of (a) the structure and (b) any element of the structure, which contributes to its special architectural, historical, cultural or social interest; and, whether the development not exempt having regard to active planning enforcement on the subject site.

7.3. **Owner Response**

7.3.1. A response has been received from John Spain Associates on behalf of the initial referrer, Frostbreak ULC and is summarised as follows:

- There is no statutory preclusion on relying on more than one category of exempted development class within the same request for a Section 5 Declaration nor is there a statutory preclusion on separately identifying constituent but discrete parts of a building unit for Section 5 Declaration purposes.

- Reference is made to a legal opinion submitted with original referral which sets it reasoning for same.
- In terms of the change of use materially affecting the character of the structure/elements of the structure, reference is made to a response prepared by a Conservation Architect (submitted with the response as an Appendix) claiming there will be no material impact to the character of the structure or any element of it occurring from the change of use. There are no physical impacts proposed at all in the application for exemption and the restoration of use of the building is welcome as it will ensure care/maintenance for it.
- A Section 5 Declaration received from Kildare County Council (ED1267) indicated that internal works including redecorating; maintenance of heating services, electrical services, light fittings and fire alarms; replacement shower/toilet/sanitaryware, refrigerators, broken fire glass and ironmongery; and the reinstatement of the cross to the front façade, is exempted development.
- No internal works are proposed as part of the subject referral.
- It is noted that there is existing enforcement on the subject site however this does not directly relate to the use of the building.
- No element of the main building is unauthorised.
- The Counsel Opinion states works do not directly relate to the use of the building and that there is no finding that the current use of the ground, first or second floors is unauthorised.
- The Counsel Opinion also states that the question of dis-application of an exemption by virtue of Article 9(viii) of the Planning Development Regulations 2001 (as amended) does not arise.
- The applicant engaged with Kildare County Council in relation to the Enforcement Notice received.
- The temporary gates/fences is subject to a first party appeal to An Coimisiún Pleanála. There is also an application to remove the for the retention of the

removed gates and fences and their permanent replacement which at Further Information stage with Kildare County Council.

- The gates and fences are not considered directly relevant to the subject matter as they are necessary for the continued security of the building and will be in place regardless of the outcome of the subject matter.
- The ESB cabinet was deemed to exempted development under a Section 5 declaration (ED1301).
- The concrete base and water tanks have been removed to satisfaction of Kildare County Council.
- The works have no direct relevance to the proposed change of use subject to the Section 5 declaration request and no further works are required to facilitate the change of use.

7.4. **Further Responses**

7.4.1. None.

8.0 Statutory Provisions

8.1. **Planning & Development Act 2000 (as amended)**

8.1.1. Section 2 (1) of the Act provides the following definitions of relevance:

"development" has the meaning assigned to it by Section 3.

"protected structure" means—

(a) a structure, or

(b) a specified part of a structure,

which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

"record of protected structures" means the record included under *section 51* in a development plan;

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i)* or *(iii)*;

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

8.1.2. In Section 3(1) of the Act, 'development' is defined as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.'

8.1.3. In Section 4(1) of the Act, numerous circumstances are outlined whereby development is deemed to be exempted development for the purposes of the Act. In this regard, the following is of note:

> Section 4(1)(h): 'Development consisting of the carrying out of works for the maintenance, improvement or alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of the structure or neighbouring structures'.

8.1.4. Section 4(2) of the Act notes that the Minister may, by regulations, provide for any class of development to be exempted development for the purposes of this Act.

8.1.5. Section 4(4) states that 'notwithstanding *paragraphs (a), (i), (ia) and (l)* of *subsection (1)* and any regulations under *subsection (2)*, development shall not

be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

8.1.6. Section 57 – (1) Notwithstanding section *4(1)(a), (h), (i), (ia) (j), (k),* or *(l)* and any regulations made under section *4(2)*, the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of –

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

8.2. **Planning and Development Regulations 2001 (as amended)**

8.2.1. Article 5 (1) – Interpretation for this Part – "protected person", means — (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013), (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996.

8.2.2. Article 6 (1) – Exempted Development states that 'Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.'

8.2.3. Article 9 (1) – Restrictions on Exemption outlines the circumstances development to which article 6 relates shall not be exempted development for the purposes of the Act. For the purpose of the subject referral, these include but are not limited to, (a) if the carrying out of such development would (i) contravene a condition, (viiB) development in relation to appropriate assessment, (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, and (xii) consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an

area specified as an architectural conservation area in a development plan for the area and the development would materially affect the character of the area.

8.2.4. Article 10 – Changes of Use (1) states that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted to development for the purposes of the Act, provided that the development, if carried out would not –

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(6) (viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

8.2.5. Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) sets out the classes of exempted development. Class 14(h) and Class 20F are specific to the exemption sought in this referral.

8.2.6. Class 14 – Part 1 of Schedule 2 – 'Exempted Development - General':

PART 1	
Exempted Development – General	
Column 1 Description of Development	Column 2 Conditions and Limitations
Change of use **CLASS 14** *Development consisting of a change of use—* *(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,*	

8.2.7. Class 20F – Part 1 of Schedule 2 – 'Exempted Development - General':

PART 1	
Exempted Development – General	
Column 1 Description of Development	Column 2 Conditions and Limitations
Temporary structures and uses **CLASS 20F** Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-	1) The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2) Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end in

residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.	accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001. 3) The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028. 4) Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary protection use of any structure which has been used for the accommodation of displaced persons shall continue for thepurposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class. 5) The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development. 6) “Displaced persons,” for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022. 7) “International protection,” for the purpose of this class, has the meaning given to it in Section 2(1) of the International Protection Act 2015 (No. 66 of 2015). 8) “Temporary protection,” for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.

8.3. **European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022)**

8.3.1. (1) In these Regulations –

"development" has the same meaning as it has in the Act of 2000.

"Displaced persons" means persons to whom temporary protection applies in accordance with Article 2 of the Council Implementing Decision.

"Relevant period" means the period commencing on the making of these Regulations and ending when the temporary protection introduced by the Council Implementing Decision comes to an end in accordance with Article 6 of the Council Directive.

"Temporary protection" has the same meaning as it has in the Council Directive.

8.3.2. Section 3(1) provides that the Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.

8.3.3. Section 3(2) provides a reference to "proposed development" in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.

8.3.4. Schedule – Classes of Development - Article 3

1. Reception and integration facilities.
2. Residential accommodation, including ancillary recreational and sporting facilities.
3. Medical and other health and social care accommodation.
4. Education and childcare facilities, including ancillary recreational and sporting facilities.
5. Emergency management coordination facilities.
6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.

7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

9.0 Assessment

9.1. Introduction

9.1.1. From the outset, I note that the purpose of a referral is not to determine the acceptability or otherwise of the subject matter before the Commission in terms of the proper planning and sustainable development of the area, but whether or not the subject matter constitutes development and if so, if it falls within the scope of exempted development. The subject matter is not a planning application which is under consideration and the planning merits as to whether or not the subject development should take place is not a basis for determining this referral.

9.1.2. I consider it appropriate to assess the question subject of this referral as it was presented in the initial referral and as subsequently referred to the Commission by Kildare County Council:

(1) Whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted development. [Class 14(h)]

(2) Whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not considered exempted development. [Class 14(h)]

(3) Whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development. [Class 20F]

9.1.3. The above relates to a change of use and the questions do not state that works are required either internally or externally to the building to facilitate the use. I draw the attention of the Commission to the planning drawings submitted with the referral which comprise both existing and proposed floor level plans for the subject building. In this regard, I note that a number of alterations are indicated which include the following:

Ground floor level

- Relabelling of treatment room to Bedroom A2/A3; WC to shower room; office to treatment room; office to security; dining room to Bedroom A7; Day Room to Dining Room; Kitchen to Resident Kitchen; Chapel to Fridge
- Subdivision of a dining room to two bedrooms, (Bedrooms A8 and A9); subdivision of shed to garage/boiler room.
- Terrace and Planters illustrated in garden area.

First floor level

- Relabelling of Kitchen to Tea Station; WC to Shower Room; treatment room to Bedroom A2/A3;
- Subdivision of a bedroom, Store and WC into a Shower Room/WC.

Second floor level

- Relabelling of WC to Shower Room; and, Kitchen to Bedroom (Bedroom D16);
- Subdivision of an Office & WC to a Shower Room.

9.2. **Is or is not development**

9.2.1. In consideration of whether or not the subject matter is or is not development, I note that the Planning & Development Act 2000 (as amended) is the relevant legislation. Section 2(1) of this Act defines "works" as being any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. This definition extends to the act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure where it is a Protected Structure. In addition, as previously outlined, Section 3(1)(a) of the Planning & Development Act 2000 (as amended) defines "development" as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

9.2.2. Having regard to the referral before the Commission and having reviewed the contents of the file and having conducted a site inspection, I note that the case presented is that the proposed development relates to a change of use of the ground floor, first floor and second floor of the existing building. The question(s)

do not infer any physical alterations or interventions to the building. However, the planning drawings submitted with the referral indicate both existing and proposed floor level plans and show internal alterations within the building. Therefore, I am satisfied that the change of use would not constitute 'works' as defined in Section 2(1) of the Planning and Development Act 2000 (as amended) but that the elements detailed on the submitted planning drawings would constitute works within the meaning of the Act.

9.2.3. In terms of whether the proposal is 'development', I am of the view that a change in use must be deemed material in order for it to constitute 'development' as set out in Section 3 of the of the Planning & Development Act 2000 (as amended). Having regard to the referral, as presented, I would consider that the change of use of the building from convent (at ground floor level and first floor level) and nursing home (at second floor level) to provide accommodation for protected persons and accommodation for international protection applicants respectively constitutes a change of use. I have formed this reasoning on the basis that Class 7 of Part 4 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended) provides for a defined use 'as a monastery or convent'; and, Class 9 of Part 4 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended) provides for a defined use 'as a hospital or nursing home' but do not include a specific use for the provision of accommodation for international protection applicants, or, the provision of accommodation for protected persons.

9.2.4. To this end, I consider that the change of the building from convent and nursing home for the provision of accommodation for international protection applicants and/or protected persons is a material change of use and falls under the definition of 'development' under Section 3(1)(a) of the Planning & Development Act 2000 (as amended).

9.3. **Is or is not exempted development**

9.3.1. In consideration of whether or not the subject matter is or is not exempted development, I am of the consideration that development can be exempt from the requirement for planning permission either by Section 4 of the Planning & Development Act, 2000 (as amended) or by Article 6 of the Planning &

Development Regulations 2001 (as amended) respectively. In the interests of clarity, I shall consider the proposal under the following sub-headings:

Alterations to the Structure/Building

9.3.2. Section 4(1)(h) of the Planning & Development Act 2000 (as amended) is relevant in the case of the subject matter and provides an exemption for *'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'*. Based on the question(s) before the Commission and the particulars contained on the file, it is my view that the subject proposal relates to the change of use to the building and that works to facilitate the change of use would be confined to the interior of the building and would not impact of the exteriors of the building.

9.3.3. Notwithstanding the exemptions provided for under section 4(1)(h) of the Planning & Development Act 2000 (as amended), I consider that section 57(1) of the Planning & Development Act 2000 (as amended) requires appropriate consideration as to whether an exemption applies given that the subject building is a Protected Structure in the Kildare County Development Plan 2023-2029 (RPS Ref. B05-40). In essence, Section 57(1) of the Planning & Development Act 2000 (as amended) states that the carrying out of works to a protected structure shall be exempted development only if those works would not materially affect the character of the structure, or any element of the structure contributing to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

9.3.4. From the outset, I would consider that a proposed a change of use to an existing building, in itself, where no physical works or alterations are proposed would not materially affect the character of the structure, or any element of the structure which contributes to its special interest. In my consideration of the totality of the documentation submitted with the initial referral, I note that planning drawings have been submitted indicating both existing and proposed floor level plans in relation to the proposal. These alterations relate to a variety of works which

include the relabelling of a number of rooms such as treatment room to bedrooms, a WC to shower room, an office to a treatment room, an office to a security room; a dining room to a bedroom, a day room to a dining room, a kitchen to resident kitchen and a chapel to a fridge room at ground floor level; a kitchen to tea station, a WC to shower room and a treatment room to bedroom at first floor level; and, a WC to shower room and a kitchen to bedroom at second floor level. Additionally, the drawings also indicate the subdivision/change of rooms such as the subdivision of a dining room to two bedrooms and subdivision of shed to garage/boiler room at ground floor level; the subdivision of a bedroom, store and WC into a Shower Room/WC at first floor level; and the subdivision of an office and WC to a Shower Room at second floor level. Furthermore, other works indicated include the provision of a terrace with planters in the garden.

9.3.6. During my site visit, I observed part of the interior of the subject building. I did not observe any ongoing works to the building at that time which could be deemed as being associated with facilitating the proposed change of use. I acknowledge that some recent works appear, in my opinion, to have been carried out which I am inclined to associate with Ref. ED1267 – a Section 5 declaration comprising internal works carried out on the building including redecoration; maintenance of dilapidated heating services; maintenance of existing dilapidated electrical services including light fittings, fire alarms and lighting; replacement of shower/toilet sanitaryware and tiling in existing bathrooms; replacement of refrigerators with large walk-in fridge; replacement of broken fire glass and ironmongery to fire doors; and, the reinstatement of the cross to front facade (damaged in 2025 storm) which were deemed by Kildare County Council to be exempted development.

9.3.7. I also observed a number of security/CCTV cameras within the hallway and circulation areas of the building along with being affixed to the exterior of the building. However, given that the building is presently idle, these cameras may, in my view, be associated with surveillance of building and in any event I am unable to confirm or verify as to whether or not these cameras may have been erected at some other time in the past. On this basis, I do not consider the matter of the security/CCTV cameras applicable to the change of use of the building.

9.3.8. Having regard to the foregoing, it is evident that the subject proposal is not strictly confined to a question of the change of use, but also includes physical works, alterations and interventions to the interior of the building to facilitate the change of use of the building to provide accommodation for protected persons/ international protection applicants. I note the response letter from a Conservation Architect submitted by the initial referrer states that *'there will be no material impact to the character of the structure or ant element of it occurring from the proposed change of use. Indeed, there are no physical impacts proposed at all in the application for exemption. The restoration of use to the building is welcome as it will ensure a level of care and maintenance for the structure'.* Whilst I would acknowledge that the overall extent and scale of the proposed works may give the appearance of minor and incidental works in the context of the subject building; I am of the view that a robust conclusion of the impacts, if any, arising from such works on the original fabric/character of the Protected Structure could only be reached whereby specific detail in respect of the precise nature of all elements of proposed works is provided. In the absence of such detail, I am not satisfied that it has been clearly demonstrated that the proposed works do not materially affect the character of the Protected Structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. In addition, it is my opinion that other internal works carried as part of a separate referral on this building cannot be relied upon by the initial referrer with respect to the current referral before the Commission where the specific details in relation to the subject works have not been provided. Furthermore, given that internal works are proposed, I am of the opinion that such works cannot be decoupled from the question(s) of the various changes of use as asked by the in this subject case.

9.3.9. Therefore, I consider that the change of use of the building, a Protected Structure, is restricted by section 57(1) of the Planning & Development Act 2000 (as amended).

Change of Use

9.3.10. The case presented by the initial referrer is threefold. Firstly, that the change of use of the ground floor and first floor of the building from convent to provide accommodation for protected persons is exempted development under Class

14(h) of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) as this class includes a change of use from 'convent' to use as accommodation for protected persons. Secondly, that the change of use of the second floor of the building from nursing home to provide accommodation for protected persons is exempted development under Class 14(h) of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) as this class includes a change of use from 'residential institution providing overnight accommodation' to use as accommodation for protected persons. Thirdly, that the change of use of the second floor of the building from nursing home to provide accommodation for international protection applicants is exempted development under Class 20F of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) as this class includes any structure uses as a 'medical and other health and social care accommodation' to accommodate or support displaced persons or persons seeking international protection.

9.3.11. I am of the view that Class 14(h) of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) is a relevant exemption for the proposed change of use outlined in both 'Question 1' and 'Question 2'. Class 14(h) provides an exemption for a change of use from convent to use as accommodation for protected persons. In the interests of absolute clarity, I refer to the specific wording of Class 14(h) of the Regulations:

*'**from use as a** hotel, motel, hostel, guesthouse, holiday accommodation, **convent**, monastery, Defence Forces barracks or other premises or **residential institution providing overnight accommodation**, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, **to use as accommodation for protected persons**,' (Inspector's emphasis added)*

9.3.12. Having regard to the above in relation to 'Question 1', I would state that I am satisfied that the subject building was built in the 1870s and used as a convent up until its closure in recent years. I am of the view that convent is specifically listed as a class of exempted development in the Regulations and therefore I am satisfied that the change of use from the ground floor level and first floor level of

the former convent building to use as accommodation for protected persons is exempted development.

9.3.13. In relation to 'Question 2' regarding the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, I note that there is an exemption in Class 14(h) for a change of use from *'residential institution providing overnight accommodation'* to use as accommodation for protected persons. Whilst I note that the subject building was originally built as a convent, a planning permission granted in 2001 under Reg. Ref. 01/1205 converted the second floor of the building to nursing use from residential use. Therefore, I am of the view that the permitted use on the second floor of the subject building is that of a nursing home and it is my opinion that a nursing home reasonably falls within the scope/definition of a *'residential institution providing overnight accommodation'*. As such, I am satisfied that the change of use is specifically listed as a class of exempted development in the Regulations and the change of use of the second floor level of the existing building to use as accommodation for protected persons is exempted development.

9.3.14. With respect to 'Question 3', the original referrer seeks exemption under Class 20F of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) for the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants. In my consideration of Class 20F, I note that it relates to temporary structures and uses and states:

'Temporary use ***by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth*** *to accommodate or support displaced persons or* ***persons seeking international protection*** *of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre,* ***medical and other health and social care accommodation,*** *event and exhibition space or any structure or part of structure*

normally used for public worship or religious instruction'. (Inspector's emphasis added)

9.3.15. I consider the principle of the change of use as presented in the referral is broadly consistent with Class 20F as I am satisfied that the former nursing home use which was permitted on the second floor of the subject building aligns with that of a *'medical and other health and social care accommodation'*. With this in mind, I acknowledge the definition of a Nursing Home as set out in the Health (Nursing Home) Act, 1990 as submitted in the initial referrer's supporting statement which is *'an institution for the care and maintenance of more than two dependant persons'*. I am of the view that the subject building is a structure, or part of a structure used as medical and other health and social care accommodation and can be used for temporary use to accommodate or support displaced persons or persons seeking international protection.

9.3.16. Notwithstanding, having regard to the precise wording of this Class, there is a requirement that the temporary use is by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth. I have reviewed the subject file, and I note that the initial referrer states that *"the applicant confirms that the use would be by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth".* Whilst this commentary is noted, there is no documentation or evidential material submitted by the initial referrer to corroborate this claim. Therefore, I am not satisfied that the proposed change of use would be consistent with the wording of Class 20F of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) – specifically Column 1. I am of the view that the wording of the legislation is clear and without ambiguity that the temporary use is to be 'by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth' and so I do not consider it appropriate to rely on a stated confirmation provided by the initial referrer which is unsupported by evidence. Moreover, I also consider that allowing a proposal for this Class 20F exemption to be confirmed on the sole basis of an implied confirmation from the initial referrer that the proposed use would be by, or on behalf of, the Minister for Children, Equality, Disability, Integration and Youth, would diminish the precise meaning and applicability of this legislation to a stage where it could not be practically implemented.

9.3.17. I note that there are eight Conditions and Limitations set out in Column 2 of the Regulations which have already been set out in full in section 8.2.6 of this report. In brief, these conditions/limitations relate to the temporary use being only for purpose of accommodating displaced parsons or persons seeking international protection; the use for purposes of accommodating displaced persons shall be discontinued when the temporary protection comes to an end; the use for purposes of accommodating persons seeking international protection shall be discontinued not later than 31st December 2028; where obligation to provide temporary protection is discontinued earlier than 31st December 2028, then temporary use of any structure used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection; notification to the local authority; and, the meaning of 'displaced persons', 'international protection' and 'temporary protection' respectively.

9.3.18. It is my opinion that the conditions and limitations of Class 20F are not reasonably applicable at referral stage and it is my view that such conditions/limitations become particularly relevant once the description of development/class has been satisfied in the first instance. Nevertheless, having reviewed the file, I note that the initial referrer has provided responses as to how the conditions and limitations would be complied it in practice/at operation stage.

9.3.19. Having regard to the foregoing, I am not satisfied that the proposed change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants would be consistent with the provisions of Class 20F or would comprise exempted development.

9.4. Restrictions on exempted development

9.4.1. I have previously outlined the available exemption in Class 14(h) of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) which is applicable in respect of the subject referral currently before the Commission. With this in mind, Article 9 of the Planning & Development Regulations 2001 (as amended) refers to restrictions on exempted development.

9.4.2. I have assessed the proposed question for the change of use from convent building at ground and first floor level to provide accommodation to protected

persons; and, the change of use from nursing home to provide accommodation for accommodation to protected persons in relation to the relevant Article 9 restrictions. I am of the opinion that the restrictions on exempted development do not apply in respect of the change of use. With this in mind, I consider that a number of the restrictions are not applicable given the scope of the referral question(s) before the Commission i.e. the change of use of the existing building. Nevertheless, I refer to the following provisions below in the interests of clarity:

9.4.3. With respect to Article 9(1)(a)(i) which relates to the contravention of a condition attached to a permission, I refer to Condition 2 of Reg. Ref. 01/1205 which relates to the conversion of the second floor of existing building to nursing use from residential use which states that, *'The use permitted shall only be used as a nursing home and not for any other purpose'.* I note that the initial referrer makes the case that there are no planning conditions preventing the future change of use of the building and makes reference to a previous Section 5 declaration from Kildare County Council (ED/1233) which confirms that the proposal would not contravene previous conditions. In my opinion, I am of the view that Condition 2 of Reg. Ref. 01/1205 does restrict the use on the second floor of the subject building to a nursing home. That said, the proposed exemption arises from the very basis of change of use which is specifically allowed by way of an exemption in legislation i.e. the change of use from a residential institution providing overnight accommodation as per Class 14(h) of the aforementioned Regulations or, the temporary use of any structure or part of a structure used as medical and other health and social care accommodation as per Class 20F of the aforementioned Regulation. As such, I am of the view that a change of use envisaged by a particular exemption set out in legislation does not contravene a condition which restricts a use.

9.4.4. In relation to Article 9(1)(a)(viiB), I note that the initial referrer appended Appropriate Assessment Screening and Environmental Impact Assessment Screening for the proposal and I refer the Commission to my determinations in relation to Appropriate Assessment and Environmental Impact Assessment as set out in this report. In addition, Article 9(1)(a)(viii) relates to the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. I note there is unauthorised development on the

site and this relates to works carried out on the curtilage of the site. However, I am satisfied that the building itself is not an unauthorised structure or is a structure subject to unauthorised use. Furthermore, in relation to Article 9(1)(a)(xii) which relates to the carrying out of works to the exterior of a structure, where the structure concerned is located within an Architectural Conservation Area and the development would materially affect the character of the area; I acknowledge that the subject site is located within the Kilcock Architectural Conservation Area. However, having regard to referral before the Commission, I am of the view there will be no works to exterior of the building. Whilst I acknowledge the submitted plans illustrate a terrace area from a proposed dining room; this element of works will not affect the subject structure. As such, I am satisfied the proposal would not materially affect the character of the area.

9.4.5. Accordingly, it is my opinion that the exemption of Class 14(h) of Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended) is available in respect of referral before the Commission and that Article 9 would not de-exempt the exemption(s) available under Class 14(h) of the aforementioned regulations.

9.5. **Additional/Supplementary Questions from Planning Authority**

9.5.1. In relation to the additional questions posed by the Planning Authority, I consider it prudent to respond to each question individually and separate to my consideration of the main Question(s) for which a determination is requested. In the interest of clarity, I have addressed each supplementary question from the Planning Authority in order of how they have been presented. My responses are set out as follows:

Question 1 - Can the applicant avail of two different planning exemptions, Class 14(h) and Class 20F, for proposed change of use on the same floor at the same time?

9.5.2. In my consideration of this question, I am of the opinion that there is no planning legislation which inhibits or precludes an applicant/referrer from seeking more than one category of exempted development class within the same request for a Section 5 Declaration.

Question 2 - Would the proposed change of use materially affect the character of (a) the structure and (b) any element of the structure, which contributes to its special architectural, historical, cultural or social interest?

9.5.3. I have addressed this matter in section 9 of this report. Whilst I acknowledge that that question(s) before the Commission relates to a change of use of the subject building, a review of the totality of the documentation submitted with the referral, notably the planning drawings, includes reference to internal works to the building to facilitate the change of use. Whilst I am of the consideration that a change of use, in itself, would not materially affect the character of the structure or any element of the structure which contributes to its special architectural interest; the works proposed to be undertaken, which include subdivision of rooms and other reconfiguration works cannot be decoupled from the overall question(s) asked by the initial referrer. The change of use would avail of the benefit of the proposed works and it is my view that the level of detail provided with the file does not satisfactorily demonstrate that said works would not materially affect the character of the subject building, a Protected Structure, or any element of this building which contributes to its special architectural, historical, cultural or social interest.

9.5.4. As a matter of further consideration and in the interests of clarification, I acknowledge that other works have been carried out within the curtilage of this Protected Structure (including but not limited to the erection of gates/fencing). However, I am of the opinion that these works can be decoupled from the question(s) currently before the Commission on account that the questions relate strictly to the change of use of the building and not the wider grounds/curtilage.

Question 3 - Is the development not exempt having regard to active planning enforcement on the subject site?

9.5.5. In addressing this question, I would state from the outset that issues of any apparent unauthorised development are a matter for the Planning Authority and outside of the remit of the Commission for consideration in this referral. I acknowledge from review of the site history that there has been previous planning enforcement action on the subject site and that there is currently live enforcement action (Ref. UD8830) pertaining replacement of gates/fencing on

the site along with ongoing works to the building. Based on the information available on file, I do not consider that elements referred to in the active enforcement proceedings are applicable to the change of use. I have also outlined in this regard that the Article 9 restriction of exemption is not applicable as the subject building itself is not deemed to be unauthorised or is not currently subject to an unauthorised use.

10.0 Appropriate Assessment (Screening)

10.1. I have considered the subject referral in light of the requirements S177U of the Planning and Development Act 2000 (as amended). The subject site is located in a built-up urban area and is not located within or immediately adjoining any designated Natura 2000 sites.

10.2. The question(s) of this referral relates to the whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons; the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons; or, the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants, is or is not exempted development.

10.3. The nearest designated site is the Rye Water Valley/Carton Special Area of Conservation (Site Code: 001398) which is approximately 6.3km from the subject site. Other European Sites within 15km of the site include which include the Ballynafagh Lake Special Area of Conservation (Site Code: 001387) and the Ballynafagh Bog Special Area of Conservation (Site Code: 000391).

10.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment as there is no conceivable risk to any European site. The reasons for this conclusion are as follows:

- The scale and nature of the works/change of use to an existing building in a built-up urban area; and,
- The distance to the nearest European site and the lack of direct connections (the subject site is in an urban location and there is no watercourse adjoining the subject building).

10.5. I conclude on the basis of objective information, that the subject development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (Stage 2) under Section 177V of the Planning and Development Act 2000 (as amended) is not required.

11.0 **Environmental Impact Assessment (EIA) Screening**

11.1. The subject referral relates to – (1) whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted development; (2) whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not exempted development; and, (3) whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development.

11.2. The proposed change of use does not come within the definition of a 'project' for the purposes of EIA, i.e. it does not comprise construction works, demolition or intervention in the natural surroundings. However, any proposed internal works to facilitate the change of use would come within the definition of a 'project'. These subject works are not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning & Development Regulations, 2001 (as amended), or Part V of the 1994 Roads Regulations. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination.

11.3. Please refer to Form 1 in Appendix 1 of this report.

12.0 **Recommendation**

12.1. I recommend that the Commission should decide this referral in accordance with the following draft order:

WHEREAS a question has arisen as to: (1) Whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted

development. [Class 14(h)]. (2) Whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not considered exempted development. [Class 14(h)]. (3) Whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development [Class 20F].

AND WHEREAS Frostbreak ULC requested a declaration on this question from Kildare County Council and the Council did not issue a declaration.

AND WHEREAS Kildare County Council referred this declaration for review to An Coimisiún Pleanála on the 7th day of January 2016:

AND WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to –

(a) Section 2(1) of the Planning & Development Act, 2000 (as amended),

(b) Section 3(1) of the Planning & Development Act, 2000 (as amended),

(c) Section 4(1)(h) of the Planning & Development Act, 2000 (as amended),

(d) Section 4(2) the Planning & Development Act, 2000 (as amended),

(e) Section 4(3) of the Planning & Development Act 2000 (as amended),

(f) Section 57(1) of the Planning & Development Act 2000 (as amended),

(g) article 5, article 6(1) and article 9(1) of the Planning & Development Regulations, 2001 (as amended)

(h) Class 14 of Part 1 of Schedule 2 to the Planning & Development Regulations, 2001 (as amended),

(i) Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended),

(j) the planning history of the site,

(k) The documentation on file from the Planning Authority and the referrer.

(l) the nature, extent and purpose of these works,

(m) the pattern of development in the area,

(n) the report and recommendation of the Inspector.

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) the change of use constitutes 'development' within the meaning of Section 3 of the Planning & Development Act 2000 (as amended),

(b) the change of use of the ground and first floor of the building at 'Shalom Nursing Home', Church Street, Kilcock, Co. Kildare from use as a convent to use as accommodation for protected persons is exempted development as it comes within the scope of Class 14 – Part 1 of Schedule 2 – 'Exempted Development - General' inserted by The Planning and Development (Amendment) (Number 4) Regulations 2015 (S.I No 582/2015),

(c) the change of use of the second floor of the building at 'Shalom Nursing Home', Church Street, Kilcock, Co. Kildare from use as a nursing home to use as accommodation for protected persons is exempted development as it comes within the scope of Class 14 – Part 1 of Schedule 2 – 'Exempted Development - General' inserted by The Planning and Development (Amendment) (Number 4) Regulations 2015 (S.I No 582/2015),

(d) on the basis of the information contained on the subject file, there is no evidence that the temporary change of use of the second floor of the building at 'Shalom Nursing Home', Church Street, Kilcock, Co. Kildare from use as a nursing home to accommodate or support displaced persons or persons seeking international protection is by or on behalf of the Minister for Children, Equality,

Disability, Integration and Youth. As such, it is not considered that the temporary change of use comes within the scope of Class 20F - Part 1 of Schedule 2 – 'Exempted Development - General' of the Planning & Development Regulations, 2001 (as amended),

(e) notwithstanding the wording of the question(s) as submitted to the Local Authority (in terms of whether or not the specific changes of use constitute development), the documentation submitted voluntarily with the initial referral to Kildare County Council clearly details works to be carried out within the building, a Protected Structure. These works constitute development within the meaning of Section 3 of the Planning & Development Act 2000 (as amended),

(f) the change of use will avail of the benefit of these works and it has not been satisfactorily demonstrated in the level of detail provided by the initial referrer that the carrying out of the said works does not materially affect the character of the Protected Structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. These works cannot therefore be determined as being not exempt development under Section 57 of the Planning and Development Act 2000 (as amended).

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 of the Planning & Development Act 2000 (as amended) hereby decides that the change of use of use of the ground and first floors of the existing building from use as a convent to use as accommodation for protected persons; and, the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons at the property addressed as 'Shalom Nursing Home', Church Street, Kilcock, Co. Kildare is development and is not exempted development. The temporary change of use of the second floor of the building from use as a nursing home to

accommodate or support displaced persons or persons seeking international protection by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth, as per the provisions of Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) at Shalom Nursing Home', Church Street, Kilcock, Co. Kildare is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Planning Inspector

18th September 2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-324005-26
Proposed Development Summary	(1) Whether the change of use of the ground and first floors of the building from use as a convent to use as accommodation for protected persons, is or is not exempted development. [Class 14(h)] (2) Whether the change of use of the second floor from use as a nursing home to use for the purpose of providing accommodation for protected persons, is or is not exempted development. [Class 14(h)] (3) Whether the change of use of the second floor of the building from use as a nursing home to use for the purpose of providing accommodation for international protection applicants is or is not exempted development. [Class 20F]
Development Address	Shalom Nursing Home, Church Street, Kilcock, Co. Kildare
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. Note: The change of use is not a 'project' but any internal works to facilitate the change of use would be deemed a project.
	☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. **EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.**	State the Class here
☒ No, it is not a Class specified in Part 1. Proceed to Q3	

3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. **No Screening required.**	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. **EIA is Mandatory. No Screening Required**	**State the Class and state the relevant threshold**
☐ Yes, the proposed development is of a Class but is sub-threshold. **Preliminary examination required. (Form 2)** **OR** **If Schedule 7A information submitted proceed to Q4. (Form 3 Required)**	**State the Class and state the relevant threshold**

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	**Screening Determination required (Complete Form 3)**
No ☒	**Pre-screening determination conclusion remains as above (Q1 to Q3)**

Inspector: _____ **Date:** _____