LON/00BF/LIS/2005/0071

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED)

Applicant: Ms B J Vernette

Respondents: London Borough of Sutton

Re: 80 Waleton Acres, Carew Road, Wallington, Surrey SM6 8PU

Hearing date: 18 October 2005

Appearances:

For the Applicant: Ms B J Vernette

For the Respondent: Mr R Powell – Senior Leasehold Officer
Mr W Marshall – Neighbourhood Manager

Members of the Residential Property Tribunal Service:

Mr I Mohabir LLB(Hons)
Mr J M Power Msc FRICS FCIArb
Mr A D Ring

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00BF/LIS/2005/0071

IN THE MATTER OF 80 WALETON ACRES, CAREW ROAD, WALLINGTON, SM6 8PU

BETWEEN:

Ms B J VERNETTE

Applicant

-and-

LONDON BOROUGH OF SUTTON

Respondent

THE TRIBUNAL'S DECISION

Background

1 Unless stated otherwise, the page references in bold herein are to the pages within the Respondent's bundle of documents.

2. The Applicant makes two applications in this matter. The first application is made pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Applicant's liability to pay and the reasonableness of service charges in the sum of £5,372.45, being her contribution for the cost of installing double glazing and carrying out other minor repairs to her block of flats in 2004. The second application is made pursuant to s.20C of the Act to disallow, in whole or in part, the Respondent's

entitlement to recover its costs incurred in these proceedings under the terms of the lease.

3. The Applicant occupied the subject property by virtue of a lease granted to her by the Respondent dated 12 June 1989 for a term of 125 years commencing from 24 June 1981 ("the lease") **[p. 210]**. Under the terms of the lease the Applicant's liability to pay service charges in relation to her block of flats, 68-86 Waleton Acres ("the building"), arises in the following way. By clause 3(1) of the lease, the Applicant covenanted to:

> *"pay to the Lessor such annual sum... as representing the due proportion of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred by the Lessor in carrying out the obligations or functions contained in or referred to in this clause and clause 4 hereof and in the covenants set out in the Ninth Schedule hereto (hereinafter together called "the Service Charges") such estimated sum to be payable in advance quarterly on the usual quarter days... ".*

By clause 4, the Respondent covenanted to perform the covenants and obligations set out in the Ninth Schedule. Paragraph 1(1) of the Ninth Schedule requires the Respondent to, *inter alia*, renew and replace the external window frames when necessary. The Applicant's contractual liability for the service charges incurred by the Respondent in relation to the building (only) is 12% of the total cost.

4. By a letter dated 9 June 2002, the Applicant sought permission from the Respondent to install double glazed windows to her flat. That permission was granted by the Respondent in a letter dated 21 July 2002 **[p. 79]**. It is important to note that in the letter to the Applicant it was expressly stated:

"... that this permission does not remove, if appropriate, your liability to contribute to any overall programme of window replacement of Waleton Acres".

The installation of the Applicant's double glazed windows was carried out by the firm of 'Our Price Windows Ltd' at a cost of £2,900 **[p. 52]** and was completed on 22 August 2002.

5. On 12 September 2003 the Respondent wrote to the residents in the building informing them that it was proposing to replace the existing windows with double glazed units during that financial year **[p. 74]**. The Respondent subsequently tendered for the proposed work. In the Notice of Intention dated 16 January 2004 served on the Applicant, as part of the consultation process, the Respondent recommended that the replacement of the windows be carried out by 'Piper Windows, Doors & Conservatories' at a total cost of £466,504.79. In the same notice, the Applicant was informed that her estimated contribution for the cost of the work would be £5,326.80. Her actual liability was £5,372.45 **[p. 93-95]**. Practical completion of the work took place on 17 December 2004.

Decision

6. The hearing in this matter took place on 18 October 2005. The Applicant appeared in person. The Respondent was represented by Mr Powell, a Senior Leasehold Officer, and Mr Marshall, a Neighbourhood Manager.

7. The Applicant told the Tribunal that she had completed the sale of the subject property on 22 April 2005. However, her solicitors had retained the sum of

£5,326.80 by way of an indemnity for the purchasers against any potential liability they may have to the Respondent for the disputed service charges that are the subject matter of this application. At the hearing, the Applicant effectively repeated the position she had taken in extensive correspondence with the Respondent. Of the total cost of the work, the Applicant's challenge only related to the cost of double glazing the building. She argued that because she had already double glazed her premises she was effectively having to subsidise at greater cost to her the installation of double glazing to the other premises in the building and that the increased cost was unreasonable. The Applicant also argued that she believed that the Respondent knew, at the time she applied for permission to install double glazing to her flat, that it was going to install double glazed windows to the building. She submitted that by failing to disclose this to her at the time, she had been misled by the Respondent. The Applicant did not accept that her service charge liability would have been greater had she not double glazed her premises because the estimate for the work did not appear to take account of the premises in the building that had already installed double glazing.

8. Mr Powell, for the Respondent, had denied in his witness statement that the Applicant had been given any assurance that no works would be undertaken in the next 3-5 years. Has said that he had no discretion to vary the Applicant's service charge liability because the contractual rate was set out in the lease. He told the Tribunal that cost of installing the double glazing was block specific and initially included all of the flats in the block. If any of the flats

had already installed double glazing then the work would have been omitted from the specification and the final account would have been adjusted accordingly. When asked by the Tribunal to demonstrate where this had taken place in the final account breakdown **[p. 95]**, Mr Powell conceded that the cost of double glazing the subject property did not appear to have been deducted. This had only been done in relation to 70 Waleton Acres in the sum of £1,875.76. He also conceded that the contingency sum of £2,007.91 appeared to have been added twice and should be deducted from the total cost claimed. Taking both matters into account, Mr Powell calculated that the Applicant's adjusted service charge liability was £4,851.31.

9. The Tribunal was satisfied, on the evidence before it, that no representation or assurance had been given to the Applicant that works to the building were not being contemplated by the Respondent within 3-5 years of the installation her double glazing. Indeed, in the Respondent's letter dated 21 July 2002, the Applicant was expressly told that she would not be absolved from any future liability to contribute to the cost of any programme of window replacement to the building. As to the Applicant's argument about subsidising the cost of replacing windows to the other premises in the building, it seems in this instance that this was an inevitable consequence of the terms of the lease. It sets out the Applicant's service charge contribution as a flat rate of 12% and she is bound by that contractual rate. The lease does not allow for the micro apportionment advocated by the applicant. The only prejudice that would have accrued to the Applicant is if the cost of installing replacement windows to her premises had not been omitted from the original specification and that

concession was made by Mr Powell at the hearing. There was no evidence before the Tribunal that the Applicant was entitled to a greater deduction for the installation of double glazing to her premises than the sum of £1,875.76 allowed for 70 Waleton Acres. The Tribunal, therefore, considered that figure should be the appropriate amount to also adopt in this instance. The Applicant's service charge liability was calculated as follows:

Total cost of works	£40,037.92
Less	
Contingency sum	£ 2,007.91
Windows & Doors to 80 Waleton Acres	£ 1,875.36
Add	
Consulatants Fees @ 5.32%	£ 1,923.40
Clients Fees @ 6.5%	£ 2,350.03
Total	**£40,427.68 x 12% = £4,851.32**

Accordingly, the Tribunal finds that the Applicant's liability for the total cost for the disputed service charges, which included the cost of replacement windows to the building, is £4,851.32.

Section 20C & Reimbursement of Fees

10. Mr Powell told the Tribunal that the Respondent had not incurred any costs in these proceedings that it would seek to recover under the terms of the lease. The Tribunal was, therefore, not required to make any order in relation to the Applicant's s.20C application.

11, The Tribunal was also required to consider under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 whether the Respondent ought to reimburse the Applicant the fees incurred by her in making this application. The Applicant's primary case was that she had little or no liability for all of the disputed service charges, for the reasons set out above. This approach seemed to ignore the other repair work carried out to the building. The Applicant's substantive challenge was only in relation to the cost of the replacement windows and she had succeeded to the extent of 10% of the total costs in issue. The Tribunal was of the view that perhaps more realistic and constructive attempts should have been made by the Applicant to settle this matter rather than pursue it to a contested hearing. The Tribunal considered that in doing so the Applicant had acted unreasonably and makes no award under Regulation 9 that the Respondent should reimburse the Applicant the fees incurred by her.

CHAIRMAN..... J. Mosahan .....

DATE..... 28/11/05 .....