

**Cheltenham Borough Council planning application:**

**20/00682/OUT Land Adjacent To Oakhurst Rise**

REF: Aspect Ecology - Ecological Appraisal April 2020 : Confidential Badger Appendix  
5487/3

**Badger Trust Gloucestershire**



**General Background Information**

NPPF – Planning Policy

The likelihood of disturbing a badger sett, or adversely affecting badgers foraging territory, or links between them, or significantly increasing the likelihood of road or rail casualties amongst badger populations, are capable of being material considerations in planning decisions.

The loss of foraging habitat could also be considered as cruel treatment of badgers. Main roads may prevent badgers from accessing their setts. Severance of territory and pathways may also result in road casualties and potential traffic accidents.

Legal Protection Badgers and their setts are protected under the Protection of Badgers Act 1992, which makes it a criminal offence to kill, injure or take badgers or to interfere with a badger sett.

Under the Act it is a criminal offence to:

*Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof*

*Intentionally or recklessly disturb a badger when occupying a badger sett*

**From the Cheltenham Plan 2011 – 2031**

*Harm to the biodiversity or geodiversity of an undesignated site or asset should be avoided where possible. Where there is a risk of harm as a consequence of development, this should be mitigated by integrating enhancements into the scheme that are appropriate to the location and satisfactory to the Local Planning Authority*

and 2<sup>nd</sup> Review of Local Plan

*Policy NE1 relates to habitats and legally protected species and states: 'Objective O18: Development which would materially harm, either directly or indirectly, a site supporting any legally protected species will not be permitted unless safeguarding*

*measures can be provided through conditions or planning obligations to secure its protection.'*

### **Site visit 08.05.2020**

Badger Trust Gloucestershire made a further visit to this site 8<sup>th</sup> May 2020 to refresh our previous appraisal at the request of local residents during summer 2017. At this time badger activity on site in the form of well used paths, snuffle holes and one active and one partly disused sett were identified. Our comments at the time are reproduced below (Appendix 1).

The site continues to display clear evidence of regular use by badgers foraging across the area of pasture with paths and snuffle holes. There is evidence of frequently used badger paths crossing the site and entering gardens of adjoining properties. The main sett is located at the northern end of Hedge 1 shown on the plans included in the Ecological Appraisal produced by Aspect Ecology and has over 20 entrances with c.15 being in current use as shown by tracks and bedding in the vicinity. During this brief visit we weren't able to confirm whether the partially disused sett under the oak in the remains of the old Ice House is showing any evidence of occupation by fox or badger.

The designation of the badger sett as a main sett is based both on the number of entrances and the level of activity, which in this case indicates that a large badger social group (clan) are present.

It should be expected that badgers from the clan living in this sett will maintain a territory that would include not only the land within the site boundary but also gardens and open spaces beyond its borders. Removal of c.40% of Hedge 1 will necessitate relocation of this main sett which should only be contemplated when other options for mitigation have been exhausted. Even the best designed artificial setts have c.60% success in attracting badgers to use them

Loss of habitat and disturbance to this site is likely to cause badgers to increasingly forage across gardens and also dig subsidiary setts in gardens causing damage and potentially causing financial loss to householders if badger excavations undermine structures and licenced closure of setts and underpinning of buildings is necessary.

Increased road traffic, even at low speeds will result in more casualties not only to badgers but to other protected species such as slow worms, which were recorded particularly in the North West quadrant of the site.

As before, Badger Trust Gloucestershire is duty bound to state that badgers have statutory protection under the Protection of Badgers Act, 1992 and that any unlicensed disturbance or harm to them or to their setts constitutes a criminal offence under the Act. We note with concern that the ecological report supplied makes very little mention of badgers despite their clear presence on site. We also note that the main appendix referring to badgers is not available except 'on application'. We regard this as a serious attempt to minimise the presence of a major protected species on site.

We recognise that badger mitigation strategies are not only mandatory but also very expensive and make a general observation based on scrutiny of many planning applications that developers often wish to avoid these costs. Badger Trust Gloucestershire is therefore not satisfied that sufficient attention has been paid to presence of badgers or to any mitigation strategy should consent be granted for this application.

Furthermore, the Trust disputes the continual references in this ecological report to the land

in question being 'poor quality grassland' and 'semi-improved'. The perceived 'quality' of this land is a direct result of enduring neglect by the current landowner, not any inherent deficiency in the land itself.

In the early stages of abandonment it will be the case that a few plant species will begin to dominate. The ecological survey attempts to present this fact as an 'inherent' deficiency in terms of biodiversity but in fact, over time, the biodiversity will improve as the complex processes of nature gain a better hold of the site and begin to repair and restore it from the state it was left in by previous owners. Badgers themselves are one component of this biodiversity improvement as they spread seeds from various plants and nuts in their diet.

Ironically, the habit of developers and landowners to deliberately neglect land to create the impression of lack of quality tends to have the reverse effect in terms of biodiversity. As soon as neglect begins the process biodiversity repair also begins. This unintended re-wilding often creates more problems for the developer than it solves.

This land is not 'semi-improved' it is simply neglected as a deliberate choice on the part of the current owner. The consideration for the planning committee is not what condition the land is in now but what condition it could or should be in, now or in the future. The land has many potential uses and could be maintained and enhanced in many ways for the benefit and amenity of the local community and environment through a more proactive management effort. It does not have to remain in its current state of neglect and building houses is clearly not 'the only option' for its future. A better use, given the Council's obligations to the Climate Crisis and carbon capture might be to use this site to plant trees.

What is clear is that it is inappropriate for an applicant to deliberately attempt to lower the quality of a piece of land by neglect and then claim that this is somehow a reason why it should be developed for profit in the form of housing. We would hope decision makers are not taken in by this practice.

We have read the Confidential badger appendix 5487/3 and note that the presence of a well developed and long established badger colony is not disputed by the developer's ecologists. We are concerned by statement 4.2.4 "*Badger setts BS2, BS3, and BS4 are inactive and therefore regardless of whether they are lost or retained are not considered further in terms of disturbance to a sett.*" This betrays a lack of understanding of how badgers occupy setts over time or use apparently 'disused' setts in certain circumstance i.e. as alternate locations in times of disturbance or as clan numbers increase. It generally takes only a few hours digging for badgers to reoccupy and ready an old sett for new use.

We are also concerned that badger setts BS2, BS1 and BS5 may be connected by long tunnels. This would have to be established by a Ground Penetrating Radar (GPR) survey. We note again the attempt to minimize the significance of the wildlife presence on this site and the impact of any future development will have on it. The current infrastructure of all the setts on this site is part of a 'cohesive whole' in terms of how it is used by the badgers present. The significance of any one part of it cannot be separated or 'picked away' from the totality of it. Any disturbance here will likely cause complete disruption to the badger colony currently on site and to the surrounding colonies. It may well be the case that a modified reoccupation of the site by badgers may occur in the future but this would be much reduced in scope

In conclusion Badger Trust Gloucestershire objects to this proposed development on the grounds of loss of habitat generally and because it will cause material harm to badgers (*Meles meles*) as a protected species (Protection of Badgers Act, 1992). The density of housing is too high to retain any meaningful amount of wildlife or local amenity for residents.

The dislocation and removal of badgers will indubitably cause difficulties and expense for neighbouring properties. We note also that there is sufficient housing land elsewhere in better, more appropriate and more sustainable locations to fulfil the council's housing obligations and that in these times of pandemic the availability of open space and amenity for the public has become a significant public concern. This means the 2006 Natural Environment and Rural Communities Act is a material consideration in determining this application.

We are also concerned that this application, if successful, will be part of a phased development of the whole site once the principle of development has been established. That is to say that the diminution of its ecological and amenity value will be used in future applications as an excuse to cover the whole site in housing.

*Julie Douglass* - Field Officer

*Peter Martin* - Chairman

### **Badger Trust Gloucestershire**



### **Appendix 1**

#### **17/00710/OUT Outline application for residential development of up to 100 dwellings including access with all other matters reserved for future consideration. Land Adjacent To Oakhurst Rise Cheltenham Gloucestershire**

The Badger Trust (Glos) has recently been consulted on this application.

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- Intentionally or recklessly damage, destroy or obstruct access to a badger sett or any part thereof
- Intentionally or recklessly disturb a badger when occupying a badger sett **Land Adjacent To Oakhurst Rise, Cheltenham, Gloucestershire Comments on the preliminary survey works on site** We are concerned to hear from local residents that intrusive surveys were carried out on site in January and February 2017. These involved the use of heavy plant and equipment in close proximity to the badger sett and appear to have been without the necessary statutory consents in place to do so. We understand the intrusive survey works close to the main sett were we reported to Gloucestershire Constabulary and Natural England. The main sett was not damaged and remains active. We are now monitoring this sett and treating it as one at high risk of further disturbance. The Application Application number 17/00710/OUT provided an ecological appraisal prepared by All Ecology in September 2016. This appraisal identified the presence of the large main sett on the site and we note it mentions a confidential badger survey was prepared, we have not seen details of this. The loss of foraging habitat for a local group of badgers may cause knock-on issues for nearby residents with changes in badger activity. So it is therefore important to check thoroughly to see how badgers may be displaced by any development as extensive as outlined in this application. We note that All Ecology propose to close the main sett and rehouse the badgers elsewhere on site. Proposing to close a longstanding main sett and remove a major part of the badger group's foraging territory at the same time will inevitably disturb the badgers at this site to the extent that they could not realistically continue to inhabit the site.

Artificial setts are rarely successful. Dispersal of badgers will inevitably result in them creating new setts elsewhere, which could well include in residential gardens and on commercial/public properties.

This application illustrates the relocation of badgers is an expensive and time consuming process. It can also have the potential to depreciate the value of surrounding properties. As a result of this Badger Trust Gloucestershire recommends that, should consent be granted, it must be on condition that a bond be given or some kind of indemnity insurance be taken out by the applicant to cover the cost of any appropriate mitigation works relating to badgers incurred by any third party within one mile of the site as a result of displacement, for a period of at least 5 years from completion of the development or until it can be proven from regular site surveys that the badger group are again settled.

Development on this site would cause a comprehensive loss of foraging territory and the badgers will be forced to forage further afield crossing roadways as they do so. This would bring them into conflict with vehicles in the vicinity and presents both a danger to the badgers and to the local residents driving at night.

The loss of trees on site will also be a further loss of the vital habitat for the badgers forcing a change in their behaviour as they search for new green spaces and wildlife corridors. It is very difficult to predict these changes particularly when All Ecology is only providing advice based on an outline site development plan. Site density, flood alleviation schemes, traffic calming measures and protection of the historical features may significantly squeeze the areas available for the badgers.

Access to drinking water at the pond at the northern point of the site is also critical for badgers and must be maintained at all times, if consent granted. Attention must also be given to contamination of the pond during construction and mitigation put in place to prevent it.

This site is highly unusual as it appears to have been undisturbed by development for several hundred years. Badger setts have been known to be centuries old and this sett could easily be one of them. In which case we would support the creation of an SSSI to protect this sett as a significant and historic feature of the landscape.

Any development on the site must allow clear and appropriately sized wildlife corridors to allow both continuity of occupation of existing wildlife and transit from this area to new foraging areas. This would apply to all mammal species such as hedgehogs, foxes as well as badgers and other mustelid species.

Badger Trust Gloucestershire objects in principle to this application as the inherent loss of wildlife habitat and 'green space' cannot be easily or economically mitigated whatever consent is given, and that best course of action would be to refuse consent.

### **Good Practice during construction (if consent is granted)**

We would recommend a Method Statement for the construction work would include the following:

Create an appropriate buffer between the works and the sett. Current standing advice does not stipulate distances from occupied setts at which licensing is or is not likely to be required, but it indicates that one should be satisfied that an activity is not likely to disturb a badger before carrying it out. To assist in that decision making process, reference is often made by developers to former guidance issued by English Nature (now Natural England) which indicated that licensing was likely to be necessary, or should be considered, when using heavy machinery within 30m of a badger sett, lighter machinery (generally wheeled vehicles) within 20m, and for light work such as hand digging or scrub clearance within 10m.

Security fencing should be kept away from the setts so access for the badgers is not impeded, any works fencing should not impede the entrance/exit points of the badger or their primary paths at any time. Badger access points must be created under both temporary and permanent fencing.

The badgers will be using this site for regular access to the pond, so it is important that any buffer or security fences enable this access to continue any works on site.

Implement site speed limits/reduce traffic flow in the vicinity of the sett, if appropriate.

Badger sett & path advice to be included in the construction method statement including clear instructions regarding the protection of the badger setts to the on-site contractors. Good working practices need to be employed by the developers and contractors.

Materials and chemicals should be stored well away from the setts (over 30m) and water courses and any site compounds should be fenced to ensure that no badger can obtain access.

Should any trenches need to be left open overnight a means of escape should be provided such as a suitably placed plank of wood.

Use of heavy machinery within 30m of the badger sett should be kept to a minimum (licence may be required) Machinery should not be left idling within the vicinity of the sett to minimise vibration and exposure to exhaust fumes.

No night work (badgers are nocturnal).

## **Long Term important considerations for this and any subsequent planning amendments**

### *Boundary treatment*

Access for badgers from setts into surrounding land and to the water courses should not be blocked or restricted in any way. If any new fencing is required, it should incorporate badger gates or large enough gaps for badgers to pass underneath easily. There should be a restrictive condition on consent that no close-boarded or other kind of fences impenetrable to wildlife should be allowed on this site.

### *Greenspace*

It is advised that Badger Trust Gloucestershire is consulted regarding the landscaping across the rest of the site in order to maximise site connectivity for wildlife and the provision of supplementary foraging through appropriate planting. In particular the badgers should have access to the nearby fields and streams. They will be forced to forage further afield across roadways if this development proceeds. So incorporating crossing points via road tunnels would be best practice.

Prior to decisions on boundary treatment/landscaping/land profiling a badger specialist should be consulted in order to ensure permeability of the site and retention of essential corridors. This is particularly important in view of loss of foraging space which this large development removes.

### *Surveys*

It is recommended that regular annual surveys are carried out of the badger population at this site for at least 5 years or until it is possible to demonstrate that they are once again settled in their new habitat.

11 September 2017