

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 4SJI/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 Footpaths (a), (b), and (c) as a public bridleway or footpath****From: a) Public road at NY638053 b) Public Road at NY640053 and c) Public Road at NY642051****To: NY640050 in Open Country****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 Footpaths (a), (b), in Parish of Orton NY638053, 640053 and 642051 to
640050 and (c) as a public bridleway or footpath** 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

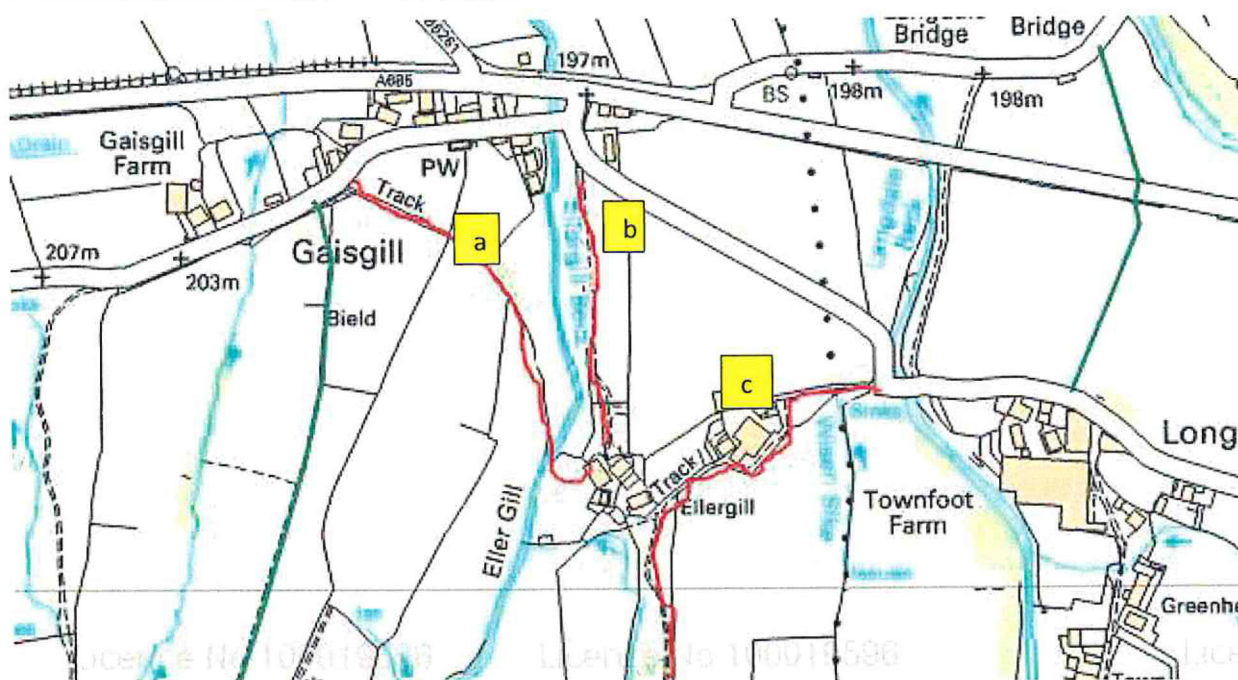
* Peter E Robin MB ChB BDS MD FRCS retired surgeon, lifelong walker and Life Member of *Ramblers*.

I append the following List of Evidence:

Extract from CCC Illustrative Definitive Map 1:10000	p3
Application	p4
Thomas Hodgson's map of Westmorland 1823	p5
Extract from Old Maps 1862 (1:2500)	p6
Extract from Ordnance Survey First Edition 25" to one mile 1860	p8
Extract from Ordnance Survey 1 st edition 6" to one mile map 1862	p9
Extracts from Ordnance Survey 2 nd editions 25" to one mile 1899 (IR Valuation)	p10
Extract from Ordnance Survey 2nd edition 6" to one mile 1899	p11
Extract from Ordnance Survey 1" revised new series Sheet 30 1897 (outline)	p12
Extract from Ordnance Survey 1:25000 1936-61	p13
Extract from John Bartholomew half inch series of England and Wales	p14
Land Registry Information	p15

Path Ref Orton 2abc Gaisgill/Ellergil to Moor (Open Country)

Extract from current CCC Illustrative Definitive Map: the three routes (a,b,c) are shown in red.



Photographs of current state:



Path 2a: Roadside entrance



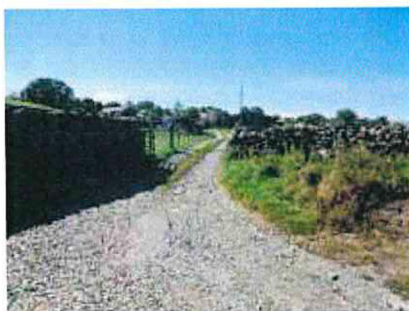
2a: Top of track



2a: Track down to ford at Ellergill



2b: Roadside start



2c: Roadside start



2c: Continuation to moor

The current situation is:

1. Is easily identified as a grossly overgrown track, pasture with slight vehicle indent, and a gateway leading down a track to ford at Ellergill
2. Overgrown and unclear. There is a roadside wall.
3. Hardened track in constant use leading up to moor and open country, navigable on foot, horse or cycle.