



Appeal Decision

Site visit made on 31 July 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 August 2017

Appeal Ref: APP/V5570/F/16/3155752

Flat 15, Sadler House, Spa Green Estate, Rosebery Avenue, London, EC1R 4TS

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Dr Emiliano Zanaboni against a listed building enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice, numbered 59/2016, was issued on 7 July 2016.
- The contravention of listed building control alleged in the notice is the removal of a Garchey System of refuse disposal from the premises.
- The requirement of the notice is:
 - 1) Replace the original Garchey system of refuse disposal back into its original position in the premises.
- The period for compliance with the requirements is three months.
- The appeal is made on the grounds set out in section 39(1)(c), (d) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the listed building enforcement notice is upheld.

The appeal on ground (c)

1. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of listed building control in contravention of s.9 of the Act, that is, that listed building consent was not needed.
2. Sadler House is a Grade II* listed building. The details of its listing include 'the fitted kitchens ... are noted for their Garchey system of refuse disposal (the first in London and the only one anywhere still known to be in operation).'¹ Significant features are sometimes not mentioned in a listed building description and it is therefore notable, and I give great weight to the fact, that the Garchey system is mentioned in the listing of Sadler House even though it is an internal and largely unseen system.
3. On this basis, and taking into account the reasons given above I consider that the Garchey system is a distinctive feature which forms part of the historic character of the listed building. It contributes to the integrity and intrinsic character of the building. It is also a matter of fact, as I saw on my visit, that the Garchey system has been removed.

¹ Historic England Sadler House and attached Porters' Lodge List Entry Summary

4. The Appellant has provided the following documents: An undated letter from himself to the Council's Building Control Service in which he sets out a list of proposed works to the Flat which included 'replacing the existing kitchen with a new one without changing the layout or drains'. An undated plan has a cross next to the sink. An undated application form for landlord's consent for alterations refers to attached details but there is no indication of what those details are. A letter from the Building Control Service dated 4 August 2015 advising the Appellant of the role of the Service. An email from the Appellant to 'Home Ownership' dated 3 June 2015 referring to a telephone conversation 'with regard to the possibility of removing the sink tap and the tube of the Garchey waste disposal' which goes on to say 'I am not planning to remove the structural part of the disposal but just to improve the quality of the sink'. The comment that 'I am not planning to remove the pipes or any structural part but only the plastic bulbe (sic) and replacing the sink structure' is repeated later in the email. An email from Leasehold Services dated 10 June 2015 which states 'As the description of works you have listed are not structural you are not required to receive landlord's consent as you are not affecting the communal pipe work. Please let me know that if the works you intend to carry out change throughout the process of changing the kitchen sink'.
5. The Appellant had purchased the flat some two years before the works were undertaken. He knew that Sadler House was a listed building. He contacted the freeholder, who happens to be the Council, for approval but he does not appear to have ascertained whether any other consents were necessary. With regard to Building Control, the letter dated 4 August 2015 specifically refers to the Regulations covering 'minimum health and safety standards' and nothing else. The Ombudsman's final decision² into the Appellant's complaint notes that the Residents' Handbook for the Estate clearly identifies the works that require listed building consent and it includes the words 'the Garchey refuse system (from original kitchen sinks) is most important and must not be changed'.
6. I therefore find that listed building consent was needed for the works undertaken by the Appellant to the Garchey system and that such consent was not obtained.
7. Even if consents from Home Ownership, Leasehold Services and Building Control Services were given to the Appellant it appears to me that the description of the works proposed to those bodies was extremely vague and unspecific and the description does not refer to the removal of the system as actually undertaken by the Appellant. S.7 of the Act provides that no person shall execute or cause to be executed any works for the alteration of a listed building in any manner which would affect its character as a building of special architectural or historical interest unless the works are authorised pursuant to s.8 of the Act.
8. The Garchey system is an integral and notable part of the listed building, written consent for its removal was required and was not granted in accordance with s.8 of the Act. The appeal on ground (c) therefore fails.

² Dated 31 August 2016 and provided by the Appellant attached to an email dated 7 September 2016

The appeal on ground (d)

9. An appeal on ground (d) is on the basis that the works were urgently necessary in the interests of safety and health or for the preservation of the building.
10. The Appellant says that consent was given by the Council for health and safety reasons and he refers to his email dated 3 June 2015 to Home Ownership referred to above in which he also stated that 'the structure is very old and dirty and we attempted to clean it but the all (sic) tube is rusted and quite unhealthy. Every time the washing machine is in use, all the water from the machine fills the sink and all the dirty material from the pipes comes out with a definitely unpleasant smell'.
11. Whilst the Appellant may have considered this to be a health and safety issue no evidence has been provided to show that it would not have been possible to repair the system or that its removal was the only remedy to the alleged problem. The Appellant had been the leaseholder of the Flat for some two years prior to the works being undertaken but he does not say when the alleged health and safety issue arose or why it was necessary for the system to be removed as a matter of urgency. The reasons given by the Appellant for the removal do not appear to me to be of such urgency that they required the urgent removal of the system without the necessary listed building consent.
12. The appeal on ground (d) fails.

The appeal on ground (g)

13. In an appeal on ground (g) the Appellant is saying that the requirements of the notice exceed what is necessary to restore the building to its condition before the works were carried out.
14. It is the Appellant's contention that he cannot comply with the requirements because the sink and other parts had been disposed of and were not retrievable. However, I note from documents provided by the Appellant relating to a Garchey system in another building that spare parts are likely to be available³. Compliance with the notice by the restoration of the system with spare parts would result in an original Garchey system, albeit not the sink/parts which were in place and formed part of the historic fabric. Listed building consent is not required for replacing 'like with like' and on this basis I consider that it would be possible for the requirement to be complied with.
15. The Appellant has also raised the question of the cost of his new kitchen and the cost of compliance with the requirement, however, these are matters that do not fall to be considered in an appeal such as this.
16. The purpose of the requirements of a notice is to, in this case, restore the building to its former state. In the circumstances of this appeal the only step that would achieve this statutory purpose is that stated, that is, 'the replacement of the original Garchey system of refuse disposal back into its original position in the premises'. The requirements of the notice are therefore not excessive.
17. The appeal on ground (g) fails.

³ Review of the Garchey Waste Disposal System page 15

Conclusions

18. For the reasons given above I conclude that the appeal should fail.

Decision

19. The appeal is dismissed and the listed building enforcement notice is upheld.

Gloria McFarlane

Inspector