

Licensing Guidance

What is a badger sett?

Context

The 1992 Protection of Badgers Act defines a badger sett as “any structure or place which displays signs indicating current use by a badger”. Undertaking any activity that will interfere with a badger sett in Scotland is likely to constitute an offence unless carried out under a licence from Scottish Natural Heritage.

This guidance is provided to help you make an informed and risk-based decision as to whether a structure which may be affected by your activities meets this definition. SNH licensing team are happy to discuss this on a case by case basis however ultimately whether or not a structure is a badger sett may only be tested in court.

What could be a badger sett?

The legal definition of a badger sett refers to a ‘structure or place’ showing signs of current use by a badger. In most cases a badger sett will be used for breeding, shelter or protection and will consist of a series of tunnels and chambers, sometimes interlinked, and accessed by one or more sett entrances. Badgers may also occasionally use other types of structure or place for the same purpose, including natural holes or voids in rock or spaces under buildings, all of these structures could constitute a sett if showing signs of current use. We would not consider that areas regularly used by badgers for other activities such as feeding or access would constitute a sett.

What are ‘signs of current use’?

There is no case law to clarify what *signs of current use* means. For the purpose of this guidance, and in the absence of such case law, we consider that the presence of field signs such as bedding, fresh spoil heaps, signs of recent digging, hair, latrines, or footprints in or around the potential sett or evidence of badgers entering or exiting the structure or place in question would indicate current use of the structure / place by a badger.

Making judgements in practice

When a structure or place is found that could potentially be a badger sett, a close and detailed inspection should be undertaken to look for field signs indicating current use by badgers. We strongly advise that this should be undertaken by a suitably experienced person. An inspection is likely to reveal one of the following scenarios;

1. **Clearly not a badger sett** - in some cases it may be possible to quickly rule out that a structure is a badger sett, for instance if entrances have collapsed, or have completely filled with debris that has clearly been there for some time.
2. **Clear evidence that it is a sett** – One or more of the signs indicating current use by badgers are found in or around the structures in question.
3. **Possible sett but signs not immediately evident or clear** – A structure cannot be ruled out as a badger sett (as in '1' above), but there are either no immediately evident signs of current use or there is uncertainty as to whether or not there are signs indicating current use by badgers.

Where the third scenario arises we recommend that the structure is subject to further monitoring (again by a suitably experienced person) to help you make an informed and risk-based decision as to whether the structure / place is a badger sett in current use.

The structure/ place should be actively monitored for a minimum of two weeks (and possibly longer during particularly cold spells in winter). To do this all possible entrances into the structure / place must be simultaneously monitored using sand-pads (to look for footprints) and sticks lightly placed over all entrances (to determine whether animals are entering / leaving). Alternatively, or in addition to this, camera-traps can be used to capture images of animals entering or exiting the structure / place. If camera traps are to be solely relied upon care should be taken to ensure that they effectively and simultaneously cover all possible entrances throughout the monitoring period.

It is important that all means of recording signs of use are checked regularly during the monitoring period to ensure monitoring is effective and reliable. We also recommend that a written record (supplemented with photographic evidence) is kept of methods, duration, frequency and results of monitoring as well as who carried it out.

We recommend that any assessment of current use should be undertaken immediately prior to carrying out works that might affect the structure in question. If there is a delay between monitoring and undertaking works there is a risk that the status of the structure could have changed in the intervening period.

Next steps

The measures described above aim to help you to make an informed decision as to whether a structure / place may be protected as a badger sett. If you do find any evidence of current use by a badger at any part of the structure you should assume that it is a badger sett. If this is the case you should either avoid any activities that could interfere with the sett, or if this is not possible apply for a licence from SNH prior to commencing any activities which could affect it.

If you conclude that a structure is not a badger sett and you do decide to carry out works that could affect it then this is done so under your own risk. By following the steps above you can minimise this risk. If you have any doubt we would advise on adopting a precautionary approach; either assume it is a badger sett or continue monitoring to better inform your decisions.

Finally, even if you do conclude that a structure is not a badger sett in the legal sense, it may be used by badgers or other wildlife in the future. We recommend that, wherever possible, such structures should be retained or measures put in place to keep any potential damage to them to a minimum.

Further reading

Guidance on interpretation of current use and badger setts can also be found on the Natural England website at:

<http://www.naturalengland.org.uk/ourwork/regulation/wildlife/species/badgers.aspx>

Further information on licensing and badgers in Scotland can be found at:

<https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/licensing/species-licensing-z-guide/badgers-and-licensing>