



By email to:

Guildford Borough Council: Victoria Bates
Surrey Wildlife Trust: Robert Hutchinson

.cc Robert Shatwell, Chairman West Surrey Badger Group

7th January 2024

Planning application ref 23/D/00018/5 Discharge of condition 4 (Landscape and Ecology Management Plan) for 20/P/00825

Dear Victoria

Thank you for your recent email update following the meeting held with WSBG, Ecology Co-Op, Tormead and SWT to discuss the various assessments of badger activity on Merrow Downs and the Urnfield site.

We remain deeply concerned about the current version of the LEMP. On the basis of the material presented so far we do not have confidence that the Applicant has collected or assessed sufficient evidence of badger activity to develop an appropriate mitigation strategy, in order to adhere to the Badger Protection Act 1992, or to meet the requirements of Local Plan DMP Policy P7.

Natural England's standing advice for Local Planning Authorities in relation to badgers is a material consideration in planning related decisions <https://www.gov.uk/guidance/badgers-advice-for-making-planning-decisions> [January 2022] and includes:

1. Ensuring adequate, up to date surveys have been undertaken to ascertain the nature and level of badger activity likely to be affected by the development (construction and operation), including sett classification and territorial boundaries
2. Ensuring the suitability and competence (qualifications and experience) of the ecologist(s) undertaking badger surveys
3. Being assured that any mitigation strategy proposed is appropriate, given the known badger setts and activity
4. Having the confidence that, given the mitigation strategy proposed, Natural England will issue a licence for sett interference / closure
5. Giving consideration to the LPA's biodiversity duty

We should like to make the following comments in relation to the Natural England advice:

1. Survey requirements

A full survey of the site and its surrounds is still required, given the differing assessments of badger activity and sett classification made by the Applicant's ecologists and the West Surrey Badger Group (WSBG), including whether the two large setts on the Urnfield site (visible from the public path on Merrow Downs) are main setts. WSBG remains convinced that the suggested main sett further to the east is in fact an annexe sett, and so would not present suitable alternative accommodation for any badgers excluded by the temporary closure of the two large setts onsite.

Existing survey data is now past its lifespan as per CIEEM practice (as identified in our letter of 10th October 2023 which is attached as an appendix).

Given this, and the continuing and significant discrepancies on the classification of seven identified setts, we believe a full bait marking survey is required which should be undertaken between February and April this year.

2. Competence of those undertaking badger surveys

We are clearly not in a position to make any comment about individual ecologists. We can, however, comment on the quality of the material submitted thus far by the Applicant's ecologists, and the email exchanges which were shared with us as part of the earlier legal challenge. This material continues to contain errors and inadequacies.

Several versions of the LEMP continue to refer to the sett at the northeast corner of the site as being 30m from the running track when it is in fact around 19m, as we have pointed out repeatedly.

The original LEMP only identified two setts of relevance to this development. Local residents without access to the site were able, from the public path on Merrow Downs, to identify several additional entrances (some of which had clearly been established for a long time under old tree roots). These had not been identified, or surveyed, by the Applicant's ecologists. Nevertheless, they have now been included for consideration in version 4 of the LEMP.

The question remains as to why these clearly established and easily visible entrances were not included earlier by qualified ecological consultants.

The four versions of the LEMP so far submitted have included repeated reclassifications of the setts on and adjacent to the site, without any significant survey data. This suggests GBC should assure itself of the professional competence of the Applicant's consultants and the validity of the material presented by them, in line with the Natural England formal advice published by Government.

3. Appropriateness of mitigation strategy

An assessment of the mitigation strategy proposed can only be made once a full and up to date survey of the site and the surrounding area has been completed. This would establish whether any artificial setts need to be built (in the case of temporary closure of a main sett without an alternative). Due to the extent of badger activity on and around the Urnfield site, it is essential that a good understanding of family groups underpins any mitigation strategy, so that mitigation works do not generate conflict / potential fighting between badger groups.

4. Confidence in licensing by Natural England

This is dependent upon accurate, detailed and reliable recent survey data, collected and assessed by competent ecologists in order to develop a coherent and comprehensive mitigation strategy within the existing policy environment.

5. Meeting the Biodiversity duty

The Local Plan Development Management Policies adopted March 2023 apply in this case, as the application to discharge Condition 4 was received on 31st July 2023.

Policy P7: Biodiversity in New Developments

General principles

1) Development proposals, including those exempt from minimum biodiversity net gain standards, are required to seek maximum biodiversity gain on site balanced with delivering other planning priorities and to follow the mitigation hierarchy.

2) Development proposals within or adjacent to a Biodiversity Opportunity Area (BOA) are required to:

a) contribute towards the achievement of the objectives of the BOA as set out in the relevant BOA policy statement 57 (and its successor revision documents);

b) protect and enhance designated and priority habitats and species within the BOA; and

c) improve habitat connectivity across and/or into the BOA.

Marrow Downs lies within BOA ND02, and the Urnfield site is adjacent to this BOA.

https://surreynaturepartnership.files.wordpress.com/2019/10/appendix-6_north-downs-biodiversity-opportunity-area-policy-statements.pdf

Therefore P7 applies.

Connectivity between the Urnfield site and surrounding protected landscapes, on three sides, fails to be recognised in any of the versions of the LEMP. Ecological management plans have been developed as if Urnfield were an island, whereas it provides essential habitat and foraging for a much wider countryside on three sides. The concluding sentence on p3 of the LEMP (v4) sums up this isolationist approach very well:

condition. The implementation of the measures recommended will ensure that the enhanced biodiversity value of the site will remain long term. In turn, the provision of a well managed, greener public realm with increased biodiversity value, will almost certainly provide increased health and wellbeing benefits for the pupils.

The purpose of the LEMP (and condition 4) is not to provide benefit to the site's users, but to minimise the ecological damage of the development and to ensure wider environmental benefits (in the context of an increased focus, legally and publicly, on Biodiversity Net Gain).

The LEMP does not provide adequate compensation for the loss of around 1ha of foraging habitat for badgers, which clearly do use the existing field for foraging (as seen by the many mammal paths up the bank from the woodland at the northern end of the site). Not only is the amount of foraging habitat greatly reduced but badgers will be required to make a circuitous route around the fenced off

hockey pitch and over large areas of artificial surface if they are to continue to forage on the grassland beyond, or around the edges of the site. No compensation for the loss of this foraging resource is recognised, or provided for, in the LEMP.

An additional change in the law affecting LPAs

You will no doubt be aware that in the Levelling Up and Regeneration Act 2023, which received Royal Assent on October 26th 2023, a change was made to the requirement for public bodies making decisions affecting Areas of Outstanding Natural Beauty (also called National Landscapes).

Whereas public bodies previously had to “have regard” to the purpose of the designation, they now have to “seek to further” the purpose, to conserve and enhance natural beauty (including flora and fauna). This is a significantly strengthened duty applying to all public bodies in their decision-making from 26th December 2023 which I am sure you will bear in mind when making decisions on the discharge of conditions for this development.

Kind regards

A handwritten signature in black ink that reads "K. M. Atkinson". The signature is written in a cursive, flowing style.

Katherine Atkinson

For Merrow Downs Residents' Group

Appendix: letter of 10th October 2023

Dear Victoria

In the view of Merrow Downs Residents' Group, the applicant still fails to provide sufficient evidence as to the nature and extent of badger activity on Merrow Downs and the Urnfield to ensure compliance with the Badger Protection Act 1992.

1. We noticed that wildlife camera traps were set up (presumably by Tormead's ecologists or their subcontractors) on three sett entrance holes during week commencing 2nd October. The cameras were in situ on Monday 2nd October but by Thursday 5th October they had been removed.

The guidance for developers produced by the Badger Trust states that activity surveys should take place over a period of no less than **three weeks**, not three days (see appendix).

2. No camera trap was set up to log activity at the new entrance hole at the northwest of the Urnfield site, as identified in our letter dated 1st October.

Has the applicant sought to establish whether there is a large sett (as reported in our letter of 18th August 2023) adjacent to the eastern boundary of the Urnfield site, in the privately owned field? It is critical to establish the presence (or not) of such a sett and its relationship to the other setts in the area, to produce a coherent badger mitigation plan and to avoid harming this protected species.

These two setts / entrance holes should be included in the LEMP, and a 30m buffer zone needs to be established (and added to the construction plan drawing approved as part of Condition 3) around both setts / entrance holes before any construction takes place, to avoid contravention by the applicant or its contractor of the Badger Protection Act 1992. They also need to be included in the method statement included in any licence for mitigation works to be sought from Natural England.

3. According to the LEMP, an activity survey has only ever been undertaken at setts 1 and 2, and this data is already over a year old (April/May 2022). Guidance from the Chartered Institute for Ecological and Environmental Management – with which Greengage is a registered practice - indicates that the data lifespan for badger surveys is less than 12 months.

<https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf>

The relevant extract from this guidance note (April 2019) is given below:

AGE OF DATA	REPORT / SURVEY VALIDITY
Less than 12 months	Likely to be valid in most cases.
12-18 months	Likely to be valid in most cases with the following exceptions: <ul style="list-style-type: none">• Where a site may offer existing or new features which could be utilised by a mobile species within a short timeframe (see scenario 1 example);• Where a mobile species is present on site or in the wider area, and can create new features of relevance to the assessment (see scenario 2 example);• Where country-specific or species-specific guidance dictates otherwise. Report authors should highlight where they consider it likely to be necessary to update surveys within a timeframe of less than 18 months.



4. We request again that a FULL survey of badger setts and activity be undertaken, to include the Urnfield site and adjacent woodland and fields. This should include not only the new sett entrance holes that our group identified during the summer, but the setts already known about and included in previous versions of the LEMP, the data for which is now past its lifespan.

Walkovers on single day visits and 3-day camera traps of a few entrance holes are insufficient. Data that is 18 months old needs to be updated properly, as per the CIEEM guidance.

5. By way of illustration, the sett 75m to the east of sett 2 was categorised as a subsidiary sett by Greengage in its letter to GBC dated 25 April 2023 whereas the LEMP now states it is a main sett, yet no activity survey (in accordance with Badger Trust recommendations) of the site and the woodland has been done to explain the change in classification. The classification appears to have been changed as a result of single day visits in June and September by Ecology Co-Op, as listed in the LEMP.
6. In addition, these seven setts / entrance holes have been assessed as in use by one badger family, without using (as far as we know) bait marking methodology which would provide conclusive evidence of this, and ensure that mitigation plans are appropriate (they would need to be different if more than one family is affected by the sett closures).

We are aware that setts are not static, and so a full activity survey should include all known setts and seek to identify any new ones; this is clearly stated as a “must”, pre-commencement, in the Badger Trust guidance (see below). The current LEMP identifies seven relevant setts. The survey should include those surveyed in spring 2022 and those as yet unsurveyed.

Reliance on a partial survey of three day’s duration, and of only 3 sett entrance holes (which were identified by residents and not the applicant’s ecologists) suggests that the applicant is taking short

cuts in order to meet its timetable for the development, regardless of the impact on a protected species and the legal implications of that designation.

As stated in the Badger Trust 2023 guidance for developers and local planning authorities, badger setts are protected by law if there are signs of current occupation, even if they are not being used at the time of any survey (see appendix).

Given the inadequate and incomplete evidence that continues to be presented by the applicant in relation to badger protection, in our view the Council should refuse the discharge of condition 4 (LEMP).

3. Responsibilities of planning authorities, ecologists and developers

The National Planning Policy Framework (July 2021) states that when determining planning applications, local planning authorities should apply the principle that **if significant harm to biodiversity resulting from a development cannot be avoided, mitigated or, as a last resort, compensated for, then planning permission should be refused.**



Natural England's standing advice in relation to badgers and their legal protection is that planning officers should consider if the developer has taken appropriate measures to comply with the above.

Planning authorities also have a responsibility under **Section 40 of The Natural Environment and Rural Communities Act 2006**, which requires that "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, the purpose of conserving biodiversity".

The Crime and Disorder Act 1998 requires local authorities to demonstrate a duty to implement crime and disorder reduction strategies in areas including wildlife and the environment. Planners and ecologists are reminded that they are categorised as partners and should always, as a priority, assist the police, disclose details of concerns and be prepared to submit a written statement.

When to ask for a badger survey

Planning authorities should ask for a survey if either historical or distribution records show badgers to be active in the area, if there are signs of setts or badgers on the development site or nearby, or if there is suitable habitat for sett building or foraging by badgers at the location.

Natural England advice is that **absence of a record does not mean there are no badgers present** or using the location. It could simply mean there is no survey data available. Submissions from other interested parties, such as nearby residents or badger groups, indicating the presence of badgers on site should also be taken into consideration when assessing survey requirements.

4. Badger surveys

An ecological survey should include details of the number and status of any badger setts affected by a proposed development and whether a protected species licence is required to facilitate the proposals. **Any report that states a site has been cleared before an ecological assessment was undertaken should be treated with extreme caution and indicates that the legal requirements outlined in Section 3 of this document have not been met.**

The survey should show if the site is currently being used by badgers and identify the presence of any setts on or near the site. Surveys should be kept confidential to avoid ill-treatment of badgers and should be undertaken by an ecologist qualified and experienced to carry out surveys for badgers. Natural England standing advice is that the ecologist should also follow the Biodiversity Code of Practice for planning and development available on the British Standards Institute website. Ecologists must ensure they have permission in writing to be on the land subject to survey.

The purpose of the survey is to identify the use of a site by badgers and assess the effect of a proposed development on them. Badgers could be affected if the development proposal causes damage to setts, loss of setts, loss of foraging areas or disturbance to badgers whilst they're occupying setts. Dangers to badgers can also occur during any development works on a site. Such disturbance can arise from noise, lights, vibration, fires or chemical use.

Badger Trust considers the following as examples of best practice to ensure surveys meet Natural England guidance and safeguard the welfare of badgers in and around the development area.

- The survey should be conducted by a suitably trained and qualified ecologist early in the project timeline.
 - The survey report should contain sufficient detail to inform the Local Planning Authority of the badger status at the application site and any mitigation, compensation and enhancement measures proposed to protect badgers prior to, during development and after work has been completed.
 - The report should include the results of a desktop survey search.
 - The report should include the results of a field survey carried out within the last 12 months, ideally in early Spring or late Autumn and state the presence or absence of badgers and any setts.
 - A map of survey findings (with grid references) should be included showing any badger field signs, including any setts, and their exact proximity to the development footprint.
 - Photographs, as appropriate, should be included.
-
- The report should state the classification of badger setts identified using standard methodology, i.e. Main/Annexe/Subsidiary/Outlier, together with a justification for the classification chosen.
 - A requirement to update the survey pre-commencement of works is a MUST (as sometimes the activity status at a badger sett changes).
 - A detailed survey conducted over a continuous period of no less than 21 days of any setts located to establish any badger activity may be required in some situations. Ideally, such a survey should employ the use of trail cameras to provide visual evidence.
 - Proposals for ongoing site or sett monitoring where appropriate.

Please note:

Sometimes smaller sites may incorporate the badger survey findings with a preliminary ecological survey, whilst some schemes may require dedicated badger surveys and a mitigation strategy. Publishing the location of badger setts within the public domain is not advised, so a redacted version of the report may be requested by the Local Planning Authority. **Setts are still protected by law if there are signs indicating current use by badgers, even if the sett is unoccupied at that time.** Occupation and use are different.