

## **Modification of Definitive Map and Statement – Edgecombe House, Ravenglass, Muncaster Parish**

### **1 Summary**

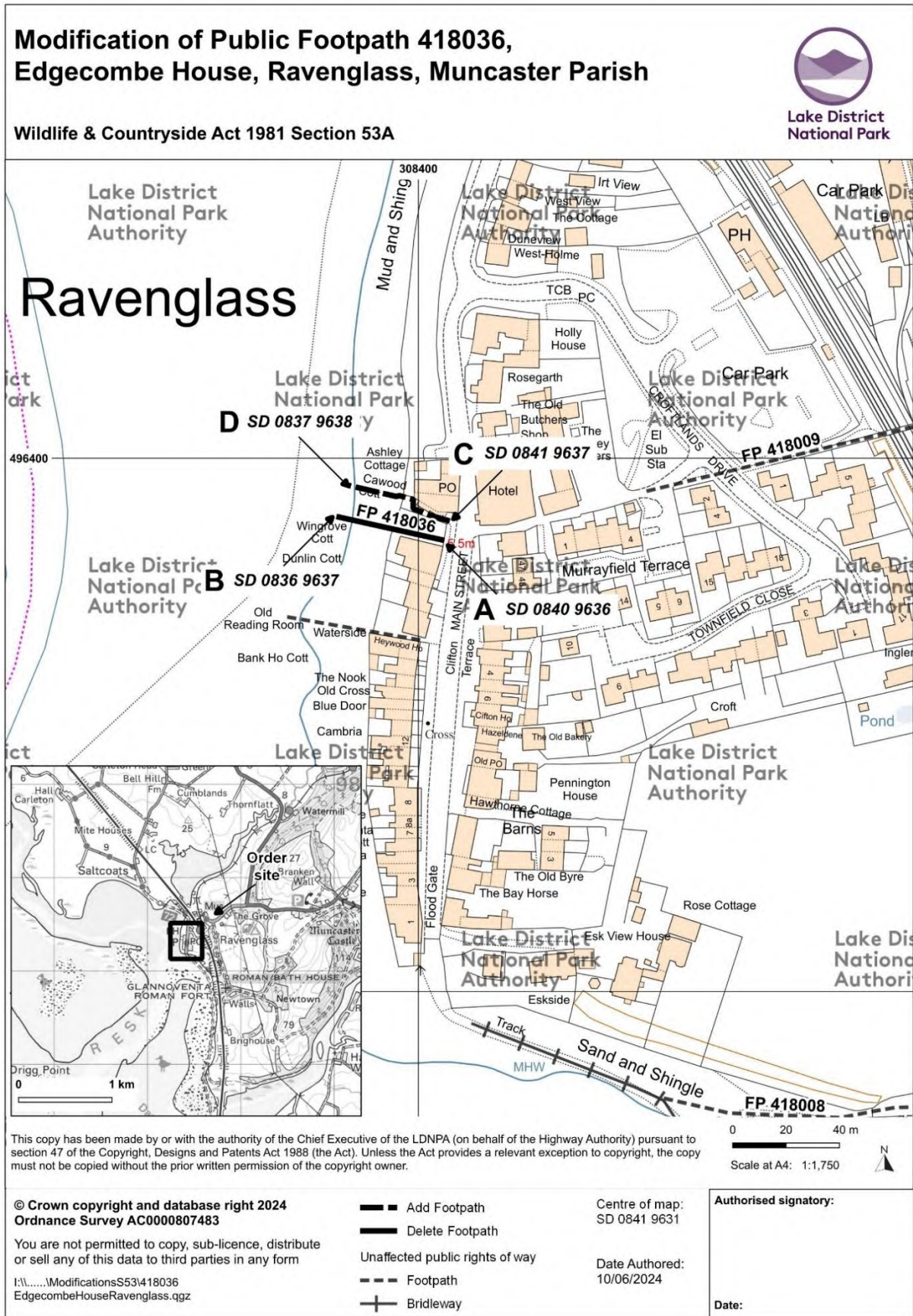
- 1.1 This report discusses a potential modification order to alter the definitive map and statement for footpath 418036 at Ravenglass, based on evidence that this path was incorrectly depicted on the definitive map, re-aligning it to the route described in the definitive statement and actually in use.

<b>Recommendation that:</b>	<p><b>a We make an order altering the recorded definitive line of public footpath 418036 to the route shown C-D on the plan on page 2 of this report, in place of the current recorded route A-B, and update the description of the route within the definitive statement;</b></p> <p><b>b We confirm the order if it receives no sustained objections; and</b></p> <p><b>c We submit the order to the Secretary of State for determination if objections are received and sustained.</b></p>
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### **2 Background**

- 2.1 In March 2024 we consulted on a Temporary Traffic Regulation Order (TTRO) over the railway footbridge in Ravenglass, crossed by footpath 418009. The owner of Wingrove Cottage on Main Street queried why the route of footpath 418036 was shown on the TTRO plan passing through what is now their property's garden and up / down the seawall on a route which was physically unusable, when they had always believed the footpath to run more closely alongside the neighbouring property Edgecombe House (now called Spindrift), where there is a narrow lane between the Main Street and foreshore.
- 2.2 This discovery that the definitive map appeared to show an impractical route prompted us to undertake further investigation of the correct route of this footpath – and the evidence is discussed within the following assessment report.

**Plan of recorded definitive line and modification route**



### 3 Policy Context

- 3.1 The key aim for access and rights of way within the Lake District National Park Partnership's Plan is to enhance the quality and diversity of the visitor's experience through improvements to accommodation, attractions, public realm, and visitor facilities. Modification orders help bring benefit to the public and landowners through providing clarity of rights with respect to the network and ensuring the accurate recording of public rights of way.
- 3.2 The Authority is performing a statutory function under powers delegated to it by Cumberland Council. The case should be determined in accordance with legal requirement and the evidence presented to the Committee - the Authority's wider policies are of no relevance to any decision.

### 4 Options

- 4.1 Possible outcomes
- a) Do not make a definitive map modification order
  - b) Make a definitive map modification order altering the recorded definitive line of the footpath (shown A-B on the plan) to the route shown C-D and updating the description of the footpath within the definitive statement.

### 5 Proposals

- 5.1 My recommendation, based on the available evidence, is that outcome 4.1b appears, on the balance of probabilities, the correct course of action. In my view the evidence suggests that C-D is the route described in the definitive statement, that it has always been the route actually in use by the public, and that the line depicted on the definitive map was a drafting error. If the Committee concludes that the definitive map requires updating, it appears logical to also update the particulars of the definitive statement to reflect later changes to the path (addition of steps around the seawall, change of house name and the removal of the cobbler's hut).

### 6 Demonstrating Best Value

- 6.1 **Work Programme:** The need to investigate whether a modification order should be made for this footpath was prompted by the discovery of evidence in March 2024 that the definitive map depiction of the route appeared likely to be incorrect. We have over 30 modification applications outstanding, we have prioritised this one as it appears relatively straightforward and will provide clarity around the route of the footpath between neighbouring domestic properties, whilst also providing a good training opportunity for staff.

6.2 The best value implications are:

- a) The **challenge** is for us to maintain an accurate definitive map which will aid our effective management and promotion of the rights of way network.
- b) We have **compared** our casework completion rates with other authorities, and it is comparable in relation to staffing levels and length of the network.
- c) We have **consulted** user bodies, the Local Access Forum, and other interested parties as part of the process.
- b) Processing modification orders is not a **competitive** procedure. Cumberland Council can also process orders but have delegated this duty to us.

## 7 Finance Considerations and Human Resources

7.1 When considering a modification order, staff and cost factors must not play any part in the decision-making process. Costs involved in modification orders may vary greatly. More complex cases can take many years to process and can consume large amounts of staff time – the value of which is difficult to calculate.

7.2 This case has so far probably taken at least 15 days of staff time – less than for most modification order investigations as it is a relatively straightforward case. If an order is made, anyone may formally object and the case would be submitted to the Secretary of State for determination. In this unlikely event, preparation for, and attendance at a public inquiry (if one is held), to present the case on our behalf is likely to take ~30 days of staff time (Rights of Way Officers and Legal Advisor) and may cost somewhere in the region of £10,000+. Written Representation and Hearing procedures if chosen by the Secretary of State would be much less.

## 8 Risk

8.1 This case has been investigated following the Authority's standard procedures and the report approved by our Solicitor. This addresses any risk of failure to comply with legislation. Reporting to Committee and the associated debate and decision provides the most effective defence against any legal challenge. All responses received during our consultation and conversations with the affected property owners suggest that nobody disputes that the footpath is currently incorrectly recorded on the definitive map. And therefore, the risk of meaningful objections is low.

## 9 Legal Considerations

9.1 Any order, if made, would be under the provisions of the Wildlife & Countryside Act 1981, namely the second limb of section 53(3)(c)(iii) – *'that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require*

*modification*'. The purpose of modification orders is to record existing rights accurately. Court cases have shown that there are no human rights implications.

## 10 Diversity and Sustainability Implications

10.1 These are not relevant issues for determining modification orders. Only the evidence can be considered.

<b>Background Papers:</b>	1422.418.04 (case file)
<b>Author:</b>	Will Hinchliffe, Rights of Way Officer
<b>Responsible Director:</b>	Stephen Ratcliffe, Sustainable Development
<b>Date Written:</b>	3 September 2025



## MODIFICATION OF DEFINITIVE MAP & STATEMENT FOOTPATH 418036, EDGECOMBE HOUSE, RAVENGLASS, MUNCASTER PARISH ASSESSMENT REPORT

### BACKGROUND

1. Footpath 418036 runs between the Main Street at Ravenglass and the shore between two properties, Wingrove Cottage and Edgecombe House (now called Spindrift). The footpath was added to the definitive map during the 1976 'Limited Special Review' process which created the Cumbria definitive map and statement.

#### Plan 1 – Excerpt from Cumbria definitive map, published 1989, relevant date 1976



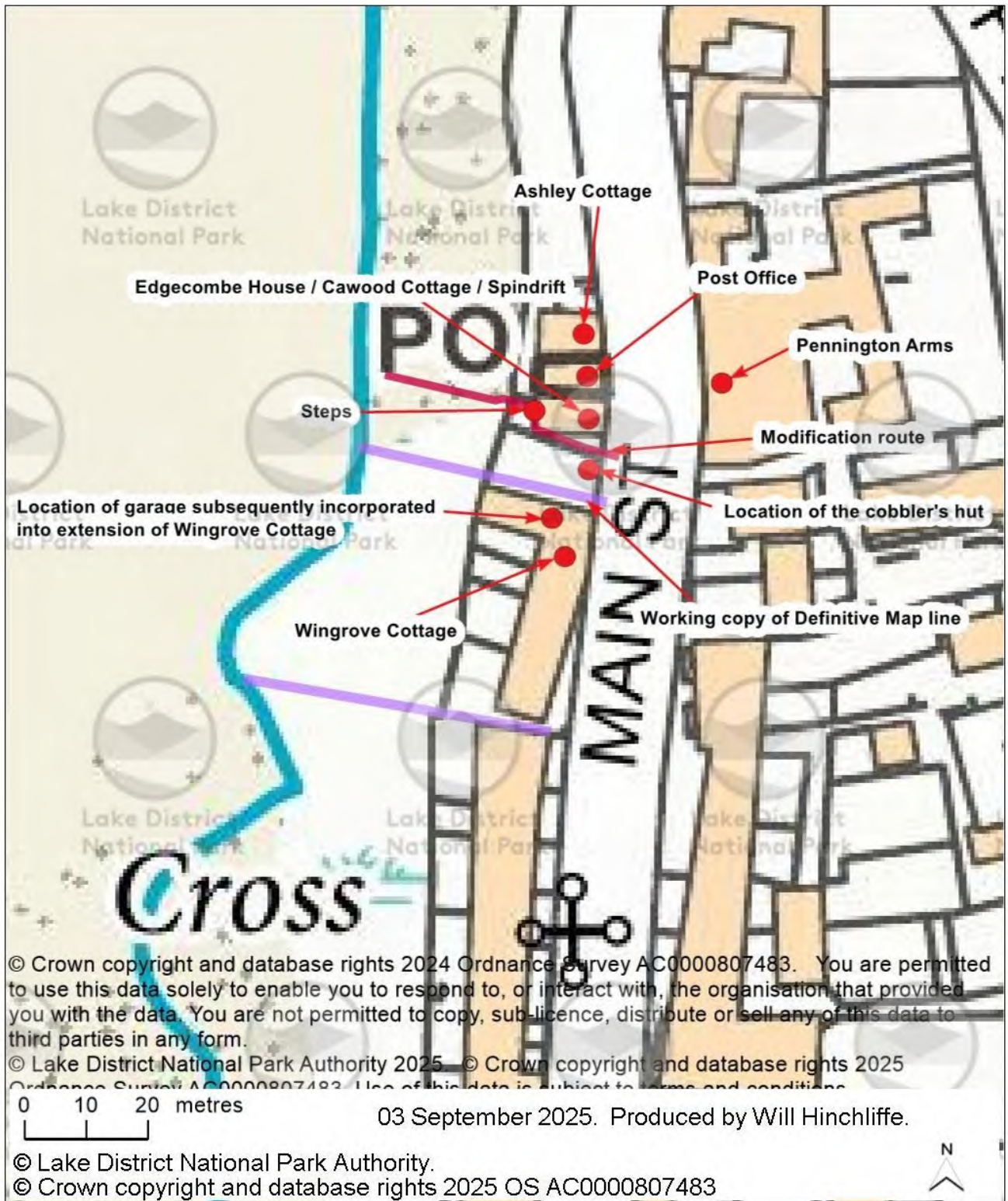
2. The Definitive Statement provides the following description of the footpath:

418036	Footpath	<del>giving access onto Manchester Fell.</del> In Ravenglass, from Main Street, westerly between Edgecombe House and cobbler's hut for 40 metres on to the foreshore.	SD09NE	40 05 36 / 96 37 05 40 / 96 36	Added during 1976 review
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3. As can be seen more clearly on plan 2 (below) the definitive map depicts the footpath running between Edgecombe House and Wingrove Cottage on the route between points A and B, directly adjacent to Wingrove Cottage. Plan 3 depicts the routes under consideration, along with the properties and other key features discussed within this report.
4. This investigation was prompted when the owner at Wingrove Cottage highlighted during consultation on an unrelated Traffic Regulation Order that they believed the definitive map showed the footpath incorrectly, and that it actually ran as shown between points C and D on the plan, directly adjacent to Edgecombe House.
5. The property referred to as Edgecombe House in the definitive statement was subsequently known as Cawood Cottage for some decades, and more recently (and currently) as Spindrift. I will refer to it as Edgecombe House throughout the rest of this report for clarity as this was its name at the time the footpath was added to the definitive map and referred to in the definitive statement.
6. Site visits, discussions with the owners and a wider consultation (paragraph 24) have all helped inform this assessment report. The relevant evidence in this investigation includes maps, photographs, guidebooks and other media.
7. This Assessment Report analyses the available evidence and the application of the relevant legislation. The documentary evidence is provided in Annex 1.



### Plan 3 – annotated location plan



## LEGAL GUIDANCE

### Modification Orders under Section 53 of the Wildlife and Countryside Act 1981

8. Section 53(3) of the Wildlife and Countryside Act 1981 allows the surveying authority to make modification orders to amend the definitive map and statement. We have delegated powers to do this under our Agency Agreement with Cumberland Council.
9. Modification orders amend the definitive map, provided that there is cogent evidence that, on the balance of probabilities, a change should be made.
10. The possible changes are:
  - **add** to the map rights of way not presently shown,
  - **remove** rights of way already on the map,
  - **upgrade or downgrade** rights of way already shown on the map or **change some details** of a recorded right of way.
11. Modifications require us to look back to discover what has happened in the past, establish the facts, and apply the relevant legal tests to decide whether a right of way exists, where it is located, and of what status. All the relevant available evidence must be considered before making a decision. The evidence must be considered in isolation to all other factors such as local history, desirability or otherwise, personalities involved, Authority policy, and whether it provides new opportunities for users or creates difficulties for landowners (or ourselves) and so on.
12. A realignment of a right of way is effectively the deletion of part of a way and addition of another part. Where there is no dispute that a right of way exists, just a dispute as to its precise route, we must look at the two routes together (as is the case here). To make a modification order we must be satisfied that there is sufficient evidence, on the '**balance of probabilities**', to indicate that the alignment of a right of way recorded on the definitive map, or the particulars in the definitive statement, are incorrect. We must decide if the definitive map and statement truly reflect the situation that existed on the ground at the time the right of way was added to the definitive map and statement.
13. To make an order to modify the map and statement there must be evidence of some substance showing that an error was made when the right of way was first shown on the definitive map. This evidence must outweigh an initial presumption that the right of way exists as shown (referred to in subsequent court decisions as 'the Trevelyan presumption' after *Trevelyan vs Secretary of State for Environment, Transport & Regions* [2001] EWCA Civ 266). The mere assertion,

without satisfactory supporting evidence, that a right of way has been wrongly aligned, would be insufficient to satisfy the test.

14. If we are convinced that a mistake was made in drafting the definitive map or within the details recorded in the definitive statement, we must then also decide if there is evidence that shows that a right of way exists over the proposed modification route. Again, we must consider all the relevant available evidence.
15. An investigation must be based on a 'discovery of evidence' which indicates the right of way is not recorded correctly. This must not have previously been considered in the context of the way and the definitive map. However, once new evidence has been discovered – however insignificant, all the available evidence must be considered. In this case, the relevant 'evidential event' prompting investigation comes under section 53(3)(c)(iii) of the Wildlife and Countryside Act (1981). Specifically in this case the discovery that the definitive map and statement appeared to be inconsistent with one another, following a query from the owner of Wingrove Cottage about the footpath's depiction on the definitive map.
16. The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. We must weigh up all the relevant evidence using the test of the 'balance of probabilities', and, if on this balance, it is reasonable to conclude that the evidence shows that a change should be made, we must do so. The 'balance' test requires clear evidence in favour of the modification route, and no credible evidence to the contrary.
17. Although I have considered the evidence, and made a recommendation based on my appraisal (approved by the Head of Service and Authority Solicitor), Members must themselves consider the evidence and reach their own conclusions.
18. If a modification order is made anyone has a right to object. The matter would then be determined by the Secretary of State.

### **Relevant case law**

19. In relation to this investigation where the depiction of the footpath on the definitive map is at odds with the description in the definitive statement, a relevant case to consider is *Norfolk County Council, R (on the application of) vs Secretary of State for Environment, Food & Rural Affairs* ([2005] EWHC 119 (Admin)). In this judicial review case the High Court quashed an inspector's decision not to confirm a modification order. The ruling found that the inspector had wrongly applied a presumption in favour of the map at the expense of the statement, the following key points are relevant to the case we're considering.




20. The judge stated that, *“where the map and statement conflict as to the position of a public right of way I can see no basis for the application of an evidential presumption in favour of one at the expense of the other”*.
21. The judge concluded that interpretation of the map and statement must take a practical approach and that they should be examined together, *“with a view to resolving the question whether they are truly in conflict or the statement can properly be read as describing the position of the right of way”*.
22. They went on to state, *“In the case of irreconcilable conflict between the map and the statement, there is no evidential presumption that the map is correct and the statement not correct. The conflict is evidence of error in the preparation of the map and statement which displaces the Trevelyan presumption. Each should be accorded the weight analysis of the documents themselves and the extrinsic evidence, including the situation on the ground at the relevant date, demonstrates is appropriate”*.

**PHOTOGRAPHS AND DESCRIPTIONS OF ROUTES**




23. The following photographs were taken during a site visit on 4 June 2024.

**Current route recorded on the definitive map (points A-B) - the 'recorded route'**

P1		The recorded definitive line leaves the Main Street and heads west-northwest into what is now the garden of Wingrove Cottage, approximately in line with the silver car and cabbage tree.
P2		The recorded line continues through the garden.

P3		At the rear of the garden, the definitive line reaches the sea wall (just to the left of the pole).
P4		Facing back east-southeast from point B on the recorded line to the seawall.
P5		Facing north-northeast from point B.

### The 'modification route' (points C-D)

P6		<p>The modification route leaves the Main Street heading west-northwest on the northern side of the property boundary between Edgecombe House and Wingrove Cottage (this route has been signed by the National Park Authority as the footpath). The width between the wall and porch is initially approximately 1.5m.</p>
P7		<p>The way continues and narrows alongside the porch of Edgecombe House. Usable width is 1m at narrowest point between flowerbed and wall.</p>
P8		<p>The remains of a telegraph pole visible in the wall between the properties.</p>

P9




The passage continues alongside Edgecombe House, at the far end is the seawall, a set of concrete steps with a handrail turn off on the right (to the north).

P10  
and  
P11



There are six steps up, then a right-angle corner and 10 steps descend down alongside the seawall to a short section of concrete path (0.75m wide between wall and rocks) and towards point D on the shore. Both sets of steps have handrails, the width of the steps is 0.9m, though due to the handrails the usable width is 0.75m.

P12		<p>Facing east-southeast from close to point D – the steps of the modification route can be viewed alongside the two phases of seawall. The shore area is registered as a village green - with the seawalls forming most of its boundary, the steps and short section of concrete path are not within the village green.</p>
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## CONSULTATION

24. We have consulted our usual consultees. The responses received are provided in the below table. Other than a few suggestions of potential additional sources no direct evidence regarding the footpath was received.

<b>Cumberland Council Countryside Access Team</b>
<p>I refer to your consultation in respect of the above.</p> <p>The Council has no objection and the only correspondence this Council has to hand is attached and refers to planning application consultations and a response to an enquiry.</p> <p>There maybe something held at our records office relating to the Special Review. Please let me know if you wish me to request the files for you to come and inspect. Or if there is no rush I could have a look through the files for you.</p> <p>--</p> <p><i>The Council later confirmed they had found no additional documentation relating to the Limited Special Review, other than the document already found (item 4 in Annex 1)</i></p>
<b>Cumberland Council Planning Team</b>
<p>As the path is within the Lake District National Park area, Cumberland Council do not hold any relevant information on this matter from a planning perspective.</p>
<b>Open Spaces Society</b>
<p>We can only presume that this claim was made by an OSS member, the late Mrs Susan Johnson. Susan always maintained that the whole settlement was built unlawfully on a village green. However, I cannot find a registration of the area at the Ravenglass foreshore as being so registered. That does not mean to say a future claim may not be made. But this will have no material weight to your considerations. Susan's files may still exist (perhaps with her daughter in Cockermouth or, more likely, in the records Office). I don't think they went to the FLD in this case.</p>

I cannot find my picture of that site - showing what became, I think, a garage, which closed pre-decimalisation as you will see from the current retained petrol pumps. The enclosed picture I believe dates from c1953-5 and looks towards the site, I think, but is not of much assistance.

There were two publications which related to the area - one by Bob Orrell and one by a teacher called, I think, Slaley about Eskdale. They both had images of the village, some hand drawn if I recall correctly. Sorry but I do not have any copies of these.

Can we assume the Act and maps accompanying the creation of the railway will be consulted?

The NPA ranger at the time, if he is still in Waberthwaite, Malcolm Guyatt, may have some knowledge of the issues (I assume Malcolm is still around). There may be some material in the LDSPB files created when Ravenglass became a Conservation Area. We assume you will be contacting Muncaster to view their estate maps and files.

So apart from this very general context we are unable to supply you any substantive evidence to assist with your potential Modification Order.

#### **USER AND OWNER EVIDENCE**

25. No significant user evidence has been gathered relating to this footpath. As discussed it was the current owner of Wingrove Cottage who initially highlighted that they believed the definitive map to be incorrect. The owner of Edgecombe House (who moved there in 2007) has also been spoken with and raised no doubts that the modification route is the correct line of the footpath. They have always been of the view that the footpath did pass along the modification route, as further evidenced by planning applications in the past (see paragraphs 47-48).

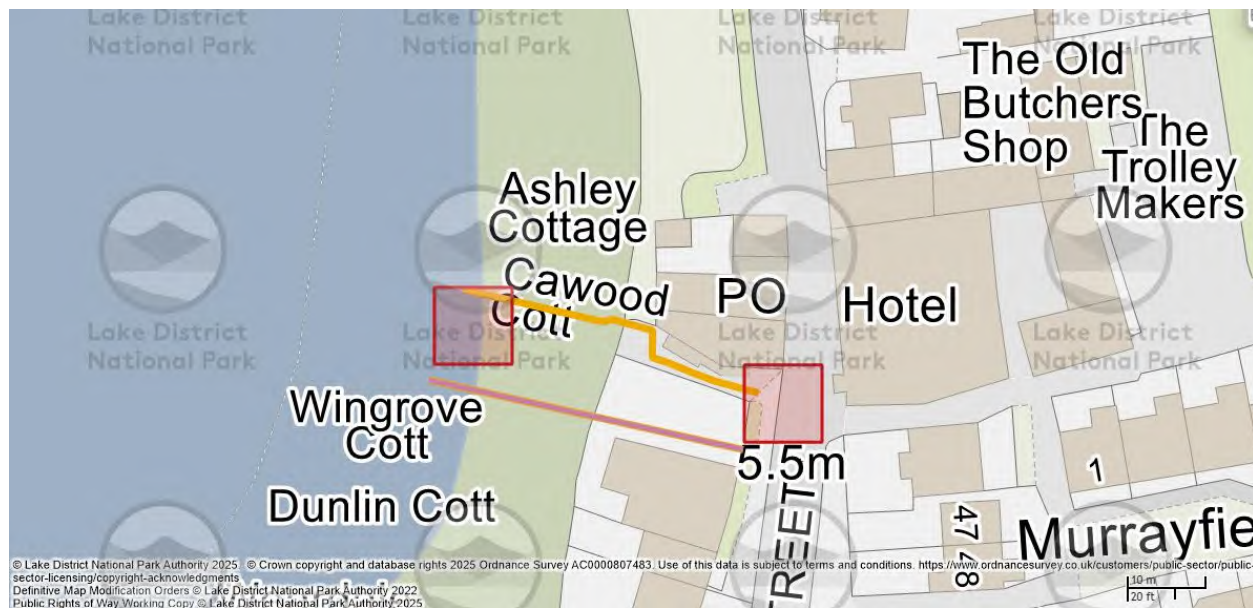
## DISCUSSION OF DOCUMENTARY EVIDENCE

26. The documentary evidence (including mapping, photographs, local guidebooks and other publications) is collated in Annex 1 and discussed below, with headings relating to the key evidenced points.

### **Addition of the footpath to the definitive map and statement**

27. This footpath was not recorded on the first (Cumberland) Definitive Map and Statement. It was claimed as a public right of way by the Parish Council as part of the Limited Special Review process which prepared the Cumbria Definitive Map and Statement (relevant date 1976, published 1989). Items 1 and 2 evidence the route claimed by the Parish Council – particulars of the path were provided by the Parish Council in item 1, “*(starts at) Main St Ravenglass old shoe repairer’s shop, (ends at) foreshore*” with a width of three yards, and in a letter written by the Parish Council Clerk to the County Council (item 2), “*Rights of Way from Main Street, Ravenglass on the west side which give access to the foreshore and registered common VG 110. There are two short footpaths one beside the old Reading Room, the other between the Garage (and old shoe repairer’s shop) and the block of buildings opposite the Pennington Arms*”. The footpath was claimed on the basis of uninterrupted public use for a period of over 50 years. The recommendation included in the Special Sub-Committee on Public Rights of Way Report of 1977 was that the footpath should be added to the definitive map and statement (items 3 and 4). Accompanying the report was a map (item 5) showing footpath 102036 on the recorded route (A-B) which would have been prepared by Cumbria County Council.
28. The Sub-Committee recommendation was approved, and the footpath was added to the Cumbria definitive map and statement. The definitive statement description (paragraph 2 above) was taken from the Sub-Committee Report, however, the grid references which were provided in the Sub-Committee Report were not included in the definitive statement. These more closely reflect the modification route than the definitive line (see Plan 4 below). Although it’s hard to ascribe too much weight to this given the scale in question and unavailability of technology at the time to record locations more accurately, this does potentially support the case that the modification route is that which was claimed by the Parish Council.

**Plan 4 - Current OS basemapping overlaid with the Definitive line (pink line), proposed modification route (orange line) and grid references which were provided within the Sub-Committee report (red squares)**



**Unavailability of the route recorded on the Definitive Map**

29. The earliest available aerial photographs from the mid-twentieth Century (items 6 and 7) provide strong evidence that the route recorded on the definitive map was not available historically. These show that there was an unbroken seawall running along the shoreward (western) side of the Wingrove Cottage plot – demonstrating that there was no feasible access from at least 1949. Later (1980s) aerial photographs (items 8 and 9) show that the recorded route continued to be obstructed by the seawall up to the present, but also that for much of that time there appear to have been additional obstructions in the garage’s yard area (including a shed and stored materials). Item 9 was taken at some point between 1979 – 1986, around the time the footpath was added to the definitive map and statement, demonstrating that the definitive line route was unavailable at this time, and that the route must have been elsewhere.
30. The earliest Ordnance Survey mapping (items 10 and 11) shows a solid boundary along the western side of the Wingrove Cottage plot, indicating that the recorded route was obstructed from at least 1860 and all available subsequent photos indicate this route remained obstructed by the wall and impracticable throughout the 20<sup>th</sup> Century. Item 11 appears to depict a building or buildings extending across the western end of the Wingrove Cottage plot, across the recorded route (annotation has been added to approximately depict the recorded route). On the second series of OS maps, revised in 1897 (items 12 and 13), the building / buildings visible on item 11 had gone, though the plot is still surrounded

by a solid boundary line – it's likely this indicates a seawall on the same footprint as it is today.

31. The details provided by the Parish Council in item 1 stated that there were no obstructions on the claimed right of way – given the photographic evidence that the recorded route was obstructed prior to this time this would be a startling omission if they intended to claim the footpath on the definitive line.

### **Where had a route been available between the Main Street and shore when the footpath was claimed in 1976?**

32. The earliest mapping of the footpath shows that there has physically been a route through to the shore alongside Edgecombe House on the modification route since at least 1860 (when the first Ordnance Survey six-inch and 25-inch maps were surveyed - items 10 and 11). On all of these early OS maps (items 10 – 13) there is a clear through-route from the road to the shore north of the boundary of the Wingrove Cottage plot, and south of the building to the north (Edgecombe House).
33. Item 14 is an illustration of Ravenglass, dated 1894 – this clearly depicts an area of open ground between Wingrove Cottage and Edgecombe House, providing further evidence that any buildings between the two had been demolished by this time. There doesn't appear to have been a seawall when this was drawn.
34. Strong supporting evidence that there were indeed buildings on this plot at an earlier time is provided by references to it being known as 'Old Buildings' in *Ravenglass through the Ages* (1989), by Barbara Newton (item 15) and *The Story of Ravenglass* leaflet (item 16), which asserts that this was where Ravenglass Fair was held historically. Item 15 refers to 'Pot Tommy', a travelling salesman, who is described parking his cart, "*beside Pharaoh's bootshop (Wingrove Cottage – see paragraph 38) on some spare ground known as Old Buildings – though the old buildings had long since disappeared*". In item 17 Bob Orrell also refers to this use of the plot in *Around and about in Ravenglass* (1976), "*The name Pharaoh has long been associated with attending to the needs of village footwear, and hand made clogs can still be obtained. The land on which Pharaoh's shoe shop stands was at one time open ground, where 'Pot Tommy' and other travelling tinkers used to park their caravans*". In *Memories of Ravenglass* (1998), by Bert Turner (item 18), reference is made to 'Pot Tommy' parking his "*steam traction engine and living van on the roadside outside Herbert House*", the property directly across the street from what is now the garden of Wingrove Cottage.
35. The description of properties within the village in item 18 also appears to give us the name of one of the previous occupants of Edgecombe House - Kate Noble, who appears to have lived there in the 1920s and 1930s. More significantly in

relation to this investigation it provides the following description, following an account of the garage, workshop and a wooden hut on the Pharaoh's land, that Kate, "*had the next grocer's shop at the corner of the shore entrance opposite the Pennington Arms*". This is further potential evidence that at this time there was a route to the shore which passed immediately alongside Edgecombe House on the modification route.

36. It is not possible from the description provided in item 18 alone to deduce with certainty that Kate and her family lived at Edgecombe House, but additional information in Bert Turner's book (items 19 and 20) corroborates this. The two properties north of Edgecombe House have housed the village post office (and shop) to the present day. The description describes Kate being in a property on a corner – which would have to be either Edgecombe House or Ashley Cottage (the northernmost of these three attached properties). The description of properties provided in item 18 appears to run south to north, referring to the garage and workshop, and a wooden hut from which Fred Holman sold pots and pans and hardware (it appears possible this was the original purpose of the cobbler's hut), then Kate Noble having the "*next grocer's shop*", and then Miss Fanny Clark running a shop which sold groceries (amongst other things) "*directly opposite the Pennington Arms*". It would appear illogical to have described Kate Noble's shop if it were at Ashley Cottage before Fanny Clark's, as it would not then have been the next grocer's shop. The description provided in item 19 appears to confirm that Fanny Clark owned the property at the southern end of the green opposite Rosegarth (and therefore the northernmost of this block of attached buildings. Item 20 is a photograph looking northwards along Main Street showing Edgecombe House and the Pennington Arms. This is uncredited, but dated to about 1914 and the caption describes, "*Fanny Clark's shop is opposite (sic) the hotel and Kate Noble's faces down the street*". The doorway in item 18 which Kate and her family were photographed in appears very similar to the doorway of Edgecombe House visible in item 20. Together these pieces of evidence strongly support the assertion that Kate and her family lived at Edgecombe House and therefore that there was a shore entrance alongside the property at that time. Bollards can be seen alongside Edgecombe House in item 20, appearing to stand where the modification route heads west off Main Street.
37. Further maps and plans available provide additional evidence that there continued to be a physical way along the modification route throughout the 20<sup>th</sup> Century - for example, item 21 is a Lake District Special Planning Board advisory plan from 1966 relating to the Ravenglass Conservation Area. A clear gap between the brown hatched blocks indicating buildings is shown on the modification route. Item 22, another Lake District Special Planning Board document (likely from around the same time as item 21) also indicates that there was a clear view / route to the sea around this time. Item 23 is a photograph which was then transposed into a tracing which was used for recording notes relating to the Conservation Area. Although again undated, the photograph is

taken from the modification route facing towards the Main Street, annotated as “*View along alley beside P.O. (Post Office)*”.

### **Confirming the modification route is the way described in the definitive statement**

38. Item 2 in my view provides the clearest description of where the Parish Council claimed the footpath “between the garage (and old shoe repairer’s shop) and the block of buildings opposite the Pennington Arms” - Edgecombe House being the southernmost of this block of buildings. The current owner believes the Pharaoh family mentioned above owned Wingrove Cottage and the adjoining plot of land as far back as the 19<sup>th</sup> Century. It is clear from various sources that the family ran a footwear business (items 15-18 already discussed, and item 24). In the 1930s Jack Pharaoh constructed a garage next to the existing shop (referenced in the first line of item 18 – this was a tin and timber lean-to construction alongside the main house. In addition to photos of the property there are also several illustrations (items 16, 25 and 26) which depict Wingrove Cottage and the garage building.
39. Jack Pharaoh and his wife lived at Wingrove Cottage until the late 1970s or early 1980s, when following Jack’s death (see item 27) the property was purchased by Dr and Mrs Hunter sometime between 1982 and 1987 (as evidenced by item 28 – a 1987 Planning letter mentioning that the rates for the property were amended in 1982 to reflect domestic use of the garage, and that the Hunters purchased the property on this basis).
40. There are several photographs (items 29, 30, 32 and 33) of a hut, with a sign stating ‘J.A. Pharaoh, Boot & Shoe Maker’, which stood at the northeastern corner of Wingrove Cottage’s property boundary, directly beside the modification route. Items 29, 30 and 32 are dated November 1979, just a few years after the footpath was claimed as a public right of way. Helping to pinpoint exactly what these photos show, the stump of the telegraph pole visible in them is still present today (photograph P8 in the photos and description of routes section of this report). The cobbler’s hut can also be identified in the mid-20<sup>th</sup> Century aerial photographs (items 6 and 7).
41. Further to the photos of the cobbler’s hut, the 1970 OS National Grid map (item 34), shows the buildings present at that time quite clearly, including the cobbler’s hut at its location beside the modification route. Items 35 and 36, Lake District Special Planning Board plans related to development proposals for Ravenglass (probably dating to around 1976) again show the hut building, which is labelled ‘cobbler’ on item 35
42. In my view the evidence discussed in paragraphs 38-41 provides confirmation of the location of the cobbler’s hut at the northeastern corner of Wingrove Cottage’s

plot of land. The footpath was claimed by the Parish Council and subsequently described in the definitive statement as being between Edgecombe House and the cobbler's hut. From this I would infer that the modification route is what is clearly described in the particulars of the definitive statement and that this is the route which should have been shown on the definitive map.

### **Construction of the seawall and steps on the modification route**

43. Ravenglass suffered several significant flooding events over the years. The most notable recorded occurrences were in February 1967 and November 1978. The 1978 flood was so severe that it drove a boat into the back of the Post Office (next door to Edgecombe House). It is possible that item 37 was taken during one of these flood events (more likely 1967 based on the vehicles visible in the photo). The 1978 flood prompted the construction of additional seawalls as a defence against future flooding – a section was added across the modification route, joining to the pre-existing wall which ran along the shoreward side of the Wingrove Cottage plot. Items 30, 38 and 39 are useful as they all date to November 1979 and appear to act as before and after images of the works.
  
44. Item 30 provides the clearest image we have of the modification route prior to the construction of the steps and seawall across the modification route. In this photo a piece of construction equipment is also visible (item 31 provides an enlarged image) – the profile looks similar to cement / concrete mixers of the time, and may well have been there for the purpose of constructing the new wall. Items 38 and 39 show the newly constructed steps and section of seawall. Additional supporting evidence for dating the construction of the seawall and steps is provided in items 40, 41 and 42 – item 40 is a letter from North West Water dating to October 1979 regarding their plan to install a flood gate at the southern end of Main Street. Items 41 and 42 are letters sent to North West Water in March 1980 (by Sheltons Solicitors acting on behalf of a local resident) and from North West Water to Cumbria County Council in May 1980, both relating to the construction of the sea wall and steps in the vicinity of footpath 418037, which follows a parallel route to footpath 418036 between the Main Street and shore less than fifty metres to the south-southwest. There was clearly some disgruntlement about the construction of the new flood defences – and this may have provided the motivation for the 'before and after' photos (items 30, 38 and 39) to be taken. The new section of seawall is topped differently to the earlier wall and so can be very easily distinguished in subsequent aerial photographs (items 8 and 9). The different construction of the sections of wall is now somewhat obscured – both sections have been rendered, but clearly at different times or with different mortar as the two can still be clearly distinguished based on their different heights, finishes and top dressings (see recent photo, item 43). The exposed brick towards the top of the earlier section of wall around Wingrove Cottage is also visible in item 38, in the newer seawall larger stonework was utilised.

45. There was clearly thought to be a need to maintain access on the modification route when the seawall was added and the concrete steps were constructed to enable this. If the modification route is determined to be the correct line of the public footpath – the way now in use via the stairs appears to remain within its original width, and the wall and steps would be features which the Highway Authority could have authorised to be added for the purpose of protecting the highway from hazards of nature without the requirement for a Public Path Order to divert the footpath (these powers are now enabled under Section 102 of the Highways Act, 1980).

### **Planning applications and the views of the property owners**

46. Wingrove Cottage was bought by Dr and Mrs Hunter in 1982. They obtained planning permission in 1987 for the demolition of the garage, and replacement with a (private) garage and domestic extension on to the side of the house where the garage had stood. No mention is made amongst these applications (references 7/1987/4083, 4088 and 4090) of a public right of way through the property. From this I would infer that the Hunters did not consider that the footpath ran through the plot of land beside Wingrove Cottage (which became its garden).
47. The current and previous owners of Edgecombe House (and Cumbria County Council's Highways team, the LDNPA Planning team and LDNPA Rights of Way team) were clearly also of the view that the public footpath ran along the modification route when planning applications were made in 1993 (items 44 and 45), and in 2010 / 2011, relating to the property. In relation to the 2010 application for an extension (reference 7/2010/4078) the LDNPA Ranger team's consultation response (item 46) highlighted potential encroachment of the proposed development onto the public footpath, although the Ranger appears to have concluded that the impact on the footpath's width would be *de minimis*. The 2010 application was withdrawn and a revised application (7/2011/4005) was made with a reduced width of the extension to mitigate any impact on the modification route's use as a footpath (items 47 and 48).
48. The current owner of Edgecombe House stated in an October 2009 initial letter to the LDNPA Planning team (item 49), prior to submitting their 2010 planning application, "*A public-right-of-way passes from the Main Street alongside my property, over the sea wall steps and down onto the foreshore. I fully accept that proper provision has to be made to allow this pedestrian traffic*".

### **Potential higher rights**

49. One final piece of evidence worth noting is a comment in Peter van Zeller's book *Ravenglass, Roman Port to Railway Junction*, 2001 (item 50), regarding the

construction of the seawalls, “*To protect the village, seawalls closed off the old cart lanes to the beach*”. If this included the modification route this could be an indication that higher public rights for animal-drawn vehicles may have existed. However, at this time there seems no further evidence to support this – we do not know if any cart use was by the public (either by right or permission) or only in exercising private rights of access. If dated correctly, item 20 indicates that by around 1914 any access along the modification route for animal-drawn vehicles had been obstructed by the installation of bollards beside Edgecombe House – and it would seem likely that they were placed there for this purpose. The Parish Council only considered the public right of way to be a footpath when they claimed its uninterrupted use, and no challenge to this appears to have been offered. Similarly, when the sea defences were added no objection was raised, as far as we know, that higher rights had been prevented.

## SUMMARY OF EVIDENCE AND RECOMMENDATION

50. In my view the evidence discussed above provides near incontrovertible evidence of several key points regarding this footpath:
- That the recorded line of the footpath could not have been physically used without a ladder or other means of scaling the sea wall, from at least 1949 (the earliest aerial photograph), and that there is no evidence this ever was used, usable or regarded as a public right of way
  - That a way has been physically available on the modification route C-D, running immediately alongside Edgecombe House / Cawood Cottage / Spindrifft since at least 1949 when it can be seen on the earliest aerial photograph, and very likely since at least the mid 19<sup>th</sup> Century when mapping indicates a passage to the shore was retained after the plot of land beside Wingrove Cottage became enclosed
  - The evidence unequivocally shows that the cobbler’s hut was at the northeastern corner of the plot of land attached to Wingrove Cottage (now the garden), immediately beside the modification route
  - That the modification route was also the route described by the Parish Council when the footpath was claimed as a public right of way, and is the route described by the particulars of the definitive statement between Edgecombe House and the cobbler’s hut
51. As discussed in paragraphs 19-22, in cases where we are considering inconsistencies between the definitive map and statement we should investigate the evidence relating to both, and decide, on the balance of probabilities, whether an alteration to the particulars of one or both is required. The first test we must consider is whether there is substantive evidence that any of the details

recorded on the definitive map or statement are incorrect. In my view there is very strong evidence that the recorded line on the definitive map was a case of imprecise drafting, or a simple error. Some interpretation of the mark-making on the definitive map is almost always necessary (taken at face value the width indicated by the lines used would mean all public rights of way were around ten metres wide). However, in this case I am persuaded that all available evidence indicates that a literal interpretation of the recorded line translates to a footpath on the ground which was never physically available or claimed to be so.

52. We must then consider whether the evidence shows, on the balance of probabilities, that there was a public right of way on the modification route / route described within the definitive statement. I am strongly of the view that the more precise nature of the definitive statement, letter from the Parish Council Clerk, and report to the Special Review Sub-Committee in this particular case indicate that the public footpath was claimed on the modification route and that this was where it was intended by the Parish Council to be recorded, based on its longstanding use by the public. As opposed to the recorded route, we can demonstrate that this was physically present and usable prior to the footpath being recorded as a public right of way. It appears to have been used as the route of the footpath, and when the additional seawall was constructed in 1979 it was clearly though necessary to add the steps to facilitate its continued use.
53. If the ROW Committee reach the same conclusions based on the evidence, we must make a modification order altering the definitive map to show footpath 418036 on the modification route, and amending the grid references recorded in the definitive statement accordingly (option 4.1b within the Committee report). It appears logical whilst doing this to update the definitive statement to reflect the names now in use for the properties and add additional details regarding the steps navigating the seawall.

**ANNEX 1**

**Evidence Bundle**

**Modification of Definitive Map & Statement – Footpath 418036, Edgecombe House,  
Ravenglass, Muncaster Parish**

Provided as separate document