

***A lot of people are under the misapprehension that if they can find some badgers or some other protected species on some land, this will prevent it always from being built on. This is not generally true.*** Read on for more information as to why this is the case.

The Protection of Badgers Act 1992 makes it illegal for badgers to be persecuted or their setts harmed, but it does allow for a licensing provision, whereby badger setts can be interfered with, restricted or removed according to strict rules. By way of example, suppose a developer discovers a badger sett in the middle of a proposed development site. He may well ultimately be successful in getting a badger licence to move the badger sett to the edge of the development area; which may then allow the planning officer the scope to permit the modified development to proceed. This process of licensing and modification may be something of a pain for a developer, but it is not likely to prevent the development going ahead if he can show that he can guarantee the welfare of the badgers throughout.

That said, the main aim of the badger protection laws is to protect badgers, and it may be possible to argue that a particular sett or clan is of overwhelming regional or national importance; and the risks of any development of any kind are too great. We are not aware of any development which has been stopped by using such an argument, but if there are very few badgers locally (e.g. East Anglia or in the major cities), or the badgers in the clan are albino (white) or ginger/red (Erythristic) it would be worthwhile putting the argument forward.

If it can be **proved** (i.e. by a badger consultant, or some-one with suitable badger expertise) that a badger sett is long disused and empty, it can be filled in and destroyed without a licence. However, in winter, badgers may be absent from some setts for weeks or months on end, but those setts are still classed as being current badger setts. Being able to understand the field signs left by badgers is a critically important part of determining whether a badger sett is in use or not. It is much better to avoid the risk of getting a criminal record for damaging a badger sett; by erring on the side of caution and get local expert advice from a Badger Consultant.

Importantly, when badgers are found to be occupying land and not causing any damage there is no option in law to have them killed. This applies no matter how many houses are being planned or how much profit might be made.

In order of preference, the options would be:

- First, to leave a very wide area around the sett; and not to build anything on, near or through it.
- Secondly, to modify the plans to realign buildings, roads, cables, pipes and drains so the badger sett can stay in position.
- Thirdly, to move the sett further away from the development - perhaps by closing the main sett and building the badgers a nice new one at or outside the edge of the development.
- Fourthly, translocate the whole clan of animals to another territory in another area.

Commercial pressures normally rule out Option 1 pretty quickly.

Option 2 can be quite popular, as it allows the developer to display some green credentials, and allows an additional selling point to new homeowners. It can also, in many cases, result in badgers having the residents gardens to forage in (especially if the development has a mandatory open "prairie-style" arrangement). This will mean the badgers can forage on the home-owners lawns and get the occasional free meal from friendly householders. We would very urge campaigners to argue that planning permissions for developments next to badger setts should be conditional on the housing estate being maintained in an open style, to allow badgers the chance to forage in gardens.

Option 3 may start to cause delays during building works, and badgers may be less than co-operative in using their new home. As this can be an unknown factor which can incur extra costs and time penalties, it is effectively an almost unquantifiable risk to timescales and profitability.

Option 4 has exceedingly little to recommend it; as the chance of the badgers being found a good new sett location in an unoccupied territory is very slim; and most reports of translocation attempts don't always seem wholly successful.

In order to get a badger licence, Natural England (or Scottish Natural Heritage or the Countryside Council for Wales) will need very detailed plans as to what is intended for the welfare of the badgers and their setts, and if the badgers are to be moved, why they cannot remain in situ. If the developer hopes that a certain sett can be closed, the licence application will need to show where the other setts are and whether these and the feeding areas are to remain safe. Expecting badgers to cross flood-prone areas, rivers, canals, railways and busy roads is not acceptable; and it should be assumed that the badgers will make some serious efforts to revisit their old home for a number of months or years after their enforced move. The licence will also specify how the badgers are to be excluded from the sett, and what timescales should apply; and how it will be established that the sett is actually empty.

In terms of the likelihood of getting a sett closed; this will depend on the nature of the information sent with the licence application and the expert who is acting on behalf of the developer; together with the scale of the badger sett. It will be much more difficult to get a main badger sett closed; as this involves the closure of the permanent home of the entire family group of badgers. If the sett is a smaller one (known as an outlier, subsidiary or annexe sett), the chances are higher that this will cause less nuisance to the badgers, so it is more likely that a licence would be granted.

Importantly, the badger licence can be applied for any any time of year, but the licenced destruction of a badger sett can take place only between 1st July and 30th November. IN other words, badger sett destruction licences may allow setts to be destroyed in the months of July, August, September, October and November ONLY. If sett damage is occurring outside these months IT IS ILLEGAL AND IT CAN NOT BE PROPERLY NOT LICENCED AND IT IS A CRIMINAL OFFENCE.

If main sett and an entire clan is to be removed (and such licences are seldom given), then information will also be required about the site where the badgers are to be released. Ideally, this should be within 20 miles (30 km) of the original site and within the same county. If there is any risk of disease transfer, permission may also

be needed from DEFRA. This is a difficult operation, because you need to answer the important question as to why there are no badgers in the destination location. In many cases the destination will be unsuitable due to lack of suitable habitat, in which case the translocation attempt will be very likely to fail. Like we have said before, there is no provision to have badgers killed if they are causing an inconvenience, so there is no provision for them to be moved to a location at which they are doomed to fail. Essentially, their destination location needs to be a good one.

In terms of funding, the developer will pay for all this as part and parcel of the overall development costs. There is no provision within national, regional or local government funds to compensate the developer for the costs of dealing with badger-related issues. This is why increasing numbers of developers are trying to keep badgers within their existing setts; as this has fewer costs, and less risks to timescales or budgets.

In terms of the formalities of planning permission, a collaborative approach will normally pay dividends. If the developer, the planning officer and the wildlife experts can meet together; and the developer agrees to reasonable requests, progress can usually be made. In our experience, if the public perception of the developer is that he is a greedy SOAB, this will antagonise the wildlife experts, the planning officer, and, importantly for the developer, the people who may have wanted to buy some of the houses. Having a group of fewer houses bordering a woodland setting, which is managed (or even owned!) by a local wildlife trust may provide the badger with a very good long-term deal; and provide the developer with massively popular PR.

In terms of how much room, the advice would be on there being an absolute minimum distance of 20 metres from the sett entrances to a surrounding fence. Ideally, there would be double that amount or even more. It is also recommended the area of the tunnel entrances be allowed to be overgrown with "pricklies", like brambles, hawthorn, nettles and even holly; as this will go some way to deterring inquisitive children. The badger may need to be fenced out of certain areas - such as away from busy roads; and may even be given protected alleyways between plots to get to feeding grounds.

However, much will depend on the badger licence, planning permission and the badger consultant's advice. In some cases, areas of the woodland can be managed to provide short-cropped grass, which will be rich in earthworms - a favourite food of badgers. This may need little more "management" than being cut once or twice per fortnight by a volunteer for the local badger group or a local resident.

As well as the developer (and the planning officer) needing more information about badgers, the builders themselves (and especially any temporary contractors) will need to be absolutely certain that certain areas of the development are "out-of-bounds" to them and their machinery. The risk that the badgers area may be accidentally cleared of vegetation or used for temporary waste dumping should be taken into account; and appropriate taping-off or fencing installed. If there is any risk that the badgers area may look like a dumping ground or resemble a "trail-bike" area, it must be fenced off in a badger-friendly, but secure manner.

Ultimately, of course, any new residents in a development where there are badgers left in close proximity, should be given a badger information pack, which should explain their rights and responsibilities with regard to the badgers and their setts.