

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 Temple SowerbyDISTRICT OF Eden PUBLIC RIGHT OF WAY. **Temple Sowerby 1**

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 the *(FOOTPATH)** (bridleway) (restricted byway) (byway open to traffic)

From: **public road NY612281**To: **Acorn Bank NY 616282**

- 2 *(Upgrading) (downgrading) to a *(footpath) (bridleway) (restricted byway) (byway open to all traffic) the *(footpath) (bridleway) (restricted byway) (byway open to all traffic)

From:

To

and shown on the map attached.

see page 3

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

List of Documents provided**see page 2**

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 (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:

**Adding a Footpath in the Parish of Temple Sowerby from public road
to Acorn Bank NY612281 to 616282** 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

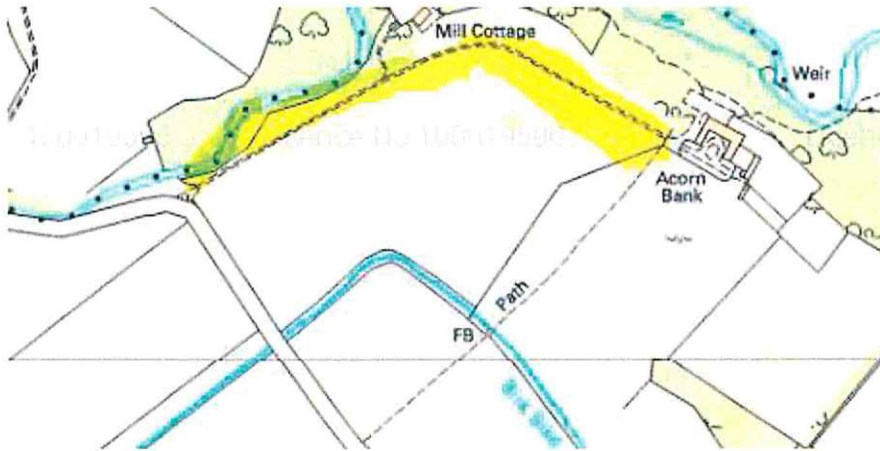
* Peter E Robin MB ChB BDS MD FRCS retired surgeon, lifelong walker and Life Member of *Ramblers*.

I append the following List of Evidence

Extract from CCC Illustrative Definitive Map 1:10000*	p3
Grounds for this DMMO Application	p4
Thomas Hodgson's Westmorland 1828	p5
Extract from Old Maps 1862 (1:2500)	p6
Extract from Ordnance Survey 1 st edition 25" to 1 mile map 1860	p7
Extract from Ordnance Survey 1 st edition 6" to one mile map 1862	p8
Extract from Ordnance Survey 2 nd edition 25" to one mile 1899	p9
Extract from Ordnance Survey 2nd edition 6" to one mile 1899	p10
Extract from Ordnance Survey 1" revised new series Sheet 30 1897 (outline)	p11
Extract from Ordnance Survey 1:25000 1953	p12
Extract from John Bartholomew half inch series of England and Wales	p13
Instructions to Field Examiners	p14
Notes	p15
Land Registry Information	p16
Appendix: Treatment of Named Lanes, Occupation and Private Carriage Roads in Westmorland	p17

Path Ref. Temple Sowerby 1

Extract from CCC Illustrative Definitive Map 1:10000



This track is depicted in every map from 1860 to 2018 and currently links with a public footpath

