



In the Matter of Suckley Green, Suckley,
Hereford and Worcester.

DECISION

This dispute relates to the registration at Entry No. 1 in the Land section of Register Unit No. VG 1 in the Register of Town or Village Greens maintained by the former Worcestershire County Council and is occasioned by Objection No. 3 made by Lady (P M) Waechter and noted in the Register on 29 November 1968.

I held a hearing for the purpose of inquiring into the dispute at Worcester on 1 December 1977. The hearing was attended by Mr A W Huland, the Chairman of the Suckley Parish Council, the applicant for the registration, and by Mr J C Lowe, solicitor, on behalf of the Objector.

The land comprised in the Register Unit was formerly known as Woodstock Green. It lies to the west of a road running north towards Suckley Station. It is crossed by two footpaths and is bounded on two sides by the curtilages of houses, to which it is the only means of access.

The earliest evidence relating to the land in question which was adduced before me was the tithe apportionment award for the parish of Suckley, made in 1839. On the map referred to in the award the words "Woodstock Green" appear on this land. In the award it is not named but is included under the number 809 described as "Roads and Waste". The number 809 appears on the map on the road on the east side of the land and on other roads, so the word "Waste" appears to relate to Woodstock Green, on which the number 809 also appears.

Woodstock Green is shown as open to the road on the 1839 map, but as fenced from the road on the 1904/5 edition of the 1/2500 Ordnance Survey map. It appears that it must have been fenced for some time, for on 28 August 1896 the Parish Council resolved that the fence should be repaired. Subsequent entries in the Parish Council minute book show that the right to repair the fence was the subject of dispute between the Council and Mr J F Twinberrow, who claimed to be the owner of the soil. The only reference in the minute book to the status of the land is that on 20 August 1896 the Chairman reported that he had made enquiries into the ownership of Suckley Green (as it had then come to be known), but had not been able to obtain any satisfactory information on the point, and that it appeared probable that the land in question was a village green, but whether or not the lord of the manor had any right to the soil subject to the right of the parishioners to use the surface did not appear clear. There then followed some correspondence with Mr Twinberrow's solicitors, the outcome of which was that on 5 March 1898 the Council resolved that while they could not admit that they had no right to repair the fences on the east side of Suckley Green, yet they had no desire to do otherwise than to leave the Green as it then was.

It appears that thereafter no one repaired the fence, so that it ultimately disappeared. At some uncertain date the fence was succeeded by black chains on white posts. When Lady Waechter became the owner in 1952, the land was very rough grass and again unfenced. In 1965 she fenced it to cultivate it and improve it.



There is no direct evidence regarding the change of name from Woodstock Green to Suckley Green. The earliest mention of Suckley Green in the documents adduced in evidence is in a receipt for succession duty dated 12 February 1873 which refers to cottages and gardens situate at Suckley Green. This indicates that the name Suckley Green had come to be applied to the neighbourhood. This is borne out by the older Ordnance Survey maps, which have the words "Suckley Green" on the east side of the road and somewhat to the north of the land in question, and the modern Ordnance Survey map, which has the words "Suckley Green" to the north of the curtilages of the houses on the north side of the land. However, the name "Woodstock Green" had not become entirely obsolete, for in an indenture dated 25 October 1873 the land comprised in the Register Unit is described as "Woodstock Green-pasture".

While it is not unknown for pieces of land to retain their names after their status has changed, the fact that this land was named Woodstock Green in 1839 is prima facie evidence that at some time the inhabitants of the locality had a right to indulge in lawful sports and pastimes on it. There was no Act of Parliament creating such a right, so any such right must have been a customary one. The other evidence for the existence of such a right is not strong. There was the lingering belief in 1896 that the land was a village green and that the parishioners had some right to use the surface. More recently, Mr Huband, who was born in Suckley 40 years ago, remembers that when he was a child he and other children and some youths used to play on the land, sometimes kicking a football about, without asking permission and without anyone trying to stop them. Lady Waechter said that she had given children permission to play on the land, but the only occasion on which she remembered doing this was ten years ago, which would be after she had fenced the land and started to improve it. Such evidence as there is of the physical state of the land before the date of the registration is also consistent with its having been a village green.

In my view, all the later evidence is consistent with the land having been a village green, though if it stood by itself it would have been barely sufficient to prove it. However, it seems to me that in this case I am justified in relying on the fact that the land has been known as Woodstock Green or Suckley Green for the whole of the period covered by the evidence.

The persistence of the description of land as "X Green" is of much greater value in determining its present status than the continued use of the name "X Common". While the name "X Common" indicates that the land so named was at some time subject to rights of common, it would be unsafe to regard it as indicating the present subsistence of such rights. Rights of common can be extinguished by surrender or abandonment, of which there is no public record, so that land can only be safely found to be subject to rights of common if there is positive evidence of the existence of such rights. The position with town or village greens is different, for the persons entitled to customary rights to use them can only be deprived of their rights by Act of Parliament: see New Windsor Corporation v Mellor, [1975] 3 W.L.R. 25, at p. 33.

Mr Lowe was unable to direct my attention to any Act of Parliament terminating the rights of the inhabitants of the locality to indulge in lawful sports and pastimes on this land. I therefore find on the evidence that the inhabitants of the parish of Suckley have a customary right to indulge in lawful sports and pastimes on this land.



Reference No. 43/D/5

For these reasons I confirm the registration.

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 December 1977

A handwritten signature in cursive script, appearing to read "G. L. Quinn", with a horizontal line underneath.

Chief Commons Commissioner