



In the Matter of land fronting the east side of the River Severn, Upton-upon-Severn, Malvern Hills District, Hereford and Worcester

DECISION

This dispute relates to the registration at Entry No. 1 in the Land Section of Register Unit No. VG.46 in the Register of Town or Village Greens maintained by the Hereford and Worcester County Council and is occasioned by Objection No. 73 made by Mr N J Griffin and noted in the Register on 12 August 1971.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 2 July 1975. At the hearing (1) Mr John Bradford on whose application the said registration was made, and (2) Upton-upon-Severn Parish Council were represented by Mr G C Humphreys solicitor of Moore Brown & Dixon Solicitors of Tewkesbury and (3) Mr Noah John Griffin was represented by Mr R Penson solicitor of Russell Livingstone Wood & Co Solicitors of Upton-upon-Severn.

The Land ("the Unit Land") comprised in this Register Unit although described in the Register as being on the east side of the River (presumably because so it would seem to a River user) is (because the River bends) geographically north of the River, to which it has a frontage of about 50 yards; the bank there is for the most part a steep grass slope. The west boundary of the Unit Land is a post and wire fence ("the West Fence") about 10 yards away from the substantial stone structure being the abutment of the Old Bridge (now removed) which formerly took the road from Upton-upon-Severn across the River; the north and east boundary are a post and wire fence separating the Unit Land from orchard ground, and from garden and other ground held - with a cottage or dwelling house nearby. Access to the Unit Land by land is at the north west corner from the public highway which was formerly the main road leading across the Old Bridge, but which is now a side road providing access for the few houses, buildings and lands adjoining.

The grounds stated in the Objection are:- "I own this land and it has been in the possession of my family for several generations, and it was not a village green at the date of registration".

Mr Humphreys said that Mr Bradford made his application on behalf of the Parish Council. On their behalf he produced from the County Archives the Upton-upon-Severn Tithe Apportionment Award (with map) dated 11 September 1843 and the Upton-upon-Severn and Ripple Inclosure Award dated 25 August 1863, and oral evidence was given (1) by Mr Bradford who has lived in Upton-upon-Severn all his life (54 years) who is and has been for the last 30 years a member of the Parish Council, and who is also a member of the Malvern Hills District Council and of the Hereford and Worcester County Council, (2) by Mr A Burghan who was born in Upton-upon-Severn 87 years ago, in 1909 joined the Army, was a member of the Upton Rural District Council for 27 years from 1930 and of the Parish Council for 15 years from 1957, and has resided for most of his life in Upton-upon-Severn. Mr Bradford produced: (1) a newspaper cutting from Berrows Worcester Journal 16 September 1971 in which



was reproduced a picture of the Old Bridge (the present bridge was built during the Second World War higher up the River) which he said was a copy of an old pen and ink drawing in his possession, made he thought about 150 years ago, and (2) the Parish Council minute books from July 1931 to April 1938 and from February 1944 to August 1949. Mr Burghan produced a photograph of two pages of the Parish Magazine for October 1882.

Mr Griffin ("the Objector") who is 50 years of age gave oral evidence, in the course of which he produced: (1) a photograph of the Unit Land which must have been taken from a boat in the River and which appeared to be at least 70 years old; (2) an abstract dated 1960 of the title of Mr Joseph Griffin (his father) to a dwelling house 15 Dunns Lane and freehold land on the north bank of the River, (3) an agreement dated 24 March 1960 by which Mr J Griffin sold the said house and land to Mr G H Dick; (4) Estate Agent's Particulars of Sale (leading to such agreement); (5) and (6) letters dated 5 June 1961 and 27 August 1962 from the Clerk to the Worcestershire County Council to Mr J Griffin and to Russell & Co (then acting as his solicitors). Also on behalf of the Objector, oral evidence was given by Mrs C Griffin (his wife; they were married in 1947 and she came to Upton in 1945) and by Mr R G Stokes who has lived in Upton-upon-Severn all his life (47 years).

On the day after the hearing I inspected the Unit Land.

Mr Bradford said (in effect):- His memory went back to about 1932. Before the Old Bridge was closed (between 1939 and 1946), the Unit Land was the focal point of Upton; it was a play area; there were boat moorings; there was fishing from it; boats were repaired on it. He remembered a pageant in 1932 part of which was a firework display from the Unit Land; local gala days and carnival days had continued up to about 8 years ago in association with the Upton regatta, and all these days included a firework display from the Unit Land; since 1932 there had been about 20 such displays, including those associated with the Jubilee of HM King George VI and the Coronation of Her Majesty. Up to 1939, it was possible to hire boats from the Unit Land there being 2 competing companies, one of Mr J Griffin and the other of Mr Harry Griffin (his brother); the jetty boat of the former was one half by the Unit Land and one half by land lower down the River; the jetty boat of the latter was one half by the Unit Land and one half higher up the River (under the Old Bridge). The Parish Council in about 1938 put another jetty boat there; in 1948 they sold this on the basis that it should be removed (the purchaser so removed it higher up the River where it eventually sank). Mr J Griffin and Mr Harry Griffin were rivals in the boat-hiring business; Mr Harry Griffin was less successful and on his death his brother took over his business; Mr J Griffin gave up the business (he thought about 1949); the purchaser took away his jetty boat and the boats which he used to hire out. Nevertheless moorings by members of the public on the bank of the Unit Land continued.

Mr Burghan said (in effect):- He as a boy played on the Unit Land, e.g. rounders; the public played there. There was never any suggestion that Mr J. Griffin or Mr Harry Griffin owned it. There was then nowhere else for the children to play. He remembered aquatic races starting from it, particularly tub races (a beer barrel cut in half). Being near the Old Bridge, it was always a focal point of Upton.

The Objector in the course of his evidence said (in effect):- His father Mr J Griffin and his uncle Mr Harry Griffin both carried on a boat-hiring business from jetty boats moored in the River by the Unit Land. There was competition; he had often persuaded persons walking from their motor cars across the Unit Land to prefer his father's business. His father in 1938 bought some land ("the Orchard Land") to the east of the Unit Land "in order to get a slipway to get



his boats on and off the water and to repair and paint them; he used this for mooring cruisers and storing small boats". His father gave up in 1958 (the agreement for sale is dated 1960); he worked in his father's business at weekends but it did not pay, so after the war he went to work in civil engineering. His father never sold the Unit Land; he asked his father if he could have some rights on it; his father went to see the Worcester County Council; there was a meeting; the County Council offered a strip between the West Fence (defined above) and the site of the Old Bridge, however they refused his father's price. His father got a letter from the County Council recognising that he was the rightful owner of the Unit Land (that dated 27 August 1962 which he produced); since then he (the Objector) had maintained it; he put up a "PRIVATE" sign about 14 years ago; he used to cultivate a small piece in the middle but got fed up with losing the crop because of the floods.

I am not on this reference directly concerned to determine the ownership of the Unit Land. It is possible in law for the Unit Land to be a village green within the definition in section 22 of the 1965 Act to be properly registered as such and at the same time be owned by the Objector. The contention put forward on behalf of the Objector (as I understood it) was:- He had acquired a possessory title to the Unit Land because he and his family had been in continuous undisturbed possession and occupation for 80 years, they having used it for running a boat-hiring and fishing business and having kept it clean and tidy and generally maintained it, and because since the sale of the business the Objector had cultivated the land and dealt with it as rightful owner. This contention is supported by the County Council's acceptance of the ownership of Mr J Griffin. It was not inconsistent with the Griffin family having never refused entry to people because they would hardly be likely to do this when their business was there. Since the termination of the business all people using the land and the moorings had done so after seeking permission from the Objector. In short (as I understood the contention) the possession (and the ownership to be deduced from it) was such as to be inconsistent with the Unit Land being within the section 22 definition of a town or village green.

All the before 1961 documents are either against, or provide no support for this contention:- In the 1843 Award the Unit Land is treated in the same way as all other common land, and as non-tithable. The 1863 Award map shows it coloured the same as the roads. In the 150 year old drawing, it looks like public land near the Old Bridge (there are 2 small boats adjoining it on the River and 2 boats on it). The at least 70 years old photograph shows a jetty boat with a hut on it marked "H & J GRIFFIN : BOATS FOR HIRE" and behind them on the River on the Unit Land some boats and nets (this photograph is consistent with H and J Griffin being entitled only to the jetty boat and mooring and not being entitled both to the Unit Land and the jetty boat and mooring). In a conveyance dated 31 December 1919 included in the 1960 abstract the Orchard Land is described as "on the northern bank of the River Severn containing $\frac{3}{4}$ of an acre...bounded...on or towards the west...partly by land then at present open to the public being part of the foreshore of the said River Severn..."; and in a conveyance dated 12 August 1938 and also included in the said abstract, the Orchard Land is described as "bounded...on or towards the west...partly by land at then present open to the public and forming part of the foreshore of the said River Severn". In the 1960 Particulars the Orchard Land is described as "...planted with fruit trees and having a slipway capable of taking a 5 ton boat. There are Mooring and Fishing rights with this land which is situate on the North side of the River"; and the purchase price is



described as including "goodwill, 4 motor launches, 20 rowing boats and canoes". The Particulars in the 1960 agreement include "THIRDLY the goodwill of the business of Boat-house Proprietor now carried on by the Vendor on the premises AND FOURTHLY the boats and equipment used in conjunction with the said business as set out in the attached Particulars of Sale". At a Parish Council meeting on 30 March 1938 reference is made to "the best means of providing a temporary landing stage to accommodate a large number of visitors who would probably be coming to Upton during the summer" and a suggestion "that the most suitable place would be on the downstream side of the existing bridge". At a Parish Council meeting on 8 March 1946 considering a request by Mr Wood permission to use the Unit Land, a councillor said "the site was a free landing place for the use of the public and they were unable to let it".

In their 1961 letter the County Council complains to Mr J Griffin about his using for the purpose of mooring and storing boats etc the land belonging to the County, being the strip between the West Fence (as to which see above) and the abutments of the Old Bridge. Their 1962 letter contains this statement: "I am advising the County Council on the evidence you have put forward not to challenge Mr Griffin's claim to the ownership of the land on the left bank of the River Severn downstream of the Old Bridge except so much of the land as appears to be part of the land held along with the Bridge namely the part which has been the subject of a licence to the White family since 1909"; such last mentioned land is the same strip.

There was at the hearing no suggestion that Mr J Griffin ever had any form of documentary title to the Unit Land, or that it ever occurred to his personal representatives that they should pass ~~some~~ ownership to the Objector. There was no suggestion that Mr Harry Griffin carried on his business under any letting or permission given by Mr J Griffin or that it occurred to Mr J Griffin that he should acquire from the personal representatives of Mr Harry Griffin his interest in the Unit Land. If Mr J Griffin had owned the Unit Land there would have been no need to acquire the Orchard Land for the reason described by the Objector. I am not persuaded by anything the Objector said that his father, Mr J Griffin ever before 1962 thought he was or could be the owner of the Unit Land. If Mr J Griffin had thought this, and that he had a chance of proving his ownership, he would have included the Unit Land in the property which he sold when he gave up the business.

In my opinion Mr J Griffin was before 1962 never in possession of the Unit Land and the whole extent of his interest in it was as a person who had a jetty boat moored up against it and who carried on the business of hiring boats from this jetty boat.

Further I am not persuaded by anything that the Objector, Mrs Griffin or Mr Stokes said that it had ever occurred to the Objector before he saw the 1962 letter that he or his father could be the owner of the Unit Land. Notwithstanding that his father had given up the business and sold the goodwill, sometime in or before 1961 it occurred to the Objector that he might use the Unit Land or the strip between the West Fence and the Old Bridge for mooring and storing his boats. The Objector was not present at the meeting described in the 1962 letter; I infer that during the meeting Mr J Griffin must have described the former use he made of the Unit Land and this led the Clerk of the County Council "not to challenge" his claim "to the ownership". The writer of this letter must have been primarily concerned with the County Council's ownership of the strip, and I do not therefore regard the letter as being any sort of public recognition of the ownership of Mr J Griffin of the Unit Land. In my view the Objector is mistaken in thinking that such letter could be regarded as such.



I do not accept the Objector's evidence that after 1961 the Unit Land was only used by persons with his permission. After the construction of the New Bridge, the number of persons who would want to use the Unit Land would be much fewer than formerly. The Objector's "PRIVATE" notice cannot properly be regarded as a significant act of possession; the Objector had no land anywhere near, so nobody without local knowledge would associate the notice with him; and anybody with local knowledge would realise that the Unit Land was not private. Neither Mrs Griffin nor Mr Stokes were as well acquainted with the Unit Land as the Objector, and I cannot therefore give their evidence any effect which I am unable to give to the evidence of the Objector.

For the reasons set out above, I conclude that the Objector is not the owner of the Unit Land, and that it has not been in the possession of his family for several generations or at all. This conclusion disposes of this dispute if the grounds of objection should be read (as I think they should) as being based solely on such possession, see Commons Commissioners Regulations 1971, regulation 26.

However the last sentence of the grounds of objection may perhaps be read independently of the rest so I will treat the Objection as putting in issue the registration quite apart from the alleged possession of the Objector's family.

In my opinion the evidence written and oral put before me on behalf of the Parish Council, which I accept, establishes that the Unit Land has as far back as living memory goes been public land used by the inhabitants of Upton-upon-Severn for recreational purposes such as for the firework displays described by Mr Bradford and for children's games as described by Mr Burghan. In my opinion such use was not in any now relevant sense with the permission of Mr J Griffin or of Mr Harry Griffin or of the Objector; further in my opinion the tidying up of the Unit Land by the Objector and the small amount of cultivation he did for a short period is of no significance. I conclude that such recreational use was as of right and that it may be properly inferred that such use was in continuation of an immemorial usage.

The circumstance that the Unit Land may also have been used for other public purposes such as providing moorings for a jetty boat and for access by persons going generally on to or coming off boats on the River does not preclude me from finding from such immemorial recreational use that the Unit Land is subject to a customary right for the inhabitants of Upton-upon-Severn to indulge thereon in sports and pastimes.

My decision is therefore that the Unit Land is within the definition of a town or village green in section 22 of the 1965 Act, and accordingly I confirm the registration without any modification.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 19th day of January

1976

a. a. Baden Fuller

Commons Commissioner