

Title of report: 2023/24 Capital Investment in Managing Ash Die Back in Herefordshire (The date range was previously listed as 2023 to 2027)

Decision maker: Corporate Director – Economy & Environment

Report by: Engineering Manager

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

To authorise the spend/investment in the Public Realm mitigating the Ash Die Back risk in Herefordshire. This decision follows the council's resolution at the full council meeting of the 10 February 2023 to approve the Capital Programme for 2023/24.

Recommendation(s)

That:

- a) The Capital Investment of £315,000.00 in 2023/24 be utilised in mitigating the Ash Die Back risk in Herefordshire, removing trees where necessary.**
- b) Authority be delegated to Service Director Environment and Highways to expend the funding and take all operational decisions in delivering recommendation (a) including authorising the procurement of services and award of any associated contracts**

Alternative options

1. Not to invest in removing the risk in the county, this has been discounted as the evidence from surveys have highlighted the issues. The funding is required to ensure the public are safe. Removing the risk when necessary will ensure safety.

Key considerations

2. Ash Die Back (*Hymenoscyphus fraxineus*) also known as Chalara dieback of ash, is identified in Herefordshire, first recordings in 2015 and is now identified across the county within the Public Realm and within council owned and managed estates.
3. The disease is widely spread by wind-born fungal spores and at present there is no effective way to prevent the spread of the disease. The council will undertake works identified following surveys. The disease is wide spread with trees at various stages with a significant number identified for removal as part of a programme of works.
4. The council is developing Herefordshire Council's Ash Die Back Action Plan ("Action Plan"), this will include monitoring and recovery. The Action Plan will be completed and submitted for approval in spring 2024.
5. Part of the project will fund a dedicated council tree officer to support the Action Plan and associated works. A robust communications plan will be developed to support the project and inform the county of the issue, risks and inform local landowners of their responsibility in removing the risk.
6. The allocated budget for 2023/24 is to address the known concerns in relation to Ash Die Back risk in the county. The council have identified a four year programme of works to begin addressing the problem, and this is the start of the project which will require monitoring and managing to ensure the safety of the public.
7. Future investment may be required to support the project and further mitigate the disease spread. This will be informed with works undertaken as part of the council's Ash Die back action plan.
8. Herefordshire has in excess of 500,000 as trees, they account for 79% of the council's registered Tree Preservation Orders. Council owned or managed land identify 2600 recorded ash trees. It has been estimated that there are in excess of 100,000 trees beside Herefordshire's circa 3,250km of public highway, 95% are thought to be in private ownership. The public rights of way network is of similar quantum, the number adjacent is estimated to be similar.
9. The council undertakes annual tree surveys, the surveys are rotated covering Hereford City, Market Towns and estates. The public highway is inspected as part of the safety inspections though this only identifies trees in critical condition and have safety concerns, the council has been undertaking additional surveys to support the programme, and this is undertaken by a qualified Arboriculturist.
10. The tree surveys undertaken as part of the Public Realm Annual Plan have recognised a number of trees with Ash Die back which need to be addressed. A programme of works to remove the risk is identified, this will be delivered through the available routes to market, tests will be undertaken to ensure value for money for the scale and life of the project.

11. Recovery will be part of the Action Plan and the funding provided through this decision will also deliver replanting.

Community impact

9. The project aligns with the current County Plan:
 - a. Environment: removing the diseased trees that pose a risk to the public, which will protect and enhance our environment and keep Herefordshire a great place to live.
 - b. Community: Improving safety protecting areas of recreation and links for communities ensuring everyone lives well and safely together.

Environmental Impact

10. The decision supports the environment and the council's environment policy commitments by removing the diseased trees with a programme of replanting, this will mitigate the loss in tackling and reducing carbon emissions and making it safer in the green spaces including routes to school. The project aligns to the following success measures in the County Plan.
 - a) Reduce the council's carbon emissions
 - b) Improve the air quality within Herefordshire
 - c) Improve residents' access to green space in Herefordshire

Equality duty

11. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
16. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.
 17. The project is aimed at removing the risk to the public from Ash Die Back, the funding is to be used to inform through surveys and action work to be undertaken, and the project may identify adjacent landowners who will need to undertake work on their own property to safe guard the public realm. This will be treated on a case by case scenario. Land owners / property owners

may be vulnerable, therefore the council will investigate and take appropriate action taking into account the risk and the personal circumstances of those involved.

Resource implications

18. A procurement strategy will be developed for the programme ensuring value for money, the councils Contract Procedure Rules will be adhered to with the support of the commercial services team. The project will be managed by the council's project management team with the Service Director for Environment and Highways being responsible for delivery.
19. The council's Ash Die Back response will commence in year, the council has identified a 4 year investment which will resource in house specialise tree officer to support the project. An initial tender process will be undertaken to deal with the initial risk in the county. The process will inform further procurement over the life of the identified risk.
20. Unique project codes will be allocated to each element so that the corporate project manager assigned can monitor and review progress to enable reporting to the capital project board along with other relevant programme boards on each of the projects. The projects were approved at council in February 2023 to be funded from corporate borrowing.
21. The funding for the response to Ash Die back is Capital, the revenue funding required will be from the Annual Plan resource, if the situation deteriorates, further revenue investment will be subject to budget allocation or further budget bid.
22. Capital Funding tables.

Capital cost of project	2023/24 £000	2024/25 £000	2025/26 £000	Future Years £000	Total £000
Removal of Trees	300	000	000	000	300
<i>Internal Staff Costs</i>	15	0	0	0	15
TOTAL	315				315

Funding streams (indicate whether base budget / external / grant / capital borrowing)	2020/21 £000	2021/22 £000	2022/23 £000	Future Years £000	Total £000
<i>Corporate Funded Borrowing</i>	315				315
TOTAL	315				315

Legal implications

23. Any procurement of services will be carried out in accordance with the Council's contract procedure rules.

24. Ash dieback is disease which results in the majority of infected trees dying and, in doing so, causes an inherent risk of falling branches and other hazards.
25. There is no statutory duty in respect of managing ash dieback specifically but it is established law that a landowner is responsible for damage/injury caused by trees standing on its land. The law requires a person to *“take reasonable care to avoid acts or omissions which cause a reasonably foreseeable risk of injury to persons or property”* [Caminer v Northern and London Investment Trust Limited (1951)].
26. Both civil and criminal sanctions may arise from an injury caused by a tree, further details are below:
 - a. Under civil law a landowner owes a general duty of care to anyone who may be affected by a tree on their land, specifically they are required to take reasonable care to avoid acts or omissions that cause a reasonably foreseeable risk of injury to persons or property (Occupiers Liability Act 1957 and 1984). Where there has been a failure to comply with the provisions of this act, an injured party may be entitled to significant compensation from the landowner.
 - b. Whilst less likely in these circumstances, in criminal law, the Health and Safety at Work Act 1974 places a duty on employers to ensure that employees and members of the public are not put at risk by the carrying out of their undertaking. There is potential for criminal prosecution for failure to comply with the provisions of this act.
27. The Council, as a major landowner within Herefordshire, is responsible for any trees within its land ownership under the above provisions. The Council also has statutory duties to maintain public highways (Section 41(1) of the Highways Act 1980) and ensure public safety. This will be relevant where a tree might affect or impede the users of a public highway.
28. The Tree Council (2020) and the National Tree Safety Group (2011) have released guidance notes on the responsible management of trees, both advocating a proportionate approach which is based on an assessment of risk in individual circumstances. These are not statutory requirements but offer a best practice approach to tree management by landowners (including the local authority).

Risk management

29. Ash dieback is becoming prevalent in Herefordshire, the trees within the public realm and council owned and managed land have the disease. The risk has been identified and included on the corporate risk register.
30. The risks / opportunities for the council are identified below:

Risk / opportunity Funding Not sufficient for the life of the project.	Mitigation The current funding is for 4 years through this life of funding, monitoring and surveys will inform the adequacy of the funding and future funding requirements.
Trees falling, limbs damaging property or even threat to life.	Surveys on location and condition will inform the works programme.
Change in condition of trees on the network require substantial investment.	Surveys required to inform the programem and future funding requirements.
Decision not approved	Business Case to be reviewed and updated with appropriate information to support the project.
Improved healthier tree stock	Removal of the diseased trees will improve the tree stock with healthier and more appropriate species.

Consultees

31. Audit and Governance Committee were briefed on the 27th September 2023, the committee were concerned about the risk and how this will be managed. The funding and the action plan were part of the briefing. (Presentation Appendix A)

Appendices

Appendix A Audit and Governance Committee briefing presentation.

Background papers

None

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	John Coleman	Date 12/01/2024
Finance	Karen Morris	Date 14/12/2023
Legal	Emma-Jane Brewerton	Date 14/12/2023
Communications	Luenne featherstone	Date 08/12/2023

Equality Duty	Harriet Yellin	Date 14/12/2023
Procurement	Lee Robertson	Date 20/12/2023
Risk	Kevin Lloyd	Date 12/12/2023

Approved by	Click or tap here to enter text.	Date	Click or tap to enter a date.
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[Note: Please remember to overwrite or delete the guidance highlighted in grey]

Please include a glossary of terms, abbreviations and acronyms used in this report.