



Tree work around badgers, and badger setts

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Badgers are considered to be, in the UK, one of our most popular and certainly one of the best know of all wild mammals. This enthusiasm and interest in these intriguing nocturnal creatures has led to numerous mentions in literature and their inclusion as wise old men in cartoons. However, in the wild badgers have been seen to be far from wise, often appearing to be quite the opposite. When a badger is frightened its instinctive reaction is to run straight back to its sett even though this may mean that it runs towards a human that has disturbed it.



Photograph By Gerald Hall - English Nature

Despite their apparent appealing image, it is a sad fact that many thousands of badgers are still killed illegally each year, and the incidents appear to be increasing. Also, due to the nature of the crimes, there are relatively few successful prosecutions. Perhaps the most familiar illegal threats to badgers are the following:

- Badger-digging and baiting
- Snaring
- Poisoning (including the misuse of pesticides)
- Lamping

The activities above have resulted in the loss of large setts and entire colonies of animals in our countryside, and may explain why badgers appear to be more common around the suburban sprawl of our towns and cities. But, here they face more threats from activities such as road building and development, and it is these that are starting to have a more pronounced impact on badger numbers.

Just because badgers may appear commonplace in some urban areas, does not mean that we should not consider their presence as important. Badgers were first given protection under the Badger Act 1973 and badger setts under the Badger Act 1991. The Protection of Badger Act 1992 consolidated the earlier legislation

Under the 1992 Act it is an offence to:

- wilfully kill, injure, take or attempt to kill, injure or take a badger
- possess a dead badger or any part of a badger
- interfere with a badger sett by:
 - *damaging a sett or any part thereof*
 - *obstructing access to a sett*
 - *disturbing a badger while occupying a sett.*
- cruelly ill-treat a badger
- dig for a badger
- *destroying a sett*
- *causing a dog to enter a sett*

The Act also introduced financial penalties and powers of sentence, which include:

- (i) up to six months' imprisonment or a fine at level 5 (up to £5,000) or both. The fine may be multiplied by the number of badgers, incidence of disturbance or sett destruction;
- (ii) forfeiture of or any article, weapons or equipment used, and any badger or skin relating to the offence;
- (iii) destruction or disposal of dogs;
- (iv) disqualification for having custody of a dog.



Photograph By Peter Wakely- English Nature

There are also a number of statutory defences in the 1992 Act. For example, a defence to damaging a badger sett would be that the damage was the incidental result of a lawful operation and could not reasonably have been avoided. However, these actions could be seen as 'reckless' if the possibility of damage was not considered or it could be deemed 'intentional' or 'deliberate' if operations continued after the sett was discovered.

This is not an exhaustive list of the offences and exceptions on the 1992 Act, so for further detail readers should consult the Act itself. The Act also contains provisions to permit (by means of a licence) certain activities which would otherwise be prohibited under this legislation.

Badgers are also listed on Schedule 6 of the Wildlife and Countryside Act 1981 and s11 prohibits the use of certain methods of taking or killing a wild animal, including illuminating devices and some snares.

It is well known that legislation protects badgers from people aiming to kill them and or destroy their setts. However, there are a number of legal activities, which are subject to compliance with conditions in the 1992 Act. These include:

- road and housing development
- forestry and agricultural operations
- badger culling by the Ministry of Agriculture in relation to bovine TB in cattle
- sett-stopping by fox hunts
- sett interference

It is important to consider badgers when planning work in an area that has signs of their presence, because, carrying out any, work near setts could be considered an offence as a result of both reckless and deliberate damage, disturbance or destruction. The 1992 Act defines a badger sett as: "any structure or place which displays signs indicating current use by a badger".

Identifying setts in current use by badgers:

- The shape of the tunnel, not the entrance hole itself, is a rounded or flattened oval (broader than high) with diameter of at least 25cm.
- Badger footprints, claw marks and soil smoothed by passage of badgers may be present near the entrance.
- Badger hairs may be found in or around the entrance or on other features nearby. Sticky tape placed across the top of an entrance can be used to collect hairs. Badger hairs are coarse and banded with black and grey or white.
- Hay, bracken etc used as bedding will usually have been excavated from tunnels together with fresh soil and piled around entrances.
- The soil excavated by badgers is in much bigger lumps than that dug out by rabbits or foxes. It may contain quite large stones.
- Distinct tracks leading to and from tunnel entrances of main, annex and some subsidiary setts.
- Small pits containing badger dung are often present close to the tunnels. There may be a tree with rough bark that shows obvious signs of claw marks up to a height of about a metre.
- During cold weather warm moist air may be seen rising from occupied setts. However this can be due to occupation by foxes, so check the other signs.
- Observations of badgers emerging from setts.
- Detection of badger use can be improved by means such as placing thin sticks or sticky tape across the entrances, of sprinkling sand or soil around them to show tracks. These may need to be left for several weeks in cold weather periods, subject to checking once or twice per week.

Some setts are only used occasionally, so even if the above signs are not present does not mean that badgers are not using it. There is very little guidance about how long a sett has to be inactive before it can be considered disused. However, it is generally considered that a period of 6-8 months of inactivity has to elapse, before a sett can be deemed inactive, or abandoned.

It is the role of planning authorities to consider the conservation and welfare impact of development on badgers and issue planning permissions accordingly.

The Protection of Badgers Act 1992 allows for licences to be issued for a number of purposes, including development under the Town and Country Planning Act 1990 and to prevent serious damage to property.

Licences to interfere with badger setts or disturb badgers for development, are issued by the relevant statutory nature conservancy organisations (SNCO); English Nature, Countryside Council for Wales or Scottish Natural Heritage. The role of the SNCO is to ensure, through the licensing process, that developments affecting badgers are carried out according to best practice guidelines so as to avoid cruel ill-treatment of badgers. The legislation is not intended to prevent properly authorised development. Licences to prevent serious damage to property (including land, crops and poultry) are issued by the relevant Government Agriculture Department (DEFRA in England, NAWAD in Wales and SERAD in Scotland). Damage licences can allow the interference with, and/or closure of setts. In some cases, licences are issued to allow the killing of badgers, although this is generally a last resort and only a few such licences have ever been issued.

Licences may be granted by the conservation agencies for interference with badger setts in the course of investigating offences. Such licences are normally issued to Police Wildlife Liaison Officers and to others officially involved in this work.

Other purposes for which licences may be granted are science, education and conservation; zoos; tagging and marking; archaeology; disease prevention; agriculture and forestry; land drainage; and controlling foxes for the protection of livestock, game and wildlife.

It is important to be aware that badgers could be disturbed by work near the sett even if there is not direct interference or damage to the sett. As a general guide for licensing purposes, measure the distance from the sett entrance. The following zones should then be considered, which indicate the type of activities that would require a licence;

1. using very heavy machinery (generally tracked vehicles) within 30 m of any entrance to an active sett
2. using light machinery (generally wheeled vehicles), particularly for any digging operations, within 20 m of any entrance to an active sett
3. light work such as hand digging, scrub clearance or tree work within 10 m of an active sett.

Most Arboricultural, Horticultural and Forestry works are likely to fall within at least one of the categories above, so it is therefore essential that the location of sett entrances is considered when tree works are being planned. With consideration to the high populations of badgers in residential areas it is clearly necessary for us to be aware of the implications of the legislation that protects badgers and their setts.

The Forestry Commission (FC) produced a Practice Guide in 1995 (Forest Operations and Badger Setts – FPG 9). This document provides some comprehensive guidance on tree work operations around badger setts, and is available as a free pdf download from the FC web site (www.forestry.gov.uk). English Nature (EN) also provide guidance and have published a booklet called 'Badgers and development' which has recently been reprinted and is available free as a pdf



Photograph By Gerald Hall - English Nature

download from the EN web site (www.english-nature.org.uk). Remember planning and licence applications are separate legal functions, and planning permission from the Local Planning Authority is no guarantee that tree work or development operations will not breach the Protection of Badgers Act 1992. It is important, therefore, that developers and planners take adequate account of badgers at the planning stage in order to ensure that a license is likely to be issued by the SNCO.

Further advice and information

For advice and information on badger-related issues, contact Dr Elaine King, NFBG (National Federation of Badger Groups) Chief Executive: www.nfbg.org.uk
15 Cloisters Business Centre, 8 Battersea Park Road, London SW8 4BG Tel: 0207 498 3220



Photograph By Gerald Hall - English Nature

For more information you may wish to visit the arborecology website: www.arborecology.co.uk

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