

Appeal Decision

Site visit made on 8 June 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 15th June 2026

Appeal ref: APP/A0665/X/26/3377635

11 City Walls, Chester, Cheshire CH1 1LD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against the failure by Cheshire West and Chester Council to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
- The appeal was made by Abbey Square Limited.
- The application, dated 24 November 2025, was validated by the Council on 3 December 2025, ref: 25/03688/LDC. The application was not determined within the prescribed period.
- The Application for a Certificate of Lawful Development was for: Lawful Development Certificate to establish that the use of the land at 11 City Walls has been used for mixed commercial purposes (including displaying and selling goods, artisan demonstrations/production, and seating) openly and continuously as part of one planning unit for more than 10 years.

Summary of decision: The appeal fails. A Certificate of Lawfulness is not issued.

Appeal site

1. The Chester City Walls are a 3.2 km historic defensive circuit encompassing the medieval centre of the city of Chester. The appeal land as shown on the lawful development certificate, (LDC), application contains the building at No. 11 City Walls, the paved forecourt and adjoining stepped area and that section of the public footpath on the top of the Walls outside the shopfront of No. 11 City Walls, Chester.

Appellant's case

2. Mr Neil Chesters, director of the Appellant Company, Abbey Square Limited, said the application land was physically distinct and readily identifiable on the ground. To the north there was a visible grid line within the floor surface; it adjoined the Old Bank Buildings to the east; to the south a stone retaining wall formed the southern boundary of the forecourt area; to the west the shopfront of No. 11 City Walls, together with the paved steps to the south and west and to the east by the boundary with the Old Bank Buildings and the retaining wall from the lower floors of 60 Eastgate Street /11 City Walls. Those features were said to create a clear and physically distinguishable forecourt and stepped area that formed part of the immediate curtilage and functional setting of No. 11 City Walls.
3. Mr Chesters provided some historical background based upon his own experiences of the appeal property. He said that during the 1980's his parents were antique dealers and collectors. He recalled visiting the antiques shop then operating at No. 11 City Walls. There had been a long-established mixed commercial use of the application forecourt at No. 11 City Walls, Chester. The forecourt had formed an integral part of the trading activities carried out at the property for several decades. They included the display and sale of goods, (antiques, artwork, cards, crafts and other items) and artisan demonstration and production on the forecourt, (including embroidery, painting and

similar activities undertaken daily by previous occupants). There was associated seating and occupation of the forecourt connected with those activities and used by operators and customers. That activity had been openly and continuously carried out on the forecourt by successive occupiers over many years. They had always formed part of a single planning unit with the internal areas used for related retail, storage and display.

4. The current use of the premises fell within Class E of the Town and Country (Use Classes) Order 1987 as amended, (the Order). It continued the same commercial pattern, with seating on the forecourt remaining associated with and ancillary to the lawful commercial operation. That use had occurred on the forecourt for well in excess of 10 years.

Inspector considerations

5. Class E (Commercial, Business and Service) to the Order was introduced in England on 1 September 2020. It consolidated several previously distinct use classes into a single, highly flexible category. Moving between uses within Class E does not require planning permission, allowing high streets and business hubs to adapt more easily. The Order at Article 3, Schedule 2 PART A Commercial, Business and Service Class E. Commercial, Business and Service describes: Use, or part use, for all or any of the following purposes:
 - (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,
 - (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
6. In considering an application for an LDC, the onus is on an appellant to make out their case to the standard of the 'balance of probabilities'. Their evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. The case of *Gabbitas v SSE & Newham LBC* [1985] JPL 630 is authority for that position. Similarly, in the context of a ground (d) appeal against an enforcement notice, it is for the appellant to take care to provide sufficient evidence which meets the balance of probabilities test. It is not for an Inspector to seek out evidence or draw an inference from gaps in evidence - *Ravensdale Limited v SSCLG* [2016] EWHC 2374 (Admin).
7. Accordingly, and since an LDC cannot be subject to conditions, an application must relate to a specific use, operation or breach of condition. It is not open to an applicant to pose a general enquiry as to what is or might be lawful. S.191(5)(b) provides that where the existing use is within a class specified in an order under s.55(2)(f) – meaning the Order – the LDC should describe the use by reference to that class. However, Inspectors should not describe the use solely or entirely on that basis. The PPG advises that: 'Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it...a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class... the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter so as to define it with precision. That is particularly important for uses which do not fall within any "use class".'
8. An LDC can legally be issued on land that contains a Public Right of Way. However, such a certificate only confirms the *planning lawfulness* of a development or use. It does not override or legally remove the public's right to use that path. Such an LDC does not protect from enforcement action taken by the local highway authority under the Highways Act 1980 if the LDC development obstructs the public's right of passage. There is no "De

Facto" closure. The LDC would not legally stop up or divert a highway. In the present instance, the application length of the public footpath alongside No.11 can allow for this use without unduly obstructing pedestrian use of the public footpath.

9. Reference in the representations was made to Google Map images. Google Street View images taken in April 2017, August 2018 and April 2019 show the building at No. 11 City Walls alongside the City Walls public footpath within the LDC application site, apparently unused, being boarded up and offered for renting. The 2018 and 2019 images show some of the LDC application public footpath land in use for the display and sale of artwork. It was said that No. 11 had formerly been used for the sale of antiques. It had been closed for a number of years until Mr Chesters' Huxley's café/bar opened for business at No. 11 in 2022.
10. The LDC application plan shows the building at No.11 within the red outlined area together with a length of the City Walls of some 25m. The application asserts that the red outline land had been used for mixed commercial purposes, including seating, continuously as part of one planning unit for more than 10 years. At the time of my visit, the No. 11 building was in use as a café/bar, the business trading as Huxley's, offering the sale of teas, coffee, beer, ice cream, cakes and snacks. Although the City Walls public footpath runs immediately alongside the side wall of No. 11, this part of the footpath was also in use as a forecourt to No. 11, the far, northern, side from No. 11 being tightly occupied by 5 small tables and their associated bench seating for use by customers.
11. As the Council pointed out, the Courts had determined that the planning unit under consideration was normally the unit of occupation, unless a smaller unit could be identified that was physically separate and used for different and unrelated purposes. They said the retail unit at No. 11 was lawfully within Use Class E of the Use Class Order (2015), although it may be they had not considered the sale of craft beers in coming to that view, but they added that there had not been any planning permission linking the highway on the City Walls to the retail unit. The retail unit was in different 'ownership' from the remaining public highway land. It was also clearly physically distinct from it. There were 2 distinct planning units within the land. It did not follow that the land outside the retail unit benefited from the same lawful use as the remainder of the land.
12. In my view, the Council's assessment is correct. The Applicants said the forecourt to No. 11 had, for several decades, formed an integral part of trading activities carried out at the property. They said that pattern of activity had always formed part of a single planning unit with the internal areas used for related retail, storage and display. They said that evidence showed external commercial activity continuing during periods when the building itself was closed or vacant. However, in my view, there was negligible evidence of the alleged continuous use of the retail unit at No. 11 in association with that of the relevant section of the City Walls public footpath. In the Appellant's later description of the extent of the application uses, scant reference is made to the associated use of the building at No. 11 or the provision of outside seating.
13. As the Council pointed out, the Appellant's submission provided no evidence of a functional link between the artist's business and the separate business of the antiques store that had been sited at No.11 City Walls prior to 2022. The Google photos of 2017, 2018 and 2019, although mere snapshots, show the building at No. 11 vacant, boarded up and apparently available to rent. No evidence of its continuing use during the requisite period in association with the artist's business was provided. The evidence that the earlier use of public footpath land opposite No. 11 by an artist to display and sell drawings and paintings suggested that such use, although over a long period, was on a minor scale, intermittent and, in my view, was not shown to have been linked to the building at No. 11. Although No. 11 appears to have been unused for several years, it is

likely not to have lost any lawful use as a retail outlet. That is because a use which was merely dormant or inactive can still be considered as 'existing', so long as it had already become lawful and not been extinguished - *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461. In my view, however, it was not part of a mixed use for commercial purposes for at least 10 years between 2015 and 2025.

14. I consider the Council were right to suggest that it was in 2022 when land outside the former retail unit at No. 11 began to be used in connection with the café/bar use by Huxley's. That effected a material change of use of the application land and building within the 10 year LDC application period. Even if the abandoned antique business use of No. 11 had been that of a retail shop, a use now classified as a Use Class E, use as a café/bar does not come within Class E. The use of public footpath land by Huxley's as a forecourt opposite No.11 in association with their café/bar was also a material change of use of that land that occurred some time after 2022, but before the date the LDC application was made.

Conclusion

15. For the reasons given above I conclude that the Council's deemed refusal to grant an LDC to establish that the use of the land at No. 11 City Walls has been used for mixed commercial purposes (including displaying and selling goods, artisan demonstrations/production, and seating) openly and continuously as part of one planning unit for more than 10 years was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

John Whalley

INSPECTOR