



ENGLISH
NATURE

Badgers and development



working today
for nature tomorrow



Laurie Campbell/NHPA

Introduction

Badgers are among Britain's most loved wild mammals, though their mainly nocturnal habits mean that many people encounter them only as road casualties. Nevertheless, they are relatively widespread in England and increasing public concern for their welfare has led to stronger legal protection and the establishment of voluntary badger groups to promote their conservation and ensure their welfare. Unfortunately digging and baiting still affects badgers in certain areas and the police, RSPCA and badger groups together play an important role in

detecting and prosecuting offenders. Badgers are also frequently affected by development and the purpose of this booklet is to provide an introduction to how development that affects badgers can be carried out within the law.

It is the role of planning authorities to consider the conservation and welfare impacts of development on badgers and issue planning permissions accordingly. English Nature's role is to ensure, through the licensing process, that developments affecting badgers are carried out according to best practice guidelines so as to avoid cruel ill-treatment of badgers. The legislation is not intended to prevent properly authorised development.



Badger biology and lifestyle

Adult badgers grow up to a metre long and males can weigh up to 14 kg. They accumulate fat reserves in late summer and autumn and lose weight over the winter. Though they have powerful jaws and sharp teeth, their preferred food are earthworms (up to 200 in a single meal); they also eat grains, acorns, insects and fruit.

Badgers live in family or social groups of related mature and young adults and cubs, sometimes known as clans. Each group will defend a territory, which contains

water and a variety of food sources to support the clan throughout the year. Fighting in defence of territory can cause serious injury to badgers. Within their territory badgers live in a number of underground tunnel systems called setts, which provide safety and shelter from the weather. Some setts are always occupied and are used also for breeding and raising young in the winter and spring. These main setts can be very extensive, with over forty entrances, whilst smaller ones may have as few as two entrances. Some main setts are ancient,

having been in use for many centuries. Badgers are extremely loyal to these setts and will often continue to occupy them despite considerable disturbance. Other types of sett may be classified as annex, subsidiary, or outliers according to how they are used and how important they are to the social group. Further details about these sett definitions can be found on page six of the RSPCA publication *Problems with badgers?*

Badgers have powerful claws and legs with which they can dig and move earth. Opening up new setts and maintaining and extending old setts is a constant occupation, with bursts of even greater activity at certain times of the year. The pattern of setts and their use can therefore change steadily over the years, or very quickly in response to short-term problems such as drought or flood. 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 do not hibernate but they often stay below ground for long periods in winter, especially during very cold or wet weather. Badgers 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 eight weeks. The cubs remain dependent upon the sow for a further few weeks while they are weaned and learn how to fend for themselves. For these reasons, disturbing badgers in setts and damaging setts should be avoided completely between the beginning of December and the end of June.

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 of the Environment (now known as Department for Environment, Food and Rural Affairs) has issued *Planning Policy Guidance: Nature Conservation (PPG9)* to local authorities. This explains the role of planners in protecting wildlife and the requirements of wildlife

legislation in this country. It is the planning authorities' role to weigh up each application and then to decide on the most appropriate approach. Where protected species are present local authorities should consult English Nature before granting planning permission, should consider attaching appropriate planning conditions or entering into planning obligation to secure the protection of the species, and should advise

developers that they must conform to statutory species protection.

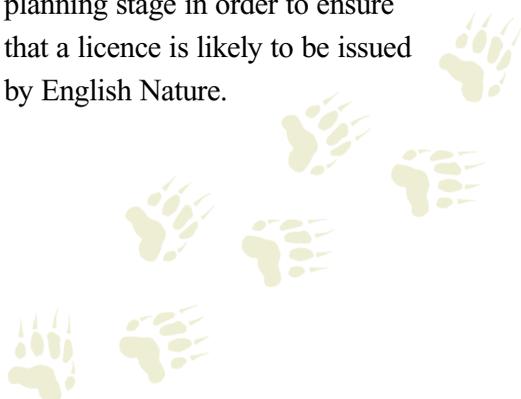
English Nature believes that all local development plans should contain policies for protected species, including badgers and their setts. This would make it clear to developers that development will not be permitted unless it is possible to take steps to ensure the survival of the badgers, reduce disturbance to a minimum, or provide adequate alternative habitats.

English Nature only usually licenses sett interference after detailed planning permission has been granted so that there is no conflict with the planning process. Local authorities and developers need to be aware that for many projects it may be necessary for an environmental assessment to be carried out 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

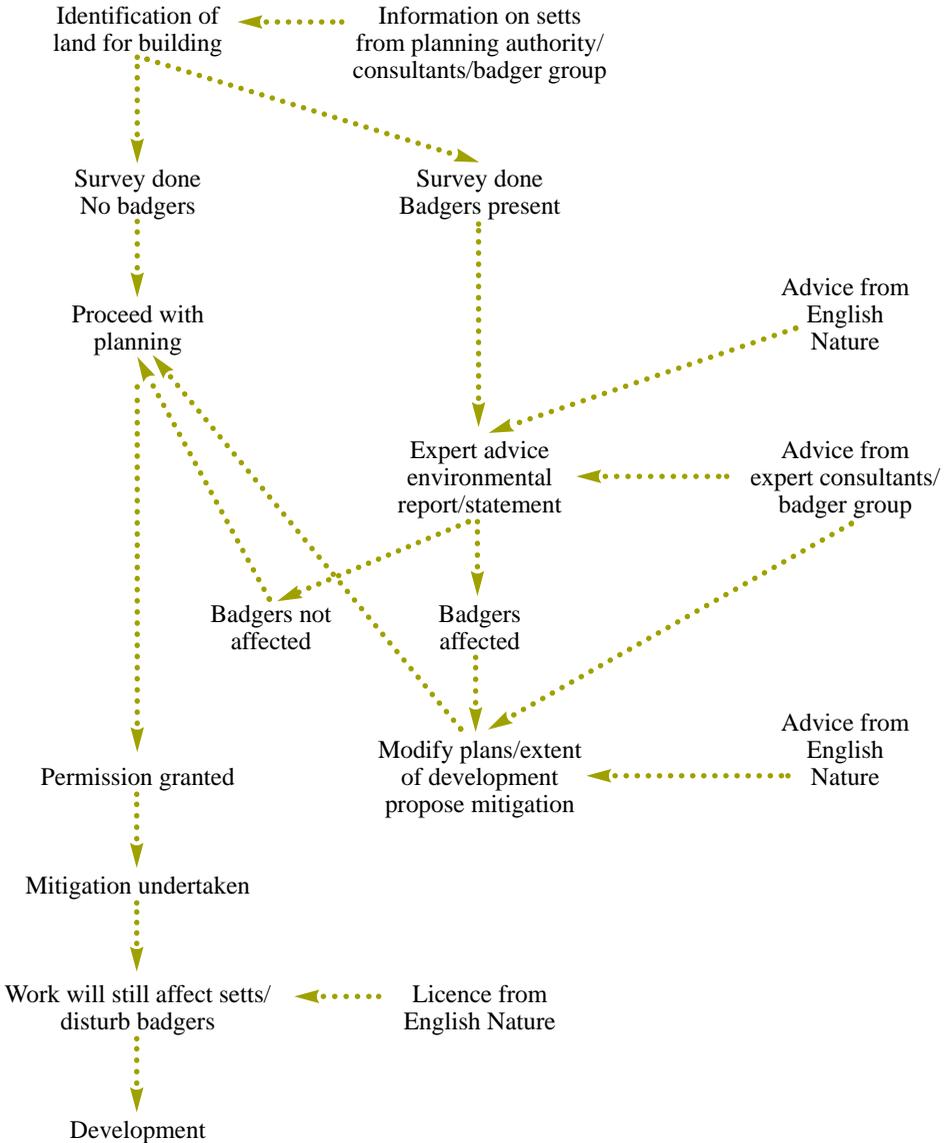
should be prepared to provide information including:

- the numbers of badgers on the site, or that are affected by the proposal;
- the impact that the proposal is likely to have on badgers and what can be done in the way of mitigation;
- if the impact is necessary or acceptable;
- and if a licence will be required from English Nature.

Planning and licensing applications are separate legal functions: planning permission from the Local Planning Authority is no guarantee that development operations will not breach the Protection of Badgers Act 1992. It is important, therefore, that developers and planners take adequate account of badgers at the planning stage in order to ensure that a licence is likely to be issued by English Nature.



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



Badgers and the law

This is only a guide to the main provisions of the law. English Nature 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, or to attempt to do so; to intentionally or recklessly interfere with a sett. Sett interference includes disturbing badgers whilst they are occupying a sett, as well as damaging or destroying a sett or obstructing access to it. It is not illegal, and therefore a licence is not required, to carry out disturbing activities in the vicinity of a sett that is not occupied by badgers. The Act contains several defences to prosecution, relating to mercy killing and incidental disturbance or damage to setts where this is unavoidable.



Stephen Dalton/NHPA



Developers should take care when carrying out any work near setts as offences could result from both reckless and deliberate damage, disturbance or destruction. A badger sett is defined in the legislation as “any structure or place, which displays signs indicating current use by a

badger”. Since development operations may take place over a protracted period, English Nature recommends that licences be sought for developments that may affect seasonally-used setts as well as main setts. A good rule of thumb is that if a sett has shown signs of occupation within the past twelve months, it could be in use by badgers when development starts and should therefore be taken account of in planning any work.

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 however recognises the need for a range of legitimate activities to be carried out and allows licences to be granted for certain purposes permitting work which would otherwise be illegal. English Nature may issue licences to interfere with setts for development purposes.

Badgers on site - organising work

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. English Nature recommends that when any protected species is thought to occur on site, early advice be sought from professional consultants, or from local experts, as this can prevent costly delays at a later date. Following the advice below will help developers to avoid committing offences and increase the likelihood of obtaining a licence from English Nature if necessary:

- any scheme proposed to offset the effects of development must be based on competent advice and an appropriate survey
- carried out at the correct time of the year;
- observations may be necessary over a period of time before insight can be gained into how badgers are using a site. Bait marking (a method used to map defended territorial ranges) and other survey techniques are usually effective only at certain times of the year;
- at times, particularly in winter, it is often extremely difficult, even for the experts, to tell whether or not a sett is occupied. For this reason, and due to the possible presence of a pregnant or nursing sow with cubs and the reluctance of badgers to emerge for long periods in winter, sett exclusion and destruction should normally be limited to between the beginning of July and the end of November;
- those in charge of a development must ensure that clear instructions are given to all the workforce where care

needs to be taken not to cause unlicensed damage to setts or disturbance to badgers;

- machinery used near setts should be operated by experienced persons with fine control of excavators or other groundwork technology, preferably supervised by someone who can advise competently on badgers;
- fires should only be lit, and chemicals stored, well away from setts;
- any trenches left open overnight should have a means of escape for any animals that might fall in;
- trees should be felled so that they fall away from active setts;
- account should be taken of the effect the work will have on the territory of each badger social group. For large developments it may be necessary to provide artificial setts, enhanced feeding areas and access routes for badgers both before and during building work. Small

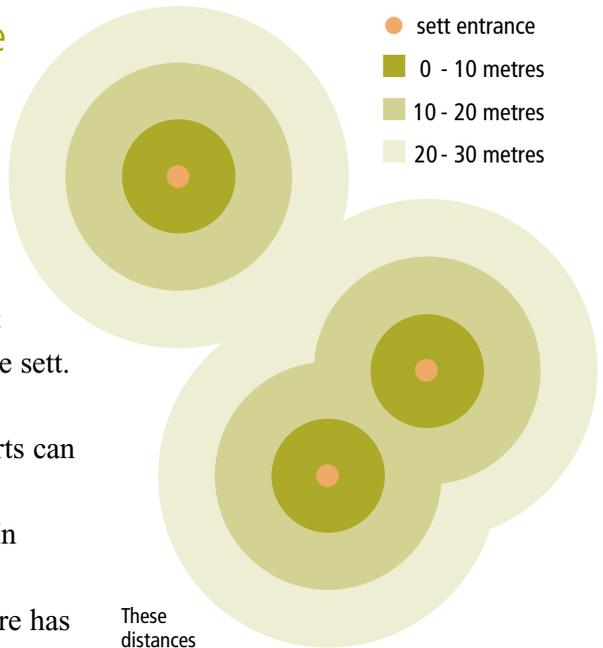
developments should ensure that badger paths are not obstructed and small, but seasonally important, water sources and feeding areas are not destroyed;

- 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. Similarly, if inappropriate development (eg that isolates a badger territory by surrounding it with roads) results in problems such as increased road deaths, licences cannot be relied upon to move the badgers afterwards;
- badgers can cause considerable damage to gardens and they should not be encouraged to rely solely upon these as a source of food or for places in which to dig new setts;
- destruction of main setts should be considered only as a last resort.

Badger disturbance

Work that disturbs badgers whilst occupying a sett is illegal without a licence. Badgers could be disturbed by work near the sett even if there is no direct interference or damage to the sett. Disturbance is difficult to determine and only the Courts can decide what constitutes disturbance under the Act. In order to aid developers in planning work English Nature has guidelines on the types of activity which it considers should be licensed within certain distances of sett entrances. For example the following may require a licence:

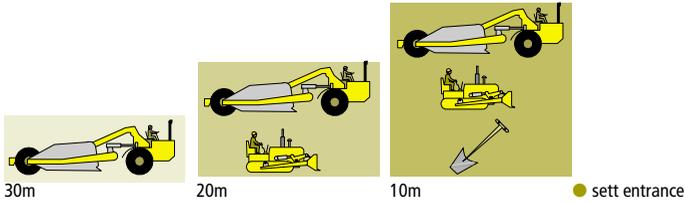
- using very heavy machinery (generally tracked vehicles) within 30 metres of any entrance to an active sett;
- using lighter machinery (generally wheeled vehicles), particularly for any digging operation, within 20 metres;
- light work such as hand digging or scrub clearance within 10 metres.



These distances do not indicate the amount of land which badgers need to sustain their long-term survival after development.

The above illustration shows how areas around sett entrances can overlap

There are some activities which may cause disturbance at greater distances (such as using explosives or pile driving) and these should be given individual consideration. In considering whether or not a licence is necessary, English Nature will take into account the likely affect on badgers. We will not issue licences ‘just in case’ badgers are disturbed.



Examples of activities requiring a licence near a badger sett

Applying for a licence

Before any work goes ahead which will interfere with setts (including disturbing badgers occupying setts) a licence will be needed from English Nature. Licences cannot be issued retrospectively and we take 15 working days to determine applications. An application form is available from English Nature, giving details of the information required in support of applications. This includes:

- a copy of the detailed planning permission granted for the site, including copies of any Section 106 agreements; we will only license schemes that have detailed planning permission (where necessary);
- information on the status, location and use by badgers of any setts that will be affected by the development;
- proposals showing how badgers occupying affected setts will be excluded humanely from those setts that need to be damaged or destroyed. Set exclusion will need to be carried out in a manner that ensures badgers are not occupying them when they are destroyed;
- the location and number of alternative setts where excluded animals may shelter when a sett is to be lost;
- an appropriately scaled map of the development site, which illustrates the location of setts

and the proposed development, including a six-figure grid reference;

- how badgers will be accommodated on site when setts are to be destroyed and no alternative setts are available (an artificial sett in a suitable, safe area within the social group's territory may be required, preferably 6 months or more before destruction of the natural sett);
- details of fencing and underpasses, where necessary, to permit access by badgers to existing feeding areas, and to prevent obstruction to setts or isolation of territories. Main, or seasonally important,

feeding areas or water sources should be maintained or replaced where they may be affected;

- details of any experience you have of dealing with badgers and badger sett interference relevant to the interference of the proposed development work;
- assurances that machinery used near setts, or to destroy setts, shall be operated by competent persons;
- dates between the months of July and November inclusive when the work will be carried out or compelling evidence that work outside this period would not result in cruel treatment of badgers.



Roger Wilmshurst/FLPA

Further information

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

The National Federation of Badger Groups

2 Cloisters Business Centre,
8 Battersea Park Road,
London SW8 4BG
(Tel: 020 7498 3220)

Advice available: General guidance on badgers, addresses of local badger groups.

RSPCA

The Causeway, Horsham,
West Sussex RH12 1HG
(Tel: 01403 264181)

Advice available: Injured badgers, welfare issues, offences against badgers.

Publication: *Problems with Badgers?* (revised 3rd edition).

The Mammal Society

15 Cloisters Business Centre,
Battersea Park Road,
London SW8 4BG
(Tel: 0207 498 4358)

Advice available: General booklets on badgers.

The Police

Contact local station and ask for the Wildlife Liaison Officer

Advice available: Reporting offences against badgers.

Local Planning Authority

Contact local office

Advice available: Planning decisions affecting badgers.

Department for Environment, Food and Rural Affairs

Wildlife Management Team
Administration Unit
Burghill Road
Westbury-on-Trym
Bristol BS10 6NJ
(Tel: 0845 6014523)

Advice available: Badgers and animal health, disease, agriculture, forestry, land drainage, penned game and livestock, damage to property or land.

Application forms for licences for development purposes are available from:

The Licensing Service
English Nature
Northminster House
Peterborough PE1 1UA
Tel: 01733 455000
Fax: 01733 568834

E-mail: enquiries@english-nature.org.uk



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