Kildare - E.C.

Ronan Megannety

From: David Ferguson <dferguson@johnspainassociates.com>
Sent: Tuesday 3 February 2026 16:58
To: Appeals2
Subject: ACP REG. REF. 324005-26 Response to Referral
Attachments: 24268 ACP REG. REF. 324005-26 Response to ACP Referral 03022026.pdf

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To whom it may concern,

On behalf of the Appellant, Frostbreak ULC, 22 Northumberland Road, Ballsbridge, Dublin 4, we wish to respond to request for submission (dated 8th January 2026) following decision by Kildare County Council to refer the Section 5 declaration request made by Frostbreak ULC the Shalom Nursing Home, Church Street, Kilcock, County Kildare, W23 FH30.

Please find attached detailed response from JSA and enclosed response from Slaterry Conservation Architects (Enclosure 1) and Counsel Opinion prepared by David Browne SC (Enclosure 2).

I would be grateful for acknowledgement of this submission.

Kind regards,

David Ferguson
Senior Planner
M: +353 87 711 5344 | T: +353 1 6625803
Email: dferguson@johnspainassociates.com
www.jsaplanning.ie | Find us on LinkedIn

39 FITZWILLIAM PLACE | DUBLIN 2 | D02 ND61

JSA John Spain Associates
Planning & Development Consultants
Chartered Town Planners

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John Spain Associates
Planning & Development Consultants
Chartered Town Planners

39 Fitzwilliam Place | Dublin 2 | D02 ND61

Tel: 01 6625803
Email: info@johnspainassociates.com
www.jsaplanning.ie

The Secretary,
An Coimisiún Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902

Date: 3rd February 2026
Our Ref: 24268 BC

Dear Sir / Madam,

RE: RESPONSE TO REQUEST FOR COMMENT IN RESPECT OF DECISION BY KILDARE COUNTY COUNCIL TO REFER SECTION 5 DECLARATION REQUEST FOR CHANGE OF USE AT SHALOM NURSING HOME, CHURCH STREET, KILCOCK, COUNTY KILDARE, W23 FH30.

KCC REG. REF.: ED/1305
ACP REG. REF.: 324005-26

INTRODUCTION

On behalf of the Appellant, Frostbreak ULC, 22 Northumberland Road, Ballsbridge, Dublin 4, we wish to response to request for submission (dated 8th January 2026) following decision by Kildare County Council, dated 7th January, to refer the Section 5 declaration request made by Frostbreak ULC the Shalom Nursing Home, Church Street, Kilcock, County Kildare, W23 FH30.

The referral made by KCC includes 3 No. questions as follows:

- *Can the applicant avail of two different planning exemptions, Class 14(h) and Class 20(f), for proposed changes of use on the same floor at the same time?*
- *Would the proposed change of use materially affect the character of (a) the structure, or (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?*

We respond to each question in turn as below.

Please also find enclosed response from Slaterry Conservation Architects (Enclosure 1) and Counsel Opinion prepared by David Browne SC (Enclosure 2).

Managing Director: P. Turley. Executive Directors: R. Kunz | B. Cregan | L. Wymer | K. Kerrigan
Senior Associate Directors: M. Nolan | B. Coughlan | I. Livingstone | C. Healy Associate Director: T. Devlin
John Spain Associates Ltd. trading as John Spain Associates

Registered Address: 39 Fitzwilliam Place, Dublin 2 | Directors: A. Murphy | J. Brennan | P. Turley | T. Gilligan
CRO No. 396306 | VAT No. IE 6416306U

Can the applicant avail of two different planning exemptions, Class 14(h) and Class 20(f), for proposed changes of use on the same floor at the same time?

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 and nor is there a statutory preclusion on separately identifying constituent but discrete parts of a building unit for the purpose of a Section 5 Declaration.

As set out in Legal Opinion prepared by David Browne SC submitted in the original referral:

"10. However, I note that the request for Section 5 declaration also relies on Class 14(h) with respect to the second floor. 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 and nor is there a statutory preclusion on separately identifying constituent but discrete parts of a building unit for the purpose of a Section 5 Declaration.

11. It is acknowledged that Class 20F is subject to different conditions and limitations to Class 14(h), although are both on relied on for the purpose of this request for a Section 5 Declaration. While the proposed change of use of the second floor comes within the scope of both Classes for the reasons set out in this request, in the event that the Planning Authority determines that either Class applies, this is determinative of the request. It also follows that if the Planning Authority is of the view that only one of Class 14(h) or Class 20F applies, the request should not be refused as they are separate Classes of exempted development in the PDR."

In relation to the above we enclose a further Opinion from Counsel which states that:

"5. In respect of the first query, there is no reason why a person making a request for a declaration under s.5 cannot rely on more than one category of exempted development in the Planning and Development Regulations ("PDR") and there is nothing preclusive in the textual wording of s.5 of the 2000 Act itself which provides that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the PDA 2000, any person may, on payment of the prescribed fee, request in writing from the planning authority a declaration on that question.

6. Furthermore, there is nothing in the PDR which states that only one category of exemption can be relied on in a request for a declaration under s.5 of the 2000 Act, or indeed in a decision by a planning authority, or the Commission on referral, on a request under s.5 and the decision-maker can rely on one or more than class of exempted development in the Act, or the PDR, provided that the corresponding conditions are satisfied and the class of exempted development is not dis-applied…

11. In my view, there is nothing in the wording of either Class 14(h) or Class 20F which would preclude reliance on the other class and indeed in the case of Dromaprop v Leitrim County Council [2024] IEHC 233, the High Court expressly referred in the judgment to both Class 14(h) and Class 20F being available as categories of exemption, subject to any disapplication by Article 9 of the PDR."

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

Please find enclosed response from Slaterry Conservation Architects (Appendix 1) enclosed which states:

"There will be no material impact to the character of the structure or any 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."

We note that the applicant received a Section 5 Declaration from Kildare County Council that internal works carried out were exempt development under KCC Reg. Ref. ED/1267 on 9th September 2025 for the following:

- *Whether the internal works carried out at The Shalom Nursing Home, is or is not exempted development including the following:*
  - *Redecoration;*
  - *maintenance of existing 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*
- *Whether the reinstatement of the cross to front facade (damaged in 2025 storm), is or is not exempted development*

It is important to note that the above internal works were considered exempt development and that no further internal works are proposed to be carried out at the premises.

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

While there is active planning enforcement on the subject site, this does not directly relate to the use of the building itself. No element of the main structure itself is unauthorised. Nonetheless, we address the enforcement notice below.

As set out in accompanying Counsel Opinion:

"In my view, none of the instances of what the Court contends that are unauthorised development (noting that ultimately this is a matter for the Court to decide) come within the scope of Article 9(viii) which concerns works to a structure which itself is unauthorised. Secondly, the instances cited in the Council's letter (even if they did amount to unauthorised development) do not directly relate to the internal use of the Shalom nursing home which is the subject of the request for a s.5 determination. Thirdly, there is no finding that the current use of the ground floor or first or second floors is unauthorised.

Therefore, in my view, the question of dis-application of an exemption by virtue of Article 9(viii) of the PDR simply does not arise. I would also note that any class in the PDR allowing for exempted development must be strictly construed."

Our client received an Enforcement Notice (KCC Reg. Ref. **UD8830** dated 9th October) in regard to:

- *"Replacement of gates to front of site, erection of fencing and gates to front, side and rear of site and all associated works.*
- *Provision of electrical cabinet to the northern side of the property attached to the northern boundary stone wall and all associated works.*
- *Provision of concrete base with water tanks thereon to the rear of the property and all associated works."*

The Applicant has engaged with KCC in relation to each aspect of the notice in order to fully address the matters as further detailed below:. In summary, the first item is subject to a current appeal, the second has subsequently been declared as exempted development and the concrete base and water tanks have been removed to the satisfaction of KCC.

Gates and Fences

The temporary retention of the gates and fences and installation of replacement is now subject of a First Party Appeal to An Coimisiún Pleanála KCC REG. REF.: 25/60841; ACP Reg. Ref. PL-500056-KE therefore all necessary information is with the ACP Inspector.

Further to this, an application for the retention of the removed gates and fences and their permanent replacement has now been submitted to KCC for determination with KCC Reg. 3rd February 2026.

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.

ESB Cabinet

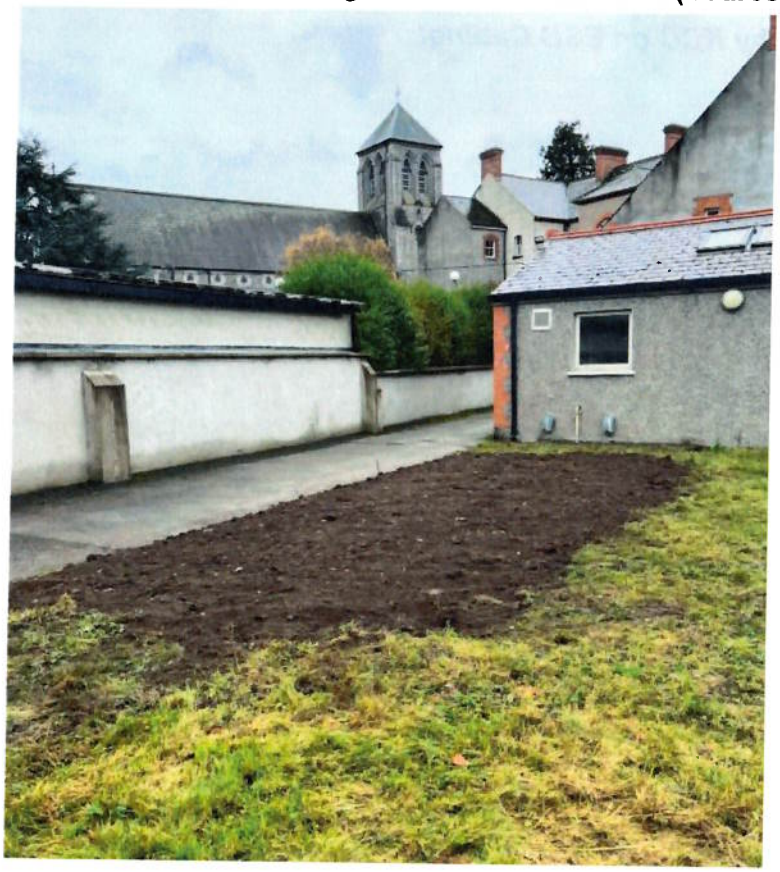
A Section 5 declaration of exempt development was sought under ED1301 in which Kildare County Council determined on the 22nd December 2025 that the installation of an ESB cabinet on the northern side of the property was exempted development under section 4(1) (g) of the Planning and Development Act 2000 (as amended).

Please see letter enclosed received from KCC (Appendix 2).

Concrete Base and Water Tanks

The concrete base and water tanks have since been removed to the satisfaction of KCC please see letter enclosed received 12th November 2025 (Appendix 3).

Figure 1: image following removal of watertanks (Source: Frostbreak ULC, 2026)



In summary, the above works have no direct relevance to proposed change of use subject of this Section 5 declaration request and no further works are required to facilitate the change of use. High Court Judge Richard Humphreys visited the site in 2025.

CONCLUSION

In conclusion it is submitted that the Applicant has appropriately addressed each of the above queries raised by KCC and is in accordance with the provisions of the planning and development Act is in accordance with the provisions of the Planning and Development Act 2000 (as amended).

Yours Sincerely,

Blaine Cregan

Blaine Cregan
Executive Director, John Spain Associates

Appendix 1: Determination by KCC on ESB Cabinet

Comhairle Contae Chill Dara
Kildare County Council

Date: 22nd December 2025
Our Ref: ED/1301

REC
19 JAN 2026

Frostbreak ULC,
c/o John Spain Associates
39 Fitzwilliam Place
Dublin 2
D02 ND61

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Shalom Nursing Home, Church Street, Kilcock, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on 14th November 2025 and 26th November 2025 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 (as amended) in this regard.

Yours sincerely,

PP
Senior Executive Officer,
Planning Department.

Comhairle Contae Chill Dara
Kildare County Council

Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended).

ED/1301

WHEREAS a question has arisen as to whether the installation of ESB cabinet on northern side of property at Shalom Nursing Home, Church Street, Kilcock, Co. Kildare, is exempted development

AS INDICATED on the plans and particulars received by the Planning Authority on 14th November 2025 and 26th November 2025

AND WHEREAS Frostbreak ULC requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

(a) Planning and Development Act 2000 (as amended) and
(b) Planning and Development Regulations 2001 (as amended); and
(c) Documentation received with the application

AND WHEREAS Kildare County Council has concluded that the development comprises works to which the provisions of the following applies:

(a) Section 2, 3, 4, 5 and 57 (1) of the Planning and Development Act 2000 (as amended)
(b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
(c) The Nature, extent and purpose of the works.

NOW THEREFORE Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the installation of ESB cabinet on northern side of property at Shalom Nursing Home, Church Street, Kilcock, Co. Kildare **IS development and IS EXEMPTED development** pursuant to Section 4(1)(g) of the Planning and Development Act 2000 (as amended).

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Coimisiún of the prescribed fee, refer a declaration to An Coimisiún Pleanála within 4 weeks of the issuing of the decision.

22nd December 2025

pp **Senior Executive Officer,**
Planning Department.

Appendix 2: Response from KCC Enforcement Regarding Water Tanks

Comhairle Contae Chill Dara
Kildare County Council

Planning Departme
PLANNING CONTROL SECTION
045-980839

Our Ref. UD8830 (Please quote this reference in future correspondence)

12th November 2025

David Ferguson
39 Fitzwilliam Place,
Dublin 2,
D02 ND61.

RECEIVED
14 NOV 2025

RE: Unauthorised Development at – Shalom, Church Street, Kilcock, Co. Kildare

Dear Sir/Madam,

I hereby acknowledge receipt of your correspondence dated 10th November 2025 and confirm that your compliance with Item 3 of the Enforcement Notice has been duly noted on file.

Yours sincerely,

Q. Heavey

Senior Executive Officer,
Planning Department.

ENCLOSURE 1: RESPONSE FROM SLATERRY CONSERVATION ARCHITECTS

DAVID SLATTERY – Architects – Historic Buildings Consultants

8, Vergemount, Clonskeagh, Dublin 6, Ireland. Tel:+353(1) 2697344 Fax: +353 (1) 2604098

www.slatteryconservation.ie *e-mail: info@slatteryconservation.ie*

23rd January, 2026

David Ferguson
John Spain Associates
Planning Consultants
39 Fitzwilliam Place
Dublin 2

Email: dferguson@johnspainassociates.com

Assessment of Impact of Proposed Exempted Use at Shalom, Former Presentation Convent, Kilcock, Co. Kildare - a Protected Structure

Dear David,

This assessment addresses the query raised by An Comisiun Pleanala in relation to the impact of the use of the Protected Structure. The query raised is as follows -

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

There will be no material impact to the character of the structure or any 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. The DoHLGH Guidance notes the following which is relevant in this regard -

"7.3.1 It is generally recognised that the best method of conserving a historic building is to keep it in active use. Where a structure is of great rarity or quality, every effort should be made to find a solution which will allow it to be adapted to a new use without unacceptable damage to its character and special interest. Usually the original use for which a structure was built will be the most appropriate, and to maintain that use will involve the least disruption to its character. While a degree of compromise will be required in adapting a protected structure to meet the requirements of modern living, it is important that the special interest of the structure is not unnecessarily affected. Where a change of use is approved, every effort should be made to

minimise change to, and loss of, significant fabric and the special interest of the structure should not be compromised."

I trust that the above clarifies matters for An Comisiun Pleanala.

Yours sincerely with kind regards,

James Slattery BArch DiplABRCons MRIAI

For

David Slattery Conservation Architects Ltd.

ENCLOSURE 2: COUNSEL OPINION PREPARED BY DAVID BROWNE SC.

COUNSEL OPINION

Querist: **Frostbreak ULC**

Agent: **John Spain and Associates**

Introduction

1. I have been asked to advise on two issues that were identified in a referral by Kildare County Council (the "**Council**") to An Coimisiún Pleanála (the "**Commission**") pursuant to s.5 of the Planning and Development Act 2000 (the **"2000 Act**") which was conveyed in correspondence on 7 January 2026.

2. By way of context, an application was made for an Exempted Development Declaration request, received by the Council on 1 December 2025 (Reference ED1305), regarding a site at Shalom Nursing Home, Church Street, Kilcock, Co. Kildare on the following questions:

    a) *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)]*
    b) *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)]*
    c) *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]*

3. The Council's letter of 7 January 2026 raised the following queries:

    a) Can the applicant avail of two different planning exemptions, Class 14(h) and Class 20(f), for proposed changes of use on the same floor at the same time?

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

c) Is the development not exempt having regard to active planning enforcement on the subject site?

4. I have been asked to address the first and third issues.

Council's Queries

5. In respect of the first query, there is no reason why a person making a request for a declaration under s.5 cannot rely on more than one category of exempted development in the Planning and Development Regulations ("**PDR**") and there is nothing preclusive in the textual wording of s.5 of the 2000 Act itself which provides that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the PDA 2000, any person may, on payment of the prescribed fee, request in writing from the planning authority a declaration on that question.

6. Furthermore, there is nothing in the PDR which states that only one category of exemption can be relied on in a request for a declaration under s.5 of the 2000 Act, or indeed in a decision by a planning authority, or the Commission on referral, on a request under s.5 and the decision-maker can rely on one or more than class of exempted development in the Act, or the PDR, provided that the corresponding conditions are satisfied and the class of exempted development is not dis-applied.

7. In this case, the request for the declaration separately referred to Class 14(h) and Class 20F.

8. Class 14(h) was inserted by the Planning and Development (Amendment) (No.4) Regulations 2015 (S.I. No.582 of 2015) (the "**2015 Regulations**") and specifically applies to a change of use for accommodation for a "protected person', which is defined as (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act 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 s.3 of the Immigration Act 1999, or (c) a programme refugee within the meaning of section 24 of the Refugee Act 1996.

9. Class 20F was inserted by the Planning and Development (Amendment) (No.4) Regulations 2022 (S.I. No.605 of 2022) (the "**2022 Regulations**") and applies to 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. The term '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. The term 'international protection', for the purpose of this class, has the meaning given to it in s.2(1) of the International Protection Act 2015.

10. The insertion of Class 20F by the 2022 Regulations was intended to address a specific category of occupation not catered for in Class 14(h).

11. In my view, there is nothing in the wording of either Class 14(h) or Class 20F which would preclude reliance on the other class and indeed in the case of ***Dromaprop v Leitrim County Council*** [2024] IEHC 233, the High Court expressly referred in the judgment to both Class 14(h) and Class 20F being available as categories of exemption, subject to any disapplication by Article 9 of the PDR.

12. This ties into the second issue I have to address which is whether any exemption is disapplied, having regard to what is described in the Council's letter as "active planning enforcement on the subject site".

13. The letter states that there is a current planning enforcement file on the site (UD8830) and an enforcement notice was issued on 9 October 2025 and refers to the following:

    A. Replacement of gates to front of site, erection of fencing and gates to front, side and rear of site and all associated works.
    B. Provision of electrical cabinet to the northern side of the property attached to the northern boundary stone wall and all associated works.

C. Provision of concrete base with water tanks thereon to the rear of the property and all associated works.

14. The letter also refers to Article 9 of the PDR which outlines restrictions on exempt 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."*

15. In my view, none of the instances of what the Court contends that are unauthorised development (noting that ultimately this is a matter for the Court to decide) come within the scope of Article 9(viii) which concerns works to a structure which *itself* is unauthorised. Secondly, the instances cited in the Council's letter (even if they did amount to unauthorised development) do not directly relate to the *internal* use of the Shalom nursing home which is the subject of the request for a s.5 determination. Thirdly, there is no finding that the current use of the ground floor or first or second floors is unauthorised.

16. Therefore, in my view, the question of dis-application of an exemption by virtue of Article 9(viii) of the PDR simply does not arise. I would also note that any class in the PDR allowing for exempted development must be strictly construed.

17. For example, in ***Dillon v Irish Cement Ltd***, unreported, Supreme Court, 26 November 1986, which concerned an application for an injunction against unauthorised development under s.27 of the Planning and Development Act 1976, Finlay C.J. stated that the Regulations should be strictly construed in the sense that for a developer to put himself within them he must be clearly and unambiguously within them in regard to what he proposes to do, as the Regulations put certain users or proposed development of land into a special and, in a sense, privileged category. This has been cited with approval by the Court of Appeal in ***Doorly v Corrigan*** [2022] IECA 6 (Humphreys J.) and by the High Court in ***North Westmeath Turbine Action Group CLG v Westland Horticulture Ltd. & Ors.*** [2022] IEHC 727 and ***Stapleton v An Bord Pleanála*** [2024] IEHC 3 at para.210.

Conclusion

18. In conclusion, there is nothing in the wording of either s.5 of the 2000 Act or Class 14(h) or Class 20F of the PDR which would preclude reliance on the other class in a request for a declaration under s.5 of the 2000 Act and ultimately, the planning authority, or the Commission on referral, can rely on Class 14(h) and / or Class 20F of the PDR as supporting the request, provided that the specific conditions relevant to those Classes of exempted development apply.

19. In the event that the planning authority, or the Commission on referral, determines that the proposes change of use is exempted development, having regard to Class 14(h) and / or Class 20F of the PDR, based on the papers that I have reviewed, this is not dis-applied by virtue of Article 9(viii) of the PDR.

David Browne SC

28 January 2026