

Record of operational decision

Decision title:	2023/24 Capital Investment in Managing Ash Die Back in Herefordshire
Date of decision:	30 April 2024
Decision maker:	Service Director Environment and Highways
Authority for delegated decision:	<p>Authorisation set out in the approved Corporate Director – Economy and Environment report, 2023 to 2024 Capital Investment in Ash Die Back in Herefordshire effective from 22nd March 2024</p> <p>That:</p> <p>(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.</p> <p>(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</p> <p>http://councillors.herefordshire.gov.uk/mgIssueHistoryHome.aspx?IId=50044221</p> <p>The authorisation limit within the financial procedure rules and is sufficient for the decision and that the officer has authority under the contract procedure rules.</p>
Ward:	‘Countywide’
Consultation:	Internal legal and finance teams were consulted as part of preparing the Director Report.
Decision made:	<p>To invest £315,000.00 in mitigating the Ash Die Back Risk in Herefordshire:</p> <ul style="list-style-type: none"> • Commission removal of trees at risk • Commission surveys to identify any change in condition and action intervention if needed. • Recovery planting in appropriate locations to mitigate the impact of tree removal. • Fund a post for council specialised tree person to support the project.
Reasons for decision:	<p>Ash Die Back (<i>Hymenoscyphus fraxineus</i>) also known as Chalara dieback of ash, is identified in Herefordshire.</p> <p>The disease is widely spread by wind-born fungal spores; at present there is no effective way to prevent the spread of the disease.</p> <p>Herefordshire has in excess of 500,000 ash trees, they account for 79% of the council’s registered Tree Preservation Orders. Council owned or managed land identify 2600 recorded ash trees. It is estimated that there are in excess of 100,000 trees alongside Herefordshire’s circa 3,250km of public highway, 95% are thought to be in private ownership. The public rights of way network is thought to be of similar quantum though these are primarily in private ownership.</p>

	<p>The council have a draft Ash Tree Action Plan and draft Tree Guidance which will inform the actions undertaken.</p> <p>To mitigate the risk the council will undertake a number actions such as:</p> <ul style="list-style-type: none"> • The council will undertake surveys to identify change in condition. • Works to remove the risk of trees. • Comms plan to raise awareness and to inform of the works. A robust communications plan is being developed to support the project, inform the county residents of the issue, risks, and inform local landowners of their responsibility in removing the risk. • Undertake replanting as part of recovery. • Recruit a tree specialist to compliment the conservation team in identifying areas of risk and change in condition. <p>The survey and mitigation actions will be undertaken through the Public Realm Contract. In agreement with the council’s commercial team and in line with the council’s contract procedure rules, an open tender will be undertaken for the tree removal and surveying sub contracted work to ensure value for money.</p>
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>Financial considerations: Funding is from the council capital invest programme.</p> <p>Equality duty considerations: 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:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>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.</p> <p>Legal considerations: Any procurement of services will be carried out in accordance with the Council’s contract procedure rules</p> <p>Ash dieback is disease, which results in the majority of infected trees dying</p>

and, in doing so, causes an inherent risk of falling branches and other hazards.

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)].

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.

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).

Risks

The risks / opportunities for the council are identified below:

Risk/ Opportunity	Mitigation
Funding Not sufficient for the life of the project	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 require substantial investment	Surveys required to inform the programme 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
Details of any alternative options considered and rejected:	<p>Not to invest, this is not recommended as this would be contrary to the council resolution on 10 February 2023.</p> <p>Not to invest will result in the risk remaining which the council may be liable for any claims due to damage, injury or loss of life.</p>	
Details of any declarations of interest made:	None	

Signed:

M.Averill (Service Director Environment and Highways, Economy and Environment)

Date: 30 April 2024