



# **Planning Consultation Guide**

*How to respond to a council planning consultation*

# **Introduction & Acknowledgement**

This document is derived from the Essex Badger Protection Group planning consultation document of March 2022.

The rapid rise in property development up and down the country represents one of the biggest risks to our badger population and dealing with planning consultations is therefore one of the most important aspects of our work. If not handled correctly, development projects can result in the loss of badger habitat, the increased urbanisation of badgers, an increase in garden problems for surrounding homeowners and even an increase in road casualties.

Whilst the presence of badgers will rarely be enough to prevent planning permission being granted for any given scheme, we can nevertheless intervene at the consultation phase in order to seek the correct mitigation measures to protect the badgers from harm and avoid any long term problems.

As part of a local group, you should try and persuade all of the local councils in your area to seek your comments before granting planning permission for any scheme which may impact badgers. Many councils are happy to do this, allowing you to ensure that badgers are properly considered when planning applications are considered for approval.

## **What is a planning consultation?**

Before a local planning authority (LPA) can grant planning permission for any development scheme, a statutory consultation period of at least 21 days is launched to allow anyone with an interest in the scheme to come forward and state their views. All of these views have to be taken into consideration by the planning officer dealing with the case and these are generally compiled into a formal planning officer report ahead of a decision notice being issued. Most cases are decided entirely by the planning officer themselves, in line with planning laws, but larger schemes will generally be decided by the relevant council planning committee. Planning committees will usually be presented with a report from the planning officer with a recommendation to either approve or refuse permission. It is nevertheless up to the committee to agree or disagree with that recommendation.

At the start of the 21 day consultation period, the LPA will contact neighbouring homeowners/landowners to alert them to the planning application and also contact a number of advisory parties whose views are sought by the council as consultees. These will vary from council to council and from scheme to scheme but may include the relevant water companies, county council highways departments, environmental health and local wildlife groups such as the local wildlife trust and, hopefully, the local badger group.

# So how do I respond?

If you're not familiar with planning consultations, some of them can seem quite daunting at first. However, whatever scheme we're looking at from the simplest extension on the back of a house to a new 2,500 home housing estate, the process we follow is identical.

## Step One: Download the relevant planning documents

All the documents relating to a planning application can be found online through the relevant council planning portal. You should be able to find this by searching the local council website under 'planning applications'.

The screenshot shows the Gloucestershire County Council website. At the top, there is a blue header with the council's logo and name, a search bar for 'Search Gloucestershire.gov.uk', and navigation links for 'Our services', 'News', 'Subscribe', and 'Contact us'. Below the header, a breadcrumb trail reads: 'Gloucestershire County Council / Planning and environment / Planning applications / Search and track planning applications'. The main heading is 'Search and track planning applications'. A grey box contains text: 'Most planning matters are handled by the local councils (city, borough or district). County councils are the planning authority for waste and minerals matters and their own development (known as Regulation 3)'. To the right, a 'Download' section lists 'Planning Protocol Determination of Planning Applications (PDF, 250.5 KB)'. Below this, a 'Guide to planning' section lists 'Plain English guide to the planning system in England'. The 'District planning' section lists links to Cheltenham Borough Council, Cotswold District Council, Forest of Dean District Council, Gloucester City Council, Stroud District Council, and Tewkesbury Borough Council. The 'County planning' section explains the 'Public Access' system and lists links for 'Weekly lists', 'property details or map references', and 'Search and track applications'. The 'Copyright' section states that the Public Access system is not a complete database and provides contact information for 'planningdc@gloucestershire.gov.uk'. At the bottom, there is a search interface with tabs for 'Applications', 'Appeals', and 'Enforcements'. The 'Applications' tab is selected. The 'Status' dropdown is set to 'All'. A search box prompts the user to 'Enter a keyword, reference number, postcode or single line of an address.' and includes a 'Search' button. The 'an idox solution' logo is in the bottom right corner.

All you need to do is type the planning reference number given in the consultation notice into the search box, 21/00714/FUL in the case of the example earlier, and click "search".

This takes you to the specific application page, which looks something like this:

**Cotswold District Council**

🔍 Search 👤 My Profile 🔑 Login 📄 Register

### Planning – Application Summary 🔗 Help with this page

20/04343/REM | Reserved Matters (Phase 1A) pursuant to Outline permission 16/00054/OUT (mixed use development comprising demolition of existing buildings (as detailed on the submitted demolition plan) and the erection of up to 2,350 residential dwellings (including up to 100 units of student accommodation and 60 homes for the elderly), 9.1 hectares of employment land (B1, B2 and B8 uses), a primary school, a neighbourhood centre including A1, A2, A3, A4 and A5 uses as well as community facilities (including a health care facility D1), public open space, allotments, playing fields, pedestrian and cycle links (access points onto Tetbury Road, Somerford Road and Cranhams Lane) landscaping and associated supporting infrastructure to include vehicle access points from Tetbury Road, Spratsgate Lane, Wilkinson Road and Somerford Road) for scale, layout, appearance and landscaping for the erection of 68 dwellings with associated open space and landscaping | The Steadings Development Phase 1A Chesterton Wilkinson Road Cirencester Gloucestershire

[← Back to search results](#) [★ Track](#) [🖨 Print](#)

**Details**CommentsConstraints (51)Documents (255)Related Cases (71)Map

**Summary** Further Information Contacts Important Dates

Reference	20/04343/REM
Alternative Reference	16/00054/OUT
Application Received	Fri 20 Nov 2020
Application Validated	Thu 18 Mar 2021
Address	The Steadings Development Phase 1A Chesterton Wilkinson Road Cirencester Gloucestershire
Proposal	Reserved Matters (Phase 1A) pursuant to Outline permission 16/00054/OUT (mixed use development comprising demolition of existing buildings (as detailed on the submitted demolition plan) and the erection of up to 2,350 residential dwellings (including up to 100 units of student accommodation and 60 homes for the elderly), 9.1 hectares of employment land (B1, B2 and B8 uses), a primary school, a neighbourhood centre including A1, A2, A3, A4 and A5 uses as well as community facilities (including a health care facility D1), public open space, allotments, playing fields, pedestrian and cycle links (access points onto Tetbury Road, Somerford Road and Cranhams Lane) landscaping and associated supporting infrastructure to include vehicle access points from Tetbury Road, Spratsgate Lane, Wilkinson Road and Somerford Road) for scale, layout, appearance and landscaping for the erection of 68 dwellings with associated open space and landscaping
Status	Decided
Decision	Application Permit
Decision Issued Date	Mon 29 Nov 2021
Appeal Status	Unknown
Appeal Decision	Not Available

There are [255 documents](#) associated with this application.

There are [0 cases](#) associated with this application.

There are [71 properties](#) associated with this application.

This page provides links to all the information provided to support the application and the names and contact details for various parties connected to the application. We are principally interested in the “Documents” link, which takes you to a list of all the documents provided to the council by the applicant to support their planning application.

This should look something like this:

**Cotswold District Council**

🔍 Search 👤 My Profile 🔑 Login 📄 Register

### Planning – Planning Application Documents 🔗 Help with this page

20/04343/REM | Reserved Matters (Phase 1A) pursuant to Outline permission 16/00054/OUT (mixed use development comprising demolition of existing buildings (as detailed on the submitted demolition plan) and the erection of up to 2,350 residential dwellings (including up to 100 units of student accommodation and 60 homes for the elderly), 9.1 hectares of employment land (B1, B2 and B8 uses), a primary school, a neighbourhood centre including A1, A2, A3, A4 and A5 uses as well as community facilities (including a health care facility D1), public open space, allotments, playing fields, pedestrian and cycle links (access points onto Tetbury Road, Somerford Road and Cranhams Lane) landscaping and associated supporting infrastructure to include vehicle access points from Tetbury Road, Spratsgate Lane, Wilkinson Road and Somerford Road) for scale, layout, appearance and landscaping for the erection of 68 dwellings with associated open space and landscaping | The Steadings Development Phase 1A Chesterton Wilkinson Road Cirencester Gloucestershire

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Details Comments Constraints (51) **Documents (255)** Related Cases (71) Map

Filter By: Document Type Document Type: Show All Apply

**You can select up to 25 documents to download in one archive file at a time.**

<input type="checkbox"/>	Date Published	Document Type	Measure	Drawing Number	Description	View
<input type="checkbox"/>	29 Nov 2021	Decision Notice	🔑		DECISION NOTICE	📄
<input type="checkbox"/>	29 Sep 2021	Report	🔑		NEW DETAILS : REVISED OUTLINE SPECIFICATION FOR DWELLINGS	📄
<input type="checkbox"/>	29 Sep 2021	Applicant/Agent Correspondence	🔑		NEW DETAILS : COVERING EMAIL (2)	📄
<input type="checkbox"/>	29 Sep 2021	Applicant/Agent Correspondence	🔑		NEW DETAILS : COVERING EMAIL (1)	📄
<input type="checkbox"/>	29 Sep 2021	Report	🔑		NEW DETAILS : BUILDING PERFORMANCE MEASURES	📄
<input type="checkbox"/>	24 Sep 2021	Drawing	🔑	PD1004B	NEW DETAILS : SUPERSEDED REVISED SITE LAYOUT	📄
<input type="checkbox"/>	24 Sep 2021	Report	🔑		NEW DETAILS : SUPERSEDED OUTLINE SPECIFICATION FOR DWELLINGS	📄
<input type="checkbox"/>	24 Sep 2021	Drawing	🔑	PD015A	NEW DETAILS : REVISED HOME OFFICE/GARAGE PLANS AND ELEVATIONS	📄
<input type="checkbox"/>	24 Sep 2021	Applicant/Agent Correspondence	🔑		NEW DETAILS : COVERING EMAIL	📄
<input type="checkbox"/>	20 Sep 2021	Applicant/Agent Correspondence	🔑		COUNCIL RESPONSE TO REVISED MATERIAL	📄
<input type="checkbox"/>	07 Sep 2021	Drawing	🔑		NEW DETAILS : REVISED PLOT 68	📄
<input type="checkbox"/>	07 Sep 2021	Drawing	🔑	PD1004B	NEW DETAILS : SUPERSEDED REVISED SITE LAYOUT WITH CHANGES HIGHLIGHTED	📄
<input type="checkbox"/>	07 Sep 2021	Drawing	🔑	PD1004B	NEW DETAILS : SUPERSEDED REVISED	📄

In this case there are 255 documents in total. The good news is that we're only interested in possible impacts on badgers and only need to look at the documents which are relevant to us. Usually we only need to look at three:

1. the Design and Access Statement (or sometimes the "planning statement")
2. the Site Plan and/or Location Plan
3. the Ecological / Habitat survey

Each of these can be downloaded from the planning documents page on the planning portal as shown.

## **Step Two: Review the design and access statement**

In very simple cases there may not be a “design and access statement”, or it may be referred to as a “planning statement” or something similar. They vary widely in terms of content but, basically, a design and access statement is a report accompanying and supporting a planning application which allows the applicant to explain how the proposed development is a suitable for the plot it will be built on. Whilst this is not strictly relevant to badgers, it does usually give a much better understanding of what’s being proposed and does often touch on ecological considerations. If no such document is available we move to step three.

## **Step Three: Review the site plan and/or location plans**

These documents simply show the boundaries of the site which is to be developed and the location of the proposed building work within it. Where we know there is a badger sett nearby, they can help us understand exactly how close the proposed work will be. Occasionally this information is also contained in the design and access statement.

## **Step Four: The Ecological or Habitat Survey**

In most cases, the ecology or habitat survey report will be provided to us separately by the LPA and is not included within the documents on the planning portal. This is because the presence of any protected species is considered “sensitive” and is not usually made publically available. However, some councils prefer to remove any sensitive details and publish the report in a redacted format. If this is the case, an unredacted copy should be sought from the planning officer.

Reviewing the survey report is undoubtedly the most important step when considering a planning application and their contents need to be studied carefully. Most are made available to us in .pdf format which makes it easier to search them specifically for references to “badger” or “badgers” and avoid having to read the entire report. Just press the ctrl and f keys on your keyboard and type badger into the search box which appears. This will then allow you to jump straight to all badger references within the report. You may however prefer to read the whole report.

There are some key points to look for:

1. *When was the report written?*

Badger surveys should have been undertaken within the last 12 months and if the report is dated any earlier than this then we are justified in asking for a new survey to be carried out. Some ecologists try and get round this requirement by ‘updating’ an old report so the date is recent but the actual survey which informs it took place over 12 months ago. We therefore need to check the report for the actual date of the survey and not simply take the date of the document at face value.

2. *Have any badger setts been found on site?*

If yes, does the report give comfort that this will be protected from the building work and if not, what is the applicant proposing to ensure that the badgers are kept safe from the work? If they are claiming the sett is dormant, what is this assessment based on? Have they carried out a proper 21 day monitoring survey in line with Natural England guidance for development? If not, we are again justified in asking for a new survey to be carried out.

3. *If there are no setts, have any badger “field signs” been found? e.g. latrines, paths or snuffle holes?*

If yes, this may indicate that badgers are visiting the site to forage. If so, what mitigation measures are proposed to ensure these badgers are protected during construction? We are fully justified in seeking additional mitigation measures where necessary.



4. *If there are no setts or field signs recorded, does your badger group have records of badgers in the area? If you do then you are again justified in asking for relevant mitigation measures to be imposed by way of planning condition on any approval granted by the LPA.*

Remember, the ecologist writing the report is ultimately being paid by the applicant to support the planning application. Whilst most reports are trustworthy, they should all be viewed with a degree of caution as they will not have been written specifically with badger protection in mind.

## **Step Five: Responding to the LPA**

With all that done, how do we go about constructing a formal response to the consultation? Fortunately this isn't quite as difficult as it sounds as most responses can be started using a similar format and using standard paragraphs and phrases i.e.

*Dear Sirs*

**Re. <insert planning reference number> / <insert application description>**

*Thank you for involving us in this planning consultation and allowing us to review the appropriate documents.*

*As confirmed in the latest Wildlife and Countryside Link Report, the badger remains the most persecuted protected mammal in the UK and it is therefore imperative that the location of any badger setts remains strictly confidential and is not published on public forums. As the commentary which follows relates to the location of known badger setts, we ask that it is not uploaded to the planning portal and is instead treated with the utmost sensitivity.*

*Badgers and their setts are fully protected in the UK by the Protection of Badgers Act 1992 and by Schedule 6 of the Wildlife and Countryside Act (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. The presence of badgers is therefore of material consideration when it comes to planning applications.*

*The **<insert badger group name>** currently has records of **<Insert number of setts known to the group within 20m of the application site>** badger setts close enough to be at potential risk from this proposal.*

*However, we are aware of **<insert relevant number here>** setts within a 2Km distance, demonstrating that the area contains a significant badger population. *(if we have no setts within this range, ignore this sentence and move on)**

*In view of the badger population in the wider area, we believe that this application should be supported by an ecological survey report. Updated Natural England guidance for local planning authorities, which can be found here: [Protected species and development: advice for local planning authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/Protected-species-and-development-advice-for-local-planning-authorities-2020.pdf), states that "you should not usually attach planning conditions that ask for surveys. This is because you need to consider the full impact of the proposal on protected species before you can grant planning permission." With this in mind, an updated survey should be provided **before** consideration is given to granting planning permission for this scheme, even in outline form. *(if a survey has already been provided, ignore this paragraph and move on)**

*We have reviewed the ecological report prepared by **<insert ecology firm name>** and note that **<insert findings of the report in terms of badger setts and field signs together with the mitigation proposed by the ecologist where relevant>***

At this point, our consultation response will depend on the recommendations being made by the ecologist and whether we agree with them or not. If we **do**, we can conclude the response along similar lines to this:

*We are supportive of the recommendations made in the ecological report and ask that any planning permission granted be conditional upon these recommendations being implemented in full.*

If we **don't** agree with the recommendations made then we would need to add some commentary as to why this is and explain any alternative proposals we wish to make. Naturally these will vary on a case by case basis, but some common examples would be:

#### *When a survey is out of date*

*Standing guidance from Natural England states that badger surveys must be conducted within 12 months of a planning application being submitted. In this case, the survey is nearly 18 months old and is therefore out of date. Badgers can occupy or re-occupy sites in a very short space of time and there is no guarantee that the position revealed in the provided survey remains the case today. Any planning permission granted should therefore be conditional upon a further badger survey being conducted prior to the commencement of the proposed development, including works of demolition and vegetation clearance.*

#### *When a survey claims a sett is dormant based entirely on a visual inspection rather than a proper survey*

*Whilst we note that the ecological report states that the sett on site is inactive, we do not believe the survey has been prepared in line with standing Natural England guidance which states that sett entrances should be monitored over an extended period of time, usually a minimum of 21 days, to see if they're active. Entrances should be monitored by any number of standard ecological methods but preferably by camera traps. There is no indication within the present report that this was done. Instead we are told that the sett is inactive based entirely on a visual inspection on a single day.*

*Given the close proximity of the sett to the development footprint we would therefore ask for a further survey to be undertaken. This survey should be undertaken no earlier than three months prior to the commencement of the development work and be undertaken over an extended period i.e. a minimum of 21 days. Ideally motion controlled cameras should be employed.*

#### *Where there are no setts on site but we believe that there are badgers in the area who may visit whilst foraging*

*Whilst we have no objections to the scheme proposed, the habitat both on site and in the wider area means that we would prefer to see increased mitigation employed to protect any badgers visiting the site during the construction. Specifically, we would wish to see the following protections added as conditions on any planning approval given:*

- *A further badger survey to be conducted by a suitably qualified ecologist as close as practicable, and no earlier than three months, before the commencement of the proposed works.*
- *All workmen on site should be fully briefed concerning the presence of badgers on site. (this may not be appropriate where there are no badger setts on site)*
- *Any trenches or deep pits should be securely covered overnight to stop any badgers falling in and becoming trapped. Alternatively, a rough plank can be provided, at an angle no steeper than 45 degrees, to allow any badgers a suitable means of escape.*
- *Any trenches/pits should be inspected each morning and evening to ensure no badgers have become trapped. Should a badger be found then formal ecological advice must be sought before work commences for the day.*
- *The storage of topsoil or other 'soft' building materials within the site should be given careful consideration. Badgers will readily adopt such mounds as setts, which would then be afforded the same protection as established setts. So as to avoid the adoption of any mounds, they should be subject to daily inspections before work commences.*
- *During the work, the storage of any chemicals should be contained in such a way that they cannot be accessed or knocked over by any roaming badgers.*



- *Open pipework with a diameter of more than 120mm should be properly covered at the end of the work day to prevent badgers entering and becoming trapped. Again, should a badger trap itself then formal ecological advice must be sought before work commences for the day.*
- *Litter on site should be cleared at the end of the working day or otherwise kept to a minimum.*
- *Security lighting should be kept to a minimum so as not to disturb the badgers on site. (this may not be appropriate where there are no badger setts on site)*

Finally, we can conclude the planning consultation response with something along the lines of:

*We thank you again for involving us in the consultation phase for this application.*

*Regards,*

## **Conclusion**

We always need to remember that the sole purpose of reviewing a planning case for a badger group is to try and protect badgers from harm and minimise any impacts which the scheme may otherwise cause. We also need to remember that it is perfectly legal for a developer to obtain a licence to close down a badger sett to allow a scheme to proceed. Whilst we may not agree with it, this would not be sufficient grounds for us to object to an application unless we have additional concerns or have a genuine reason to believe there is nowhere else for the badgers to go.

We should always look to recommend changes to schemes and find solutions to problems rather than simply object to proposals. It is rare for the presence of badgers to prevent a planning application from going ahead, but if we offer reasonable suggestions at the consultation phase then we have a good chance of persuading planners to increase the conditionality attached to an approval in order to ensure that badgers are kept safe.

Occasionally you may feel that there is simply no alternative but to object to an application and that's fine. However, whilst they have an obligation to consider biodiversity, we have to accept that planning officers are under no legal obligation to consult with badger groups and therefore, if you become a nuisance by objecting to everything, they may stop approaching you. This would make it much harder to protect the badgers within your areas.

What follows are some typical examples of planning application responses which you may find helpful. As you'll see, they follow a similar pattern and the final example does offer an objection. In that particular case, which was slightly more complicated than most, the council took additional advice and did eventually agree with us, refusing planning permission for the case.

Good luck!!

## Examples

Dear Sirs,

**Re. 20/01507/COND/1 | Discharge of conditions 3 (Details of materials), 5 (Details of treatments), 6 (Scheme of soft and hard landscaping), 9 (Details of external lighting), 13 (Arboricultural Method Statement) and 14 (Ecological Appraisal) of application 20/01507/FUL (Demolition of the existing dwelling and garage. Construction of new replacement dwelling). | 167 Chelmsford Road Shenfield Brentwood Essex CM15 8SA**

Thank you for involving us in this planning consultation and for sending a copy of the Preliminary Ecological Appraisal and Badger Survey dated 8th January 2021.

Badgers and their setts are fully protected in the UK by the Protection of Badgers Act 1992 and by Schedule 6 of the Wildlife and Countryside Act (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. The presence of badgers is therefore of material consideration when it comes to planning applications.

As previously advised, the Essex Badger Protection Group has records of setts very close to this proposal and it is noted that the Essex Field Club similarly provided Hybrid Ecology Ltd with desktop survey data confirming a record just 100m from the site. Whilst we acknowledge that no setts or field signs were found during the badger survey, we would stress that this was completed in early January when badger activity is at its lowest. We suspect that, given the presence of badgers in the wider area, signs of badgers using the site would be found if such a survey was completed in the spring.

Nevertheless, we have no objection to the approval of this scheme. However, we would strongly urge planners to make any permission subject to the following mitigation measures to protect badgers visiting the site - some of which is also recommended in the badger survey report:

- Any trenches or deep pits should be securely covered overnight to stop any badgers falling in and becoming trapped.
- Any trenches/pits should be inspected each morning before work commences to ensure no badgers have become trapped overnight. Should a badger be found then formal ecological advice must be sought before work commences for the day.
- The storage of topsoil or other 'soft' building materials within the site should be given careful consideration. Badgers will readily adopt such mounds as setts, which would then be afforded the same protection as established setts. So as to avoid the adoption of any mounds, they should be subject to daily inspections before work commences.
- During the work, the storage of any chemicals should be contained in such a way that they cannot be accessed or knocked over by any roaming badgers.
- Open pipework with a diameter of more than 120mm should be properly covered at the end of the work day to prevent badgers entering and becoming trapped. Again, should a badger trap itself then formal ecological advice must be sought before work commences for the day.

We thank you again for involving us in this consultation.

Regards,

Dear Sirs,

**Re. 21/00106/FUL | Demolition of part of the existing school buildings (building 'EFAB'); refurbishment of the existing school buildings (buildings 'EFAA' and 'EFAC'); and the construction of one new two-storey teaching block (known as 'Block A') and one new three-storey teaching block (known as 'Block B') with associated external landscaping works and outdoor sports facilities | Brentwood County High School Seven Arches Road Brentwood Essex CM14 4JF**

Thank you for allowing us to participate in this planning application and for providing us with a copy of the Preliminary Ecological Survey prepared by EECOS.

The Essex Badger Protection Group currently has no record of any badger sett close enough to this scheme to be at any direct risk of harm, although we would stress that the school area, being close to the railway embankment and Shenfield common, is known to contain a significant badger population. EECOS has further acknowledged within its report that badgers are known to use the site even though no setts were found during the survey.

We therefore support the mitigation recommendations made by EECOS within its report under section 7.6 and, provided the scheme proceeds strictly in accordance with the methodology proposed, have no objections to this application.

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Dear Sirs,

**Re. 21/00141/FUL | Demolition of existing buildings and construction of seven new dwellings (2no 3 bedrooms, 3no 4 bedrooms and 2no 5 bedrooms) with associated landscaping and parking. | Larkrise Farm The Tyburns Hutton Brentwood Essex CM13 2JD**

Thank you for allowing us to review and comment on this case, and for sending us a copy of the Preliminary Ecological Appraisal from Southern Ecological Solutions.

The Essex Badger Protection Group has no record of any sett close enough to this scheme to be at any direct risk of harm. However, we would echo the comments of SES in its report in that the site has good foraging potential for badgers. SES also notes seven badger records in the wider area, with our own records reporting a slightly higher figure. It is therefore clear that badgers have a significant presence in the area.

Whilst we have no objection to the application, we would prefer to see more specific mitigation measures used as part of the planning conditionality for any approval, specifically:

- Any trenches or deep pits that are to be left open overnight should be provided with a means of escape should a badger enter. This could simply be in the form of a roughened plank of wood in the trench as a ramp to the surface.
- The storage of topsoil or other 'soft' building materials within the site should be given careful consideration. Badgers will readily adopt such mounds as setts, which would then be afforded the same protection as established setts. So as to avoid the adoption of any mounds, they should be subject to daily inspections before work commences.
- During the work, the storage of any chemicals should be contained in such a way that they cannot be accessed or knocked over by any roaming badgers.
- Open pipework with a diameter of more than 120mm should be properly covered at the end of the work day to prevent badgers entering and becoming trapped.

This is to ensure that any transient badgers visiting the site whilst foraging are fully protected.

Thank you again for allowing us to comment on this case.

Dear Sirs,

**Re. Planning Application 19/01060/FUL - 3 Mount Crescent, Warley**

Thank you for allowing us the opportunity to comment on this application. As much of the response below deals with the presence of active badger setts, we should be grateful if this is kept confidential and not uploaded to the Planning Portal.

The Essex Badger Protection Group wishes to **OBJECT** to this proposal as we do not believe that sufficient consideration has been given to the impact it will have on the affected badgers or the likely disturbance to the local area which will be caused by closing down the sett nearest to the proposed works.

In its badger survey dated July 2019, Ecology Solutions confirms the presence of two setts, the larger of which is deemed to be a "subsidiary sett" and the smaller an "outlier". We are told that the "subsidiary sett", which rests within the curtilage of the property to be developed, has 4 active entrances, whereas the "outlier" has a single entrance and is located in an adjacent garden. Whilst we understand and agree with Ecology Solutions' classification of the "outlier" sett, we fail to see any supportable argument within its report to convince us that the "subsidiary sett" is not actually a "main sett" i.e. permanently occupied and used for breeding. Furthermore, we are not convinced by the implication that the sett only contains a single male and single female as the presence of four active holes would point to the likely presence of a larger family group than just two animals.

To clarify this point further, a "subsidiary sett" is generally defined as not always being in use, whereas there is no argument made within the badger survey that this is the case here. Indeed, the sett was monitored by trail camera over a two week period in June 2019, which is not a peak time for badger activity, yet badgers appear to have been recorded using the sett on a regular basis. Therefore, as we see it, we are considering a planning application which will necessitate the closure of a main badger sett and the effect of this on the badgers and the wider area needs to be considered very carefully. Ecology Solutions gives no commentary within its report as to what it expects to happen with the badgers when the sett is closed.

In our considered opinion, the most likely outcome in the short term is that the "outlier" sett, which is located in an adjacent garden, will be expanded by the badgers so that it can accommodate the entire family group. How practical this is will clearly depend on the topography of the area. Furthermore, this may well bring the badgers into conflict with the homeowner at that property who may not be keen to have a main badger sett excavated in his garden just to facilitate his neighbour's extension. It is not clear from any of the documents presented to us as part of this application whether discussions have taken place between the homeowners regarding the badgers and the potential issues this proposal will cause. Furthermore, in our experience, the badgers' family group may well fragment - with badgers spreading into multiple gardens to dig setts. Additionally, and invariably, some will also be killed on the surrounding roads if they are left temporarily homeless.

Ordinarily, the closure of a main badger sett will require the construction of an artificial sett elsewhere, with time being given to prove that the badgers have moved to that sett before the proposed development scheme gets underway. Clearly, in an urban setting, this is not always a practical solution. Nevertheless, badgers and their setts have legal protection under the Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981 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. The welfare of the badgers therefore needs to be a key concern when assessing this application and any mitigation measures proposed to ensure their safety should be robust and supportable. We do not believe that this is the case here. We therefore urge planners to either refuse planning permission on the grounds that the badgers safety cannot be guaranteed, or that the decision be deferred until such time as we are presented with a reasoned, evidence based explanation as to the likely impact of this sett closure on the badgers and the wider area, and that all parties are satisfied that the badgers will not ultimately be harmed as a result.

Regards,

## Addendum

Although it's not part of the Protection of Badgers Act 1992, and therefore not legally enforceable by the police, any development work involving heavy machinery, usually defined as 'tracked vehicles' e.g. diggers, will usually need a Natural England licence if taking place within 20m of a badger sett. This is primarily to avoid the risk of damaging the sett. This is generally accepted by ecologists and should be acknowledged within any applicable survey reports submitted alongside planning applications.

However, we also need to consider the possibility that badgers could be disturbed by work taking place, even if this is beyond the usual 20m licencing requirements. One of the most common scenarios where this applies is that of piled foundations. In Scotland, there is a requirement for any piling work within 100m of a badger sett to be licenced by Nature Scotland (the Scottish version of Natural England) due to the increased risk of disturbance. However, this isn't specifically mentioned within any Natural England documents in relation to cases in England. Nevertheless, we have recently received the following guidance regarding 'disturbance' from Daniel Weightman, a lead Wildlife Advisor at Natural England:

*“as a guide, any work within 30m of an entrance to a badger sett (or 100m for pile driving and blasting work) could result in disturbance of the Badgers in the sett, or block or damage tunnels that radiate from the entrance to the sett.*

*Consideration should also be given to the nature of the works within 30-100m of the sett and the orientation of the sett entrances, which will give a clearer indication of the level of risk that the sett will be damaged as a result of the works.*

*In summary any works within 30-100m of the sett which pose a clear risk of either damaging the sett or causing disturbance beyond that which Badgers would commonly tolerate, would require a licence”*

It may prove useful to quote some of this information in your planning responses where it is clear that piling work will be carried out close to a badger sett without any licence being obtained from Natural England. Whilst such licences are usually granted to developers, the licensing period for badgers in relation to developments runs from 01 July to 30 November. This prohibits any work outside that period, thereby ensuring that any disturbance is prevented whilst cubs are being reared.