

AGENDA ITEM NO: 13

Briefing Note regarding legal position concerning the highway status of Saville Road

The entire width of Saville Road (including the verge) is shown on the Council's highways maintenance records as a highway maintainable at the public expense. As highways authority, the Council is under a statutory duty to maintain such a list under section 36(6) Highways Act 1980. It is upon these records that the Council Officers rely when carrying out highways functions – although it is understood that the Downs Ranger has maintained the verge as part of the Downs.

It has been suggested that when Saville Road was built, the verge was to be retained and not become part of the public highway. The Clifton & Durdham Downs (Bristol) Act 1861 does provide for the opening of new roads and also allows for such roads to be closed. Research indicates that Saville Road was indeed built by virtue of the 1861 Act – but why a verge should be retained is unclear.

Whilst periodic closures are inconsistent with dedication of public highways, it appears clear that the road has been regarded by the City Council as a public highway for many years, hence its inclusion (in its totality) in the maintenance records.

When considering the Act, it must also be recognised that the interpretation of 19th century statutes can be complex – particularly when they pre-date the creation of local government in its current form.

If it were to be argued that the road was not highway, then the Council's duty to maintain Saville Road could not apply. The obligation to maintain would rest with the Committee. It is considered that such an interpretation would seriously undermine the City's overall highways network – especially within the context of its wider statutory duties – under the Highways Act and Traffic Management Act 2004.

In exercising its highways authority powers, the Council does however need to act reasonably and to undertake proper consultation where considered appropriate.

It should be noted that this report is written from the perspective of the City Council in its capacity as highways authority. In the circumstances, the Committee might consider seeking its own independent advice on the issues raised.

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