



## DEVELOPMENT MANAGEMENT COMMITTEE

### Report by Head of Planning, Economic Development and Regeneration

#### DESCRIPTION

Application under section 42 for deletion/variation of conditions 4 and 5 (tree protection and retention) of planning permission 0639/FUL/19 at Blackridge Primary School, Main Street, Blackridge

#### DETAILS

<b>Reference no.</b>	<a href="#">0095/FUL/21</a>	<b>Owners of site</b>	West Lothian Council
<b>Applicant</b>	West Lothian Council	<b>Ward &amp; local Members</b>	Armada and Blackridge  Cllr S Borrowman Cllr S King Cllr A McGuire
<b>Case officer</b>	Gillian Cyphus	<b>Contact details</b>	01506 282408 gillian.cyphus@westlothian.gov.uk

**Reason for referral to Development Management Committee: Head of Service discretion**

#### RECOMMENDATION

Grant planning permission, subject to conditions.

#### 4 DETAILS OF THE PROPOSALS AND BACKGROUND

- 4.1 This is an application under s42 of the Town and Country Planning (Scotland) Act 1997 (as amended) to allow development that was previously granted to be carried out without complying with conditions 4 and 6.
- 4.2 Planning permission was granted for a new nursery school at Blackridge Primary School in October 2019. When the application for the nursery was first submitted, it included the removal of 5 trees. A tree survey submitted with that application described two of the trees as being poor and the remainder as fair. It was established that three of the trees were of a low quality. The proposal to remove the trees was considered acceptable by officers and recommended for approval.
- 4.3 However, members of committee continued the application and asked the applicant to look at ways of redesigning the proposed nursery development to retain all the trees. The applicant was unable to make changes to the layout but revised the proposal to retain the trees within the outdoor play space. Conditions regarding the protection and retention of the trees were attached to the consent. Condition 4 states that all trees in or adjacent to the site shall be retained and protected from damage during construction and that the mature beech trees within the site shall not be felled or trimmed without the written consent of the planning authority. Condition 5 requires detailed plans for the nursery play areas to be submitted and

approved by the planning authority in consultation with the council's arborist, without compromising the beech trees.

- 4.4 Since then, the applicant has been in discussion with the council's arborist to try to agree a safe and practical way forward. Copies of the correspondence between the applicant and the arborist are attached to the report. During the construction works care was taken to protect the trees. However, it has now become apparent that the trees cannot safely be accommodated within the play area. The council's arborist has concluded that the trees are approaching the end of their Safe Useful Life Expectancy (SULE) and that the best option is to remove the trees and replace them with semi-mature transplants. The applicant now seeks to delete the conditions to allow for the trees to be removed.

## 5 REPRESENTATIONS

- 5.1 There have been two objections to the application.
- 5.2 A summary of representations is provided in the table below and copies of the objections are attached for members information.

Comments	Response
No justification for the removal of the trees	The council's arborist recommends the removal of the trees on safety grounds.
No proper assessment of the impact on environment or drainage	The removal of the trees, whilst regrettable, would not have a significant impact on the environment, particularly as semi-mature replacements will be provided. Drainage of the site is being addressed under the previous planning permission.
Loss of amenity	The removal of the trees, whilst regrettable, would not have a significant impact on the environment, particularly as semi-mature replacements will be provided.
Play area can and should have been designed to accommodate the trees	It has not been possible for the trees to be safely accommodated within the necessary play area.

## CONSULTATIONS

- 6.1 A summary of consultations received is provided in the table below. The full documents are contained in the application file:

Consultee	Objection	Comments	Planning Response
Arborist	No	The trees should be removed and replaced with semi-mature transplants	Noted. See discussion below and correspondence attached.

## 7 ASSESSMENT

- 7.1 Section 25 of The Town and Country Planning (Scotland) Act 1997 (as amended) requires planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

7.2 The Development Plan comprises the Strategic Development Plan for South East Scotland (SESPlan) and the West Lothian Local Development Plan.

7.3 The relevant Development Plan policies are listed below:

<b>Policy</b>	<b>Policy Summary</b>	<b>Assessment</b>	<b>Conform</b>
West Lothian Local Development Plan, 2018  DES1 (design principles)	All development proposals are required to take account of and be integrated with the local context and built form. Development proposals should have no significant adverse impacts on the local community and where appropriate, should include measures to enhance the environment and be high quality in their design. Development proposals which are poorly designed will not be supported.	With suitable replacement trees the impact on the amenity of the surrounding area will not be significant.	Yes
West Lothian Local Development Plan, 2018  ENV9 (Woodland Forestry, Trees and Hedgerows)	There is a presumption against development which results in the loss of trees which are considered to be of value.	Although the trees do make a positive contribution to the area, on balance their removal on safety grounds, along with replacement planting, is acceptable.	Yes

7.4 The determining issue in relation to this application, is whether the loss of the 5 mature trees is acceptable in these circumstances.

7.5 The applicant advises that it has not been possible to achieve a safe and suitable outdoor play arrangement for the children at the nursery that includes the retention of the trees. This is because the trees are reaching the end of their safe useable life expectancy and may pose a safety risk to children playing in the vicinity. In addition, the arborist advises that beech trees of this age can suffer from summer branch drop, where significant limbs can fall from the tree without warning. This cannot be foreseen or picked up during inspections and would pose a significant risk to the users of the nursery. The safest way to proceed is to remove these trees and replace them with semi-mature transplants which will make a positive and longer lasting contribution to the amenity of the area. The applicant has agreed to undertake appropriate replanting. Although they are mature trees, they are of questionable value and are not subject to any additional protection, such as a tree preservation order. The removal of the trees, albeit noticeable, will not have a significant detrimental impact on the visual amenity of the area. Subject to a condition about replanting within the nursery outdoor play area, the application is compliant with policies DES1 (Design) and ENV9 (Woodland, Forestry, Trees and Hedgerows) in the development plan.

## **8 CONCLUSIONS AND RECOMMENDATIONS**

8.1 Whilst the loss of mature landscaping is regrettable, the retention of the trees conflicts with the safety of the users of the outdoor play space. Removal of the trees and replacement planting will ensure that the amenity impact is not significant. Taking these factors into consideration the application is acceptable and complies with the terms of the development plan.

<b>9 BACKGROUND REFERENCES AND ATTACHMENTS</b>
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- Draft conditions
- Location plan
- Site plan
- Letters of representation
- Correspondence from arborist

Craig McCorriston  
**Head of Planning, Economic Development & Regeneration**

**Date: 9 June 2021**

## **0095/FUL/21 Draft Conditions**

- 1) The development shall be carried out in accordance with the approved plans and conditions 1, 2, 3 and 6 of planning application 0639/FUL/19

Reason: To clarify the terms of this permission.

- 2) Prior to the occupation of the nursery building, detailed proposals for replacement planting shall be submitted to and approved in writing by the planning authority. For the avoidance of doubt the replacement trees shall be semi-mature and at least 3m in height. The approved replacement planting shall be carried out in the first planting season following the occupation of the building.

Reason: To allow full consideration of these details yet to be submitted and in the interests of visual and environmental amenity.









# Comments for Planning Application 0095/FUL/21

## Application Summary

Application Number: 0095/FUL/21

Address: Blackridge Primary School 56 Main Street Blackridge West Lothian EH48 3RJ

Proposal: Application under section 42 for deletion/variation of conditions 4 and 5 (tree protection and retention) of planning permission 0639/FUL/19

Case Officer: Gillian Cyphus

## Customer Details

Name: Mr Richard Henson

Address: 6 Matthews Crofts Backridge EH48 3TJ

## Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I have a number of concerns regarding the application to amend the planning conditions 4 and 5 for 0639/FUL/39, which protect the mature beech trees to the North of the newly built Nursery at Blackridge Primary School.

I believe that the reason for this application is that the council wish to remove the mature trees in question, without presenting any justification or reason for this. The application seems to suggest that the Care Inspectorate will not deem that there is 'safe free flow' access to an outdoor area, but without any justification for that hypothetical decision. The observations from the WLC Arborist have not been made available to the public, so this calls into question the transparency of this application.

In application 0639/FUL/39 all the documentation (including the tree survey from an independent arborist) assumed the trees would be removed without justification, as if it was a fait accompli. An objection by Paul McCormack pointed out that there are a number of reasons to retain the trees, of which I will not repeat here but I believe the points are all still valid. The council took this into account when placing conditions 4 and 5 on 0639/FUL/39.

In the original tree survey from Alan Motion, it was stated that none of the trees in question (i.e. those within the nursery play area) are in an unsafe condition, and are in fact within the expected acceptable condition for their age (approximately 150-200 years old). Any proposed demolition of these large mature trees is environmentally destructive of the natural habitat of a large quantity of fauna, insect and micro-organic life, not in line with WLC policy. In addition, these trees provide a substantial rate of water attenuation and the removal of the trees would negatively affect the drainage for the play area, which I suggest would be a far greater barrier to safe free flow than the existing trees. To date, no study has been produced by the applicant to quantify any effects of the environment damage or drainage issues that removal of the trees would cause.

Being large mature beech trees, spaced naturally far apart, they present little to no obstruction to



the rest of the outdoor space and in addition provide interesting play and learning opportunities for the nursery children. As this presents a beneficial learning environment (as evidenced by forest school nurseries in West Lothian), I see no justification for the removal of these trees.

As the nursery building has now been completed and is being used, any attempt to remove the trees will mean that the play area would be unusable until any necessary remedial ground works could be completed. If there was any concern about the retention of the trees, the time for any remedial work was while the nursery and play area were being constructed, not retrospectively once the building is occupied.

██████████ the nursery in August, and I hope ██████ will benefit from these trees as many others have for over a century.

**From:** Paul McCormack  
**To:** [REDACTED]  
**Subject:** LETTER OF FORMAL OBJECTION - 0095/FUL/21 New application to demolish 5no. existing mature trees at Blackridge Primary/Nursery  
**Date:** 03 March 2021 11:13:36  
**Attachments:** [new path position and tree crowns](#) [REDACTED]

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Paul McCormack & Manna Dobo  
Christchurch Hall  
60 Main Street  
Blackridge  
EH48 3RJ

03/03/21

Dear Ms. Cyphus,

LETTER OF FORMAL OBJECTION TO PLANNING APPLICATION 0095/FUL/21

We confirm having received again, notice by mail of the above planning application dated 15th February 2021, with a closing date of 8th of March for objections/ comments.

Our objections are as follows:

In the above planning application, reference is made by the applicant to a 'deem' by a Mr. Craig Sinclair, an arborist for WLC. However, having checked with the planning case officer no further tree survey has been submitted as part of the application by WLC. This 'deem' has not been substantiated.

For the record, on the planning application, there are numerous **false** statements about the new access route to the play area being 'through' the 'wooded area' of the row of 5 trees and about the new access route being 'surrounded' by the 'wooded area'. These statements are simply and verifiably untrue. We presume that the somewhat misleading relative pejorative terminology of a 'wooded area' refers to the row of 5 trees.

**In fact**, the newly constructed access route to the play area passes by the right-hand side of the row of 5 trees by some eight metres and is well outwith the crown of the 5th and 6th tree. Please refer to attached sketch, 'New Path Position' over original tree survey drawing. Or, in other words, the new access route is located in the middle of a 16 metre gap between the fifth (2803) tree and the sixth tree (2804). The sixth tree is not part of the wooded area referred to. Even on the enclosed photograph by the applicant, we note that the access route to the play area and MUGA is clearly shown contradictorily to be well to the side of the 5th tree of the row of trees and not 'through' them.

We note the absence of a formal drawing to accompany this planning application showing the above-described spatial relationships and the new configuration of the play area and access to it. The description on the planning application by the applicant is false. It should also be noted that the location plan included with the application is actually 'wrong' regarding the path position and would be confusing to anyone reading the application in conjunction with this plan.

Finally, in the covering letter dated 28th January from WLC to the application notification, received with the original neighbour notification, the applicant stated that, in relation to '...trees which 'surround' the access to the nursery outdoor space 'it should be noted that 'safe free flow' access for nursery children to an outdoor area is a key Care Inspectorate requirement and without this the Care Inspectorate will rate the nursery environment as inadequate.'

From this, we assume that this is NOW the sole justification proffered by the applicant for the demolition of the trees as nothing else has materially changed regarding the previous planning decision and conditions 4 and 5 to retain the five mature trees.

It really is NOT a justification to demolish mature trees because of a bureaucratic oversight on behalf of the applicant who should have involved this stakeholder at a far earlier stage in the proceedings and for their opinion, albeit based on a false assumption, to have been taken into account. For the applicant not to have 'lined up all their ducks' can hardly be placed at the door of the planning committee's previous decision and conditions 4 and 5.

From where we are, it appears to us that the applicant is now trying to amend 'the facts' to suit their bureaucratic requirements, just in the same way the contractor-bought tree survey was used to try and 'technically' and retrospectively justify the proposed demolition of trees 1-5.

We would respectfully request that the planners and planning committee refuse this application.

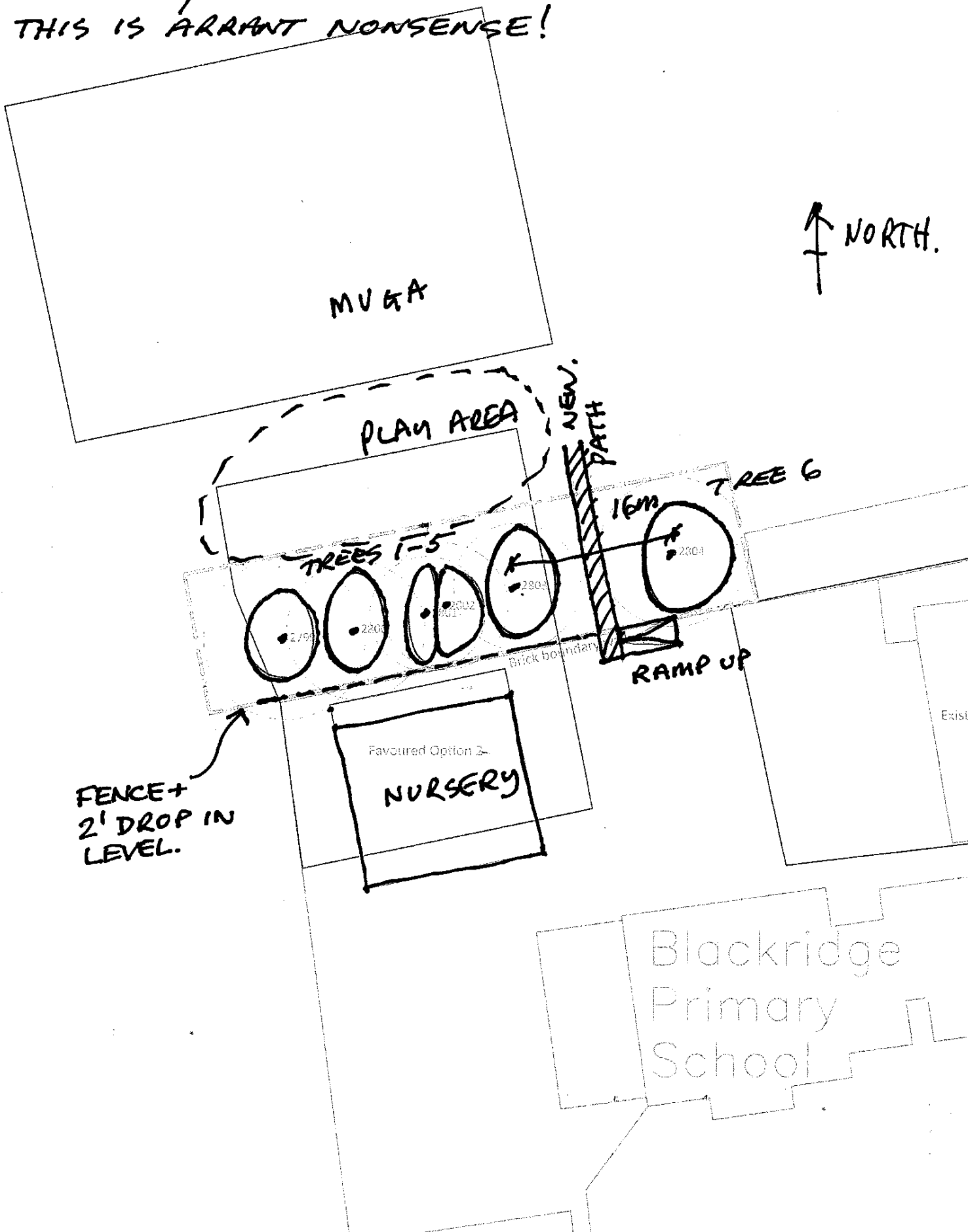
We would be grateful if you could acknowledge receipt of this letter. Many thanks.

Yours faithfully,

Paul McCormack & Manna Dobo.

FROM THE TREE 'SURVEY'  
ORIGINALLY THE APPLICANT WANTED TO DEMOLISH  
TREES 1-5, BUT SOMEHOW TREE 6 WAS JUST FINE!  
THIS IS ARRANT NONSENSE!

Meeting Date - 9 June 2021  
Item No. 5





**From:** Sinclair, Craig  
**Sent:** 08 January 2021 10:56  
**To:** Adam, Donna <[Donna.Adam@westlothian.gov.uk](mailto:Donna.Adam@westlothian.gov.uk)>  
**Subject:** RE: New Nursery accommodation, Blackridge PS - [OFFICIAL]

**DATA LABEL: OFFICIAL**

Hi Donna

I totally understand where we are now.

The original plan that was approved had the access round and away from the trees not under them. This plan would have 'steered' the users of the outdoor area away from any potential risk. With this plan now being changed and the route now designed to pass between the trees, thus changing the hazard and risk from low to high. In short there is now a target where one did not exist before.

I would strongly recommend, as was one of the original ideas, that these trees be removed and replaced with large transplants. Trees within the landscape are very important to the design of the project.

The Beech present are now heading towards the end of their Safe Useful Life Expectancy (SULE) and this can be seen as an opportunity to replace them with very significant specimen transplants – I would suggest London Plane trees, semi-mature transplants with a height of anywhere between 3-7metres in height, size very much depends on funds available.

This solution would solve any issues and insure tree cover at this location for the next 200+ years, the trees at present are likely to be in decline within the decade. New tree planting would carry a low risk to the users

Further it is worth bearing in mind that Beech is not native to this part of the UK and do suffer from 'summer branch drop', where Beech of this age class can drop significant limbs with no warning or indications that would be picked up by regular inspection

I trust this clarifies my position, however should you need anything further please just let me know

Kind regards

*Craig*

**Craig Sinclair**  
Trees and Woodland Team Leader (Arboriculture)  
**NETs, Land and Countryside Service**

**From:** Adam, Donna  
**Sent:** 07 January 2021 12:41  
**To:** Sinclair, Craig <[craig.sinclair@westlothian.gov.uk](mailto:craig.sinclair@westlothian.gov.uk)>  
**Subject:** New Nursery accommodation, Blackridge PS - [OFFICIAL]

**DATA LABEL: OFFICIAL**

Hi Craig

It was good to catch up with morning, please find below some background information in relation to the new nursery accommodation at Blackridge PS:

The original Strategic Outline Business Case (SOBC) that was approved to secure the capital funding - £1.6M for the project to build a new nursery at the school, highlighted the fact that the current nursery outdoor area is very small and does not support the key requirements of 'Space to Grow' thus putting the children attending this setting at a disadvantage. The Care Inspectorate require children to have access throughout the day to what is termed as 'free flow' access to the nursery outdoor area. I.e the children can decide for themselves to go outside without being accompanied by an adult at any time. As you will appreciate this option for children under 5 Years this has to be safe.

However, given the current situation in relation to the route through the trees to the new outdoor area, the Care Inspectorate are unlikely to approve the registration application for the new nursery without adding condition in relation to safe access for free flow play to the outdoors.

Can you please advise of the options available to provide safe access for nursery children to the designated outdoor area.

Many thanks Donna

**West Lothian Council - Data Labels:**

**OFFICIAL - Sensitive:** Contains Personal or Business Sensitive Information for authorised personnel only

**OFFICIAL:** Contains information for council staff only

**PUBLIC:** All information has been approved for public disclosure

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