

**APPLICATION FOR A MODIFICATION ORDER****FORM WCA5****WILDLIFE AND COUNTRYSIDE ACT, 1981****The Wildlife and Countryside (Definitive Maps and Statements) Regulations, 1983 (Schedule 7)**DEFINITIVE MAP AND STATEMENT FOR THE PARISH OF CliburnDISTRICT OF Eden PUBLIC RIGHT OF WAY NO. \_\_\_\_\_

TO: CUMBRIA COUNTY COUNCIL

OF: COUNTRYSIDE MAPPING, THE PARKHOUSE BUILDING, KINGMOOR  
BUSINESS PARK, CARLISLE, CUMBRIA, CA6 4SJI/We (Name of applicant) **Peter E Robin**Of (Address of applicant) **9 Caldry Road West Kirby Wirral CH48 2HE**hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act 1981  
modifying the Definitive Map and Statements for the area by

1 Adding

2

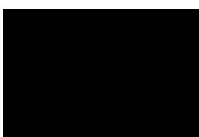
From:

To:

3 UPGRADING from a Footpath FP314007 to a BRIDLEWAY

From: Public Road NY587252

To NY601253

as shown on the map attached: **see page 4**I/We attach copies of the following documentary evidence (including statements of  
witnesses) in support of this application:List of Documents provided **see page 3****Date 08 October 2018****Signed**

**APPLICATION FOR A MODIFICATION ORDER**

**FORM WCA5**

**WILDLIFE AND COUNTRYSIDE ACT, 1981**

**The Wildlife and Countryside (Definitive Maps and Statements)  
Regulations, 1983 (Schedule 7)**

DEFINITIVE MAP AND STATEMENT FOR THE PARISH OF Cliburn

DISTRICT OF Eden PUBLIC RIGHT OF WAY NO. BR314008

TO: CUMBRIA COUNTY COUNCIL

OF: COUNTRYSIDE MAPPING, THE PARKHOUSE BUILDING, KINGMOOR  
BUSINESS PARK, CARLISLE, CUMBRIA, CA6 4SJ

I/We (Name of applicant) **Peter E Robin**

Of (Address of applicant) **9 Caldý Road West Kirby Wirral CH48 2HE**

hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act 1981  
modifying the Definitive Map and Statements for the area by

1 Adding

From:

To:

2 UPGRADING part of BR314008 as a Restricted Byway

From: Public Road at NY596254

To NY597246

as shown on the map attached: **see page 4**

I/We attach copies of the following documentary evidence (including statements of  
witnesses) in support of this application:

List of Documents provided **see page 3**

**Date 08 October 2018**

**Signed**



# Wildlife and Countryside Act 1981

## The Definitive Map and Statement of Public Rights of Way in Cumbria

To: Cumbria County Council  
The Courts, English Street  
Carlisle CA3 8NA

I, Dr Peter Ernest Robin of 32 Wattsfield Road Kendal LA9 5JN\*<sup>1</sup> (and jointly with The Ramblers Association of 2nd Floor Camelford House 87-90 Albert Embankment London SE1 7TW) hereby apply for an order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

### Upgrading FP314007 to Bridleway from NY587252 to 601253 in the Parish of Cliburn

as shown on the map accompanying this application.

1. This application is made because, on the cut off day,

The effect of s.53(1) and (2) Countryside and Rights of Way Act 2000 on a public path that existed prior to 1949, still exists on the cut-off date, and hasn't been a highway of a different description in between, and is not shown in the definitive map and statement at all is to extinguish all rights on that route. (This applies if the route is determined to be a footpath or bridleway.)

2. In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities that highway rights exist. The use of the 'balance of probabilities' test rather than 'beyond reasonable doubt' was confirmed by the High Court in [\*Todd, Bradley v SOS for EFRA\* \[2004\] 4 All ER 497](#).

3. The courts have given guidance on how evidence of highway status is to be considered. In *Fortune and Others v Wiltshire Council and Another* [2012] EWCA Civ 334, Lewison LJ said, at paragraph 22,

In the nature of things where an inquiry goes back over many years (or, in the case of disputed highways, centuries) direct evidence will often be impossible to find. The fact finding tribunal must draw inferences from circumstantial evidence. The nature of the evidence that the fact finding tribunal may consider in deciding whether or not to draw an inference is almost limitless. As Pollock CB famously directed the jury in *R v Exall* (1866) 4 F & F 922:

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."

4. While no single piece of evidence may be conclusive, the applicant believes that taken as a whole the pieces of evidence demonstrate highway reputation over many years, indicating that the route does indeed have highway status

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<sup>1</sup>\* Peter E Robin MB ChB BDS MD FRCS, retired surgeon, lifelong walker and Life Member of *Ramblers*.

I attach copies of the following documentary evidence (including statements of witnesses where applicable) in support of this application:

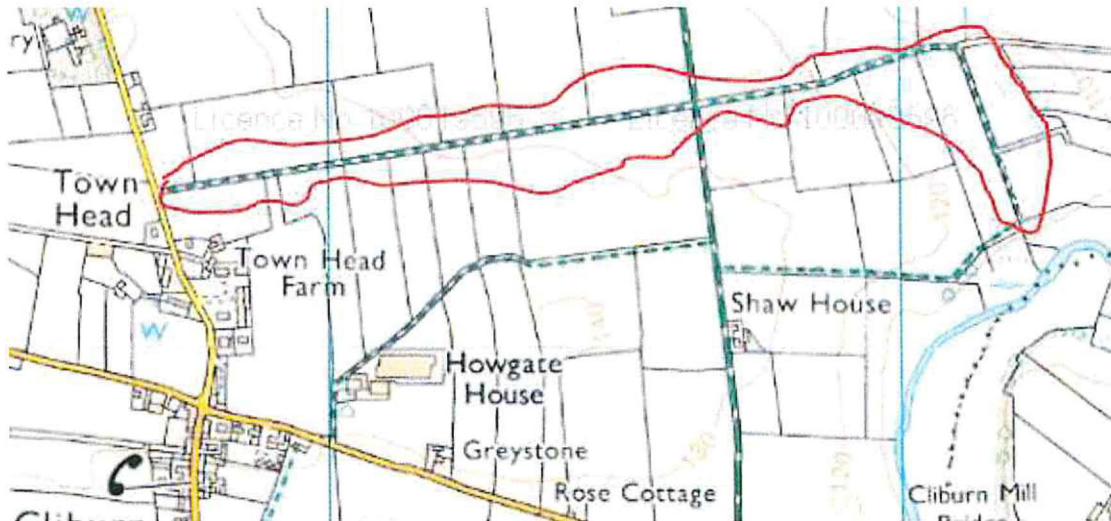
I attach the following evidence:

1. Excerpt from CCC Illustrative Definitive Map	p3
2. Thomas Hodgsons Westmorland 1770-1828	p5
3. Thomas Jeffreys Map of Westmorland 1770	p6
4. Copy of "Old Maps" 1859-61	p7
5. Excerpt from Ordnance Survey 1st edition map 25" to one mile 1860	p7
6. Excerpt from Ordnance Survey 6" to 1 mile 1 <sup>st</sup> edition 1863	p8
7. Excerpt from Ordnance Survey 2nd edition 25" to 1 mile 1915	p9
8. Excerpt from Ordnance Survey 2 <sup>nd</sup> edition 1899 annotated copy	p9
9. Excerpt from Ordnance Survey 2 <sup>nd</sup> edition 6" to 1 mile 1899	p10
10. Excerpt from Ordnance Survey 1" New Popular edition 1947	p10
11. Excerpt from Ordnance Survey 1" Revised New Series 1897	p11
12. Excerpt from Ordnance Survey 1:25000 edition NY52 and 62, 1953	p11
13. John Bartholomew Half inch maps of England and Wales	p12
14. Inclosure Map of Cliburn 1806/1820	p12
15. Inclosure Award of Cliburn 1806/1820	p13
16. Evidence for the Treatment of Named Lanes and Occupation Roads	p14-20
17. Notes	p21
18. Land Registry Information	p22



Route Reference: Cliburn 4

Excerpt from CCC Illustrative Definitive Map\*



This track ("occupation road") is metalled but unsealed, and has a character of the bridleway which it crosses as well as other bridleways or unsealed public roads in the vicinity. It would appear wrongly graded as a footpath. This public footpath would justify upgrading to a bridleway

\*Cumbria County Council digital DM