



BADGER PROTECTION GUIDANCE FOR DEVELOPERS

Badgers are a protected species and with development projects occurring daily across the UK, it remains incredibly important that interested parties understand the law and best practice guidance.



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Badger Protection Guidance for Developers

1. Introduction

Badgers have been a part of the British landscape for thousands of years and can be found in the countryside, towns and urban locations. As a result of mass persecution, badgers are a protected species. With development projects occurring daily across the UK, it remains incredibly important that interested parties understand the law and best practice guidance. Applied incorrectly, development projects can result in the occurrence of wildlife crimes through negligence.

We aim to provide best practice guidance to define how development can be carried out within the law and in a way that minimises the negative impacts of development upon badgers. Planning officers, ecologists, developers, badger groups and other interested parties can gain an overview of the law, licence requirements, mitigation measures, appropriate surveying and activities that are licensable.

2. Legislation and Fines

Badgers (*Meles meles*) are an iconic wild mammal in Britain and are relatively widespread in England. Badgers and the setts they live in are fully protected in the UK by the **Protection of Badgers Act 1992** and by Schedule 6 of the **Wildlife and Countryside Act 1981** (as amended), and Section 40 of the Natural Environment and Rural Communities Act 2006 places a public duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. Badgers are of material consideration when it comes to planning applications.

It is an offence to:

- Wilfully kill, injure, take, possess or cruelly treat a badger or to attempt to do so
- Intentionally or recklessly damage, destroy or obstruct access to a badger sett.
- Works must be kept to a predetermined distance where damage to a sett will not occur, this may be 30m in some situations

3. Planning Process

The National Planning Policy Framework (July 2018) states that when determining planning applications, Local Planning Authorities (LPAs) should apply the following principle:

"If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site...), mitigated or, as a last resort, compensated for, then planning permission should be refused"

When seeking planning permission, badger surveys and mitigation plans are required if:

- There are signs of setts or badgers on the development site or nearby.
- Historical or distribution records show that badgers are active in the area or that it is a suitable habitat for sett building.



3.1 Pre-application Advice

Early consultation is always advised. LPAs welcome pre-applications and some have their own planning ecologists who can be consulted.

If not licensed, works taking place too close to a badger sett could result in a wildlife crime.

4. Badger Surveys

Local Planning Authorities (LPA) should assess the need for ecological surveying on a site and developers/applicants should provide details of the number and status of any badger setts affected by a proposed development. The LPA would need to know if a badger licence is required to facilitate the proposals.

The Badger Trust would consider the following as examples of best practice for badger surveys:

- Independent survey with a suitably trained ecologist early in the project timeline
- Detailed report to inform LPA of badger status at the site and adequate mitigation measures proposed to protect badgers
- Desktop data records search
- Survey in early spring or late autumn
- Up to date survey, within 12 months of application
- The presence/likely absence of badgers ascertained
- A detailed survey could include trail cameras, sett monitoring and bait marking
- Details of monitoring during development if required
- Map of survey findings (with grid references)
- Photographs as appropriate

Please note:

Sometimes smaller sites may incorporate the badger survey findings with a preliminary ecological survey, whilst some schemes may require dedicated badger surveys and a mitigation strategy. Publishing the location of badger setts within the public domain is not advised, so a redacted version of the report may be requested by the LPA. Setts are still protected if there are signs of badgers even if the sett is unoccupied at that time.

5. Development Impacts

Badger and badger sett 'disturbance' can be short term (during development) and long term (after development). It is advisable to fully explore what would be acceptable in both the short term and the long term. The main aim is to avoid negative effects. If mitigation measures are required, these measures should be incorporated into the development plans.

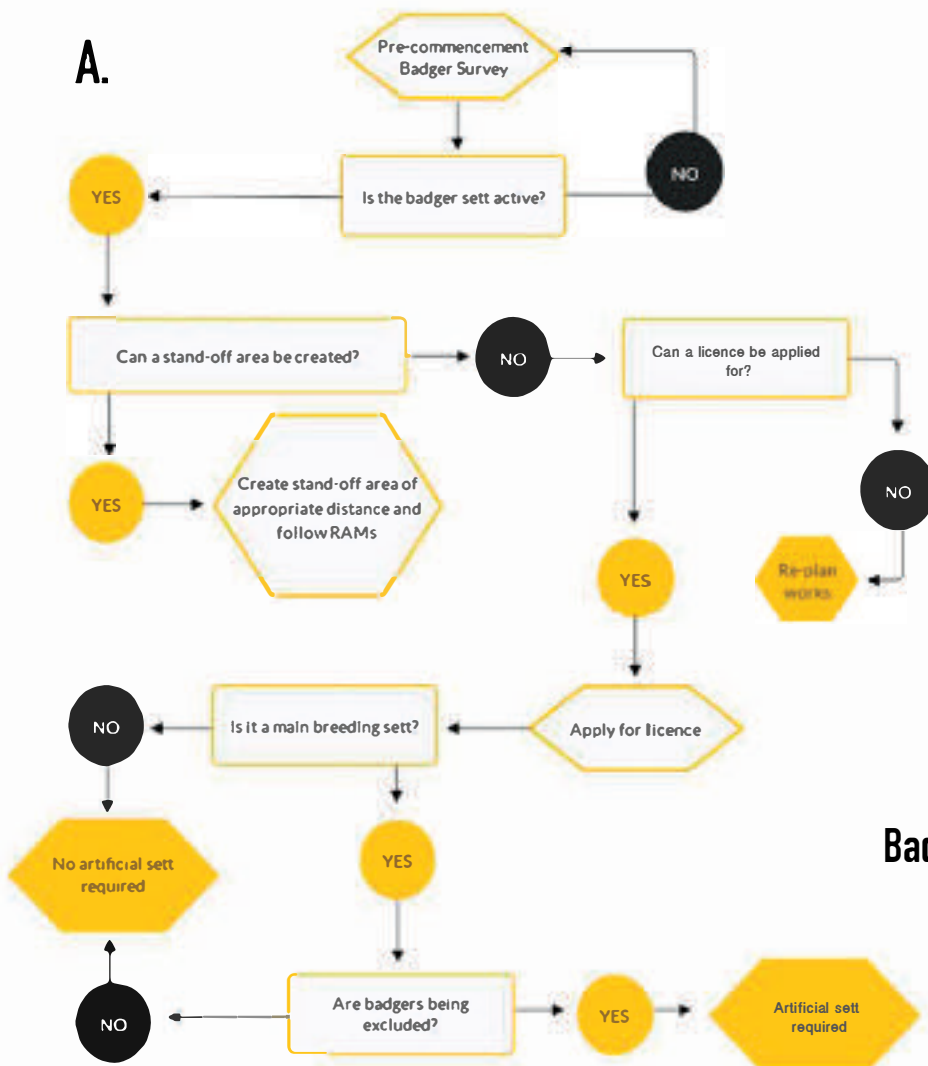
An example of this may be protecting a badger sett during an 8-month new housing development using an agreed dedicated standoff area (short term) and then providing more sett protection by utilising an 'unlit' zone with native planting, fencing and screening of the retained badger sett protection area (long term).



5.1 Proposed Mitigation/Enhancement Schemes

Mitigation schemes are site-specific however the following are previously accepted examples:

- Badger sett retention and protection with enhancement provided for badgers i.e. buffer or stand-off areas surrounding the entrances
- Unlit wildlife corridors i.e. maintained safe badger access to foraging areas within the badgers' existing territory
- Creation of non-public areas using fencing and/or planting of native fruit and nut-bearing species
- Sett licensing, exclusion, closure of setts
- Artificial sett construction to compensate for loss of sett(s)
- Underpasses/traffic calming measures
- Sensitive lighting schemes during and after construction
- Badger proofing measures
- Reasonable Avoidance Measures (RAMs) during development to ensure badgers are unharmed
- Enhancement of public areas away from the main sett to provide improved foraging habitats



Badger Mitigation Flow Chart

5.2 Badger Foraging Enhancement

An assessment of the value of the current foraging habitat of a site for badgers should be made at survey stage and the likely impact calculated. Retention, enhancement and/or creation of habitat should then be considered.

Areas with higher worm density are more favourable as foraging habitats. Vermicides (chemical treatments for earthworms) should not be used.

For examples please see habitats table below:

Examples of primary foraging habitat type	Short grassland (amenity), improved grazing pasture, improved mown grassland, golf course, semi-improved grazed pasture or mown grassland
Examples of secondary foraging habitat type	Rough grassland (un-grazed), arable, scrub, broadleaved woodland, mixed woodland, riparian
Examples of less favoured foraging habitat type	Coniferous wood and beech woodland

5.3 Licensing

It is important to remember that planning consents and badger licenses are separate legal functions. In granting planning permission, the LPA is not stating that development operations will not breach the Protection of Badgers Act 1992. Likewise obtaining planning permission does not guarantee that a badger licence will be granted by the issuing authority.

A badger licence is essentially a permit for an activity that would otherwise be an offence under the Protection of Badgers Act 1992. Licensing authorities will only issue a licence after planning permission has been granted so that there is no conflict with the planning process.

Licences cannot be issued retrospectively, and licensing authorities require time to process licence applications. Licences will normally only be granted for works to be undertaken between 01 July and 30 November inclusive.

If badgers have to be excluded from a sett:

- Make sure there are alternative setts nearby that badgers can relocate to.
- Build artificial setts before excluding badgers from the original sett -ensure that badgers have found the artificial setts before excluding them from their original setts.
- Use 1-way badger gates for at least 21 days from the last sign of badgers.
- Do not use chemical repellents.

6. Recommended Measures for Protecting Badgers During Works

A method statement must be prepared, describing how work will be undertaken to minimise the likelihood of any offences being committed and badgers and/or setts being adversely affected. This must be agreed with the LPA before work starts.

Examples may include the following:

- Inform site staff of the presence of protected species by way of a "toolbox talk."
- Inform site staff of the relevant legislation and the penalties imposed.
- Make site staff aware of any sett exclusion zones - use signage and physical barriers but allow badger passage underneath.
- Ensure excavations or trenches left overnight are covered or have an escape route.
- Ensure badger paths are not blocked and access to foraging is maintained.
- Removed trees and shrubs should be outside the exclusion zone and should be felled so that they fall away from the obvious direction of a sett.
- Ensure no chemicals or materials that may be harmful to badgers are used.
- Restrict works to daylight hours where appropriate.
- Ensure no dogs are brought to the work site.

7. Example Wording for Planning Conditions

The following may be used by LPAs when applying planning conditions.

- Prior to commencement of development, a badger survey report shall be submitted to and approved in writing by the LPA. The development shall be carried out in accordance with the badger survey report so approved.
- Prior to first occupation/use of the site, a report prepared by an appropriately qualified and experienced Ecological Clerk of Works demonstrating implementation of the badger mitigation/enhancement measures as set out in the badger survey report shall be submitted to and approved in writing by the LPA.
- Reason: To ensure the protection of badgers in compliance with the Protection of Badgers Act 1992 and Schedule 6 of the Wildlife and Countryside Act 1981 (as amended).

8. Conclusion

Badgers are a protected species, and certain measures must be taken to ensure that lawful activities taking place near badger setts are carried out within the law. With appropriate measures and advanced planning, badgers can remain protected and unharmed during the course of development activities. If you are undertaking any activities and require advice please contact the Badger Trust at staff@badgertrust.org.uk.



Example of fenced exclusion zone



PROTECTING BADGERS, THEIR SETTS AND THEIR HABITATS

**This publication is a guide and where possible the
Badger Trust recommends seeking expert advice.**

Facts & figures correct as of 2019

www.BadgerTrust.org.uk

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