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| **Order Decisions** |
| Site visit made on 28 November 2023 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 16 January 2024** |

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| **Order Ref: ROW/3291978** | **Order A - Diversion Order** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as The Bedford Borough Council (Ravensden: Part of Bridleway No.10 and Part of Footpath No.29) Public Path Diversion Order 2020. | |
| * The Order is dated 2 December 2020 and proposes to divert one public bridleway and one public footpath as shown on the Order Plan and described in the Order Schedule. | |
| * There were two objections outstanding when Bedford Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | |
| **Summary of Decision: The Order is confirmed.** | |
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| **Order Ref: ROW/3291977** | **Order B - Diversion Order** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as The Bedford Borough Council (Ravensden: Part of Bridleway No.42 and Parts of Footpath Nos. 8 and 11) Public Path Diversion Order 2020. | |
| * The Order is dated 2 December 2020 and proposes to divert one public bridleway and two public footpaths as shown on the Order Plan and described in the Order Schedule. | |
| * There were two objections outstanding when Bedford Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | |
| **Summary of Decision: The Order is confirmed.** | |
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| **Order Ref: ROW/3291980** | **Order C - Creation Order** |
| * This Order is made under Section 26 of the Highways Act 1980 and is known as The Bedford Borough Council (Ravensden: Bridleway at Brook Farm) Public Path Creation Order 2020. | |
| * The Order is dated 2 December 2020 and proposes to create a public bridleway as shown on the Order Plan and described in the Order Schedule. * There were two objections outstanding when Bedford Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | |
| **Summary of Decision: The Order is confirmed.** | |
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| **Order Ref: ROW/3291970** | **Order D - Extinguishment Order** |
| * This Order is made under Section 118 of the Highways Act 1980 and is known as The Bedford Borough Council (Ravensden: Parts of Footpath Nos. 8 and 9) Public Path Extinguishment Order 2020. | |
| * The Order is dated 2 December 2020 and proposes to extinguish parts of two public footpaths as shown on the Order Plan and described in the Order Schedule. * There were two objections outstanding when Bedford Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. | |
| **Summary of Decision: The Order is confirmed.** | |
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Preliminary Matters

1. I was due to make an accompanied site visit on 28 November 2023 with representatives of the parties for and against the Orders. As one of the objectors was unable to attend, and the other objector is in support of the overall scheme and would only object to partial implementation, I decided to carry out the site visit unaccompanied.
2. Although there are four separate orders, the routes in them are interlinked and some sections are dependent on each other. Therefore, they are being considered concurrently. It would be possible to confirm some of the Order routes but not others. However, if I were to do this, modifications may be required to ensure that the rights of way connect to other routes. I will refer to various sections and points shown on each of the Order Plans and have attached copies of them to the end of my decision.

**Main Issues**

***The Diversion Orders***

1. Section 119(6) of the Highways Act 1980 (the 1980 Act) involves three separate tests for an Order to be confirmed. These are;

Test 1: whether it is expedient in the interests of the landowner, occupier, or the public for the paths to be diverted. This is subject to any altered point of termination of the paths being substantially as convenient to the public.

Test 2: whether the proposed diversions are substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which; (a) the diversion would have on public enjoyment of the paths as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public rights of way, and (c) any new public rights of way created by the Order would have as respects the land over which the rights are so created and any land held with it.

1. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to the enjoyment of the land affected by the new paths must be taken into account, where applicable. Other relevant factors are not excluded from consideration and could include those pointing in favour of confirmation.
2. The government guidance on “diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises” was issued by Defra in August 2023, it is also known as the ‘presumption guidance’. Although this was issued after the making of the Orders the parties have mentioned the guidance. It states that I should weigh the interests of the owner against the overall impact of the proposal on the public as a whole. Reducing or eliminating the impact of the current route of the right of way on the owner, in terms of privacy, security and safety are important considerations to which due weight should be given. The objector states that this guidance may be relevant to BR RAV 10 (Order A) but it does not extend to the other rights of way subject to these Orders.

***The Creation Order***

1. Under Section 26 of the 1980 Act, if I am to confirm the Order, I need to be satisfied that there is a need for the public bridleway, and that it is expedient that it should be created. In determining the need for the bridleway, I must have regard to:
2. the extent to which the bridleway would add to the convenience or enjoyment of a substantial section of the public, or the convenience of persons resident in the area; and
3. the effect which the creation of the bridleway would have on the rights of the persons with an interest in the land, account being taken of the provisions for compensation.

***The Extinguishment Order***

1. The Order is made on the grounds that the paths are not needed for public use. Under Section 118(2) of the 1980 Act, if I am to confirm the Order, I must be satisfied that it is expedient to extinguish the paths having regard to:
2. the extent, (if any) to which it appears that the paths would, apart from the Order, be likely to be used by the public; and
3. the effect that the extinguishment of the paths would have as respects land served by the paths, account being taken of the provisions for compensation.
4. Where an extinguishment is being considered concurrently with a diversion, Section 118(5) provides that I may have regard to the extent to which a path provided by the diversion Order will provide an alternative path or way when considering the likely future use of the path proposed for extinguishment.
5. In accordance with section 118(6), any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.
6. I have had regard to the judgements of *R v SSE ex parte Stewart* [1980] KPL 537 and *R v SSE (ex parte Cheshire County Council)* [1991] JPL537 which clarified the relevant tests to be applied. Whilst the Authority must consider the need for the path for public use when making the Order, I must look at its likely future use.

***All the Orders***

1. I need to have regard to any material provision of any rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Orders would create, extinguish, or divert public rights of way.

**Reasons**

***The Diversion Order – Order A***

1. The diversion Order, if confirmed, would divert one public bridleway and one public footpath. Section A-B-C-D of BR RAV 10 would be extinguished and replaced with section A-E-D. Section B-F of FP RAV 29 would be extinguished and replaced with section E-G.
2. The existing bridleway and footpath cross field boundaries and structures are not provided in many of them, so they are effectively obstructed. The routes are also obstructed with vegetation in places. However, I will disregard these obstructions and assess their use as if they were available to the public. On the site visit I was unable to access the majority of FP RAV 29 due to the obstructions. I could however view the footpath from the boundary just to the south of point B at its northern end. I could also view the footpath at the southern end from a point to the north west of point F, where I had a clear view of the paddock and where the footpath runs around the field edge. I could also see a horse stable and further trees and vegetation obstructing the route. I am satisfied that I could see enough of FP RAV 29 to make my decision.

*Whether it is expedient in the interests of the owners, lessees, or occupiers of the land and the public that the paths should be diverted*

1. The diversion Order has been made in the interests of the owners of the land, for reasons of land management and to improve the security and privacy of a dwelling. The proposed diversion of BR RAV 10 between point A-B-C-D is in the interests of the landowners as the current route enters and crosses a private garden area. To the north of point B the route enters a field currently used for grazing animals, this continues to point C. It is stated the diversion is in the interest of the landowner to enable more efficient use of the land for agricultural and livestock purposes. For these reasons, I consider that the diversion of section A-B-C-D is in the interests of the landowner.
2. The existing section of FP RAV 29 is also proposed to be diverted in the interest of the landowner. Part of the current route, from point B, runs along what could be described as the curtilage of a dwelling, although it would appear a hedge boundary now separates the footpath from the garden. The remainder of the footpath runs along the edge of a paddock. I consider that the diversion of the footpath is in the interests of the landowner for reasons of privacy and security, and for the management of livestock.

*Whether any new termination points are substantially as convenient to the public*

1. The start and end points of BR RAV 10 are unchanged by the proposed diversion.
2. The northern end of footpath FP RAV 29 (point B) would move approximately 27 metres to point E and terminate on the same bridleway. The other end would terminate at point G. The objector states that point G does not connect to a public highway. However, there is a footpath connection between points G and F, this was created by another footpath diversion Order that is now confirmed. I am satisfied that the new termination point will be substantially as convenient to the public.

*Whether the new path will not be substantially less convenient to the public*

1. The proposed section of BR RAV 10 would be a similar length to the existing bridleway and runs parallel to it for most of its length. The proposal would negate the need for a number of gates on the existing route, either currently in place or that would be required if the route was available. There is one field gate stated in the Order for the proposed bridleway, this is on the track between points A and E. On my site visit this gate was open, the track and the verge to the side was unhindered. No other furniture would be required on the proposed route.
2. The proposed route is an existing farm track, the surface is firm under foot, it is easy to use and to follow. The existing route is mostly a grass surface which would become muddy with heavy use and wet weather.
3. The proposal for FP RAV 29 is to follow an existing farm track, it is similar in length and runs parallel to the current route. As above, I consider that the firm surface of the track would be more convenient and easier to use than the current grass surface. Path furniture would be needed on the current route if it was available. There is no furniture requirement on the proposed route, making it more accessible and therefore more convenient to use.
4. The objector comments that the proposed routes on the existing track would be shared with farm traffic, whereas the existing grass routes are free of farm traffic. There is no evidence before me regarding the frequency of use by farm vehicles. The evidence would suggest that these routes have already been in use for some time and there is no evidence of any recorded incidents of conflict between users of the paths and the farm vehicles. Therefore, I do not consider this issue would make the proposed routes substantially less convenient to the public.
5. Overall, I consider that the new paths will not be substantially less convenient to the public.

*The effect of the diversion on public enjoyment of the path as a whole*

1. The current route of BR RAV 10 between point A and B partly goes through the garden of a property, this may have an impact on the enjoyment of some users. Between points B and C there are limited views to the west due to the line of trees along the western boundary of this field. The proposed route between point E and D has open views of the field to the east.
2. The current route of FP RAV 29 from point B is enclosed between a hedge and an overgrown tree boundary, there are no views from this point. Further south along the edge of the paddock, views would be limited due to the trees along the western boundary of the paddock. The proposed route offers open views of the field to the east. The objector comments that views to the west would be lost behind a bank of trees, however, I consider when walking from point E to G there are particularly good views to the south. I consider the diversion of this footpath would not impact on its enjoyment and for many walkers, it would be more enjoyable.
3. I have already concluded in paragraphs 19 and 20, that the proposed line of BR RAV 10 and FP RAV 29 is easier to use and follow, therefore the diversion would make it more enjoyable. The views I consider would be improved. I consider that the diversion would not affect the enjoyment of these paths.

*The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created*

1. The proposed diversions are supported by the landowner. The routes to be extinguished do not appear to provide access to any land. The proposed routes are used as access tracks, but the diversion will not affect this use.

*Conclusions on whether it is expedient to confirm the Diversion Order*

1. I consider the diversion of BR RAV 10 to be in the interests of the landowners. The diversion will not be substantially less convenient to the public and section A-E-D will be more convenient. It would not impact on the enjoyment of the bridleway and many users will find it more enjoyable.
2. I consider that the diversion of FP RAV 29 is in the interests of the landowners. The diversion will not be substantially less convenient to the public and section E-G will be more convenient. It would not impact on the enjoyment of the footpath and many walkers will find it more enjoyable.
3. Having regard to these and all other matters raised, I conclude it is expedient to confirm the diversion Order.

***The Diversion Order - Order B***

1. The diversion Order, if confirmed, would divert part of one bridleway and parts of two footpaths. Section A-B of BR RAV 42 would be extinguished and replaced with section A-G-B. This is an alignment that is very similar, but not identical to, parts of FP RAV 8 and 9 which are the subject of an extinguishment Order (Order D), which is considered below.
2. Also by this Order, section C-D of FP RAV 8 would be extinguished and replaced with section G-E. Section E-F of FP RAV 11 would be extinguished and replaced with section E-H.

*Whether it is expedient in the interests of the owners, lessees, or occupiers of the land and the public that the paths should be diverted*

1. The diversion Order has been made in the interests of the owners of the land, for reasons of land management. The land is used for grazing livestock and arable cultivation. Diverting the routes onto the existing farm tracks and a headland route rather than a cross field path would make the land easier to manage. I consider that the diversion is in the interest of the landowner.
2. The diversion of BR RAV 42 is also in the interest of the public as it would resolve an anomaly with the current routes. At present there is no bridleway link between BR RAV 10, which is being retained on its current alignment, with BR RAV 40 and 42. The diversion would allow users of BR RAV 10 to then continue in a generally northerly direction towards point G, or they could continue easterly and connect to BR RAV 40 along the northern edge of Great Wood.

*Whether any new termination points are substantially as convenient to the public*

1. The termination points at each end of BR RAV 42 would remain the same. For FP RAV 11 the termination point at the northern end, point E, remains the same. At the southern end, point F, this would move to the other side of the hedge boundary to point H.
2. For FP RAV 8 the termination point at the north easterly end would move from point C to point G, which is only a few metres away. The other end point D would move to point E, the Council state this would mean approximately an additional 290 metres to walk to either point C or D depending on the direction of travel. The objector states that this longer, less direct route makes the new termination point substantially less convenient to the public. The additional distance needed to travel between the two points could make the new termination point less convenient for some users of the path. However, as the majority of use is for recreational purposes, I do not consider the new termination point to be substantially less convenient.

*Whether the new path will not be substantially less convenient to the public*

1. The proposed route of BR RAV 42 is a similar length to the current route, there is no path furniture on either route. An individual making a representation has commented that the current route is uneven, poorly defined with hidden ruts in places. I agree and consider that the surface of the proposed route is more convenient to use.
2. For FP RAV 8 the current and proposed sections are a similar length, however, as stated at paragraph 35 above, the proposal would mean an increased distance to walk between points D and C. This may make the new path less convenient in this respect for some users, however, I consider that as the majority of use is recreational this would not be the case for many. The surface of the current route is very difficult to walk on, the soil is thick clay, and it was extremely muddy on my site visit after prolonged rain the previous day. The Council state that in the summer months the soil becomes very hard and rutted and is again very difficult to walk on. The proposed route between points E and C is an existing farm track, it is firm under foot and is easier to use. It would also be more convenient to walk on in all weather conditions and easier for those users with mobility problems.
3. For FP RAV 11 the current and proposed sections are the same length and run parallel to each other. The proposal is to divert the current route, which is a grass surface field edge path, to an existing farm track the other side of the hedge boundary. The objector again refers to the fact that the existing footpath is free of farm traffic and the proposed route would be shared with such vehicles, however, as stated in paragraph 21 above in relation to this same issue, I do not consider this to make the new path substantially less convenient.
4. At point E there is currently a locked field gate into the field containing the current route, if the footpath was made available path furniture would be required. There is no path furniture required on the proposed route. Therefore, for some users with limited mobility the proposed route would be considered more convenient.
5. The objector also refers to the wind and states the hedge on the eastern side of the current route gives walkers protection from cold easterly winds. On my site visit there was a light but cool north westerly wind therefore on that occasion I was more protected on the proposed route. As the wind direction can be changeable, I do not consider this issue to have a substantial effect on the convenience to the public.

*The effect of the diversion on public enjoyment of the path as a whole*

1. The main issue in relation to enjoyment of the path for BR RAV 42 is that the diversion would remove the current segregation of walkers from horse riders and cyclists, the opinion of the objector is that this makes the route less enjoyable. The proposal for the new route is an unenclosed field edge path with a width of 4 metres. I consider that this width is suitable for all users and the visibility on the route is good. I consider the likelihood of conflict between users on a path of this nature would be uncommon and would therefore have little effect on the public enjoyment of the path as a whole. On my site visit I noticed the views from the current route to the east were of the farmland and a water tower in the distance. However, the views from the proposed route I consider to be superior, from this position there are extensive uninterrupted views to the west. I consider this would add to the public enjoyment of this path.
2. With regard to FP RAV 8 the objector states walking downhill from point C to D offers walkers a sense of openness with good all round views. It is claimed that the diversion would have an adverse effect on the public enjoyment as a whole. I consider that the views when walking between points G and E are of equal value. If the Order is confirmed there would be a considerable improvement to the walking surface of this route, which I consider would add to the public enjoyment of the path as a whole.
3. With regard to FP RAV 11 the objector states the views to the west would be diminished and the views to the east are not comparable. FP RAV 11 is on lower ground than the proposed route of BR RAV 42, therefore the views to the west are not the same. On the current route of FP RAV 11 there are trees on the western boundary of the field, so the view is limited for the most part. At point E there is a slight view over the trees into the distance. There are similar views from the proposed route of the surrounding farmland and the woods to the east. I do not consider the loss of the view from the current FP RAV11 would have a negative effect on the public enjoyment of the path as a whole.
4. The current route of FP RAV 11 is currently used for grazing livestock. I consider that for some users of the footpath this may affect their enjoyment of the path, and some would prefer to use a route where they would not encounter livestock.

*The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created*

1. The proposed diversions are supported by the landowner. It is considered that the diversion would have no effect on other land served by the existing paths or over land where the new paths would be created.

*Conclusions on whether it is expedient to confirm the Diversion Order*

1. I consider the diversions of BR RAV 42, FP RAV 8, and FP RAV 11 to be in the interests of the landowners. The diversions will not be substantially less convenient to the public and some sections will be more convenient. It would not impact on the enjoyment of the routes and many users will find the proposed routes more enjoyable.
2. Having regard to these and all other matters raised, I conclude it is expedient to confirm the diversion Order.

***The Creation Order - Order C***

1. The Creation Order, if confirmed, would create a new bridleway between points A-B-C. Part of FP RAV 8 is diverted onto the section A-B by Order B above. Part of FP RAV 11 is diverted onto the section B-C also by Order B above. This Order is therefore effectively seeking to upgrade the diverted footpaths to a bridleway.

*The need for the proposed bridleway*

1. The proposed bridleway would link BR RAV 42 with BR RAV 10. If the Creation Order is confirmed along with Order B this would create a circular route. The Creation Order would increase connectivity for the bridleway network. As the proposal is for the status of bridleway this would allow access to a wider group of users. Therefore, I consider there is a need for this bridleway.

*The extent to which the paths would add to the convenience or enjoyment of the public or the convenience of residents*

1. The proposed bridleway would provide a convenient link between two other bridleways. It would allow the use of a of circular and linear route for walkers, horse riders and cyclists. I consider it adds to the convenience and enjoyment of the public.
2. The surface of the proposed route on existing farm tracks is firm under foot, easy to use and to follow. There is no path furniture proposed on the bridleway. I consider that the proposed width of 4 metres is adequate for the bridleway. All of these factors would add to the convenience and enjoyment of the public.
3. The objector mentions concerns regarding the connections of the proposed bridleway. As Order B is proposed to be confirmed, the route would connect to a bridleway at both ends, therefore no modification of the Order would be necessary.
4. The objector states that if this Order is confirmed there will be no segregated route for walkers. The objector raised this issue in relation to the diversion of BR RAV 42 in Order B above (paragraph 41). I consider the proposed 4 metre width of the bridleway would be sufficient to avoid any conflict between users. The visibility is good, and the proposed route is unenclosed therefore I consider the potential for conflict to be minimal. I consider this issue would not be detrimental to the convenience or enjoyment of the public.
5. Overall, I consider that the proposed bridleway, section A-B-C, would add to the convenience and enjoyment of the public and residents.

*The effect on persons with an interest in the land*

1. The landowner accepts the creation of the bridleway included in the Creation Order. Therefore, I consider that there are no adverse effects on persons with an interest in the land.

*Conclusions on whether it is expedient to confirm the Creation Order*

1. The Creation Order route is needed for public use and would add to the convenience and enjoyment of the public and residents. There are no adverse effects on the landowner. Having regard to these and all other matters, I consider that it is expedient to confirm the Creation Order.

***The Extinguishment Order - Order D***

1. The Extinguishment Order, if confirmed, would extinguish part of FP RAV 8 (section A-B) and part of FP RAV 9 (section B-C).

*The extent to which it appears that the paths would, apart from the Order, be likely to be used by the public*

1. Section A-B for the most part follows a track, there is one small part where it is not aligned to the track. The Council state there is also a discrepancy with the northern part of FP RAV 9 where it is shown some distance from the field boundary for part of its length.
2. The current route of BR RAV 42 follows a route parallel to section A-B-C but on the other side of the field boundary. Order B proposes to divert BR RAV 42 onto an alignment that is very similar to the Order route but amending the route slightly to resolve the alignment issues mentioned above. On considering Order B above it is proposed to confirm the Order. The width of the diverted route of BR RAV 42 is 4 metres.
3. I consider that these footpaths are unlikely to be used by the public if Diversion Order B is confirmed, as the Order would effectively replace the footpaths with BR RAV 42.
4. The objector states that the footpaths are needed for public use and refers to connection issues for walkers at each of the points A, B and C. However, as Order B is proposed to be confirmed, there would be no connection issues as walkers would be able to use the diverted bridleway.

*The extent to which the Diversion Order would provide an alternative path*

1. As previously concluded, if the Diversion Order B is confirmed, an alternative route that is wider and easier to follow than section A-B-C would be available.

*The effect that the extinguishment of the paths would have as respects land served by the paths, account being taken to the provisions as to compensation*

1. There is nothing before me to indicate that the extinguishment of section A-B-C would negatively affect land served by the existing route.
2. The extinguishment of section A-B-C and proposed diversion Order B would allow better management of the farmland. The alternative route proposed by the diversion Order interferes less with farming activities. Therefore, the extinguishment of this section of the footpath would have a positive effect on the land served by it.

*Conclusions on whether it is expedient to confirm the Extinguishment Order*

1. I consider that section A-B-C is unlikely to be used by the public. Therefore, I consider it is expedient to confirm the extinguishment order for section A-B-C. The extinguishment of section A-B-C is dependent on the alternative route, proposed in Order B, being created. If BR RAV 42 is diverted, section A-B-C is unlikely to be used by the public. I have concluded in paragraph 47 above that it is expedient to confirm diversion Order B. Accordingly, I conclude it would be expedient to confirm the extinguishment Order for section A-B-C.

**Rights of Way Improvement Plan (‘ROWIP’)**

1. The Council states there are no provisions within the ROWIP that are relevant to the proposals contained in Orders A and B.
2. The Council states the addition of a bridleway (Order C) would add to the network overall which satisfies aim 3 of the ROWIP, ‘Develop a better connected and safe public rights of way network’.
3. For Order D the Council considers that the ROWIP does not contain any provisions that would militate against the making of the Order.

**Other matters**

1. It has been suggested that the Orders are modified to record the position of the new routes in relation to the field boundary or the centre line of a track. I consider that the new routes are sufficiently described in the Orders and shown on the accompanying maps, and therefore no modification of the Orders is necessary.

**Overall Conclusions**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the two Diversion Orders, the Creation Order and the Extinguishment Order should be confirmed. As I have concluded that all the Orders should be confirmed modifications are not necessary.

**Formal Decision**

***The Diversion Order - Order A***

1. I confirm the Order.

***The Diversion Order - Order B***

1. I confirm the Order.

***The Creation Order - Order C***

1. I confirm the Order.

***The Extinguishment Order – Order D***

1. I confirm the Order.

*J Ingram*

INSPECTOR

ORDER MAPS - COPIES NOT TO SCALE







