Protection of badgers within the planning system

This advice note sets out how the Isle of Wight Local Planning Authority applies legislation and planning policy guidance to the (potential) occurrence of badgers, a legally protected species. This guidance note has been prepared to assist developers in the preparation of a planning application where the presence of badgers is likely.

This document provides only a guide to the main provisions of the law. The Isle of Wight Council does not provide legal advice to developers and the text of the Badgers Act should be consulted and professional legal advice sought for exact interpretations of offences and defences. This is not intended to be a definitive guide and a list of references is provided which should also be referred to.

Legal status

Badgers and their setts are legally protected in England and Wales through the Protection of Badgers Act 1992. The preservation of all legally protected species, including badgers, is a material consideration when determining planning applications. The following sets out the legal offences defined within the Act and highlighted in bold are those offences related to Planning:

- Willfully kill, injure or take a badger (or attempt to do so).
- Cruelly ill-treat a badger.
- Dig for a badger.
- Intentionally or recklessly damage or destroy a badger sett, or obstruct access to it.
- Cause a dog to enter a badger sett.
- Disturb a badger when it is occupying a sett.

Planning policy

Section 11 of the National planning Policy Framework states:

*The planning system should contribute to and enhance the natural and local environment by:*

- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

The Island Plan Core Strategy sets out policies for determining planning applications. SP5 Environment states:

*The Council will support proposals that protect, conserve and/or enhance the Island’s natural and historic environments. All development proposals will be*
expected to take account of the environmental capacity of an area to accommodate new development and, where appropriate and practicable, to contribute to environmental conservation and enhancement.

Is a survey required?

Natural England’s standing advice says the following:

Survey for badgers if:

- there are signs of setts or badgers in the development site or nearby
- historical or distribution records show that badgers are active in the area or there is suitable habitat for sett building

It is the developer’s responsibility to ensure all information is provided to enable an informed planning decision. Therefore it is important that necessary surveys and assessments are carried out prior to determination of a planning application. Where badger surveys are required it is advised a suitably qualified and competent ecologist undertakes this work.

If a sett is present on site or in close proximity then mitigation work will be necessary. It is considered best practice to avoid works in or around the breeding season. Further to this works within 10m of a sett should be avoided and within 30m minimal impact construction methods can be agreed. Development further than 30m from a sett is unlikely to cause damage to a sett.

Reviewing information

Natural England’s standing advice (March 2015) provides guidance on the survey effort required as well as mitigation and compensation methods for development. When reviewing submitted information the standing advice is referred to. ‘Badgers and development – a guide to best practice and licensing’ Natural England, October 2006 also provides useful detailed advice.

The aim of a protected species survey is to determine whether the species is present in the area and how they use the site. This information will inform any mitigation or compensation methods. Natural England’s standing advice states:

Impacts you should consider include:

- damage to setts
- loss of setts
- loss of foraging areas
- disturbing badgers while they’re occupying setts with noise, lights, vibration, fires or chemicals

Impacts to badgers should firstly be avoided by locating development away from setts and using buffer zones. Natural England’s standing advice provides detailed
guidance on specific measures to achieve this\(^1\). It may be necessary to use mitigation measures such as maintaining habitat connectivity with the use of green corridors, tunnels or underpasses. A final resort may be to exclude badgers from setts and to create an artificial sett close by. It is an illegal offence to capture a badger and they cannot be translocated away from a development site.

Increased development, especially in urban areas, can be a problem where badgers are constantly displaced and pushed into people’s gardens. Where badgers are known to be present measures such as boundary treatments will be considered.

**Planning decision**

All information submitted and comments received will be used to make a final judgement on a planning application. All information relating to badgers, including surveys and mitigation plans, should be provided prior to determination. It is considered best practice for information relating to badgers to be treated as confidential and therefore not displayed online\(^2\). In some cases development will be refused where it is deemed to have an unacceptable impact on protected species. Use of conditions and informatives are also applied where appropriate.

Separately to planning permission a license from Natural England is required where a badger sett cannot be reasonably avoided. A licence application will only be considered if accompanied by an appropriate survey report (undertaken by a suitably qualified and experienced ecologist). A license can be applied for prior to or after planning permission is secured but if a license can’t be obtained planning permission won’t be realised. In granting a licence Natural England may place restrictions on both the timing and methodology of any works affecting a badger sett.

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\(^1\) For a complete list please see [here](https://www.gov.uk/guidance/badgers-surveys-and-mitigation-for-development-projects).

\(^2\) For this reason when information is submitted after an application has gone live it is not readvertised and information such as this is only consulted internally.
References


Natural England’s Standing Advice on Badgers (March 2015), available online here: https://www.gov.uk/guidance/badgers-surveys-and-mitigation-for-development-projects