



**HM COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Flat 6, Farleigh Road Flats, Farleigh Rd., Pershore, WR10 1LA

**Applicants** : Mr & Mrs J.W.K. Fraser

**Respondent** : Mercia Investment Properties

**Case number** : BIR/47UF/LIS/2012/0028

**Date of Application** : 2nd April 2012

**Type of Application** : (1) Application for the Leasehold Valuation Tribunal ('LVT') to determine the liability to pay and reasonableness of Service Charges under s.27A of the Landlord & Tenant Act 1985 and  
  
(2) whether the Lessor's costs in connection with the proceedings should be included in future service charges under Section 20C of the Landlord & Tenant Act 1985.

**The Tribunal** : I.D. Humphries B.Sc.(Est.Man.) FRICS (chair)  
P.J. Hawksworth (Lawyer)

**Date of Decision** : 18th September 2012

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**DECISION**

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- 1 In respect of the four disputed items:
  - 1 Interest charges have been waived and are no longer in issue;
  - 2 Management Fees for the period to 25.12.11 should be charged at £40 per half year plus VAT;
  - 3 The charge for the Health & Safety Inspection in 2011 is confirmed at £878.40 for the development or £48.80 for each Flat.
  - 4 The cost of Health & Safety Works is deferred to a later LVT Hearing on 16.10.12.
  
- 2 The landlord has not indicated whether any costs incurred in these proceedings would be included in future service charge demands but for completeness the LVT find that no such costs would be payable under s.20C of the Landlord & Tenant Act 1985.

## REASONS

### Introduction

- 3 Mr and Mrs Fraser own a Leasehold interest in Flat 6, Farleigh Road flats, Farleigh Road, Pershore, Worcestershire, for a term of 99 years from 29th January 1965 at a rent of £10 per annum. Their lease requires them to re-imburse the landlords for various costs incurred under Schedule 6.
- 4 The tenants applied to the LVT on 2.4.12 for a determination of whether various charges incurred for the service charge year ending 25.12.11 were fair and reasonable and a prospective service charge for the year ending 25.12.12. The disputed amounts were:
- |   |                                 |          |      |
|---|---------------------------------|----------|------|
| 1 | Interest Charges                | £ 50.15  | 2011 |
| 2 | Management Fees                 | £ 90.00  | 2011 |
| 3 | Health & Safety Inspection Fees | £ 48.80  | 2011 |
| 4 | Health & Safety Works           | £ 214.11 | 2012 |
- 5 The LVT have considered the written submissions of the parties, oral submissions made by the applicants at a Hearing on 18th September 2012, the terms of the lease and relevant legislation and set out below our findings in respect of each item in dispute.

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### The Lease

- 6 The property is held by lease dated 29th January 1965 granted by Hawkwood Developments Limited to Douglas Michael Halliday for a term of 99 years from 29th January 1965.
- 7 The landlord's interest has since been assigned to Mercia Investment Properties and the tenant's to Mr and Mrs J.W.K. Fraser, the present applicants.
- 8 Clause 4.2 requires the Lessee to pay a service charge in accordance with the Sixth Schedule which is written in general terms but includes the repair and maintenance of the property, insurance, rates, taxes and outgoings and the cost of having the service charge audited by a Chartered Accountant.
- 9 The charge is billed half yearly.

### The Relevant Law

- 10 Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 11 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 12 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where they are incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.

### The Items in Dispute and Determinations

- 13 The dispute relates to four items in the service charge accounts considered overleaf:

.../3

14    1            **Interest Charges**    £ 50.15    2011

Applicants

Mr and Mrs Fraser submitted at the Hearing that the rate of interest charged of around 23% was excessive and in their opinion a fairer rate would be 4% over the current Bank Minimum Lending Rate.

Respondent

The landlord's agents did not attend the Hearing but sent written Submissions advising that all interest charges had been credited and were no longer demanded.

LVT Decision

As the Respondents have now provided written confirmation that the claim is not being pursued, the cost of interest charges in 2011 is no longer in issue and the LVT decline to make a determination on the point.

15    2            **Management Fees**    £ 90.00    2011

Applicants

Mr and Mrs Fraser submitted in writing and at the Hearing that the Management Fees should be in line with a previous Decision of this Tribunal (differently constituted) on 13.1.12 (Case Ref. BIR/47UF/LIS/2011/0033) where management fees for the period 24.9.09 to 24.6.11 were determined at £40 plus VAT per Flat per half year. ~~They pointed out that the service charge for the period ending 25.12.11 had not been audited at the time they applied to the LVT in April 2012 although they had been asked for payment.~~

Respondent

The landlord's agents did not attend the Hearing but submitted in writing that the fee was 'consistent with other comparable properties', appropriate and reasonable and included the cost of obtaining a health and safety report.

LVT Decision

The respondent's agent provided no details of charges for 'comparable properties' or anything justifying the claimed 12 hours spent corresponding with the applicants. We find the charge excessive for managing a relatively straightforward low rise development of this type and agree with the Applicants that the charge should be in line with the Decision reached by the LVT in January 2012 of £40 plus VAT per Flat per half year.

16    3            **Health & Safety Inspection Fee**    £ 48.80    2011

Applicants

The Applicants' contention is that the amount charged is excessive as they were charged only £67 for preparing a survey of Block B, i.e. the block containing their flat, in 2009 and the comparable charge has now risen to £292.80 (i.e. 6 flats in Block B @ £48.80 each). In their view the increase is out of proportion. Furthermore, they claim that a large part of the survey related to an asbestos report and most of the asbestos found at the Farleigh Road flats was in the garage roofs of the other block in the scheme, Block A. The garages let with Block B had felt roofs and they were being charged for costs that ought to have been charged to Block A.

Respondent

The landlord's agents submitted that in their opinion the amount charged to the Applicants of £48.80 was fair and reasonable. It represented 1/18th of the total cost of £878.40.

LVT Decision

The Respondents provided a copy of the Health & Safety Report with their Submission. It comprises 87 pages including an asbestos report for which the contractors charged £312 to prepare the Health & Safety and Fire Risk Assessment and £420 for the Asbestos Survey and Register, plus VAT. The contractors are a specialist firm, '4site Consulting Limited' of Feering in Essex.

Applying our own general knowledge (but no special or secret knowledge), we consider the charges reasonable for a report in this detail. The Surveyor carries a high level of risk that requires special professional indemnity

insurance cover, over and above that required by General Practice Chartered Surveyors acting in local markets and bearing in mind the time taken to inspect the buildings and produce the document, the overall charge is fair. While we appreciate the point made by Mr and Mrs Fraser that their garage roofs may be felt and may not contain asbestos, it would not necessarily reduce the Surveyor's liability to inspect and make the relevant enquiries. We therefore consider an equal apportionment between both blocks to be fair and find in the landlord's favour at £48.80 for Flat 6.

17 4 Health & Safety Works £ 214.11 2012

This is the subject of a separate application to the LVT made by the landlord in respect of all the Flats in the block. The case is due to be heard by a differently constituted LVT on 16th October 2012 and as this LVT have no wish to prejudice their decision, it will be determined by the later LVT when all the costs and issues for the block can be assessed based on full information that may not be available to this tribunal.

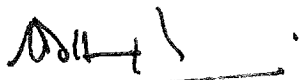
18 Summary

In summary, the LVT find as follows:

|   |  |                                 |                 |
|---|--|---------------------------------|-----------------|
| 1 | Interest Charges                               | £ 0.00                          | 2011            |
| 2 | Management Fees                                | £ 40.00 + VAT / half year       | 2011            |
| 3 | <del>Health &amp; Safety Inspection Fees</del> | <del>£ 48.80</del>              | <del>2011</del> |
| 4 | Health & Safety Works                          | Deferred to Hearing on 16.10.12 | 2012            |

s.20C Determination

19 The landlord's agents have not indicated whether any costs incurred in connection with these proceedings would be included in future service charge accounts but as the tenants were not advised in writing that the interest charges would be credited to their account until two days before the Hearing and they have succeeded on the issues of the cost of Management Fees, the LVT determine s.20C in favour of the tenants that no costs for these proceedings are to form part of future service charges.



I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Date 26 SEP 2012