

# Protecting Badgers – Guidance for Local Planning Authorities

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## Introduction

The badger is one of Scotland's most iconic native species. Present across the length and breadth of the country, the species plays an important role in maintaining functional and healthy ecosystems.

Inappropriate or poorly-planned development is one of the greatest threats to badgers in Scotland. Roads, housing, community infrastructure and energy generation projects can, if designed insensitively, result in the destruction or damage of setts or the loss/fragmentation of important foraging grounds.

Legislative and Scottish Planning Policy provisions protect badgers from inappropriate development. This brief guidance document provides advice for Local Planning Authorities and will support Planning Officers in meeting their legal and policy obligations

## Badgers and the Law

The badger is a relatively common species in Scotland. It is not considered a conservation priority as its population is not threatened by decline. However, the species is amongst Scotland's most persecuted. For centuries, badgers have suffered extensively as a consequence of badger baiting, a cruel and illegal sport.

In response to the persecution threat faced by the species, badgers and their setts receive legal protection in Scotland, via the Protection of Badgers Act 1992 (as amended). The Act makes it an offence to:

- Wilfully injure or kill a badger
- Disturb a badger while it is in a sett<sup>1</sup>
- Intentionally or recklessly disturb or destroy any part of a badger sett
- Obstruct access to a badger sett

A badger sett is defined by the Act as '*any structure or place which displays signs indicating current use by a badger*'.

While the legislation was designed to address persecution issues, it is absolute, thus any development activity that results in an offence could be subject to prosecution.

The legislation makes provision for a licensing system, which allows activities that would otherwise constitute an offence. Licences are administered by Scottish Natural Heritage and are regularly

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<sup>1</sup> The underground resting place of a badger

issued to enable development. Licences are normally required for any activity within 30m of a badger sett and cannot be implemented during the badger breeding season (30<sup>th</sup> November – 1<sup>st</sup> July).

## **Badgers and the Planning System**

As a ‘protected species’ badgers are an important consideration of the development management process. Scottish Planning Policy (A Natural, Resilient Place, paragraph 214) states:

*“Protected Species are an important consideration in decisions on planning applications. If there is evidence to suggest that a protected species is present on site, or may be affected by a proposed development, steps must be taken to establish their presence.”*

This means that, before an application can be determined, Planning Authorities must have satisfied themselves that all potential impacts on badgers have been determined and that the applicant has developed sufficient mitigation or compensation to avoid an offence.

Beyond compliance with the Protection of Badgers Act (1992), Planning Authorities are required by Scottish Planning Policy (paragraph 214) and the Biodiversity Duty<sup>2</sup> to further the aims of wider biodiversity. From a Development Management perspective, this means that Local Planning Authorities must consider those impacts to badgers not covered by legislation. These impacts may include:

- The loss of foraging habitat and reduced territories
- The introduction of unacceptable levels of disturbance
- The introduction of mortality risks (e.g. roads)

Where these potential impacts exist, mitigation and/or compensation must be developed.

## **When to ask for a Badger Survey**

In order that Planning Authorities can be fully aware of potential impacts on badgers, it is often necessary to undertake a detailed survey of the application site. Badgers are present throughout Scotland and therefore the need to undertake surveys applies across the country.

While badgers are normally associated with woodland habitats, in Scotland, the species has been recorded in all settings, ranging from urban carparks to upland moorlands. However, as a general rule, Planning Officers should always request a badger survey when an application site:

- Is previously known to support badger populations
- Is located on or within 100m of a statutory or non-statutory designated site
- Is situated within an agricultural context (i.e. a network of fields demarcated by hedgerow or tree lines)
- Supports, or is within 100m of;
  - Woodland or conifer plantation (of any size)

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<sup>2</sup> Further information relating to the Biodiversity Duty is provided here <https://www.nature.scot/scotlands-biodiversity/biodiversity-duty>

- watercourses
- Networks of natural vegetation, including tree lines and hedgerows

In addition, some types of development pose a particular risk to badgers. Badger surveys should always be requested when applications involve transport infrastructure.

## **Guidelines for Badger Survey and Survey Reports**

Scottish Badgers has published guidelines for badger surveys. 'Badger Surveys – Good Practice Guidelines (2018)' is available for the Scottish Badgers website, [www.scottishbadgers.org.uk](http://www.scottishbadgers.org.uk). All badger surveys should be cognisant of these guidelines and, as a minimum:

- Be undertaken by a suitably qualified person(s).
- Be no older than 12 months at the point of submission to the Planning Authority.
- Be undertaken within an appropriate survey season. Badger surveys should avoid the height of summer when vegetation may obscure field evidence.
- Be undertaken within the entire site and a buffer of up to 100m.

In order that Planning Authorities can fully consider the results of badger surveys, applicants should submit a detailed Badger Survey report. Survey reports should:

- Be informed by an appropriate desk study/search of existing data (available from Scottish Badgers).
- Provide a full account of survey methods and the experience of surveyor(s).
- Acknowledge any limitations in the survey method.
- Provide a detailed baseline of setts and other field evidence, including mapping and photography where appropriate.
- Categorise types of badger sett and their 'current use' status.
- Interpret potential impacts arising from the proposed development (i.e. they should be fully informed by development proposals).
- Where necessary, identify all necessary mitigation or compensation measures.
- Conclude whether a licence is required to enable works.

Applicants should be encouraged to follow the mitigation hierarchy, whereby attempts are initially made to avoid impacts through redesign. Where avoidance is not possible, mitigation should be developed. Where mitigation is unlikely to be successful, compensation should be identified.

Where mitigation is proposed, it should be presented as a Badger Protection Plan (BPP). The BPP should provide a detailed account of all necessary measures, how they will be delivered, and by whom, and details of monitoring. The BPP should provide details of all necessary licensing requirements.

**In all instances, badger surveys and reports should be undertaken by independent, professionally qualified and experienced ecologists.**

**Due to the persecution faced by badgers, Badger Survey reports should not be made publicly available through Planning Portals. They should only be made available to relevant consultees where appropriate.**

## Interpreting Badger Survey Reports

The responsibility for ensuring compliance with Scottish Planning Policy lies with the Planning Authority. However, Scottish Badgers recognises that Planning Officers are not necessarily experts in ecological issues. We recommend that where survey reports identify the presence of badger setts, and the need for complex mitigation or licensing, Planning Officers should seek further advice. Sources of additional advice may include:

- Local Authority Biodiversity Officers/Ecologists
- Local Authority Ranger Services
- Scottish Natural Heritage Case Officers/Area Advisors/Species Experts

However, it is the responsibility of the Applicant and his/her ecological advisors to provide all necessary data and interpretation. Planning Authorities should not be required to commission their own badger surveys, either through professional ecologists, Local Authority ranger services or conservation charities.

Scottish Badgers has a team of skilled and experienced volunteers who would be happy to provide further advice. In the first instance, contact should be made via [operationscoordinator@scottishbadgers.org.uk](mailto:operationscoordinator@scottishbadgers.org.uk).

## Further Sources of Information

A wide range of further information is available at the Scottish Badger Website, [www.scottishbadgers.org.uk](http://www.scottishbadgers.org.uk).

Scottish Natural Heritage has produced detailed information and guidance in relation to badgers and licensing for the purposes of development. Further information can be found at:

- <https://www.nature.scot/plants-animals-and-fungi/mammals/land-mammals/badger>
- <https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/licensing/species-licensing-z-guide/badgers-and-licensing/badgers-licences-development>