



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

21 September 2023

Report of the Executive Director - Place

Ashbourne Relief Road – Route Alignment and Public Consultation
(Cabinet Member for Infrastructure and Environment)

1. Divisions Affected

1.1 Dovedale and Ashbourne.

2. Key Decision

2.1 This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

3. Purpose

3.1 To advise Cabinet of the outcome of pre-application and sequential testing of the proposed Ashbourne Relief Road; to outline a proposed approach to submission of the planning application; and to seek approval in principle to assess alterations to scheme alignment and authorisation of targeted public engagement around these alterations.

4. Information and Analysis

Overview of Previous Decisions and Commissioned Studies

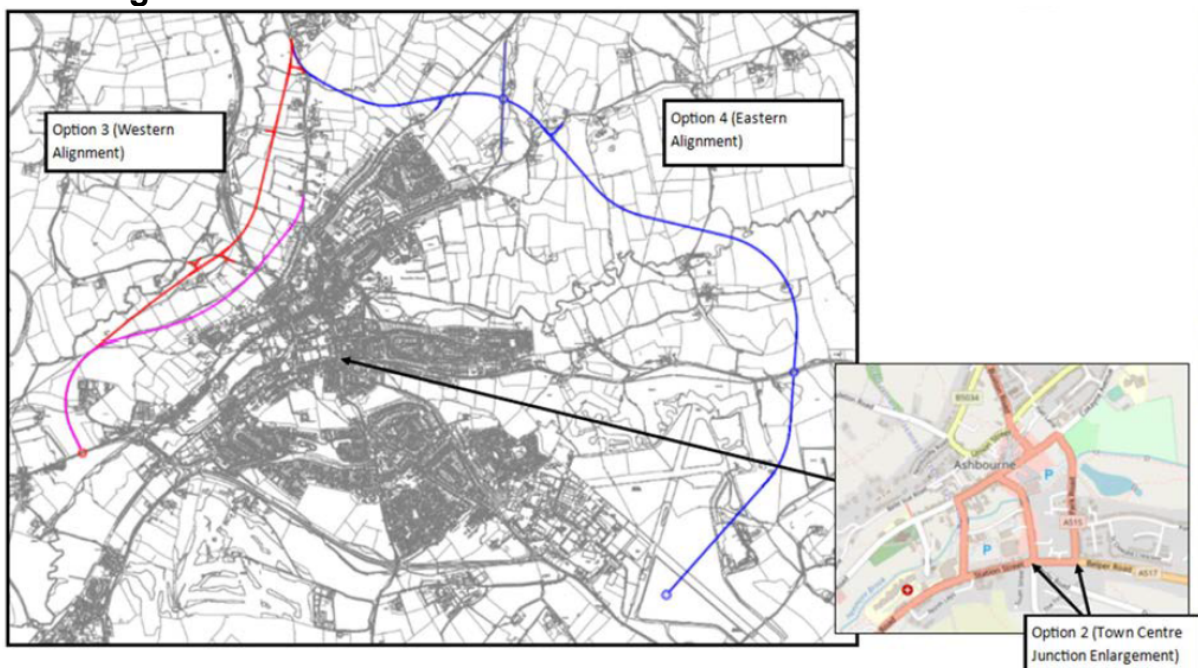
4.1 At its meeting of 29 June 2017, Cabinet agreed for detailed investigations, surveys and preparatory work to be undertaken to explore strategic solutions to the traffic issues being experienced within the unique historic core of Ashbourne (Minute No.195/17 refers). This

particularly related to north-south movements along the A515 which connects the Peak District National Park to the national strategic road network (via the A50 trunk road) and passes through Ashbourne town centre. This work culminated in public consultation, carried out in late 2020, and reported to Cabinet at its meeting of 11 February 2021 (Minute No. 28/21 refers). The options under consideration were:

- Option 1 – Small-scale schemes
- Option 2 – Junction improvements
- Option 3 – Western bypass options
 - 'A' – following an alignment coloured red on Figure 1 below
 - 'B' – Following an alignment coloured pink on Figure 1
- Option 4 – Eastern bypass option

4.2 Cabinet agreed that 'Western Bypass Option A' be confirmed as the 'preferred route' and that Western Bypass Option B and the Eastern Bypass be dismissed from further assessment.

Figure 1



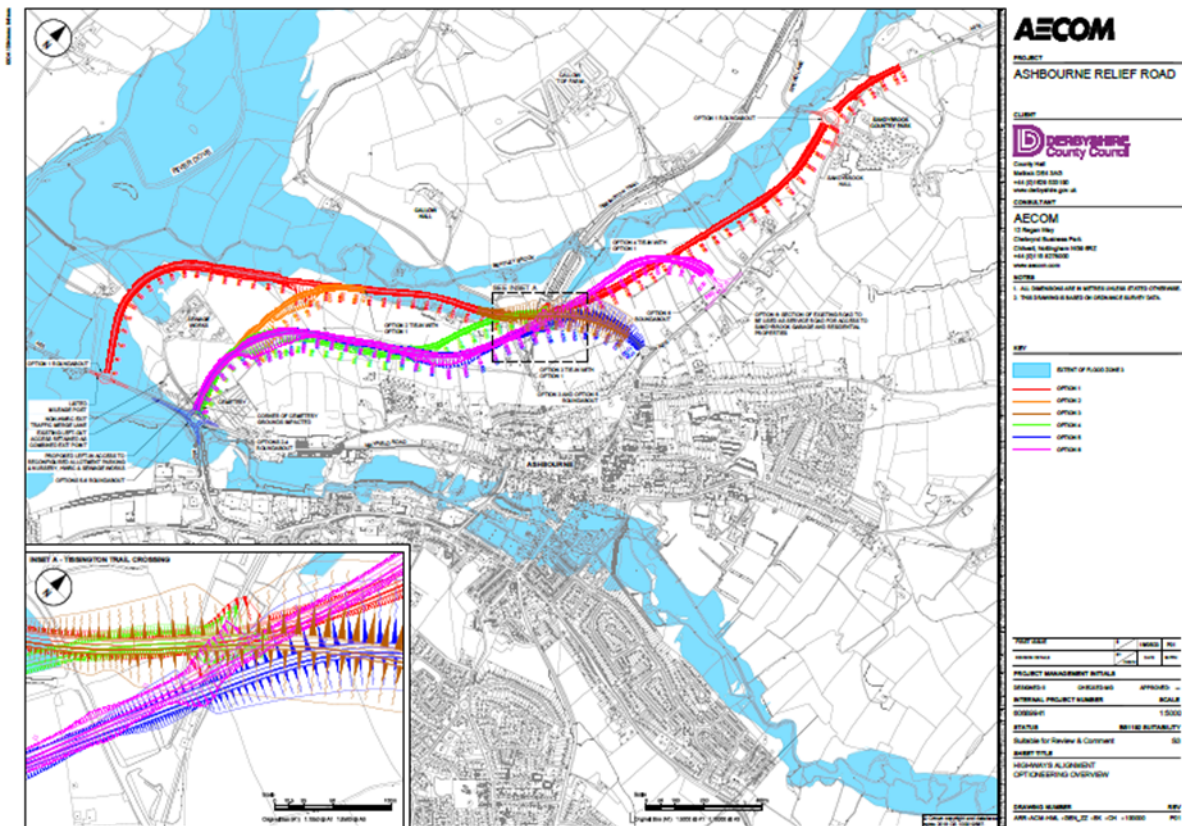
4.3 In the February 2021 report, a detailed description of Western Bypass Option A was given, specifying its exact length (2,817 metres) and the precise locations of its junctions with the A52 and A515, together with details of the alignment between these points. Cabinet's authorisation is therefore required to pursue any design which varies from these, and this is sought through this report on the basis of further analysis below:

Scheme Preparation and Implications

- 4.4 Progress towards producing the Environmental Statement for the preferred option has been underway for some time, with a substantial amount of work carried out on ecological surveys and analysis alongside preliminary design of the scheme. This reached the point in March 2023 of the commencement of pre-application liaison with the County Council's Regulatory Services (as the Council will be the determining planning authority, as well as the applicant). By far the most significant consideration arising from this is with regard to flood risk and the implications this could have both on the delivery programme and on the outcome.
- 4.5 Where a proposed development impacts upon Defined Flood Zones 2 or 3, as is the case for the preferred route, the applicant must supply the outcome of a 'sequential test'. This forms part of the planning application so is considered by the planning authority at the point of submission rather than being resolved in advance. Guidance relating to this sets out that the applicant must assess potential alternative 'sites' and identify any which could be suitable for the proposed development. For alternative sites, the assessment should cover any issues that would prevent development on the site and whether these issues could be overcome. In this regard, the relief road should be regarded as the 'site'.
- 4.6 With regard to the scope of considering alternative sites which would reduce or eliminate flood risk, there would be no advantage in extending beyond western route options. In the comments supplied by the Environment Agency during the 2020 consultation were the following relating to flood risk:
- "All the bypass options include sections within the floodplain of the River Dove/Bentley Brook or the Henmore Brook and the Agency stresses that any of these will need to be designed in accordance with the National Planning Policy Framework to prevent any increase in flood risk and, where possible, reduce flood risk overall. The Eastern option also crosses the Henmore Brook and, in addition, would need to be designed as a clear spanning structure, with abutments set outside of the flood plain, and set back from the top of the bank of the watercourse."*
- 4.7 Whilst this does leave open the possibility of an eastern option with no flood zone impact, this would have significant cost and other environmental impacts when, as set out below, western route options can be developed which do minimise or possibly reduce flood risk so should be capable of receiving consent.

4.8 An assessment has now been carried out of western relief road options, and whilst inevitably each of these presents its own challenges this concludes that there are deliverable options which can reduce impact on the flood zone to a minimal level. None of these has been the subject of a full Environmental Assessment but all options have been assessed against engineering and environmental criteria as set out in Appendix 2. The options are shown on Figure 2 below:

Figure 2



4.9 The options coloured blue and pink on Figure 2 impact on flood zone only at their southern junctions with the A52, tying into an existing roundabout which sits only partly within the defined flood zone. It would, therefore, be difficult to supply to the local planning authority a sequential test justifying the submission of any of those options (such as the red route) which do have significant impacts; it would be demonstrable that less intrusive options are available.

Programme Implications

4.10 It has emerged from pre-application liaison that the Environment Agency has no existing hydrological model of the River Dove catchment is available, and this will be required in order to assess any options with impacts upon the Bentley Brook. The Environment Agency is currently building such a model which will enable this assessment. Any option

which has a significant impact on the flood zone would, once the model becomes available, have to be tested for its impact and the degree to which any mitigation measures, such as the provision of additional flood storage, would counterbalance its impact.

- 4.11 Irrespective of the sequential test requirement, an advantage of the 'blue' or 'pink' options is that a preliminary model for the Henmore Brook is already available and can support early work to assess the impacts of some options and also, potentially, to demonstrate that mitigation is possible (through provision of additional flood storage) which can counterbalance the impacts of the scheme or even reduce the existing level of risk. An assessment of the suitability of this model is taking place at present.
- 4.12 The 'worst case' scenario for completion of flood modelling for the blue or pink scheme and the completion of other planning application documents is late 2024. This does, though, include a significant allowance for flood modelling which can potentially be reduced if the existing Henmore Brook model and design of mitigation measures can be utilised to demonstrate that flood risk can be eliminated.

Proposed Approach

- 4.13 Based upon pre-application liaison with the local planning authority and the Environment Agency and further option assessment informed by this it must be concluded that it will be difficult, if not impossible, to submit a successful planning application adhering to the detailed alignment approved by Cabinet in 2021. Two options, coloured blue and pink on Figure 2 above, are assessed as being deliverable without bringing about significant flood zone impacts.
- 4.14 It is proposed that Cabinet grants its approval to the preparation, at this stage, of both blue and pink options with a refined assessment of their impacts, not least their interface with the Tissington Trail. A further report will be brought to Cabinet in due course regarding the selection of one option to be submitted for planning consent.
- 4.15 Although this further consideration by Cabinet will take place ahead of public engagement prior to submission of the planning application, there could be benefit in informal engagement around the two options as assessment of these is progressed, with landowners and occupiers in particular, and Cabinet's authorisation is sought to carry out this informal engagement alongside design and planning preparation.

5. Consultation

- 5.1 In due course, formal consultation on a proposed relief road will be undertaken by the Council as local planning authority once a validated application is in place. As set out above, ahead of submitting an application, Cabinet will receive a further report dealing with selecting a preferred option and pre-application engagement on this. In the shorter term, this report seeks Cabinet's authorisation to carry out informal engagement on the two options outlined above.
- 5.2 Cabinet will wish to note that the relief road continues to be raised by local stakeholders and the general public in the context of other local initiatives such as the action plan for the town's Air Quality Management Area and the Ashbourne Reborn (Levelling Up) project. These indicate that the relief road retains the broad support of the community.

6. Alternative Options Considered

- 6.1 The Council could proceed with the submission of a planning application for the preferred alignment for the Ashbourne Relief Road approved by Cabinet in 2021. As set out in the report, though, it is now considered that a sequential test with regard to flood risk shows that there are viable options with lower levels of impact, and as a result it will be difficult to obtain consent for this alignment.
- 6.2 Work towards the relief road could be paused until such time as a validated flood model for the River Dove catchment becomes available. This would, though, introduce a delay of approximately a year and it would remain the case that a sequential test would still identify that options exist which can avoid impact on the catchment.
- 6.3 It would be valid to broaden consideration of relief road options beyond the two recommended in this report. However, of those considered to be viable for western alignments only these two appear capable of 'passing' the sequential test. Eastern options could only avoid flood zone impact only through the provision of substantial structures across the Henmore Brook and were discounted through the assessment approved by Cabinet in 2021.
- 6.4 Work towards a relief road could be halted. It does, though, remain both a County Council aspiration and one widely supported by the local community.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

- 8.1 Cabinet Report, A515 Ashbourne Bypass, dated 29 June 2017 (Minute No.195/17 refers.)
- 8.2 Cabinet Report, A515 Ashbourne Transport Study – Preferred Option Selection, dated 11 February 2021 (Minute No. 28/21 refers).

9. Appendices

- 9.1 Appendix 1 – Implications.
- 9.2 Appendix 2 – Option Assessment.

10. Recommendations

That Cabinet:

- a) Notes the implications of flood risk for the process to be followed in submitting a planning application for the Ashbourne Relief Road and in obtaining a successful outcome.
- b) Approves the approach recommended in this report that two options, coloured blue and pink on Figure 2, be the subject of further assessment ahead of a further report to Cabinet to identify one of these as 'preferred'.
- c) Approves the carrying out of informal targeted engagement with landowners and occupiers over the blue and pink options.

11. Reasons for Recommendations

- 11.1 In order to ensure that Cabinet has understood and acknowledged the risks of continuing to develop proposals for the preferred relief road alignment
- 11.2 In order to focus work on options most likely to be able to obtain planning consent in due course
- 11.3 In order to ensure an appropriate level of engagement in the development of options.

12. Is it necessary to waive the call in period?

12.1 No.

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Implications

Financial

- 1.1 There is currently no Capital Funding in place for this scheme.
- 1.2 Whilst £0.250m has already been spent and a further £0.143m has been earmarked from the Kick Start Reserve, if capital funding does not become available or the project was to fail then this funding would be a sunk revenue cost. Therefore, consideration needs to be given as to whether the project remain financially sustainable.

Legal

- 2.1 The Gunning principles set out the common law principles to be observed when undertaking consultation. R v London Borough of Brent ex parte Gunning [1985] 84 LGR 168 established these principles, which set out that a consultation is only lawful when these four principles are met:
 - a) Proposals are still at a formative stage - a final decision has not yet been made, or predetermined, by the decision makers.
 - b) There is sufficient information to give 'intelligent consideration' - the information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response.
 - c) There is adequate time for consideration and response - there must be sufficient opportunity for consultees to participate in the consultation. In the absence of a prescribed statutory period, there is no set timeframe for consultation, though it is considered that an eight week consultation period is sufficient in this case. The adequacy of the length of time given for consultees to respond can vary depending on the subject and extent of impact of the consultation.
 - d) 'Conscientious consideration' must be given to the consultation responses before a decision is made. Decision-makers should be able to provide evidence that they took consultation responses into account.
- 2.2 In coming to a decision, the Council should also have regard to the Public Sector Equality Duty (PSED) under the Equality Act 2010. The PSED requires public authorities to have "due regard" to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 (section 149(1a)).
- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1b)). This involves having due regard to the need to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic (section 149(3)(a));
 - or take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(3)(b)); and
 - or encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low (section 149(3)(c)).

Human Resources

- 3.1 Work on the Ashbourne Relief Road is supported by staff within the Economy and Regeneration Service, supported by commissioned consultancy resources.

Information Technology

- 4.1 None.

Equalities Impact

- 5.1 An Equality Impact Assessment will be carried out on the two options recommended in this report ahead of the submission of a planning application.

Corporate objectives and priorities for change

- 6.1 The recommendations of the report support the Council Plan priority of supporting Resilient, Healthy and Safe Communities.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

Property

- 7.1 The selection of a preferred option, as recommended in this report, will allow more detailed work to be carried out on the extent of land

requirements and informal negotiation with landowners. Cabinet will note that authorisation of the use of compulsory purchase powers will need to follow the granting of planning consent.

Social Value

- 7.2 Further development of relief road proposals for Ashbourne is likely to provide significant opportunities for engagement with local schools, community groups and colleges.