

<u>APPLICATION NO:</u>	25/00260/CLD	<u>CASE OFFICER:</u>	Reece Black
<u>WARD:</u>	Prescot North	<u>PARISH:</u>	Prescot Town Council
<u>LOCATION:</u>	59 Kemble Street, Prescot, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF PROPOSED LAWFUL DEVELOPMENT FOR USE OF PREMISES AS CAFE/JUICE BAR (USE CLASS E (b))		

1.0 Site Description

- 1.1 The application property refers to a two-storey, end-terraced property which presents as a commercial property on the ground floor, with a shop front appearance to the front elevation. The unit is not operational or currently trading. The building benefits from a two-storey rear extension.
- 1.2 The premises is located on a corner plot adjacent to a crossroads. The front elevation fronts Kemble Street and the side elevation faces Aspinall Street. There is a main shopfront entrance to the front elevation, which comprises large shopfront windows and fascia board detailing above the fenestration. There is a separate access taken from the side elevation into the interior of the premises and gated external access to a pathway behind. The side elevation contains a boarded-up window with some fascia board advertisements across the elevation, with what appears as a 'hatched / counter' window with boxed shutters.
- 1.3 The application site is located within Prescot Town Centre and falls within an area which is designated as a Town and Retail Centre in the Development Plan.

2.0 Application (Proposal)

- 2.1 The application 25/00260/CLD ('Application') is made pursuant to s.192 of the Town & Country Planning Act 1990.
- 2.2 The Application relates to the ground floor of the premises of 59 Kemble Street, Prescot, as shown edged in red on the Location Plan.
- 2.3 The Application is dated 22/04/2025 ('the Relevant Date') and is made on behalf of Mr D Fitzpatrick.
- 2.4 The use alleged to be lawful in the application is "*in terms of the use of the Premises, the ground floor of the premises (the application site) operated under Use Class E (Green Deal Energy Limited, then as the Vape Shack) since at least April 2015 (Google Street View) until the Vape Shack ceased*

trading in 2024.” It is claimed that “the ground floor of 59 Kemble Street operated under Use Class E (Green Deal Energy Limited, then as the Vape Shack) since at least April 2015.” Therefore, it is claimed that the use began more than 10 years before. The applicant claims within the Application Form that the uses of the premises, since its purchase in 2006, would all fall within Class E uses; either by the current Use Class Order, or the now defunct Use Class Order 1987.

- 2.5 The Certificate of proposed lawful development is sought as the applicant proposes to carry out minor internal alterations to utilise the floor space to provide a ‘Café and Juice Bar’ premises (Use Class E(b) (Commercial, Business and Services) of the Use Classes Order 1987 (as amended).
- 2.6 The Application is accompanied by the following:
- Application Form – received 22/04/2025
 - Location Plan – received 22/04/2025
 - Planning Statement – received 22/04/2025
 - At the request of the Local Planning Authority to the planning agent for additional evidence, a document titled ‘Supporting Letter’ (provided by one of the Landlords of the 59 Kemble Street) was received (04/08/2025).

3.0 Consultations and Representations

- 3.1 None. There is no statutory requirement to consult third parties including parish councils or neighbours for an application such as this. (Planning Practice Guidance: Lawful Development Certificates – Paragraph 008).
- 3.2 Legal – The Council’s Legal Team were consulted on the contents of the application and have provided advice to assist in the determination of the application.

4.0 Planning History

- 4.1 The Local Planning Authority hold no formal planning history for the site, nor any other information which evidence any previous or established use of the site.
- 4.2 Google Maps Street View Images provide timestamped photographs on a timeline, which at their earliest, go as far back as August 2009 with the most recent being August 2024.
- 4.3 Currently, the premises is vacant, it retains the appearance of a commercial property.

5.0 Relevant Law

- 5.1 The Application has been submitted under S192(1)(a) of the Town and

Country Planning Act (the 'Act').

- 5.2 1) *If any person wishes to ascertain whether—*
 (b) *any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.*
 (2) *If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*
- 5.3 S171B(3) of the Act stipulates that *in the case of any other breach of planning control, no enforcement action may be taken at the end of the period of ten years beginning with the date of the breach.* The legislation therefore affirms that the time limit for unauthorised uses of land for taking enforcement action comprises of ten years.
- 5.4 Where an applicant's case is that the time for enforcement action has expired, they must demonstrate a continuous breach of planning control for at least, in this case, 10 years (*SoSE & Holding v Thurrock BC* [2002] Court of Appeal). It must have been possible for the LPA to have taken enforcement action against the breach for the entire 10-year period i.e. the use cannot have been dormant for long periods of time. Immunity under the 10-year rule only arises if enforcement action could have been taken at any time during the 10 years.
- 5.5 Planning Practice Guidance ('PPG') (Paragraph 009) stipulates that a *Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.*
- 5.6 PPG (Paragraph 003) reiterates that *lawful development is development* against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
- 5.7 PPG (*Paragraph 006*) states that *in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.*
- 5.8 On 1st September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987 (UCO). The amendments created a new broad 'commercial, business and service' use class (Class E) which incorporates amongst others:
- Class A1 (shops),
 - Class A2 (financial and professional services)
 - Class A3 (Restaurants and Cafes)
 - Class B1 (Business)
 - Class D1 (Provision of non-residential institutions)
 - Class D2 (Provision of assembly and leisure)

and includes other uses which it is appropriate to provide in a commercial, business or service locality.

- 5.9 S.57(1) TCPA 1990 states that planning permission is required for the development of land and S.55 states:

"Meaning of "development"

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. (Section 55(2)(f) of the Act provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.

6.0 What the Applicant must prove

- 6.1 The application seeks a certificate which confirms the lawful use of the premises for a cafe/juice bar (use Class E(b)) of the Use Classes Order (as amended). For the proposed use to be lawful:
- (a). The existing use of the premises must be immune from enforcement action; **and**
 - (b). The proposed use must fall within the same use class (in this case Class E), or the change of use must be permitted development.
- 6.2 The onus of proof rests with the applicant. The applicant must provide clear, precise and unambiguous evidence that, on the balance of probabilities, that the proposed use would not constitute development or require planning permission. Therefore, as outlined within the PPG the applicant needs to describe the proposal with sufficient clarity and precision to enable the Council to understand exactly what is involved such that on the balance of probabilities, a certificate for the proposed use can be granted. The 'Relevant Date' is 22/04/2025 and therefore the 'Operative Date' (i.e. 10 years prior to the date of the Application) is 22/04/2015.

7.0 Evidence submitted

The following has been submitted in support of the application:

- A. Planning Statement** – Prepared by the planning agent (Mr M. Carr) on behalf of the applicant (Mr D. Fitzpatrick). Titled ('Planning Statement attached to the proposed use of 59 Kemble Street as a Café (Use Class E(b)) Premises'). Dated 18/04/2025, date received 18/04/2025.

This contains:

- (1.) INTRODUCTION
- (2.) THE APPLICATION SITE AND LAND USE ALLOCATION.
- (3.) PLANNING HISTORY
- (4.) CURRENT USE CLASSES ORDER
- (5.) EXISTING USE/USE CLASS
- (6.) PROPOSED USE/USE CLASS
- (7.) THE PROPOSED USE AND CONCLUSIONS

- B. Supporting Letter** – A written statement, authored by the joint owner and landlord (Mr R. Gregory) of the Premises (59 Kemble Street). Dated 02/08/2025 and signed by the joint owner and landlord, date received 04/08/2025.

- C. Location Plan** – drawing No. 1 titled ('Site Location Plan') (Scale 1:1250) date received 22/04/2025.
- D. Floor Plans** – Drawing No. 2 titled ('Existing and Proposed Floor Plans') (Scale 1:50) date received 22/04/2025.
- E. Google Maps Street View Images** – This evidence has not formally been submitted to the Local Planning Authority by the planning agent or contained formally within the application, but the Planning Statement (Item A), Supporting Letter (Item B) and the submitted Application Form all make reference to this information.

7.1 (Item A) Planning Statement from Agent

- 7.1.1 This document stipulates that *"in terms of the use of the premises, the ground flood of the premises (the application site) operated under Use Class E (Green Deal Energy Limited, then as the Vape Shack) since at least April 2015 (Google Street View) until the Vape Shack ceased trading in 2024."*
- 7.1.2 *Subheading 4. Current Use Classes Order* outlines the changes to the Use Classes Order. Within this section of the Planning Statement, it outlines that with these updates on 1st September 2020, Use Class A1 was revoked and *"effectively replaced within the provisions of the new Class E – Commercial, Business and Service, which have greater clarification to the use of commercial premises and placed many commercial and office uses under the same Use Class umbrella."* It furthers that the *"The knock-on effect of these changes was that Use Class E premises then had greater flexibility in terms of the uses they could operate under, without the need to apply for full planning permission."* The Planning Statement lists the full range of Class E Uses.
- 7.1.3 *Subheading 5. Existing Use/Use Class* reiterates the claim that the ground floor of 59 Kemble Street operated under Use Class E (Green Deal Energy Limited, then as the Vape Shack) since at least April 2015.
- 7.1.4 *Subheading 6. Proposed Use/Use Class* asserts that proposals for the application site comprise only of internal alterations to the floor space to be used as a 'Café and Juice Bar' which would fall within Use Class E(b) (Commercial, Business and Services).
- 7.1.5 *Subheading 7. Proposed Use and Conclusions* concludes that the previous A1 lawful use of the building was revoked by the 2020 update to the Use Classes Order and replaced by Use Class E, the application seeks confirmation that planning permission is not required for the change of use in this instance, due to its previously established lawful use of A1 use.
- 7.1.6 The Planning Statement is not in the form of a statutory declaration or sworn statement. Furthermore, it does not include any independent evidence (notwithstanding the later submitted Supporting Letter (Item B) discussed further in section 7.2), other than reference to Google Maps Street View Images; therefore, can only be awarded limited weight in the consideration of the application.

7.2 (Item B) Supporting Letter

- 7.2.1 The Supporting Letter is a written statement prepared by the joint owner and landlord (Mr. R Gregory) of the premises (59 Kemble Street) to support the application for a Lawful Development Certificate. The letter stipulates that the information provided is a true reflection of the ownership and the use of the premises since it was purchased in 59 Kemble Street in 2006, when its claimed existing use was as a bookmaker.
- 7.2.2 The Supporting Letter asserts that when the purchase was completed, the premises was sub-divided into two shops, with the front of the premises selling energy efficiency products and supplies, whilst the back of the premises was used as a hairdresser / barber until December 2015. Access to the hairdresser / barber was taken via Aspinall Street, whilst access to Energy Green Deal Ltd was taken from Kemble Street. This corroborates with the two separate entrances to the premises.
- 7.2.3 It is claimed that the combined use of the premises as a hairdresser / barber included customer services and sales (by the use as a hairdressers / barbers), the sale of energy efficiency products, online orders, storage, office space and site services to install energy efficiency home products. At its peak, the 2 uses employed 6 members of staff. Despite the claim laid out in point 2 of the Supporting Letter which provides some description of the operations, however, there is still a large amount of ambiguity on whether these uses would lend themselves to strictly an A1, A2, B1 or a mixed / sui-generis use.
- 7.2.4 The Supporting Letter states that the hairdressers / barber use of the rear part of the premises ended in 2013 and was replaced by the Vape Shack business and continued the mixed use with the Vape Shack and Energy Green Deal Ltd up until 2015 when the combined / mixed use ceased and the use of the entirety of the premises as the Vape Shack began in May 2015 (which is supported on Google Street Scene). Paragraph 5 states that "The use of the whole premises as the Vape Shack included the sale of vape related products from the shop and online, with the premises also being used for related internal storage of office space." The Supporting Letter appears to contradict itself between points 2 and 4, as point 2 stipulates that the combined use as the hairdresser/barber and energy efficiency premises finished in 2015 and point 4 states that the hairdressers/barber use of the rear part of 59 Kemble Street ended in 2013.
- 7.2.5 The Supporting Letter concludes that the use of 59 Kemble Street as the Vape Shack ended in March 2024. The Supporting Letter is dated 02/08/2025 and signed by R. Greogry. This letter is not in the form of a statutory declaration or sworn statement. Moreover, this letter is not supported by any further or new evidence which further substantiates the claim of the application as originally submitted. The letter echoes references to Google Street Scene, however, as the main and limited foundations to substantiate the application, it is limited in weight given that there is no further evidence. There is reference to a hairdresser / barber, which is the first mention of this use, however, more importantly, there is no evidence to further verify this. The letter appears to contradict itself regarding dates of when the alleged hairdressers / barbers concluded (as discussed in the above paragraph). Furthermore, there is no evidence to support when the premises in its entirety was used as the Vape Shack; it is not until September 2016 that Google Maps Street View Images evidences the entirety of the premises is utilised as the business 'Vape Shack', prior to this it appears from Google Street View

the premises retained its mixed use up until at least November 2015.

- 7.2.6 Although the Supporting Letter claims that the use of the whole premises as the 'Vape Shack' started shortly after in May 2015 and that this is confirmed on Google Street Scene. This is inaccurate as November 2015 on Street View Data still shows the same shopfront for 'Energy Green Limited'. Therefore, this is nothing to substantiate or support the claim that the use began any earlier than September 2016.
- 7.2.7 In summary, the Supporting Letter contains discrepancies (with itself and the other supporting information) and inaccuracies which appear to muddle the application. The letter does not provide any further evidence to demonstrate the claims asserted and paired with the fact it is not a sworn statement or Statutory Declaration it is considered that this document can only be afforded very limited weight.

7.3 (Items C & D) Location Plan and Floor Plans

- 7.3.1 The submitted plans submitted in support of the application do not contribute any significant weight. The floor plans show the internal layout of the ground floor of the premises, however, the only difference in any annotations is limited to the titling of 'Retail Shop Floor – Use Class E (a)' for the ground floor plan as existing in contrast to the titled 'Café/Juice Bar – Use Class E (b)' for the ground floor plan as proposed. This is the only difference between the two plans. Furthermore, the floor plan submitted is not a historic or previously approved document. Therefore, this holds little to no weight and provides only a diagram to illustrate the written claims of the Planning Statement (Item A) and Supporting Letter (Item B). The Location Plan offers no additional information and consequently, also holds little to no weight.

7.4 (Item E) Google Maps Street View Images

- 7.4.1 As outlined, the applicant has not formally submitted these within the application but the documents supporting the application have made explicit reference that these form a central base to evidence their claims for the previous uses. Google Maps Street View Images provide some photographic evidence with timestamps beginning August 2009. This forms much of the evidence that the applicant has used as a foundation to base their application.
- 7.4.3 **August 2009:** the premises appeared to be empty but the ground floor, front elevation (fronting Kemble Street) was glazed, and the premises had the appearance of a commercial property with a shopfront as its front elevation.
- 7.4.4 **April 2015:** The front of the premises was occupied by Energy Green Deal Ltd, a business which offered solar panels, boiler replacements and loft insulation using Eco-Grants. The nature of the business (evidenced by the signs in the windows which advertise that the business was recruiting self-employed door to door canvassers, offering free home energy efficiency services, free energy comparison advice, eco grants and for interested parties to apply within) indicates that the premises were likely to be used as an office at the time. Furthermore, the frontage of the premises presents more akin to

an office use rather than a shop. To the side elevation of the premises, fronting Aspinall Street, there is evidence of a fascia sign above the window for 'Vape Shack' along with a freestanding signage to advertise the business.

- 7.4.5 **As early as November 2015 (first appearance on Street view images is September 2016) to at least August 2024:** the premises were in use as a vape store 'Vape Shack' to the front and side elevations of the building (with the use of Energy Green Deal appearing to have ceased). There are no google street view images of the premises in the period between November 2015 to September 2016.
- 7.4.6 Google Maps Street View Images do provide images that are clear and are considered to be good-quality, independent evidence which should be afforded some weight. The photographic evidence (Google Maps Street View Images) does provide a timestamped timeline which show the uses throughout the years and do hold some weight. Although, given that these are simply snapshots of the premises exterior, they provide limited detail on the logistics and operations of the business' located at the premises and subsequently, only limited weight can be awarded to these. Furthermore, with the absence of any further additional information to corroborate with these images, this further restricts the weight which can be awarded to these photographic images.

8.0 Analysis

- 8.1 As a preliminary point to section 8.0 of this report, the LPA does not dispute the opinion that a vape shop would fall within Class E use of the updated Use Class Order (2020) and formally, prior to the amended order, would fall within a Class A1 use. This is further supported by an Appeal Decision for (APP/R3515/X/23/3332449) in which the Inspector affirmed that the vape shop would be within Class E. The use of a café / juice bar would be deemed to fall within Class E given that it would involve the sale of food and drink principally to visiting members of the public.
- 8.2 The Local Planning Authority hold no formal record of any lawful use of the site. The use of the premises as Energy Green Deal Ltd is not substantiated or evidenced and therefore remains ambiguous and unclear. Based from the Google Maps Street View Images, the nature of the business appears to be of more akin to office use at the time and therefore office use within a town centre (under the previous use classes prior to the revisions on 1st September 2020) would have been Class B1(a) or possibly A2 (if services were provided principally to visiting members of the public). The Supporting Letter suggests it is a shop, apart from reference in this letter, no evidence has been submitted to support the use of Energy Green Deal as a shop. The Planning Statement states that the premises has operated as a shop (selling energy efficiency products and supplies) whilst the Application Form asserts that Energy Green Deal Ltd fell within Class E use, however, other these references, no clear evidence has been submitted to support the claim that the use of Energy Green Deal Ltd as a shop. This is discussed in points 7.2.2 and 7.2.3 with reference to the Supporting Letter.
- 8.3 There is insufficient evidence about the use by Energy Green Deal Ltd to

determine which use class the premises were in during their occupation. There is no evidence to show that the use of the premises by Energy Green Deal Ltd in 2015 had planning permission or was otherwise lawful. Therefore, because of this, the Local Planning Authority is not satisfied that sufficient evidence has been provided to establish how the premises was used by Energy Green Deal Ltd and subsequently, whether there is a lawful use of the premises or not.

- 8.4 Although the application has presented their case within the Planning Statement that these uses of Energy Green Deal Ltd and the Vape Shack uses would fall within A1 (shop) of the former Use Classes Order and that now these would constitute uses within Class E. As stated, it is claimed within the Supporting Letter that the use of Energy Green Deal Ltd was used as shop. Therefore (in the applicant's opinion) the use of the premises as a Class E use would be lawful, and a Certificate of lawful development should be granted.
- 8.5 In the case of (APP/R3515/X/23/3332449), in which an application for a 'Certificate of lawful use (existing) of premises as a vape shop from previous use as a beauty salon and display of advertisements with deemed consent' ascertained (point 15) that the lawfulness of the use as a beauty salon must be determined by reference to the Order as in force at the time the use was instituted. It does not matter that Class A1 was later incorporated into Class E and that a beauty salon could now fall within Class E. The appeal decision established that the use before the 2020 Regulations were enacted remained relevant.
- 8.6 In the case of R. (on the application of Harbrige) v Secretary of State for Communities and Local Government it was held that s55(2)(f) should not be read as if the word 'lawfully' had been inserted into it. In that case it was held that after ten years, no enforcement action could be taken against a use that fell within the then class D1. A change of use that did not constitute development within the ten-year period did not restart the clock.
- 8.7 Therefore, for the consideration of this application, between 15th April 2015 and 1st September 2016 planning permission was not required for a change of use from A2 to A1, however was required for a change of use from B1 to A1. It is cardinal to understand the nature of the use of the premises by Energy Green Deal Ltd to fully determine the implications this would have on the application. If Energy Green Deal Ltd was an A2 use and commencement more than 10 years before the 'Relevant Date' (22 April 2025) the premises may have acquired a lawful use, however, if it was a B1 use, then a 'new chapter' in the planning history of the premises / site would have commenced when the Vape Shack commenced operation (sometime between November 2015 and September 2016 – as an A1 use), planning permission would have been required and the 'enforcement clock' would have begun again. As outlined previously within the report, the applicant has not provided any clear, precise and unambiguous evidence to establish that the business of Energy Green Deal Ltd would fall within Class A1 or A2. If Energy Green Deal Ltd was evidenced that it could be classed as an A1 use this would not have required permission to change to an A2 use.
- 8.8 The planning agent was offered an opportunity to submit further information and evidence to provide some clarification to this issue to ascertain the use class of Energy Green Deal Ltd and whether this would fall under B1(a) or A2

of the former Use Class Order. This provided the opportunity to comment and substantiate the application and although the Supporting Letter was provided, as addressed within point 7.2 of this report, it is considered that this statement does not provide any substantially clear, precise and unambiguous evidence to establish the use class or how the business operated and functioned and therefore the Supporting Letter does not provide sufficient clarity which would enable the LPA to confidently assess and determine whether or not there is a lawful use of the premises or not such that the certificate of proposed use can be granted. In line with the PPG (Paragraph 005), which states *without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.*

- 8.9 There are inconsistencies between the supporting evidence provided. As outlined, the Supporting Letter states at paragraph 2 that the premises had been turned into two shops (front and back) 'with the front of the premises selling energy efficiency products and supplies whilst the back was used as a hairdresser / barber until December 2015'. Paragraph 4 states that use as a hairdresser / barber ceased in 2013 and that the 'combined use of the premises from 2013 to May December 2015 included the Vape Shack and Energy Green Deal'. It further states that the 'combined use of 59 Kemble Street ended in December 2015'. It is noted that in paragraph 5 it states that the whole premises as the Vape Shack 'started shortly after in May 2015'. This contradicts with the Planning Statement, which states that 'in terms of the use of the premises, the ground floor of the premises (the application site) operated under Class E (Green Deal Energy Limited, then as the Vape Shack) since at least April 2015 (Google Street View) until the Vape Shack ceased trading in 2024'. The Google Street View Image from April 2015 Energy Green Deal is located to the front of the premises with Vape Shack situated to the rear. The accounts of what has taken place at the premises are inconsistent. Notwithstanding these inconsistencies, no evidence has been submitted in respect of these alleged separate uses to conclude whether the planning unit was the entire premises meaning that until a point in 2015 the site may have been in composite use or whether two planning units existed side by side.
- 8.10 For the consideration of mixed use, the case of *Wipperman v Barking LBC* [1965] 17 P&CR 225 was concerned with a 'change of use from a mixed use comprising: (a) storage of farming materials; (b) storage of building materials' and (c) car breaking and storage of car parts to a single use for storage of building materials. In this instance, the Court held that if uses (a) and (c) had ceased and use (b) had been maintained at its former intensity that no material change of use would have occurred, but on its facts use (b) had taken over the whole of the planning unit to the exclusion of the other uses, which resulted in a material change in the character of the use.'
- 8.11 As set out above, the information provided to furnish the application is contradictory. The submitted plans do not show any physical divides to suggest that the internal area was physically separate and therefore could mean that the vape store and energy green deal was a composite use. It would be considered that given the size of the unit it would make it plausible to consider the unit as a composite use where the businesses within the unit operate functionally separate but not physically separate, however, given that the only evidence is of the exterior of the building, this point is founded on inference.

- 8.12 The alleged use of the premises as a hairdressers / barber was not brought to light until the Supporting Letter was received 04/08/2025. This further complicates the determination of the application (particularly given the absence of any further evidence). The potential for the mixed use furthers the ambiguity and uncertainty associated with the use of the premises.
- 8.13 Given the mixed uses which are alleged to have occurred at the premises, the ceasing of Energy Green Deal and the sole claimed sole use by the Vape Shack may have resulted in a material change of use / a new chapter in the planning history.
- 8.14 Ultimately, there is insufficient evidence to establish how the premises was used by Energy Green Deal Ltd and subsequently, whether there is a lawful use of the premises or not. It is this for this reason, that the LPA would not be able to grant a Certificate of Lawful Development. As outlined in Paragraph 009 of the PPG *a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.*

Conclusion

The application has not provided sufficient and substantive evidence which is considered precise and unambiguous to justify the granting of the Certificate of Lawful Development due to the ambiguity of the former use as Energy Green Deal. Consequently, the LPA cannot consider that the applicant has provided adequate evidence to support the application and despite the opportunity to submit further evidence, no convincing, sufficient and unambiguous evidence has been provided to the satisfaction of the LPA to allow the granting of a Certificate of Lawful Development; therefore, the application should be refused. It has not been sufficiently demonstrated or evidenced that a continuous 10-year period of uses of the premises which are within the same use class in which the proposed use would not require planning permission or have obtained immunity from enforcement action by the passage of time has been demonstrated.

The LPA has discussed these areas of concern with the planning agent and have provided a more than reasonable timeframe to provide further information to substantiate their assertion.

Recommendation

That a Certificate of Lawfulness should be refused as the application has failed to present sufficiently clear, precise and unambiguous evidence to demonstrate on the balance of probability that the use for any purpose in Class E is lawful. While the Use Class of the Vape Store is considered to be Class E, the Use Class to the prior business Energy Green Deal Ltd, as outlined within the Officer Report, has not been sufficiently evidenced to substantiate with certainty that the use falls within an A1 Use Class of the former Town and Country Planning (Use Classes) Order 1987 (as amended) or an A2 Use Class such that a change of use to A1 would have been permitted. As a result, it has not been sufficiently evidenced that a continuous 10-year period of uses of the premises which are within the same use class in which the proposed use would not require planning permission or would have gained immunity from enforcement action by the passage of time has been demonstrated. Therefore, the application should be refused.

Signed Case Officer¹: Reece Black

Signed Authorising Jo Sheridan
Officer²: _____

Date: 05/09/2025

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed