



## **BADGERS AND DEVELOPMENT**

### **A Guide to Best Practice and Licensing**



### **INTRODUCTION**

Badgers are among Britain's most loved wild mammals. They are relatively widespread in England, though their mainly nocturnal habits mean that many people encounter them only as road casualties. Increasing public concern for their welfare led to stronger legal protection being introduced with the Protection of Badgers Act 1992. Unfortunately, digging and baiting still affects badgers in certain areas and the Police, RSPCA and local badger groups work together to report and investigate offences.

Badgers are also affected by development and the purpose of this note is to provide guidance on how development can be carried out within the law and in a way that minimises the detrimental impact on this animal. The guidance also explains what development activities might require a licence and provides information on how to obtain a licence from Natural England.

## **BADGER BIOLOGY AND LIFESTYLE**

Adult badgers grow up to a metre long and males can weigh up to 14 kg. They have strong claws and legs with which they dig and move earth. They are omnivorous and their diet typically consists of worms, insects, grain and fruits. During late summer and autumn they accumulate fat reserves. Badgers do not hibernate over winter but they are much less active and stay below ground especially during very cold or wet weather.

Badgers live in family or social groups of related mature and young adults and cubs, sometimes known as clans. Their “home ranges” consist of feeding grounds and one or more setts. A badger sett is defined in the legislation as “any structure or place which displays signs indicating current use by a badger”. Setts can usually be classified as one of the following<sup>1</sup>:

1. *Main Setts*: These usually have a large number of holes with large spoil heaps, and look well used. They usually have well used paths to and from the sett and between sett entrances. Although normally the breeding sett, and in continual use all year round, it is possible to find a main sett that has become disused because of excessive disturbance or for some other reason.
2. *Annexe Setts*: These are always close to a main sett and are usually connected to the main sett by one or more obvious, well-worn paths. They usually consist of several holes, but are not necessarily in use all the time, even if the main sett is very active.
3. *Subsidiary Setts*: Often these have only a few holes, are usually at least 50 m from a main sett, and do not have an obvious path connecting them with another sett. They are not continuously active.
4. *Outlying Setts*: These usually only have one or two holes, often have little spoil outside the entrance(s), have no obvious path connecting them with another sett, and are only used sporadically.

Whilst these categories look clear cut, classification can be difficult in the field. In areas of low badger density main setts may be relatively small with only a few holes. One should not necessarily expect to find examples of all sett types in a particular area. Many badger social groups do not have an annexe sett, for instance, whilst in poor badger habitat large areas may be searched without finding a main sett. Setts are sometimes taken over or cohabited by foxes or rabbits. However, they can still be recognised as badger setts by the shape of the tunnel (not the entrance hole), which is at least 250 mm in diameter and rounded or flattened oval in shape.

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<sup>1</sup> Thornton, P. S. (1988) Density and distribution of badgers in south-west England - a predictive model. *Mammal Review*, 18, 11-23.

Badger family groups usually remain loyal to their main setts unless they are frequently disturbed. Opening up new setts and maintaining and extending old setts is a constant occupation, with bursts of digging activity at certain times of the year. Activity and use of setts can change steadily over the years, or very quickly in response to short-term changes such as flooding or a food crop ripening nearby. In general though, badgers are creatures of habit. They tend to use the same pathways to foraging areas and will continue to try to do so despite any obstacles that are placed in their way. New fences may be broken down and new roads crossed despite any difficulty or danger presented.

Badgers can mate throughout the year but pregnancy starts around the end of November, or early December, when the previously fertilised embryos implant into the sow's uterus. Often only the most dominant sow in a family group will produce cubs, usually two or three per litter. These are born underground, usually towards the end of January or beginning of February, emerging for the first time after about 8 weeks. The cubs remain dependent upon the sow for a further few weeks while they are weaned and learn how to fend for themselves.

## **BADGERS AND THE LAW**

This is only a guide to the main provisions of the law. Natural England does not provide legal advice to developers and the text of the Act should be consulted and professional legal advice sought for exact interpretations of offences and defences. The Protection of Badgers Act 1992 is based primarily on the need to protect badgers from baiting and deliberate harm or injury. It also contains restrictions that apply more widely and it is important for developers to know how this may affect their work. All the following are criminal offences:

- to willfully kill, injure, take, possess or cruelly ill-treat a badger;
- to attempt to do so; or
- to intentionally or recklessly interfere with a sett.

Sett interference includes damaging or destroying a sett, obstructing access to a sett, and disturbing a badger whilst it is occupying a sett. It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett if no badger is disturbed and the sett is not damaged or obstructed.

Since development operations may take place over a protracted period, Natural England recommends that plans consider the effect of the development on seasonally-used setts as well as currently occupied setts. If a sett has shown signs of occupation within the past few months, it could be in use by badgers when development starts and should therefore be taken into account during the survey and any planning stages of the development. Where interference

with a sett showing signs of use cannot be avoided during the development, a licence should be sought from Natural England.

Penalties for offences can be severe with fines of up to £5,000 plus up to six months imprisonment, for each illegal sett interference, or badger death or injury. The legislation does, however, recognise the need for a range of legitimate activities to be carried out and allows licences to be granted for certain purposes permitting work that would otherwise be illegal. The purposes for which licences can be granted include:

- Preventing serious damage to land, crops, poultry or any other form of property (e.g. a house, garden, road etc.)
- Any agricultural or forestry operations
- Any operation to maintain or improve any existing watercourse or drainage works, or to construct new works required for the drainage of land, including works of defence against sea or tidal water
- Preventing the spread of disease
- Development
- Scientific or educational purposes, or conservation
- Preservation or archaeological investigation of scheduled ancient monuments

The licensing authority in England is Natural England. For information on how to obtain a licence please see the final section of this guidance.

## **BADGERS AND THE PLANNING SYSTEM**

Planning authorities are required to take account of protected species and habitat conservation when they consider planning applications. The Department for Environment, Food and Rural Affairs (Defra) published Planning Policy Statement 9: Biodiversity and Geological Conservation (PPS9) for local authorities in England. This document explains the role of planners in considering the requirements of wildlife legislation to protect wildlife. Where protected species are present local authorities should consult Natural England's standing advice (see <http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/default.aspx> ) before granting planning permission. They should also advise developers that they must conform to statutory species protection.

Natural England believes that all local development plans should contain policies for protected species, including badgers and their setts. Development should not be permitted unless it is possible to take steps to ensure the survival of the badgers in their existing range and at the

same population status, with provision of adequate alternative habitats if setts and foraging areas are destroyed. Natural England will normally only issue a licence after detailed planning permission has been granted, where applicable, so that there is no conflict with the planning process. Licences will only be issued in advance of full planning permission in exceptional circumstances. Local authorities and developers need to be aware that it may be necessary for an environmental assessment to be carried out, prior to the development, if the proposed development site hosts badgers. Before the planning application is determined, the local planning authority should request a detailed ecological survey/report and developers should be prepared to provide the following information:

- The numbers and status of badger setts and foraging areas that are affected by the proposal;
- the impact that the proposal is likely to have on badgers and what can be done by way of mitigation;
- judgment on whether the impact is necessary or acceptable; and
- a recommendation on whether a licence will be required.

Planning Permission and badger licensing are separate legal functions. Thus receiving planning permission from the Local Authority is no guarantee that development operations will not breach the Protection of Badgers Act 1992. Similarly planning permission does not guarantee that a badger licence will be granted. It is important, therefore, that developers take adequate account of badgers at the planning stage in order to ensure that badgers will not be affected or, where a licence is required, that appropriate mitigation measures can be implemented.

### **BADGERS ON SITE – BEST PRACTICE GUIDANCE**

The need to comply with the law is obvious. However, there are other more practical benefits in taking adequate account of badgers when planning a development. Public affection for this species means that the cost of mitigation to accommodate badgers may be small compared with that of dealing with protests or adverse publicity if badgers are not catered for. Natural England recommends that when any protected species is thought to occur on site, early advice be sought from an appropriately experienced adviser, as this can prevent costly delays at a later date. Following the advice below will help developers to avoid committing offences:

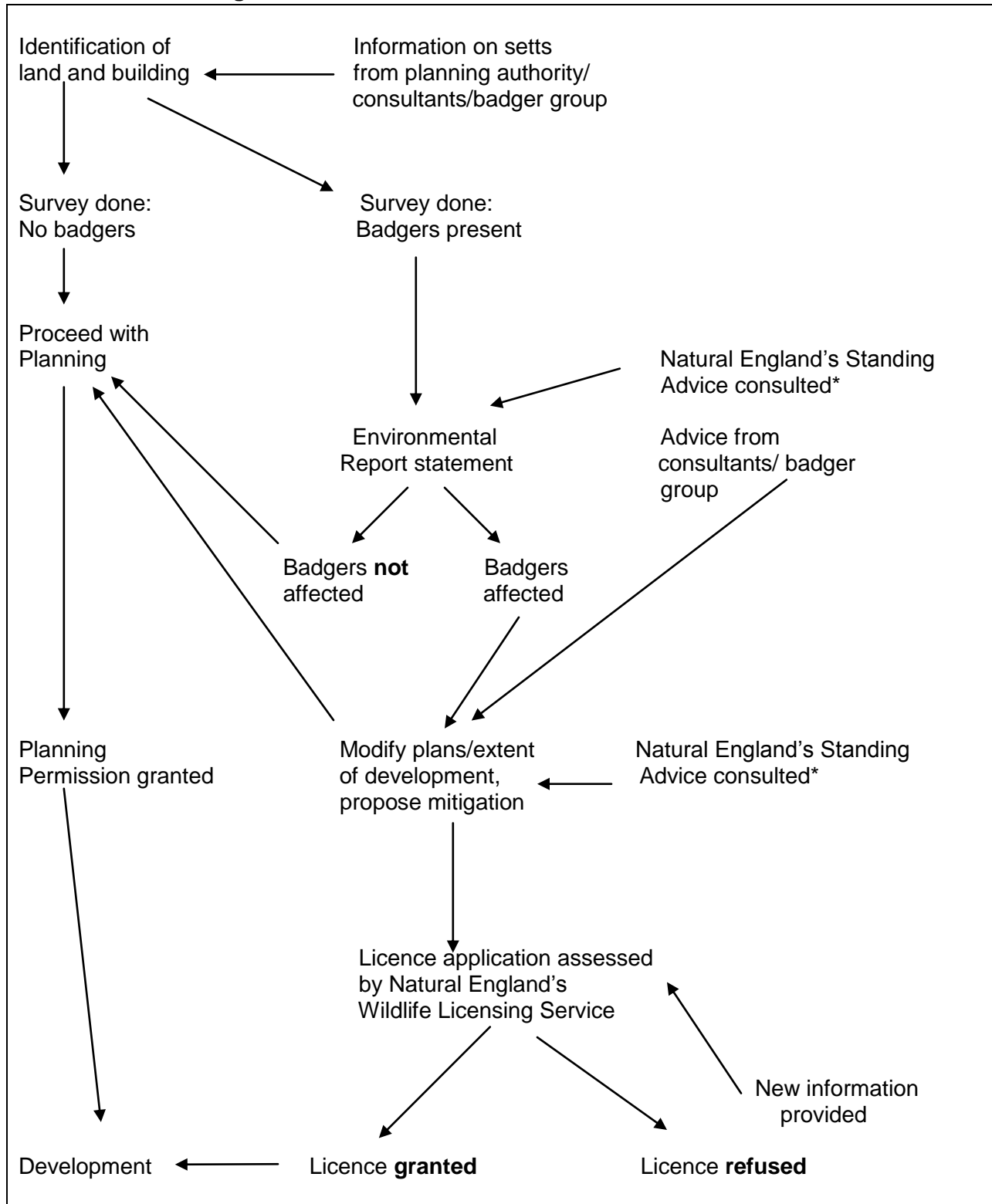
- Base your plans on competent advice and an appropriate survey.
- It may take a period of many weeks or months to obtain adequate information about how badgers are using a site. Bait marking (a method used to map territorial ranges) and other survey techniques are usually effective only at certain times of the year.

- Foraging areas should be maintained or new foraging areas should be created.
- Access between setts and foraging / watering areas should be maintained or new ones provided.
- Development that isolates a badger territory by surrounding it with roads or housing results in problems such as increased road traffic collisions, and badger damage to gardens and houses.
- Natural setts are usually favoured over artificial setts, so unnecessary closure of natural setts should be avoided.
- Badger tunnels can extend to 20m from the entrance holes and are located between 0.2 and several metres deep, depending on the soil and topography. Excavation work and heavy machinery should be kept well away from where it could result in damage to the sett or disturbance to any badger occupying the sett.
- Fires and chemicals should not be used within 20 metres of a sett
- Trees should be felled so that they fall away from active setts and badger paths should be cleared of felled timber and scrub wherever possible.
- Disturbances, such as loud noise or vibrations, that might agitate badgers occupying a sett should be avoided or limited to areas well away from the sett.

If this guidance cannot be followed and the work you are proposing is likely to cause sett interference you will need to apply for a licence. In considering your licence application you should note:

- Sett interference should be avoided between the beginning of December and the end of June, which is when badgers are breeding. Badgers are particularly vulnerable at this time of year and sett interference can result in dependant cubs being left on their own.
- The law does not permit licences to capture badgers for development purposes, so physically moving them out of the way of development is not an option.
- The person to be licensed should be competent and will, ideally, have previous, relevant experience in carrying out this type of work.
- Excluding badgers from a sett under licence takes time – typically a licence will require that exclusion methods, such as one-way badger gates, are in place for a minimum period of 21 days following the last sign indicating possible access by badgers to the sett.

The following diagram shows the various stages involved in developing land that contains badger setts



\*<http://www.naturalengland.org.uk/ourwork/planningtransportlocalgov/spatialplanning/standingadvice/default.aspx>



## **APPLYING FOR A LICENCE**

Licences cannot be issued retrospectively and we take 30 working days to determine applications.

Application forms for licences are available from Natural England at:

<http://www.naturalengland.org.uk/conservation/wildlife-management-licensing/forms>

E-mail: [wildlife@naturalengland.org.uk](mailto:wildlife@naturalengland.org.uk)

Natural England, Wildlife Licensing Unit

First Floor

Temple Quay House

2 The Square

Bristol

BS1 6EB

Tel: 0845 601 4523

Fax: 0845 601 3438

To assess an application we will need:

- A completed application form
- A planning permission reference number, where applicable
- Information on the status, location and use by badgers of any setts that will be affected by the development
- Details of appropriate mitigation for any setts that will be destroyed
- An appropriately scaled map of the development site, which illustrates the location of setts in relation to the proposed development, including a six-figure grid reference and aerial photos if available
- Details of any experience you, or those working for you, have of dealing with badgers and badger sett interference
- A time plan for the proposed works



**FURTHER INFORMATION**

Further information on badger issues can be obtained from the following organisations:

<i>Organisation</i>	<i>Contact details</i>
<b>The Badger Trust</b>	PO Box 708 EAST GRINSTEAD RH19 2WN Tel: 08458 287878 Fax: 02380 233896  <a href="mailto:enquiries@badgertrust.org.uk">enquiries@badgertrust.org.uk</a> <a href="http://www.nfbg.org.uk">www.nfbg.org.uk</a>
<b>The Mammal Society</b>	3 The Carronades, New Road, Southampton. SO14 0AA Tel: 02380 237874 Fax: 02380 634726  <a href="mailto:enquires@mammal.org.uk">enquires@mammal.org.uk</a> <a href="http://www.abdn.ac.uk/mammal">www.abdn.ac.uk/mammal</a>
<b>The Police</b>	Contact local station and ask for the Wildlife Crime Officer
<b>Local Planning Authority</b>	Contact local office
<b>RSPCA</b>	RSPCA Enquiries Service Wilberforce Way Southwater, Horsham West Sussex RH13 9RS Tel: 0870 33 35 999 (9am to 5pm weekdays only)  <a href="http://www.rspca.org.uk">www.rspca.org.uk</a>
<b>The Wildlife Trusts</b>	The Kiln Waterside Mather Road Newark Nottinghamshire NG24 1WT Tel: 01636 677711  <a href="mailto:enquiry@wildlifetrusts.org">enquiry@wildlifetrusts.org</a> <a href="http://www.wildlifetrusts.org">http://www.wildlifetrusts.org</a>