

578

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 **Orton**

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 to**

From: **Park (and FP 355058) NY612089**

To: **Public Footpath 355056 NY613087**

2 UPGRADING

From:

To

as shown on the map attached: **see page 5**

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 from Park (and FP 355058) to Public Footpath 355056 NY612089 to 613087 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

Grounds for this Application	p3
Extract from CCC Illustrative Definitive Map 1:10000	p4
Extract from Old Maps 1862 (1:2500)	p5
Extract from Ordnance Survey First Edition 25" to one mile 1860	p7
Extract from Ordnance Survey 2 nd edition 25" to one mile 1899	p8
Extract from Ordnance Survey 6" map 1899 and 1920	p9
Extract from Ordnance Survey 1:25000 1936-61	p10
Extract from Ordnance Survey Instructions to Field Examiners	p11
Notes applicable to all DMMO applications on historic grounds.	p12
Land Registry Information	p13

This DMMO application is made on the following grounds:

1. The footpath is shown on Ordnance Survey 1st edition 25" to one mile 1860 coloured sepia as all other footpaths.
2. It is identified on "Old Maps" suitably reproduced.
3. The path is designated as "FP" on OS 6" 1899 and also shown in 1920
4. It is shown as a footpath (FP) on the OS 2nd edition prepared for the Revenue Valuation Survey of 1910-15
5. It still appears on OS 1:25000 map (an edition directed towards the walking public) in 1961.
6. The existence of a footpath for 100 years and particularly during the earlier part of this period is an indication that it was in use by the walking public.
7. The historic Ordnance Survey Instructions to Field Examiners were that only such a path, visible on the ground (and thus in use) and such as the public would use, should be recorded as a footpath. This indicates that at that time the surveyors had reason to consider that this was a public path.
8. The instructions to Field Examiners for the 1860 edition are "lost" but there is no reason to believe that they differed from those cited on p11.
9. It is unclear why a path so obviously a footpath and delineated precisely in the same manner as the related paths, has been overlooked and ignored.
10. It is strongly maintained that on the balance of probability (see p1 para2) this is a path used by the public for some 100 years and should therefore be included on the Definitive Map.

Path Ref. Orton 6

Extract from CCC Illustrative Definitive Map 1:10000



View from FP355056 looking N



Old stile at S end of