



Badger Protection:

Best Practice Guidance for Developers, Ecologists and Planners (England)

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 when encountering this iconic mammal and its habitat.

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Foreword

We all know that human activity is the leading cause of species decline in Britain, and badgers are no exception. The rise in property, infrastructure and road expansion projects means planning and development now represents one of the most significant threats to our wildlife. Yet, awareness of that fact alone isn't enough to counter the extraordinary pressure on our natural environment. Real action is urgently needed.

Planning developments impact plants and animals, there is no ambiguity about that. So, whether you're a developer, ecologist, planning officer, councillor or construction specialist, you have an absolutely critical part to play in helping to stop the decline of nature. You all count and you all have a responsibility, legal and moral, to conserve and care for the environment. And, if you fail in this duty, your grandchildren won't appreciate your neglect - surely not something you want on your conscience!

Anyone involved in the development of an area inhabited by badgers should comply with the guidelines outlined here. At the very least, and importantly, it will avoid you risking offences under our wildlife protection laws. It will also ensure you don't fall foul of the current advice and licensing requirements of Natural England. More creatively, by following these best practice guidelines from Badger Trust, it will allow for sustainable human-badger co-existence in both the short and long-term.

We must allow space for badgers – indeed space for all nature – and learning to live alongside this iconic and ecologically important species is a challenge which pays enormous rewards.

Chris Packham CBE

Broadcaster and Environmental Campaigner





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Acknowledgements

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1. Introduction

This guide aims to widen knowledge and make best practice guidance for badger protection easier to understand among planners, developers, ecologists, local authorities, wildlife crime investigators, and nature lovers and other interested parties so that the legal requirements for badger protection are properly understood and practised.

Badgers and their setts have unique protection under the Protection of Badgers Act (1992), and it is illegal to disturb, harm or destroy a badger or its sett either with intent or through negligence. With development projects occurring daily across the UK, it remains incredibly important that interested parties understand the law and best practice guidance when encountering this iconic mammal and its habitat.

Planning and development activities are some of the most common threats to badgers reported to Badger Trust. **Over 50% of badger crimes reported relate to sett interference, and 20% of these are related to housing and development projects.**

A lack of clarity regarding badger protection and obligations during planning and development projects can lead to costly delays in the project, breaches of the law, and unintended harm to badgers. This guide can be used to clearly identify the legal requirements for wildlife surveying, ecological assessments, licensing, and mitigation or monitoring of badgers living or foraging on development sites.

Consultants are often under unrealistic time pressure to complete survey work and can come under pressure to forego required standards in their work. Not only does this lead to last-minute delays for the client when objections are invariably lodged, but can also lead to legal action. It is in all parties' interests to follow the guidance in this document.

Poor planning can also increase the potential for conflict between badgers, householders, and property owners by pushing badgers into other areas ripe for development or where badgers are not welcome. This can lead to a recurring cycle of badger disturbance, ecological, infrastructure and planning issues with resultant financial costs and pressures falling on local authorities and the police going forward.

Badgers have been part of the British landscape for thousands of years and can be found in countryside, towns, and other urban locations. With land development projects occurring daily across the UK, it is essential that interested parties are knowledgeable about the law and their responsibilities. Applied incorrectly, development projects can result in wildlife crimes with severe repercussions.

Badger Trust aims to provide best practice guidance to define how development can be carried out within the law, in line with Natural England current guidelines, and in a way that minimises any negative impact on badgers at the development site and in the wider area going forward. This guidance document provides an overview of the law and appropriate surveying and activities that are licensable, licence requirements, and mitigation measures.

Where reference is made to current Natural England "standing advice" this refers to the Natural England "standing advice" for badgers.

Natural England has issued standing advice for badgers as part of a collection of standing advice for protected species. The impact of development proposals on badgers may be a material consideration in planning decisions. Natural England's standing advice should be taken into account by local planning authorities when determining relevant planning applications.



2. Badgers and the law

Badgers (*Meles meles*) are an iconic wild mammal in Britain and are relatively widespread in England and Wales. As a result of continued persecution and public concern for the badger, it has become a UK protected species. Badgers are fully protected in the UK by the Protection of Badgers Act 1992, by Schedule 6 of the Wildlife and Countryside Act 1981 (as amended) and by the Animal Welfare Act 2006.

It is an offence to:

- Wilfully kill, injure or take a badger, or attempt these actions.
- Treat a badger cruelly.
- Interfere with a badger sett (the entrances, tunnels and chambers where they live).
- Possess or control a live badger.
- Mark or ring a badger.

A person is guilty of an offence if, except as permitted by or under the Protection of Badgers Act 1992, they interfere with a badger sett by doing any of the following things:

[a] Damaging a badger sett or any part of it.

[b] Destroying a badger sett.

[c] Obstructing access to, or any entrance of, a badger sett.

[d] Causing a dog to enter a badger sett.

[e] Disturbing a badger when it is occupying a badger sett, intending to do any of those things or being reckless as to whether their actions would have any of those consequences.

A badger sett includes the entrance holes, tunnels and chambers.

Penalties for breaches of the Protection of Badgers Act 1992 may include a fine and/or a prison sentence of up to six months. This is also the case for breaches of the Wildlife and Countryside Act 1981. Breaches of the Animal Welfare Act leading to unnecessary suffering by badgers if trapped and under the control of man can lead to the offender receiving a maximum five-year prison sentence.

3. Responsibilities of planning authorities, ecologists and developers

The National Planning Policy Framework (July 2021) states that when determining planning applications, local planning authorities should apply the principle that **if significant harm to biodiversity resulting from a development cannot be avoided, mitigated or, as a last resort, compensated for, then planning permission should be refused.**



Natural England's standing advice in relation to badgers and their legal protection is that planning officers should consider if the developer has taken appropriate measures to comply with the above.

Planning authorities also have a responsibility under **Section 40 of The Natural Environment and Rural Communities Act 2006**, which requires that "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, the purpose of conserving biodiversity".

The Crime and Disorder Act 1998 requires local authorities to demonstrate a duty to implement crime and disorder reduction strategies in areas including wildlife and the environment. Planners and ecologists are reminded that they are categorised as partners and should always, as a priority, assist the police, disclose details of concerns and be prepared to submit a written statement.

When to ask for a badger survey

Planning authorities should ask for a survey if either historical or distribution records show badgers to be active in the area, if there are signs of setts or badgers on the development site or nearby, or if there is suitable habitat for sett building or foraging by badgers at the location.

Natural England advice is that **absence of a record does not mean there are no badgers present** or using the location. It could simply mean there is no survey data available. Submissions from other interested parties, such as nearby residents or badger groups, indicating the presence of badgers on site should also be taken into consideration when assessing survey requirements.

3.1 Pre-application advice

Early consultation is always advised and encouraged – it can save time as well as money. If not licensed, works taking place too close to a badger sett could result in a wildlife crime.

Local Planning Authorities should welcome pre-applications, and many will have their own ecologists who can be consulted. A developer may need to separately appoint a qualified ecologist to advise on the planning application and help provide supporting evidence.

Natural England also offers pre-application advice as part of its suite of chargeable discretionary services.

4. Badger surveys

An ecological survey should include details of the number and status of any badger setts affected by a proposed development and whether a protected species licence is required to facilitate the proposals. **Any report that states a site has been cleared before an ecological assessment was undertaken should be treated with extreme caution and indicates that the legal requirements outlined in Section 3 of this document have not been met.**

The survey should show if the site is currently being used by badgers and identify the presence of any setts on or near the site. Surveys should be kept confidential to avoid ill-treatment of badgers and should be undertaken by an ecologist qualified and experienced to carry out surveys for badgers. Natural England standing advice is that the ecologist should also follow the Biodiversity Code of Practice for planning and development available on the British Standards Institute website. Ecologists must ensure they have permission in writing to be on the land subject to survey.

The purpose of the survey is to identify the use of a site by badgers and assess the effect of a proposed development on them. Badgers could be affected if the development proposal causes damage to setts, loss of setts, loss of foraging areas or disturbance to badgers whilst they're occupying setts. Dangers to badgers can also occur during any development works on a site. Such disturbance can arise from noise, lights, vibration, fires or chemical use.

Badger Trust considers the following as examples of best practice to ensure surveys meet Natural England guidance and safeguard the welfare of badgers in and around the development area.

- The survey should be conducted by a suitably trained and qualified ecologist early in the project timeline.
- The survey report should contain sufficient detail to inform the Local Planning Authority of the badger status at the application site and any mitigation, compensation and enhancement measures proposed to protect badgers prior to, during development and after work has been completed.
- The report should include the results of a desktop survey search.
- The report should include the results of a field survey carried out within the last 12 months, ideally in early Spring or late Autumn and state the presence or absence of badgers and any setts.
- A map of survey findings (with grid references) should be included showing any badger field signs, including any setts, and their exact proximity to the development footprint.
- Photographs, as appropriate, should be included.



Image © Andrew Bishop

- The report should state the classification of badger setts identified using standard methodology, i.e. Main/Annexe/Subsidiary/Outlier, together with a justification for the classification chosen.
- A requirement to update the survey pre-commencement of works is a MUST (as sometimes the activity status at a badger sett changes).
- A detailed survey conducted over a continuous period of no less than 21 days of any setts located to establish any badger activity may be required in some situations. Ideally, such a survey should employ the use of trail cameras to provide visual evidence.
- Proposals for ongoing site or sett monitoring where 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 Local Planning Authority.

Setts are still protected by law if there are signs indicating current use by badgers, even if the sett is unoccupied at that time. Occupation and use are different.

5. Development impacts

The impact of any proposed development on badgers should be considered early in the design stage of the project. **Badgers are territorial animals and often try to return to existing territories during the building process and after the development is completed.** This can lead to badger welfare issues, time delays and cost and is best avoided through careful planning and an understanding of badger ecology. Even during a build, excluded or disrupted badgers can occupy large piles of topsoil and soft building materials. Excluded badgers can cause damage to land and property through broken fences, trying to gain access to foraging areas, new or old, or looking to create setts within new gardens, under sheds or in public open spaces. It may also lead to conflict with other nearby badger populations in larger development projects.

Retention of setts, together with sufficient space around them, is often key to minimise disturbance, avoiding the need for a wider survey of competing badgers in areas adjacent to the project site before planning and building an artificial sett elsewhere, and even the need for a licence. Relocated badgers often seek to return to their original site, with consequences to both the badgers and the developer. Sett closures should be carefully considered. Long-term consideration must be given to the impact on setts and badgers during a construction project and the period afterwards. Badger movements across a site during and after development must also be a consideration of mitigation and enhancement proposals. **Development proposals including sett closure should demonstrate that other available options have been considered and explain why they are not being pursued.**

Green space connectivity is vital, with wildlife corridors essential to allow the retention of commuting routes on and off retained spaces for badgers and other species that make use of their runs. Gardens of new properties being constructed are never and should never be seen as an adequate replacement for lost foraging availability as this may increase any potential conflict with homeowners. Some gardens may be accessible to badgers, others may not be. Badgers may be welcome garden visitors to some and not to others. Supplementary feeding, accidental or otherwise, may occur but should never be relied upon as a foraging enhancement.

Natural England standing advice is that badgers could be affected if the development proposal causes:

- Damage to sett.
- Loss of setts.
- Loss of foraging areas.
- Disturbance to badgers while they're occupying setts – from noise, lights, vibration, fires or chemical use.

Work which leads to any of the above is illegal without a licence.

5.1 Badger disturbance

It must be recognised that badgers can be disturbed by work near a sett, even if there is no direct interference or damage to the sett. It is difficult to know what badgers will find disturbing in each circumstance or where in a sett badgers may be living. In light of this, Badger Trust considers the following activities may require a licence:

- Use of heavy machinery within 30 metres of any sett entrance.
- Use of lighter machinery (particularly for digging) within 20 metres of any sett entrance.
- Use of hand tools such as hand digging or scrub clearance within 10 metres of any sett entrance.

These are guidelines only. Other factors should be taken into account including topography, sett type and age and if the location is in a rural or urban environment. Some other activities can cause disturbance at far greater distances (such as the use of 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.

5.2 Avoidance, mitigation and compensation measures

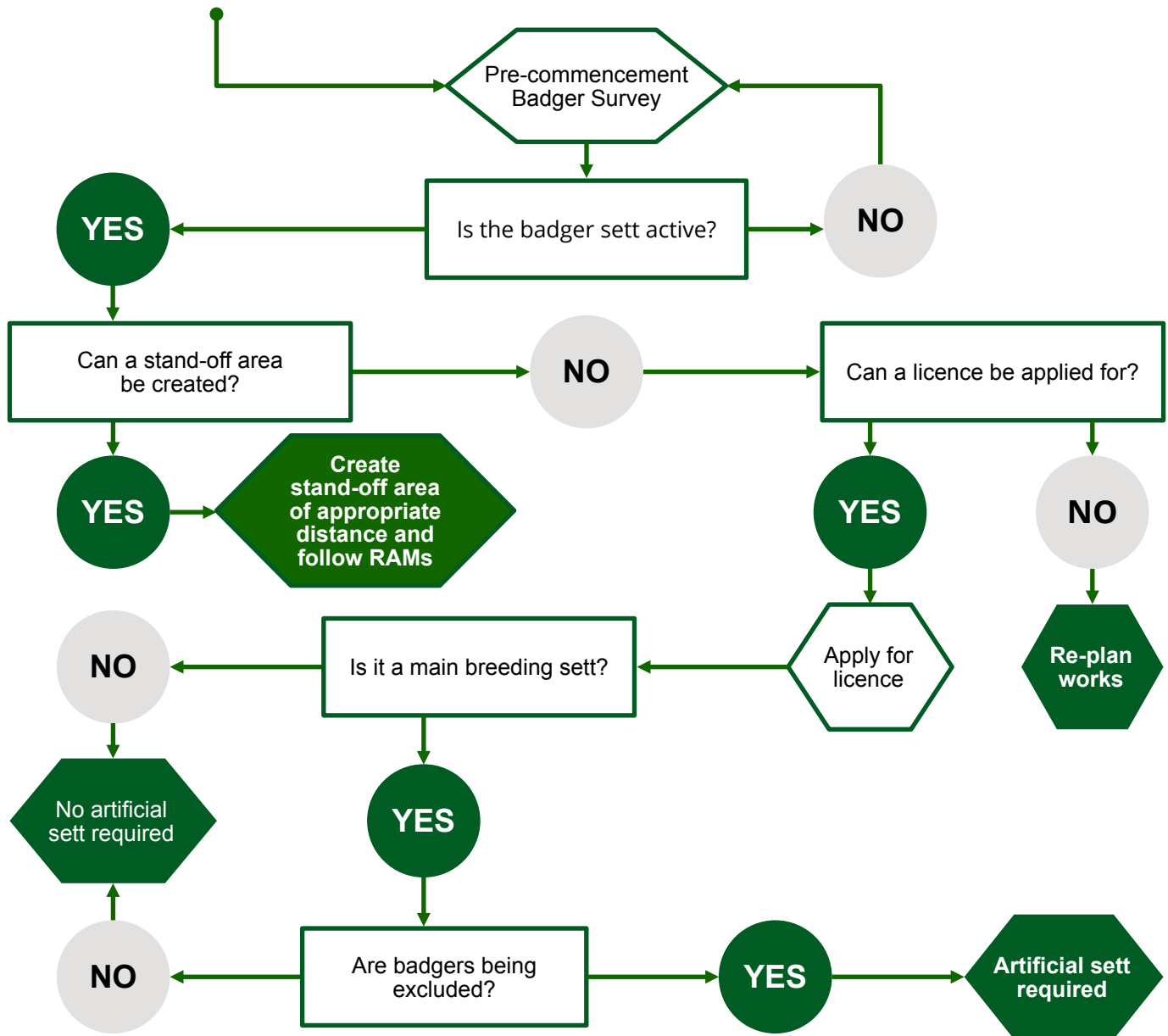
Natural England advice is that, where possible, developments should avoid effects on badgers. Where this is not possible, the developer will need to include mitigation or compensation measures in their proposal.

The following are previously accepted examples:

- A layout designed to avoid isolating the badgers' territory with badger sett retention/protection/enhancement, such as exclusion zones around setts/sett entrances.
- Avoid artificial lighting around setts and retain unlit wildlife corridors to provide safe badger access to foraging areas within existing territories.
- Creation of non-public areas using fencing and/or planting of native species (particularly fruit or nut-bearing).
- Retention of vegetation around setts, to provide cover and enhancement of public areas away from setts to provide improved foraging habitats.
- Artificial sett construction to compensate for loss of setts.
- Underpasses/traffic calming measures.
- Badger-proofing methods.

- Setts licensing, exclusion, closure of setts.
- Sensitive lighting schemes during and after construction.
- Reasonable Avoidance Measures (RAMs) during development to ensure badgers are unharmed such as avoiding disturbance, including noise and vibration near active setts, keeping heavy machinery/excavation work away from setts, and avoiding activity between dusk and dawn when badgers are most active.

Badger Mitigation Flow Chart



Mitigation should not include moving badgers from the site, known as translocation. There is no licensing provision for this under the Protection of Badgers Act 1992.

5.3 Badger foraging enhancement

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

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

For examples, please see the 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 woodland, beech woodland

5.4 Licensing

Natural England advice states that a developer may need to apply for a protected species licence before they start work if they plan to:

- Exclude a badger from a sett.
- Disturb a badger.
- Damage or remove a sett.

Planning consents and badger licences are separate legal functions. In granting planning permission, the Local Planning Authority is not confirming 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 to action 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 applications. Licences will normally only be granted for works to be undertaken between 1st July and 30th November.



Image © Chris Packham

If badgers have to be excluded from a sett under licence:

- Make sure there are suitable alternative setts nearby to which badgers can relocate.
- Build artificial setts before excluding badgers from the natural sett. Ensure that badgers have found the artificial setts before excluding them from natural setts.
- Use one-way badger gates and welded mesh/chain link for at least 21 days from the last sign of badgers accessing the sett.
- Do not use chemical repellents.
- Follow all licence conditions imposed.

6. Measures for protecting badgers during works

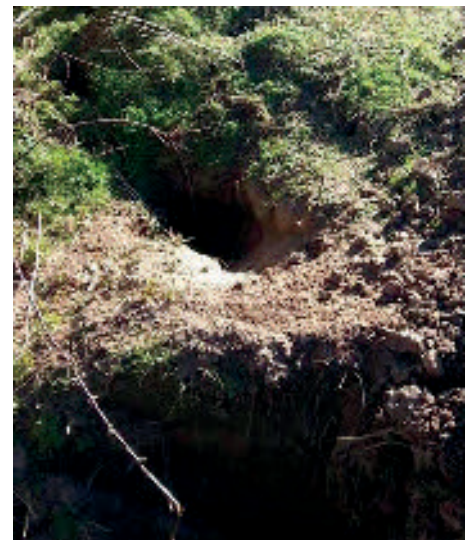
A method statement must be prepared, describing how work will be undertaken to avoid any offences being committed and badgers and/or setts being adversely affected. This will accurately reflect working operations and the site use by badgers. **This must be approved by the Local Planning Authority before work starts.**

The following should be adopted as a minimum in most cases:

- A pre-commencement of work badger survey should be conducted by a suitably qualified ecologist to ensure the current badger situation is known and that the recommendations are correct.
- All site personnel should be fully briefed concerning the method statement, the presence of badgers, the mitigation measures to be followed, the relevant legislation, the penalties imposed and who to contact should they need to.
- Trees and shrubs should be felled so that they fall away from the direction of a sett and outside exclusion zones.
- Ensure excavations or trenches left overnight are covered or have an escape route such as a shallow gradient at one or both ends.
- Ensure excavations or trenches are inspected each morning and evening to ensure no badgers have become trapped.
- Open pipework with a diameter of more than 120mm should be properly covered or capped at the end of the working day to prevent badgers from entering and becoming trapped.
- 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.
- The storage of topsoil or other “soft” building materials within the site should be given careful consideration. Badgers will readily adopt such mounds and dig setts which would then be afforded the same protection as established setts. To avoid the adoption of such mounds, they should be subject to daily inspections before work commences or alternative measures put in place, such as being fenced off for higher-risk areas.
- Litter, tools and potentially dangerous materials on site should be cleared at the end of the working day. Care should be taken that there are no sharp metal objects or pointed protrusions on the ground which could seriously injure a badger due to their poor eyesight.
- Ensure no dogs are brought to the work site.
- Adherence to these measures should be confirmed to planners at regular intervals by the project ecologist.

Additional measures may be necessary depending on the specifics of the project, such as:

- Security lighting should be kept to a minimum and away from setts to avoid disturbance to any badgers on site.
- Fires should be lit only in secure compounds away from areas of badger activity and should be fully extinguished at the end of the working day.
- Use of noisy plant or machinery should cease at least two hours before sunset and not commence until an hour after sunrise to avoid causing a disturbance to badgers or preventing access or egress to setts.
- Badger paths must not be blocked to ensure access to foraging areas is maintained.



7. Site management and monitoring

Natural England advice is that you should consider the need for site monitoring and management. These measures are likely to be needed by wildlife licences and should set out the issue considered, the conclusions reached, and the plan decided for monitoring and management, as well as who is responsible for its implementation and oversight.

A site management and monitoring plan should:

- Ensure sett building and foraging/commuting habitats are intact and still available in the long term.
- Check that setts, including artificial setts, have not been interfered with after development, such as from increased human presence or vandalism.
- Include carrying out management works to habitats, and additional survey work to check that mitigation measures are working as intended, followed by remedial work if needed.

8. Example wording for planning conditions

A good quality survey, with any mitigation plan, is required **BEFORE** planning permission is granted. Initial surveys should not form part of the pre-commencement conditions. Surveys requested at the approval stage should relate to **additional** surveys only.

The following may be used by Local Planning Authorities when applying planning conditions:

- As close as practicable and no earlier than three months prior to commencement of development, an additional badger survey report shall be submitted to and approved in writing by the Local Planning Authority. Should the position, in so far as it relates to badgers, have changed from that originally reported when the application was submitted, the new survey report should incorporate a revised badger mitigation plan.
- Prior to first occupation/use of the site, a report prepared by an appropriately qualified and experienced ecologist demonstrating the 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 Local Planning Authority.

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).

9. Conclusion

Badgers are a protected species, and certain measures must be taken to ensure that 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 and developments can proceed on time, to budget and specification and with good neighbourly relations intact. Cutting corners leads to false economies, negative impacts on nature, additional expenditure, adverse publicity, and reputational damage.

Lots of projects are managed in an exemplary fashion for others to follow, and we thank those involved for the care and responsibility they demonstrate towards our iconic native wildlife.

There is no reason to get any of this wrong: advice is widely available.

*If you are in any doubt or have questions about the correct course of action that should be taken, please contact Badger Trust at **hello@badgertrust.org.uk**.*



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