

675

**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 **Musgrave**

DISTRICT OF **Eden** PUBLIC RIGHT OF WAY NO. ....

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 Caldys 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 **Footpath**

From: **St Theobalds Church NY 767132**

To: **Hall Garth NY772134**

2 UPGRADING

From:

To

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 **09 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 Footpath in Parish of Musgrave from St Theobalds Church to Hall Garth NY 767132 to 772134** 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

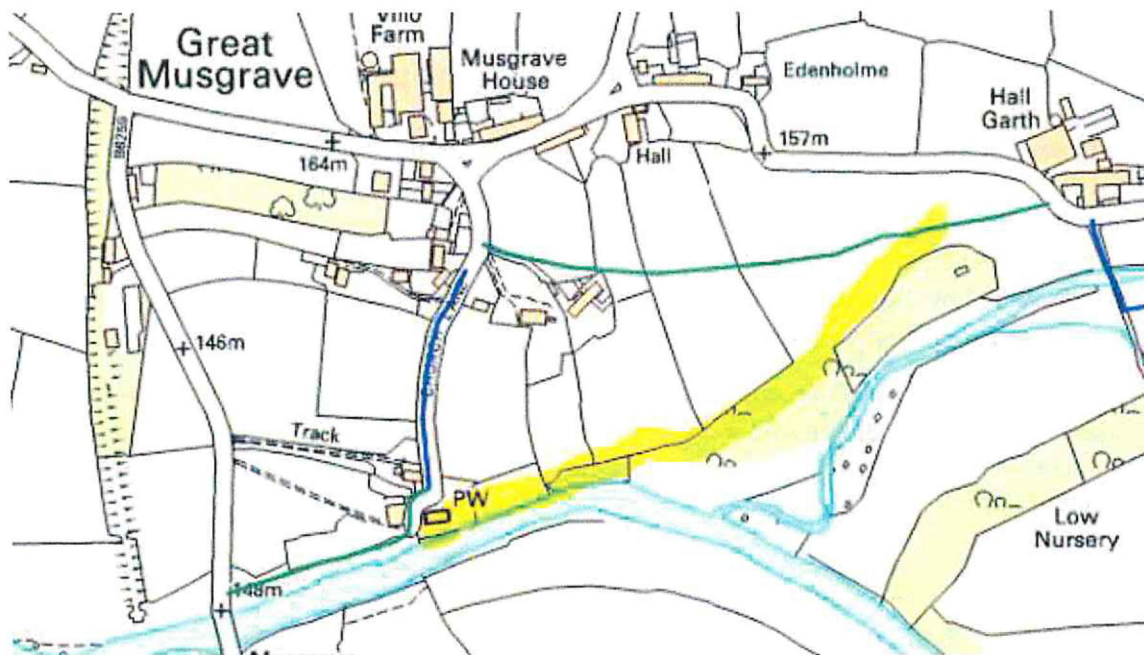
\* Peter E Robin MB ChB BDS MD FRCS retired surgeon, lifelong walker and Life Member of *Ramblers*.

I append the following List of Evidence

Extract from CCC Illustrative Definitive Map 1:10000*	p3
Application	p4
Extract from Old Maps 1862 (1:2500)	p5
Extract from Ordnance Survey First Edition 25" to one mile 1860	p6
Extract from Ordnance Survey 1 <sup>st</sup> edition 6" to one mile map 1862	p7
Extract from Ordnance Survey 2 <sup>nd</sup> edition 25" to one mile 1915	p8
Extract from Ordnance Survey 2 <sup>nd</sup> edition 25" to one mile 1915 (annotated)	p8
Extract from Ordnance Survey 2nd edition 6" to one mile 1899	p9
Extract from Ordnance Survey 1" revised new series Sheet 30 1897 (outline)	p10
Extract from Ordnance Survey 1:25000 1936-61	p11
Tithe Map and Records	p12
Instructions to Field Examiners	p14
Notes	p15
Land Registry Information	p16

Path Ref. Musgrave 3

Extract from CCC Illustrative Definitive Map 1:10000



A path still exists through the graveyard and beyond, climbing away from the river bank to join the mapped public path to Hall Garth.