



Order Decision

Inquiry held on 10 March 2020

Site visit made on 09 March 2020

by Susan Doran BA Hons MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 September 2020

Order Ref: ROW/3224741

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 and is known as The Lancashire County Council (Edenfield to Helmshore Road via Irwell Vale) Definitive Map Modification Order 2016.
- The Order is dated 30 November 2016 and proposes to modify the Definitive Map and Statement for the area by upgrading lengths of footpath to bridleway, adding lengths of bridleway and deleting a length of footpath as shown in the Order plan and described in the Order Schedule.
- There were 4 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision

Procedural Matters

1. This case concerns the upgrading of several lengths of existing footpath to bridleway and the addition of lengths of bridleway in the parishes of Ramsbottom and Haslingden to form a continuous route between points 1 (Church Lane) and E (Blackburn Road) on Plan 1/5 attached to the Order, and between points D (Hardsough Lane) and K (Helmshore Road) on Plans 1-5 attached to the Order, having a total length of approximately 2.3 kilometres (the Order route). In addition, the Order seeks to delete a length of footpath between points H-X shown on Plans 2/5 and 3/5.
2. There had been 5 statutory objections to the Order of which one was withdrawn prior to the Inquiry. There were no objections to the proposed deletion. Having carried out an unaccompanied site inspection of the Order route the previous day, nothing arose at the Inquiry that required me to make a further visit. None of the four remaining Objectors appeared at the Inquiry.

The Order

3. The Council requested the length of path to be deleted be shown on the Order plan by a 'bold continuous line' and be so described in Part I of the Schedule to the Order. I am satisfied that no-one has been prejudiced by the Order Schedule describing a bold line. Whilst the Order plan shows the section of path by a bold broken line, it is clearly identified as the route to be deleted.
4. In addition, the Council sought a modification to record Haslingden 411 as 414, so as to avoid duplication of numbering in the Definitive Map and Statement (DMS). If I confirm the Order, I shall modify it in line with both of the Council's requests.

The Main Issues

5. The criteria for confirmation of the Order are contained in the Wildlife and Countryside Act 1981 (the 1981 Act), in this case subsections 53(3)(c)(i), 53(3)(c)(ii) and 53(3)(c)(iii). These require me to consider whether the evidence discovered shows that a bridleway should be recorded in the DMS between points 1-2-B-C-3-4-D-E and from D-5-6-7-8-9-F-G-10-H-11-12-I-13-14-J-15-16-17-K. For this to be the case, the evidence must show that those sections of the Order route not currently recorded in the DMS should be recorded with bridleway status, and those sections that are currently recorded as footpaths should be upgraded to bridleway status. In addition, I must consider whether a length of footpath, H-X, should be removed from the DMS.
6. As regards the proposed bridleway, the evidence adduced is both documentary and user. In terms of the documentary evidence, Section 32 of the Highways Act 1980 (the 1980 Act) requires that I take into consideration any map, plan or history of the locality, or other relevant document provided, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway. Therefore, I must consider whether or not the documentary evidence available to me, when considered as a whole, shows that bridleway rights have existed historically over the Order route.
7. As regards the user evidence, I shall consider whether dedication of the Order route as a public bridleway has occurred through use by the public. This may be either by presumed dedication as set out in the tests laid down in Section 31 of the 1980 Act, or by implied dedication under common law.
8. In this case, it is presumed dedication that is relied on to demonstrate that public bridleway rights have been established. This requires me to consider the date on which the right of the public to use the Order route was brought into question; whether it was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowners to dedicate the Order route. Should these tests not be met, I shall go on to consider the evidence under common law.
9. The evidence adduced in respect of the proposed deletion of a length of footpath is documentary. When considering a deletion, the evidence needed to remove a public right of way from the DMS must be new, it must be of sufficient substance to displace the presumption that the definitive map is correct, and it must be cogent¹.
10. My decision is reached on the balance of probabilities.

Reasons

Documentary evidence

The Order route (1-2-B-C-3-4-D-E and D-5-6-7-8-9-F-G-10-H-11-12-I-13 14-J-15-16-17-K)

¹ Department for Environment, Food and Rural Affairs, Rights of Way Circular 1/09, Version 2 October 2009, paragraph 4.33

11. Documentary sources, including Ordnance Survey (OS) mapping, aerial photographs and side roads order records, were considered by the Council. I agree the evidence shows the existence of a route capable of being used as a bridleway, in part dating back to the mid-19th Century. However, I consider the combined evidence from these sources is insufficient to reach a finding that a public bridleway subsists over the Order route. It follows that it is necessary to consider the user evidence to determine whether or not such rights exist.

The claimed deletion (H-X)

12. During its investigation of the bridleway application, the Council discovered an error in the recording of Ramsbottom Footpath 130. Having considered the documentary evidence concerning the DMS, OS mapping and aerial photography, I concur with the Council that the footpath was incorrectly shown in the River Irwell on the Revised Definitive Map (First Review), rather than crossing the Irwell Vale Bridge as described in the Revised Definitive Statement (First Review)², and as previously recorded in the Draft, Provisional and Definitive Maps. In the absence of evidence of an order diverting the path to a different alignment, I consider it an anomaly likely to have resulted from a drafting error.
13. I find the evidence discovered is compelling and meets the relevant guidance such that there is no public right of way over the land at this location. Accordingly, I conclude the section H-X should be deleted from the DMS.

Presumed dedication under Section 31 of the 1980 Act

The date on which the right of the public to use the Order route was brought into question

14. The Council considered the date to be 2013 when an application to modify the DMS to record the Order route as a bridleway was submitted to them as order making authority. In the absence of an alternative date arising from the evidence, I agree with the Council. Accordingly, the date of bringing into question is 2013 and, for the purposes of section 31 of the 1980 Act, the 20-year period for me to consider is 1993 to 2013.

Whether the Order route was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question

15. Evidence of use was provided in 33 user evidence forms (forms) and supported in 21 witness statements (statements). I heard first-hand evidence of use from 10 people claiming use on foot, horseback and/or with a bicycle. Of these, 2 claiming use on horseback had not completed forms or statements.
16. I heard of regular use of all or part of the Order route during or throughout the 20-year period (and prior to it), varying from 6 times a year to weekly or more often. This was mostly at weekends and sometimes in the evenings, on horseback or with a bicycle, or sometimes on foot. Use had been both by the individuals themselves or with others in groups varying in number from 2 or 3 up to a dozen or so people. All had seen other horse riders and cyclists when

² With a relevant date of 1 September 1966

using the Order route on most occasions they used it. There is nothing to suggest that use had been exaggerated and was less than claimed.

17. None of those giving evidence had used force nor sought or been given permission to use the Order route, and claimed use was open. None spoke of having been challenged. Several referred to gates along the Order route, one a witness said being difficult to open. Nevertheless, none had found them to be locked so as to prevent use and mostly they were left open. Several spoke of a car parked on the route outside a property (near Irwell Vale) which at times made it difficult to pass, one saying this was around 2015 which falls outside the 20-year period under consideration. However, it had been an inconvenience rather than preventing use of the Order route, and I would regard it as a temporary and ineffective obstruction if present in the relevant period.
18. Some witnesses had seen or heard of an apparently official notice on Hardsough Lane, stating 'No horses'. Most thought it had been put up a few years ago, possibly in 2013 or a little earlier or later. All said it had been taken down quickly, and those who saw it had continued their use of the Order route.
19. An analysis of the forms shows that claimed use was mainly on horseback (25 individuals) with 9 people claiming use with a bicycle. Use was for recreation and varied in frequency from a maximum of daily to a minimum of once or twice a year. Again, claimed use was as of right without interruption or challenge. A similar picture is apparent in the remaining statements from those who did not speak in person.

Whether there is sufficient evidence that there was during this 20-year period no intention to dedicate the Order route

20. Whilst I cannot be certain if the notice was present during the 20-year period, or the latter part of it, it was not in place for long. If it was in place during the 20-year period then I would not consider it to be sufficient evidence of a lack of intention to dedicate the Order route, or that part of it, by the landowner.
21. As regards the car parked on the route, whilst it is possible it was intended to discourage, or even prevent use by horse riders, I would not regard it as a sufficient indication of a lack of intention to dedicate the route as a bridleway by the landowner there. Further, it is not clear that it was present during the 20-year period.

Conclusions on user

22. I am satisfied on the evidence that use by the public on horseback and with a bicycle is sufficient to raise a presumption of dedication of the Order route as a bridleway. There is little or no evidence that any of the landowners took actions sufficient to rebut that presumption. It follows that I find a bridleway subsists and ought to be recorded over the Order route.
23. Since I have concluded that the tests under section 31 of the 1980 Act have been met, I do not need to consider the user evidence at common law.

Other matters

24. Concerns were raised in submissions about health and safety and the potential for accidents, for example where the Order route was narrow and overgrown, or between different the types of user. Maintenance and costs were further

points raised. Whilst I understand the importance of health and safety, and indeed of the concerns as a whole to those expressing them, these are all issues that I am unable to take into account under the legislation. It follows that, in reaching my decision on the evidence, I have not done so.

Conclusions

25. Having regard to these and all other matters raised both at the Inquiry and in written representations, I conclude that the Order should be confirmed with modifications that do not require advertising.

Formal Decision

26. I confirm the Order subject to the following modifications:

- In Part I of the Schedule attached to the Order, under the 'Description of Path or Way to be deleted', insert "continuous" between the words 'bold' and "line"
- In Part II of the Schedule attached to the Order, as regards the recording of Haslingden 411 in the Definitive Statement, replace '411' with "414" wherever it occurs
- On Plans numbered 2/5 and 3/5 attached to the Order, show the length of Footpath to be deleted H-X by a bold continuous line

S Doran

Inspector

APPEARANCES

For Lancashire County Council:

Constanze Bell *of Counsel*

who called

Jayne Elliot

Senior Public Rights of Way Definitive Map
Officer

Debra Batchelor

Christine Heald

Carl Nelson

Chris Peat

Applicant

David Rispin

Matthew Slack

Liam Spencer

Ann White

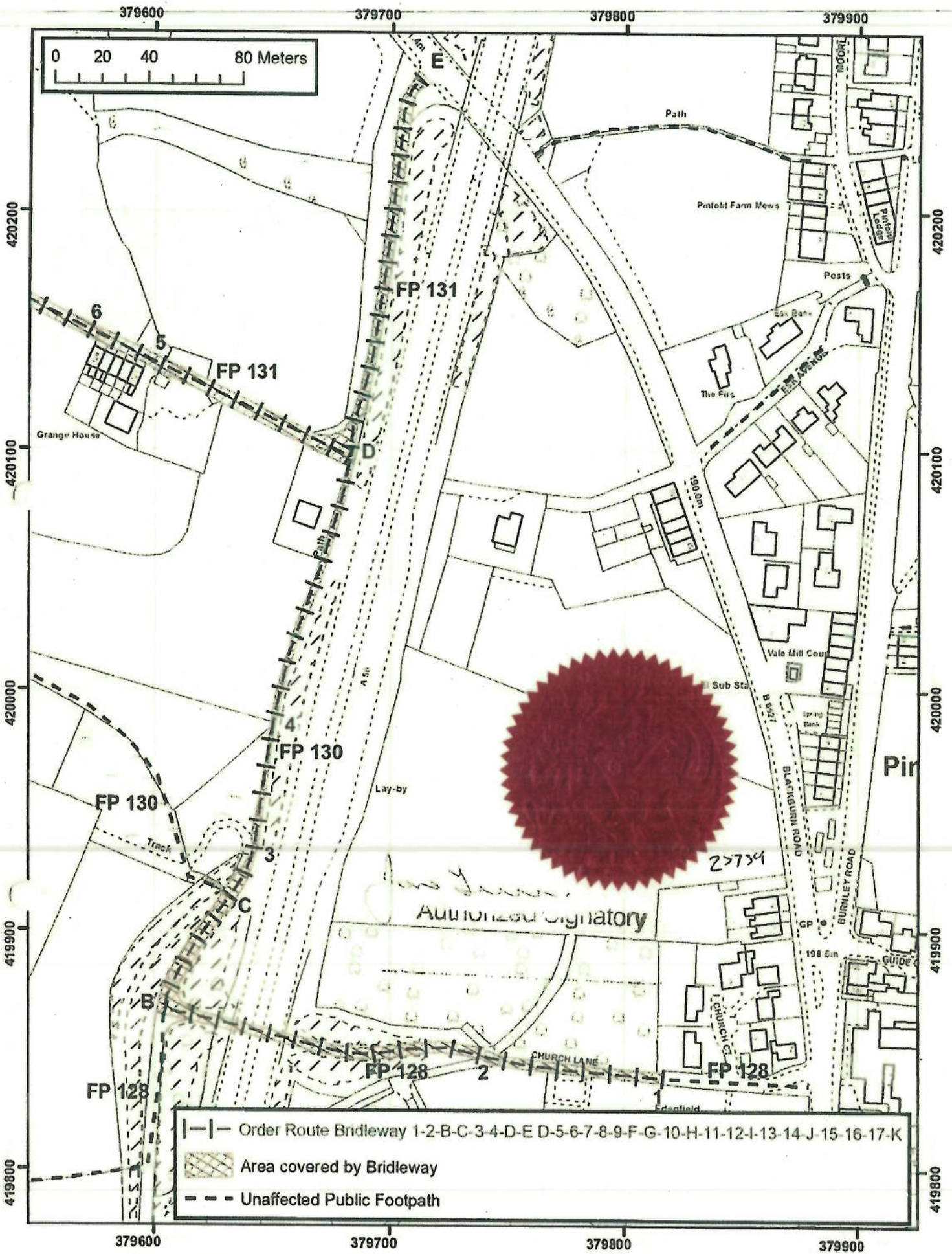
Others who spoke in support:

Gillian Bower

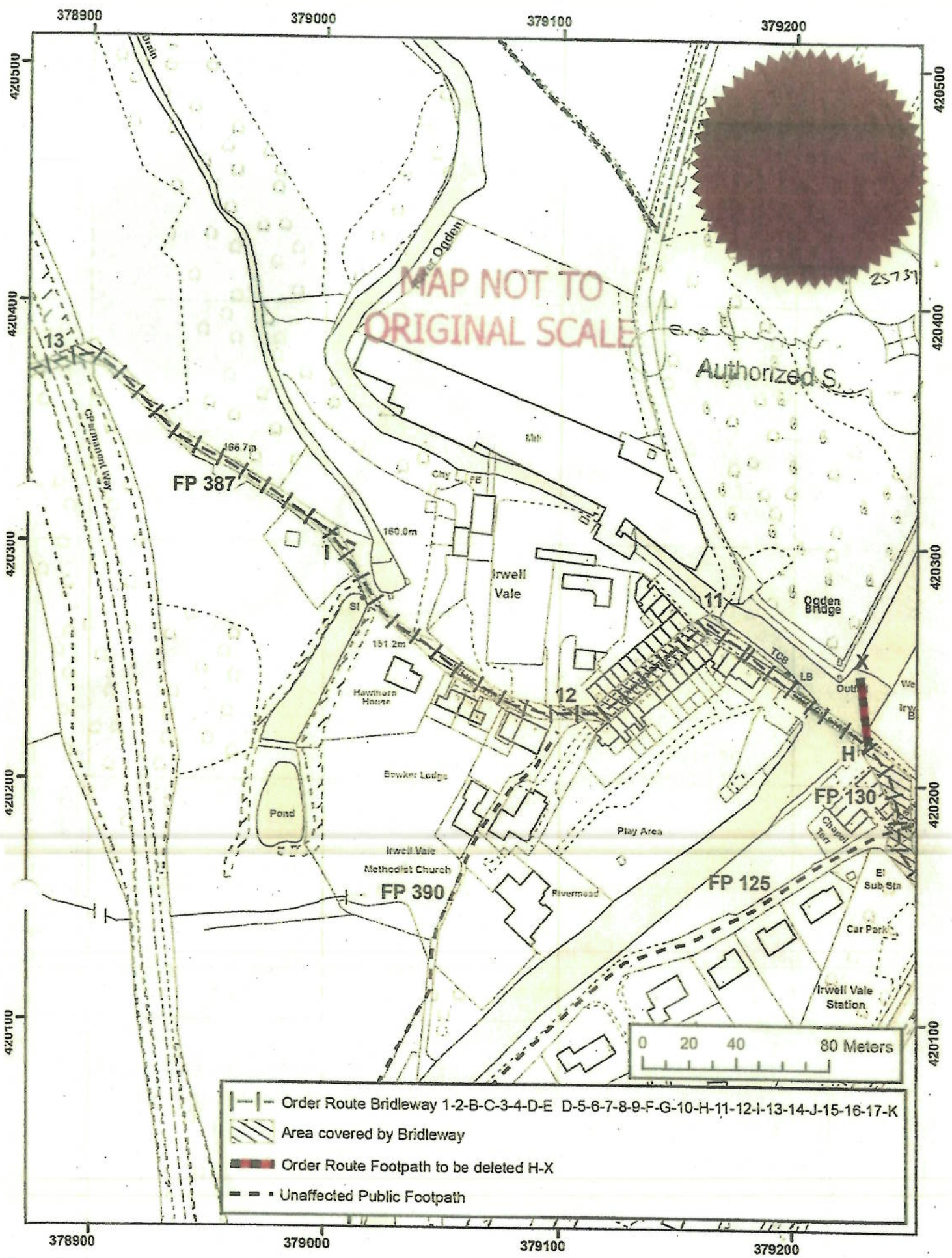
Aileen Johnson

DOCUMENTS

1. Opening submissions on behalf of Lancashire County Council
2. Copy bundle of Proofs of Evidence for Lancashire County Council
3. Closing submissions on behalf of Lancashire County Council







- Order Route Bridleway 1-2-B-C-3-4-D-E D-5-6-7-8-9-F-G-10-H-11-12-I-13-14-J-15-16-17-K
- Area covered by Bridleway
- Order Route Footpath to be deleted H-X
- Unaffected Public Footpath



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
The Lancashire County Council (Edenfield to Helmshore Road via Irwell Vale)
Definitive Map Modification Order 2016

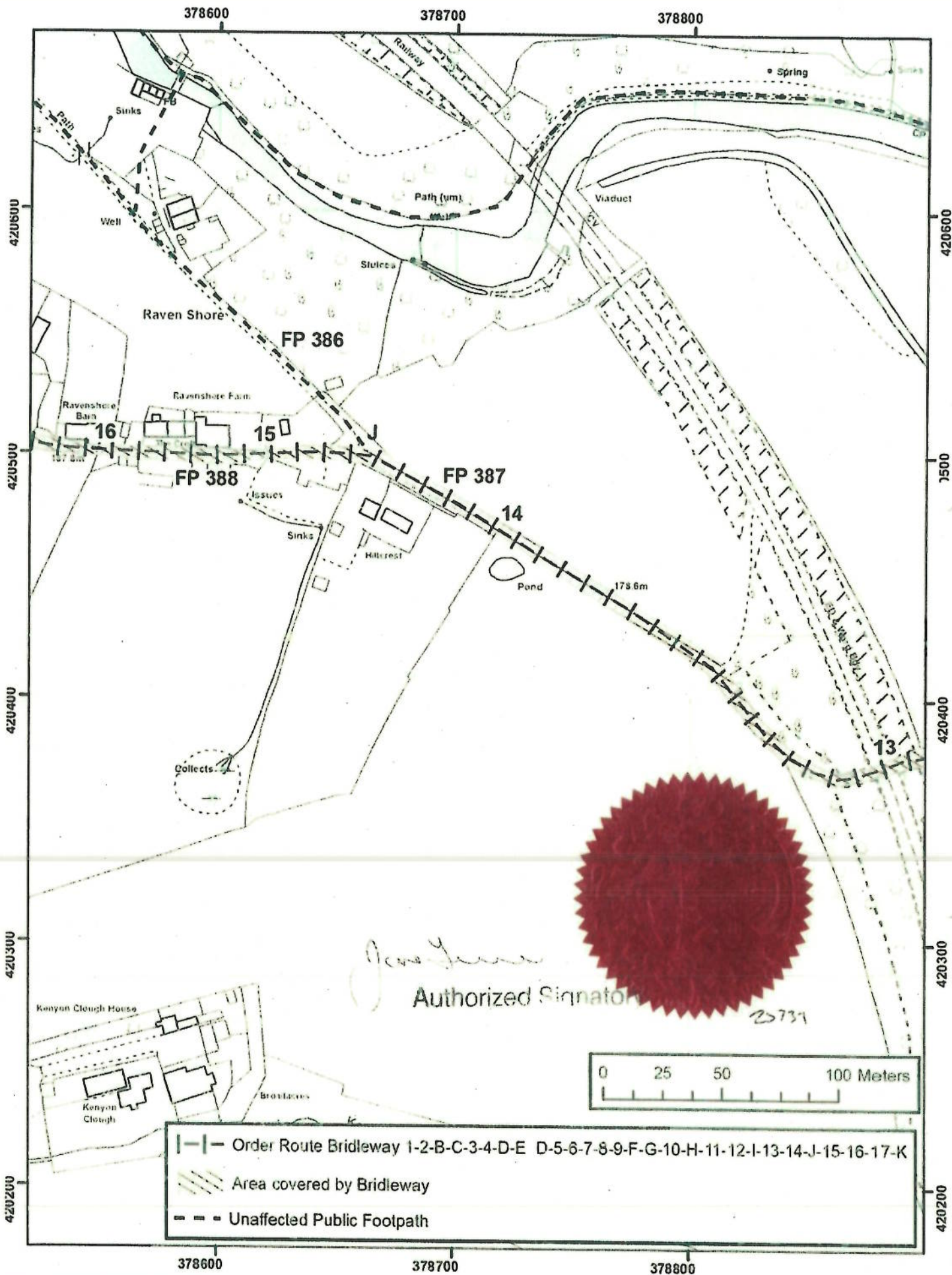
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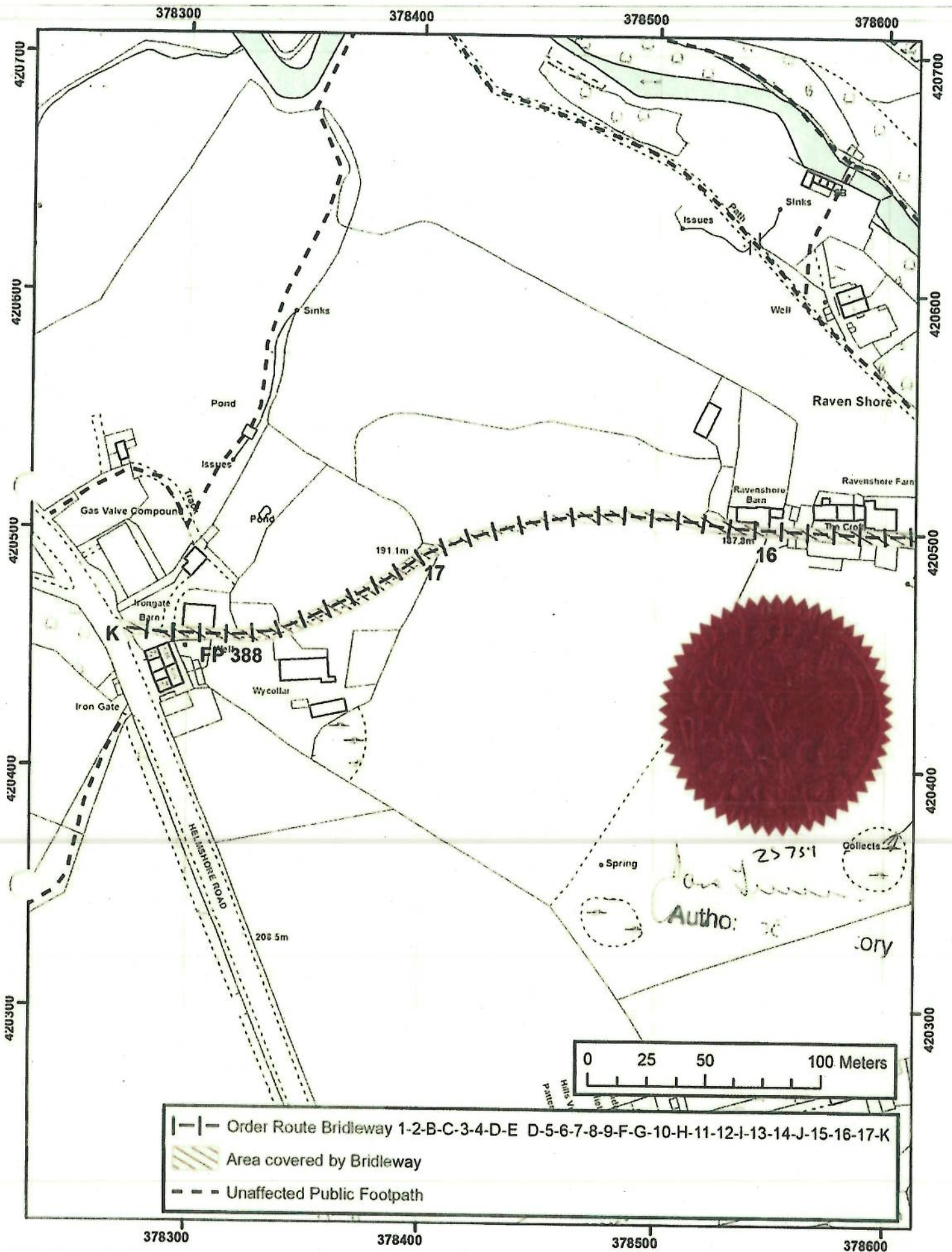
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Plan 3/5



Order Route Bridleway 1-2-B-C-3-4-D-E D-5-6-7-8-9-F-G-10-H-11-12-I-13-14-J-15-16-17-K
 Area covered by Bridleway
 Unaffected Public Footpath



	Order Route Bridleway 1-2-B-C-3-4-D-E D-5-6-7-8-9-F-G-10-H-11-12-I-13-14-J-15-16-17-K
	Area covered by Bridleway
	Unaffected Public Footpath