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Fact sheet

Badgers – A Guide for Developers



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Introduction

This information is intended as a basic guide for developers and should not be used as a substitute for professional advice where badgers are affected by development.

Biology and Lifestyle

Badgers live in family or social groups of related mature and young adults and cubs, sometimes known as clans, and each group will defend a territory which contains water and a variety of food sources which support the family throughout the year.

Within their territory badgers live in a number of underground tunnel systems – setts – which provide safety and shelter from the weather. Some setts are always occupied and are also used for breeding and raising young in the winter and spring. These are main setts which can be very extensive. Some have over forty entrances, others as few as two.

There are other types of setts which are classified as annex, subsidiary, or outlier setts according to how they are used and how important they are to the social group. These setts may be occupied seasonally rather than being used throughout the year.

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 with pregnancy starting around the end of November, or early December. Cubs 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 until they are weaned and learn how to fend for themselves.

For these reasons, disturbing badgers and damaging setts should be avoided completely between December and June inclusive.

Badgers and the planning system

Developers need to be aware that planning authorities are required to take account of protected species and habitat conservation when they consider planning applications.

It is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development is established before the planning permission is granted.

Guidance to local planning authorities on the consideration of protected species in the planning process is captured in *Planning Policy Wales Technical Advice Note 5 – Nature Conservation and Planning (Welsh Assembly Government September 2009)*

NRW licenses sett interference only after full planning permission has been granted so that there is no conflict with the planning process.

Badgers and the law

The law protecting badgers is based primarily on the need to protect badgers from baiting and deliberate harm or injury. It also contains restrictions which apply more widely and it is important for developers to know the ways in which this may affect their work.

The following is a summary of the offences contained in The Protection of Badgers Act 1992. The Act itself should always be referred to for the exact wording. The following are criminal offences:

- To wilfully 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:

- Damaging or destroying a sett or any part of it
- Obstructing access to, or any entrance of, a badger sett;
- Disturbing a badger when it is occupying a sett.

Developers should take care when carrying out any work near setts as offences can result from both reckless and intentional 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”. Some badger setts, such as outlier setts, may be used seasonally and NRW takes the Badgers Act definition to include such seasonally used setts. Before a sett can be damaged or closed without a licence it would have to be demonstrated that the sett had been abandoned by badgers and is not just currently unoccupied. Monitoring for a period of up to 12 months may be needed to demonstrate this.

Penalties for infringing the law can be severe and fines of up to £5,000 plus up to six months imprisonment can be levied by a court for each sett interference, or badger death or injury, which results from illegal or reckless activity. The legislation however recognises the need for a whole range of activities to be carried out and allows licences to be granted for certain purposes permitting work which would be otherwise illegal.

NRW is the licensing authority for activities which will result from land development and for preventing damage to scheduled monuments. For licenses relating to agriculture or forestry operations, preventing damage to property the appropriate authority is the Welsh Government.

See <http://naturalresourceswales.gov.uk/permits-and-permissions/protected-species-licensing/uk-protected-species-licensing/badger-licences-issued-by-natural-resources-wales-and-the-welsh-government/?lang=en>

What should you as a developer consider?

An understanding of badger biology can help developers to reduce the effects that their proposals may have on resident badgers. NRW recommends that when any protected species is found on site early advice is sought from professional consultants, or from local experts, as this can prevent costly delays at a later date. Some of the situations encountered may require complex mitigation which needs to be considered within the development budget and which may affect the time of year when certain works can be carried out.

The following advice and sound working practices need to be considered in the light of proposed building work.

Planning your work:

- Any scheme proposed to offset the effects of development must be based on competent advice and, where necessary, survey carried out at the correct time of year, where sufficient effort has been extended to provide reliable information.
- Observations may be necessary over a period of time before insight can be gained into how badgers are using a site. The best time to undertake a badger survey is in the spring when badgers are particularly active but the vegetation is not so dense as to cover field signs.
- Bait marking is a useful technique to determine the territory boundaries of badgers. Badgers are fed coloured pellets in food at the main sett and these are then located in dung pits on the boundaries of their territory. Badgers of different social groups can be fed different coloured pellets. The need for bait marking will depend on whether the additional information is needed to inform consideration of the proposal.
- 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 the badger to emerge for long periods in winter, sett exclusion and destruction is nearly always limited to July to October inclusive.
- Large development schemes should take into account the effect the work will have on the territory of each badger social group and the number of setts which may be lost. If feeding territory is lost, measures should be taken to create or enhance remaining areas through habitat management.
- Small developments should ensure that badger paths are not obstructed and small, but seasonally important, water sources and feeding areas are not destroyed.
- 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.
- If the destruction of a badger sett can not be avoided, it may be necessary to provide an artificial sett. Destruction of main setts should be considered only where all other options have been examined. If a main sett has to be destroyed an artificial sett will need to be constructed in a suitable location well in advance of the development work. The need for an artificial sett to compensate for the loss of other types of setts is considered on a case by case basis. However, the closure of an outlier sett would not normally require the provision of an artificial sett. See section on artificial setts for further information.

Managing your work on site:

- Badger setts can be extensive therefore, to minimise disturbance, a protection zone of 30 metres from the outermost holes of the sett is recommended. It is advisable to fence the protection zone off leaving a gap of 25 cm at the base of the fence.

- 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. Any activity which may cause disturbance to badgers or their setts should be undertaken as far away as possible from the protection zone.
- Fires should only be lit, and chemicals stored, well away from the setts. Any trenches left open over night 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. Badger paths should not be blocked. Vegetation should not be removed from the vicinity of the sett.
- Machinery used near setts, or to destroy 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.

Badger Disturbance

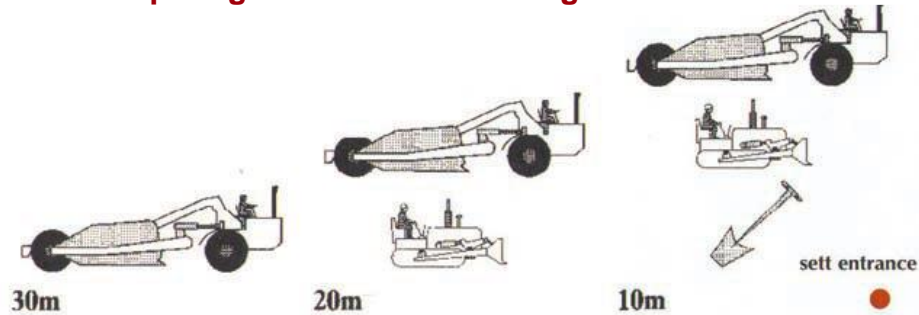
Work that disturbs badgers is illegal without a licence. Badgers could be disturbed by work near the sett even if there is no direct interference or damage to the sett. Because it is difficult to know what badgers will find disturbing in each particular circumstance, NRW has guidelines on the types of activity which it considers should be licensed within certain distances of sett entrances. The following activities will all require to be licensed:

- Using very heavy machinery within 30 metres of any entrance to an active sett.
- Using lighter machinery (particularly for any digging operation) within 20 metres,
- Light work such as hand digging or scrub clearance within 10 metres.

The illustration on the following page shows how areas around sett entrances can overlap.

There are some activities which can cause disturbance at far greater distances (such as explosives or pile driving) and these should be given individual consideration. As a guide blasting activities within 100m of a sett may require a licence, but the level of disturbance will depend on the type and nature of the blasting and the geography of the surrounding area.

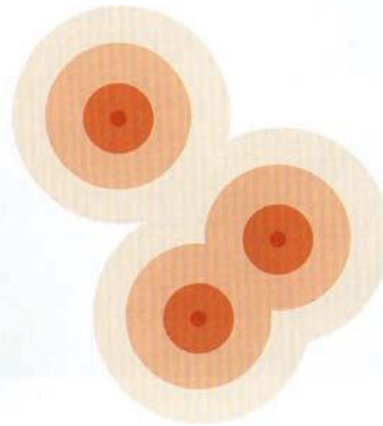
Examples of activities requiring a licence near a badger sett.



The illustration on the right shows how areas around sett entrances can overlap.

- sett entrance
- 0 - 10 metres
- 10 - 20 metres
- 20 - 30 metres

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



Artificial setts for badgers

Where an artificial sett is required it is important that the sett is properly constructed and in a suitable location. Setts that have been badly designed may be unsuitable for badgers. Setts should be constructed well in advance of the exclusion of badgers from the affected sett.

The design and construction of an artificial sett should be supervised by a suitably experienced badger ecologist and should adhere to the following guidelines:

- build the sett at the top of a slope for good drainage. The base of the sett in clay or non porous soil should slope slightly downhill. Tunnels should slope away from chambers.
- include at least 3 exit holes, one of which is higher for ventilation. This higher pipe should have a bend in it at the exit to prevent rain from entering.
- build the sett as close as possible to the original one in a quiet location.
- build at least two chambers in a site area of at least 100m² as replacement for the loss of a small sett.
- use pipes of 30 cm in diameter. Where joins leave gaps, exterior grade ply should be placed over to prevent infill. Plastic pipes are best cut lengthways to form an arch over an earth floor. If this method is selected, 60cm pipes should be used to maintain the required 30cm height of created tunnels.
- leave open ends of pipes facing an earth bank (as well as leading to chambers) so that the badgers can extend the sett for themselves.

- do not make the chambers too small. The chambers should be at least 35 cm high and about 90cm by 60cm in size.
- cover the sett with steel mesh (to deter illegal badger diggers) and then with about a metre depth of soil covering the sett.
- include a 30m exclusion zone around the sett.
- plant scrub cover plants around the sett

Any licence application should include a simple and clear plan of the sett including dimensions and a site plan with dimensions including elevation to show slope.

Obtaining a licence

A licence will be needed from NRW before any work goes ahead which will cause damage to setts, or disturbance to badgers. Licences cannot be issued retrospectively so an application should be made at least a month in advance of the proposed work. The following are guidelines on the sort of information NRW will require in a licence application for a development affecting badgers:

- Details of the final planning permission granted for the site, including a copy of any section 106 agreement;
- Information on the location and use by badgers of any setts which will be affected by the development;
- Proposals showing how it will be ensured that there are no badgers occupying setts that need to be damaged or destroyed;
- The location and number of alternative setts where excluded animals may shelter when a main sett is to be lost;
- How badgers will be accommodated on site when setts are to be destroyed and no alternative setts are available;
- Details of any artificial sett that has been constructed including a clear plan of the sett and photographs of the sett under construction and once completed. Evidence of use of the sett by badgers should also be included. Note that we recommend you consult NRW regarding proposed artificial setts prior to their construction.
- Details of fencing and underpasses, where necessary, to permit access by badgers to existing feeding areas, and to prevent obstruction to sett. Main, or seasonally important, feeding areas or water sources should be maintained or replaced where they may be affected;
- The names and addresses of those who will be carrying out specialised badger work, capable of operating to a suitable standard to ensure the work is carried out effectively;
- 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 mitigating reasons or circumstances for any work to be undertaken outside this period.
- Details of monitoring to be undertaken during and post-construction.
- General operating practices on site must ensure that badgers are not inadvertently harmed or trapped.

Note that the law does not permit licences to capture badgers for development purposes. Relocating badgers by translocation is not an option.