

Wildlife and Countryside Act 1981

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

To: Lake District National Park Authority
Murley Moss, Oxenholme Road
Kendal LA9 7RL

I, Dr Peter Ernest Robin of 9 Caldby Road West Kirby CH48 2HE (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 Nook Lane as Restricted Byway from SD463925 to 463923 and 465922 in Parish of Underbarrow and Bradleyfields 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

Date **08 October 2018**

Signed



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

I append the following List of Evidence

Extract from CCC Illustrative Definitive Map 1:10000*	p3
Application	p4
Thomas Hodgson's Westmorland 1770-1823	p5
Extract from Old Maps 1862 (1:2500)	p6
Extract from Ordnance Survey 1 st edition 25" to 1 mile	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 1915 (IR Valuation)	p9
Extract from Ordnance Survey 2 nd edition 25" to one mile 1899 (annotated)	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" New Popular Edition sheet 89 1947	p12
Extract from Ordnance Survey 1:25000 1936-61	p13
Extract from John Bartholomew half inch series of England and Wales 1924	p14
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Evidence of Treatment of Named Lanes, Occupation and Private Carriage Roads	p17
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Extract from CCC Illustrative Definitive Map 1:10000



Nook Lane is a mainly sealed metalled Lane which is of undefined status into which several public footpaths merge or cross. It is in regular unrestricted use by pedestrians, cyclists and motor vehicles.

