

## **Managing Ash Dieback in Devon**

Report of the Chief Officer for Highways, Infrastructure Development and Waste, the Head of Planning, Transportation and Environment and the Head of Digital Transformation and Business Support

***Please note that the following recommendations are subject to consideration and determination by the Executive (and confirmation under the provisions of the Council's Constitution) before taking effect.***

### **Recommendation:**

- (a) that delegated authority be given to the Chief Officer for Highways Infrastructure Development and Waste and the Head of Digital Transformation and Business Support, in consultation with the relevant Cabinet Member, to vary the frequency of tree inspections as required to manage the risk of Ash Dieback;**
- (b) that the financial costs outlined in this report need to be considered as part of the process for setting the Council's 2018/19 budget and Medium term financial strategy;**
- (c) that Cabinet support and resource a programme of environmental mitigation in line with the principles set out in the Advice Note (Jan 2018) issued by the Devon Ash Dieback Resilience Forum.**

## **1. Summary**

This report proposes how Devon County Council should manage its responsibility for Ash Dieback in the county regarding public safety and the environment.

## **2. Background/Introduction**

Chalara dieback of Ash which is more commonly referred to as Ash Dieback (ADB) has been pervading the UK from the continent, spreading from east to west. The eastern counties from Kent to Norfolk are experiencing quite advanced stages of the disease, whilst in Devon it is in the early stages but with confirmed cases in most of the county. The most advanced areas of the disease in Devon are generally where imported ash has been unknowingly planted with the disease, and these include large plantations in Bickleigh (near Tiverton) and near Totnes.

It is estimated that 20% of Devon's total tree population is Ash. Ash defines a lot of Devon's landscape as it is a predominant hedgerow tree both by highways and in open landscape. It supports a small but limited range of lichens and invertebrates of which ash is the sole host. As a result of the disease it is expected that the vast majority of the Ash Trees will die with less than 5% being resistant. The timescale for the major impact in Devon is expected to be within the next ten years, but the disease can develop within individual trees in under two years and in some cases a single season.

Ash dieback is most readily identified when a tree is in leaf where it can be diagnosed through loss of canopy. When in its advanced stages, the disease will cause limbs to shed from the tree (or even whole tree failures), which is the key hazard.

Devon County Council has estimated\* that its Ash tree population includes:

- 6,300 on highway land
- 3,900 on its corporate estate
- 3,100 on school grounds
- Over 440,000 which are within falling distance of the highway (owned by third parties or in indeterminate ownership if land is un-registered)

(\* – based on a sample survey of ash trees carried out across Devon in 2013)

### **3. Proposal**

There are two principal areas to be considered in the management of Ash die-back in Devon. The first is public safety and the second is environmental impact and mitigation.

#### **Public Safety with regards to Highway Trees**

As a landowner or occupier of land, DCC has a duty of care to ensure that all trees on its land are kept in an acceptable condition that does not put persons and property at unreasonable risk. Trees are risk assessed into four categories from High to Very Low. The high-risk category includes location of high thoroughfare such as schools, high streets and major roads. These are inspected at least annually by staff and are inspected every three years by a qualified arboriculturalist. Lower risk categories are inspected less frequently but any reports of dangerous trees can trigger a professional ad-hoc inspection.

As Ash die-back starts to develop further in Devon, greater vigilance is required, and information received to date suggests that when canopy loss of ash trees reaches 50% it is unlikely that it will survive, and when it reaches 70% loss it can be dangerous to remove without mechanical means as branches/limbs could fall on the operative felling the tree. It is therefore currently seen as safest to act when the canopy loss gets to around 50%. This could require the professional inspection frequency to be increased, initially to every two years and potentially to every year and may need to be supplemented by more vigilant inspections by staff to highlight key areas where the disease is rapidly developing.

When trees are highlighted as a safety risk they are generally categorised as follows:

- Imminently dangerous - required felling or making safe within 24 hours
- Urgent – requires felling or tree surgery within 6 months.

Where the authority is made aware of dangerous private trees that could impact on the highway there are powers within the Highways Act to issue a Notice on landowners / occupiers and require them to take remedial action within a short timescale. If a landowner fails to act on a Notice, DCC may undertake the work itself and recharge the landowner. Where trees are imminently dangerous, it is not always possible to contact the owner and appropriate action would be taken to maintain public safety.

It is proposed that on main roads the Authority would seek to coordinate activity using the tree framework contractors, arrange the road closure and recharge private landowners. There has been pilot undertaken on the A396 and A3072 near Bickleigh where 68 DCC and private diseased trees were successfully felled in a coordinated approach which minimised the impact on highway users. From this pilot useful lessons have been learnt and will be used as a model for further work on other major roads. However, it does require significant administrative resource to identify the landowners gain their agreement and collect the payment.

The timescales for the development of the disease is unclear but it is expected to escalate in the coming growing season and could become extensive in the next few years.

## **Considerations for DCC Corporate Sites & Schools**

The 2013 tree survey identified 3900 Ash trees on Corporate Sites and 3100 on Schools, however with the ongoing academisation of schools this number is dropping, with a much more limited number of neighbouring trees that may require action. These sites have been subject to a formal tree inspection every 3 years and Premises Managers are required to carry out an annual tree inspection and after severe storms.

In a similar approach to highways it is proposed that tree inspections are increased where it is shown that there is an increased risk, initially to two-yearly but ultimately annually if the risk dictates. It is expected that as ADB develops a network of staff sharing intelligence about the progression of the disease will be utilised.

When the presence of ABD is detected at a DCC site an assessment of the trees will be made to ensure which trees have 'actionable levels of infection' and need tree surgery. It is expected that the contractors on the DCC Tree Surgery Framework will be able to deal with trees provided the disease does not get too advanced.

The scale of managing trees outside of the highways context for DCC is considerably more manageable both in practical & financial terms.

## **Environmental Impact and Mitigation**

The current expectation is that ash dieback will result in the loss of excess of 90% (and, perhaps, close to 100%) of all native ash trees in Devon. Given that ash is, currently, our second most numerous tree, this will have profound and long-lasting implications for Devon's environment. The anticipated effects are likely to include:

- Degradation of wildlife habitats and loss of key species;
- Visual impact on the landscape;
- Slope stability/soil erosion;
- Greater surface water run-off and increased flood risk;
- Possible implications for air quality and temperature regulation.

Devon County Council took a lead in establishing the Devon Ash Dieback Resilience Forum to promote a more joined-up and proactive approach between organisations, agencies and private land-owning interests in addressing its huge tree safety and environmental implications of this tree disease. It has also worked closely with the Devon Local Nature Partnership (LNP) in producing a Devon Ash Dieback Action Plan (February 2016), which is available on the Devon LNP web site at:

<https://www.naturaldevon.org.uk/wp-content/uploads/2016/02/Devon-ash-dieback-action-plan-February-2016.pdf>

The Devon Ash Dieback Resilience Forum is producing a range of materials to inform the Devon response to the environmental consequences of the disease. This includes an Advice Note on replacing ash through new tree planting (available at:

<https://www.naturaldevon.org.uk/wp-content/uploads/2018/03/Replacing-ash-advice-note-final-Feb-2018.pdf>).

This proposes the following eight key principles which, it is recommended, should be followed by Devon County Council wherever appropriate:

1. Act now to minimise the landscape impact of ash tree loss – start promoting new trees and taking better care of existing trees.
2. Use the Devon 3/2/1/ formula: at least 3 new trees for loss of a large tree, 2 for a medium tree and 1 tree for a small tree.
3. Promote natural regeneration wherever possible, particularly in woodlands.

4. Grow the right trees in the right places in the right ways, and give them the right aftercare.
5. Encourage a diverse range of trees to develop a resilient landscape.
6. When choosing species, consider local factors such as what trees are characteristic of the area, soil type, management requirements, local stresses, etc.
7. For wildlife, landscape and woodfuel, choose native species, or those well established in the British Isles such as sycamore, wild pear, crab apple or white willow. In urban areas it is more acceptable to use species from other parts of the world.
8. Reduce the risks of introducing new diseases by only planting trees grown in Britain, by reputable nurseries, preferably from seed sourced from south-western England.

The Forum has also devised a project proposal entitled 'Save Devon's Treescapes', which is currently being considered for inclusion within a multi-million-pound funding bid to the Heritage Lottery Fund for a national programme of action to address ash dieback. If successful, this work will be coordinated by the Devon Wildlife Trust on behalf of the Devon Ash Dieback Resilience Forum. It is recommended that this Authority sets an example for all others in Devon by providing a significant match-funding contribution for this project, which might enable DCC to comply with the Devon 3/2/1 formula in replacing ash trees which it will be forced to remove for public safety reasons.

An Impact Assessment has been undertaken for the proposals set out in this report and circulated to Cabinet Members. This is available on the Council's web site at <https://new.devon.gov.uk/impact/published/>, which Members will need to consider for the purposes of this item.

#### **4. Consultations/Representations/Technical Data**

Devon County Council established the Devon Ash Dieback Resilience Forum two years ago to consider the long-term approach to tackling the disease. It has been leading on it in partnership with organisations including the Arboricultural Association, Devon AONBs, Clinton Devon Estates, Country Landowners Association, Devon Hedge Group, Devon Wildlife Trust, Dartmoor National Park, East Devon District Council, Forestry Commission, Highways England, National Trust, National Farmers Union, Network Rail, North Devon Council, RSPB, The Tree Council, Torbay Council, Plymouth City Council, and Western Power Distribution.

This group provides a useful sounding board for developing approaches to dealing with ADB, and provides a very useful conduit for communicating with a wide range of interested groups within the county. It has also been instrumental in determining how the disease is best managed and how the environmental impact of this disease can be mitigated, and through the Tree Council provides important national links. DEFRA have been closely monitoring Devon's approach to ABD, which they consider to be exemplary and a model for others to use.

The pilot undertaken at Bickleigh was well publicised to start raising the profile of ABD. The current key message is that landowners should be regularly inspecting their high-risk trees and understand their legal responsibilities.

#### **5. Financial Considerations**

The cost of felling the trees where Devon County Council has a direct responsibility is currently estimated at £2.5m, based on manual felling. The cost of felling all the ash trees that could affect the highway could be more than £70m but is predominantly the responsibility of other landowners, where they can be identified. Additional resources would

also be required to administer this activity which could cost in the region of £60 - £100,000 per annum.

An increased provision is required in the medium term financial strategy to absorb costs associated with the Authorities direct liabilities, but there is a further expenditure risk associated with unrecovered costs from private landowners.

A further funding provision of £250,000 is also recommended in order to address the significant environmental consequences of ash dieback. This would be offered as matchfunding support for the intended 'Saving Devon's Treescapes' project.

The financial costs outlined in this report need to be considered as part of the process for setting the Council's 2018/19 budget and Medium term financial strategy.

## **6. Equality Considerations**

There is no known equality consideration that relates to this report.

## **7. Legal Considerations**

As a landowner and occupier of land, DCC has a duty of care to ensure that all trees on its land are kept in an acceptable condition which does not put persons and property at unreasonable risk.

A similar common law duty applies to all landowners but section 154 of the Highways Act 1980 empowers the authority to deal, by notice, with hedges, trees and shrubs growing on adjacent land which overhang the highway, and to recover costs.

Clarification from Central Government is currently awaited on expected changes to regulations, including Felling Licences and Tree Preservation Orders, which should streamline procedures for the removal of trees infected by Ash dieback.

## **8. Risk Management Considerations**

Ash dieback presents a significant risk to the authority which has been recorded in the corporate risk register and some provision highlighted within the medium term financial strategy. This report provides a means for managing the risk appropriately, enhancing the approach currently used to manage routine tree risk. The significant risks to Devon's environment are outlined above, along with recommended approaches to the mitigation of these.

## **9. Public Health Impact**

There is no direct public health impact, but trees provide an essential range of services which support general health and wellbeing, including improvements to air quality, shading and temperature amelioration and flood regulation.

## **10. Options/Alternatives**

There is an option for the authority to do nothing in the face of the increased risk posed by Ash die-back. However, this option could expose the authority to claims, if injury ensued, or possibly open the channels, if negligence could be demonstrated, to a charge of Corporate Manslaughter if someone were to die as a result.

The Authority could choose not to replace any ash trees or engage in other mitigation measures; however, trees are such an important part of Devon's landscape, and have other key benefits, that a proactive approach is strongly recommended.

## 11. Reason for Recommendation/Conclusion

Devon County Council as a Highway Authority and landowner has a duty to ensure that it has taken reasonable steps to mitigate the risk of death or injury for falling trees or limbs, and Ash die-back provides an increased risk that is not appropriately accommodated by the authority's current policy. However, this proposal of increased inspections and action would provide an appropriate means of mitigating this risk.

Through its role in the Devon Ash Dieback Resilience Forum and its support for the Devon LNP, this Authority is well-placed to provide a lead in mitigating the huge environmental consequences of this tree disease, including its adoption of the Devon 3/2/1 ash replacement formula and match-funding support for the 'Saving Devon's Treescapes' project.

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## Electoral Divisions: All

Cabinet Member for Highway Management: Councillor Stuart Hughes  
Cabinet Member for Community, Public Health, Transportation and Environmental Services:  
Councillor Roger Croad

Local Government Act 1972: List of Background Papers

Contact for enquiries: Chris Cranston, Peter Chamberlain, Jon Williams

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Background Paper	Date	File Reference
1. Devon County Council Tree Safety Management Policy and Procedures	January 2018	Health & Safety Policies, The Source
2. 2013 Ash Tree Survey	January 2018	Jon Williams
3. Devon Ash Dieback Action Plan (Devon Local Nature Partnership)	February 2016	<a href="https://www.naturaldevon.org.uk/wp-content/uploads/2016/02/Devon-ash-dieback-action-plan-February-2016.pdf">https://www.naturaldevon.org.uk/wp-content/uploads/2016/02/Devon-ash-dieback-action-plan-February-2016.pdf</a>
4. Devon Ash Dieback Resilience Forum Advice Note: Replacing Ash	February 2018	<a href="https://www.naturaldevon.org.uk/wp-content/uploads/2018/03/Replacing-ash-advice-note-final-Feb-2018.pdf">https://www.naturaldevon.org.uk/wp-content/uploads/2018/03/Replacing-ash-advice-note-final-Feb-2018.pdf</a>
5. Impact Assessment cc270418cab Managing Ash Dieback in Devon hk 06	May 2018 030518	<a href="https://new.devon.gov.uk/impact/published/">https://new.devon.gov.uk/impact/published/</a>