



Canal &
River Trust

Keeping people, nature & history connected

Commentary on the judgment in Moore v. British Waterways

- The outcome of this appeal by Mr Moore turned on “special facts”¹ and has no implications for the generality of the waterway network of Canal & River Trust.
- The Court of Appeal confirmed that no right to moor permanently arises simply from ownership of land adjoining a waterway² (e.g. ‘end of garden’ moorings).
- Mooring permanently over the bed of a waterway owned by another without consent would be unlawful (as a trespass)³.
- Ownership of the bed of the short tidal stretch of the GU at the relevant location in this case was ignored for the purposes of the appeal.

This appeal case considered just one of the many issues contended by Mr Moore in the High Court. It concerned the enforcement of permanent mooring on a short tidal and semi-tidal stretch of the Grand Union Canal at Brentford where it joins the River Thames⁴. This stretch of waterway has a very unusual history with regard to both the ownership of the bed of the waterway and the statutory powers and rights concerning navigation.

For almost all tidal waters, ownership of the bed is held by the Crown and out of that various common law public rights (mainly of navigation) have arisen. In the case part of the Grand Union Canal where it joins the Thames (which is a canalised part of the River Brent) the position is further affected by certain provisions of the Grand Junction Canal Act 1793.

The rest of the GU and of the canal network of Canal & River Trust where the Trust is the owner of the bed of the waterway is not affected by the issues raised in the appeal.

The Court of Appeal decided that in the absence of evidence of a permanent mooring being unlawful (e.g. due to being a trespass or where obstructing navigation), s.8 notices under the BW Act 1983 requiring removal of a vessel could not be served. Canal & River Trust owns the bed of the artificial canals in its network so mooring without consent, as a trespass, is unlawful and s.8 powers continue to apply.

¹ Lord Justice Lewison; paragraph 67 of the judgment.

² Lord Justice Mummery; paragraphs 36 & 66.

³ Lord Justice Mummery; paragraph 43.

⁴ Between Bax’s Mill/The Boatman’s Institute and the junction of the Canal with the Thames.

Ownership of the bed of this stretch of the GU was not considered for the purposes of the appeal. Canal & River Trust (as successor to British Waterways) is registered as the freehold owner of the bed of the waterway at HM Land Registry and HM Land Registry registered the land in our name since the Land Adjudicator found in our favour. A person other than Mr Moore has however sought permission to have a judicial review of that decision of HM Land Registry. Mr Moore has recently been allowed to make submissions in these proceedings. Permission for that judicial review has yet to be granted and pending the outcome of that it was not open to Canal & River Trust to rely on the ownership of the bed of the waterway in the Moore case. If it is established that in mooring at this location Mr Moore is committing a trespass, it will be open to Canal & River Trust to exercise its powers under s.8 BW Act 1983.

In the course of its judgment the Court usefully reaffirmed that a permanent right to moor does not arise alone from ownership of land adjoining a waterway ('riparian' land). This confirms the position taken for many years by British Waterways and the Trust on the generality of 'end of garden' moorings on canals.