

## APPENDIX 10.5: BADGER PROTECTION PLAN

### 1.1 Background

- 1.1.1 This badger *Meles meles* specific Species Protection Plan (SPP) was prepared in support of the Tangy III planning application in 2015. Revisions have then been made to include updated survey information from the extended Phase 1 habitat survey completed in January 2018.
- 1.1.2 This SPP considers the potential impacts associated with the layout of the proposed development on the badger setts identified in the ecological study area. This SPP has been prepared with reference to the submitted turbine specifications and track layout and also details whether or not there is scope to avoid these impacts by adjusting this layout or by implementing other impact avoidance measures.
- 1.1.3 This SPP also discusses the current best practice measures used to mitigate or compensate for impacts, particularly those that relate to the direct disturbance or destruction of a sett. This discussion includes consideration as to whether or not the construction activities would require a licence from SNH under the Protection of Badgers Act 1992 (as amended).
- 1.1.4 This SPP includes a comprehensive bespoke method statement for the construction activities proposed, detailing the approaches that should be followed and the monitoring or supervision that may be required to be completed by a suitably qualified ecologist.
- 1.1.5 This SPP has been written following the best practice guidelines as set out by SNH<sup>1</sup> with reference to the 'general' licence for forestry operations<sup>2</sup> which provides guidance on felling near badger setts.

### 1.2 Summary of Survey Results

- 1.1.6 Badger surveys were completed April-June 2013 and again in January 2018 and involved a detailed search of the ecological study area and a minimum distance of 30 m outwith the site boundary for the following signs of badger activity:
  - setts;
  - foraging signs;
  - dung pits/latrines;
  - scratching posts;
  - snuffle marks; and
  - paths.
- 1.1.7 During the 2013 surveys, one badger sett with three entrances was recorded in the ecological study area as shown on Figure 10.9: Badger Sett (Confidential). This sett was also recorded during the 2018 survey and is considered to be active, with three entrances still present. A further sett was recorded 61 m to the south of this sett and comprised a single, inactive entrance.
- 1.1.8 In 2013, the sett was monitored from 29<sup>th</sup> April- 29<sup>th</sup> May using camera traps which confirmed that the sett was in use, albeit with records of badger activity on only five occasions. The sett still appeared to be active during the 2018 survey visit, although camera traps were not used on this occasion.

<sup>1</sup> SNH Species Protection Plan guidance – <http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/forms-and-guidance/species-protection-plan/>

<sup>2</sup> SNH 'General' Forestry Licensing - <http://www.snh.gov.uk/protecting-scotlands-nature/species-licensing/mammal-licensing/badgers-and-licensing/land-mgt/>

## 1.3 Legislation and Guidance

### ***Species Protection and UK Legislation***

1.1.9 Badgers are protected under the Protection of Badgers Act (1992) as amended by the Nature Conservation (Scotland) Act (2004). The Protection of Badgers Act (1992) provides full protection to badgers and their setts and applies whether a badger is occupying a sett or not. The legislation makes it an offence to:

- wilfully kill, injure, take or attempt to kill a badger;
- possess a dead badger or any part of a dead badger;
- cruelly ill-treat a badger;
- use badger tongs in the course of killing, taking or attempting to kill a badger;
- dig for a badger;
- possess, sell or offer for sale any live badger; and
- mark, tag or ring a badger.

1.1.10 It is also a crime to interfere with an active badger sett by intentionally or recklessly causing or allowing:

- damage to a sett or any part of it;
- destruction of a sett;
- obstruction of sett access/entrances;
- a dog to enter a sett; and
- disturbing a badger when it is occupying a sett.

### ***Licensing***

1.1.11 The Protection of Badgers Act (1992) means that badgers are fully protected in Scotland, and that any planned activity, which may affect them, requires prior consultation with the appropriate statutory nature conservation organisation (SNH). Licences from SNH may be granted for certain purposes that would otherwise be illegal.

1.1.12 Under Section 10 (1) of The Protection of Badgers Act (1992), licences may be granted to interfere with a badger sett within an area specified in the licence by any means so specified.

## 1.4 Protection Plan

### ***Badger Ecology***

1.1.13 Badgers are omnivorous carnivores and eat a wide variety of invertebrates, vertebrates, bulbs and fruits. In general, badgers live in social groups of approximately six animals and usually defend a territory of approximately 80 hectares (ha). They often have more than one sett per social group but a main sett is almost always the centre of their social activities; other setts can be referred to as annexe, subsidiary and outlier. Annex setts usually occur less than 150 m from a main sett connected by obvious paths. Subsidiary setts are usually at least 50 m from a main sett but have few entrances and no obvious paths. Outlier setts only have one or two entrances and are often used sporadically. The breeding season of badgers spans from December to June.

### ***Potential Impacts***

1.1.14 The badger setts recorded in the ecological study area are thought to be outlier setts with three entrances and a single entrance both lacking connecting paths to other setts. By using camera traps in 2013, it was established that the three entrance sett was active but rarely used. On a total of 31 days (29th April – 29th May 2013), badger activity at the sett was recorded on five days. A camera trap was also directed on suspected badger paths adjacent to the sett from 4th September

– 24th October 2013, with no badger observations. Based on the 2018 survey, the sett still appears to look active but at a low level, with no new spoil heaps and few tracks. An additional sett with a single entrance was recorded during 2018 surveys 61 m south of the previously recorded sett. This sett appears inactive.

- 1.1.15 Based on our survey results, it is considered likely that any badgers using the active sett come from outside the site boundary to the west of the ecological study area. This is based on the proximity of the sett to the western boundary and the fact that no other signs of badger activity were found elsewhere. The proposed development would not sever any links between the western part of the ecological study area and the setts.
- 1.1.16 The layout of the infrastructure of the proposed development is not considered to have the potential to impact the active badger sett recorded in the ecological study area since the active sett is located approximately 200 m from the nearest track, 122 m from the nearest borrow pit search area and 170 m from the nearest borrow pit working area. However, 270.5 ha of forestry is proposed to be clear felled as part of the proposed development and includes the area where the badger setts were recorded, as well as extending to the site boundary to the west of the setts and approximately 270 m to the north of the setts. Clear felling of this area has been chosen as the preferred option because it creates favourable wind conditions for the turbines and would ensure that turbine life expectancy and energy output is maximised. A key-hole felling forest design around the turbines was considered but, due to the volume of windthrow present in the coniferous woodland plantation, clear felling has been selected as a more viable option. Clear felling in the area of the active badger sett would result in disturbance of this sett.
- 1.1.17 As recommended by the Forestry Practice Guide<sup>3</sup>, leaving a protective zone of forestry surrounding the badger setts is not considered a viable option as it would leave an isolated area of forestry at risk of subsequently blowing down and causing damage to the sett's earthworks.
- 1.1.18 It is therefore considered that applying for a licence to carefully remove trees within 20 m of the badger setts outwith the breeding season is the best available option. The active badger sett would not need to be destroyed and effects on the species are thought to be temporary disturbance, with the possibility of temporary displacement of any badgers using the sett. Where possible, taller felled tree stumps would be left around the sett to offer some shelter.

### **Licence**

- 1.1.19 Badger sett tunnels vary in length with most under 15 m, though occasionally reaching 20 m. Tunnels are approximately 60 cm under the surface and can be at risk of collapse from heavy machinery or large falling trees<sup>4</sup>. A licence from SNH will be applied for, permitting standard forestry operations within 20 m of badger setts between 1st July and 30th November. This licence would allow standard forestry operations of felling and harvesting within 20 m of all entrances. A protection zone of 20 m would need to be established in all directions from all sett entrances, within which no heavy machinery, or vehicles would be allowed.

## **1.5 Method Statement**

### ***Pre-construction Survey***

- 1.1.20 A pre-construction survey for badger will be carried out in advance of construction, particularly focusing on determining the level of current use of the two known setts in the ecological study area. The survey will be conducted within eight months of felling, as recommended by SNH.

<sup>3</sup> Forestry Commission (1995) Forest Operations and Badger Setts. Forest Practice Guide 9.

<sup>4</sup> Forestry Commission (1995) Forest Operations and Badger Setts. Forest Practice Guide 9.

1.1.21 Surveys will follow the same methodology and guidance that was used during the original surveys of the proposed development detailed in Chapter 10: Ecology<sup>5</sup> and in Sections 10.1.6 and 10.1.8 in this plan. Surveys will also involve the use of camera traps to monitor badger activity.

### ***General Measures***

- 1.1.22 The ECoW will use camera traps on all known badger setts, which will be checked immediately prior to any work commencing within 20 m of sett entrances and continue to a minimum of one week after the completion of works.
- 1.1.23 All personnel, including contractors and subcontractors, will be briefed on the presence of the badger setts before works commence, including details of their protected status and the conditions of any licence. Copies of any licences will be held on-site with other key documentation.
- 1.1.24 If any badgers are sighted during the works, all works must stop and the sighting reported to the ECoW, who will be responsible for determining when works can recommence to avoid any accidental injury or disturbance of badgers.

### ***Specific Measures***

- 1.1.25 An SNH licence will be applied for by the ECoW or site manager for work within 20 m of the badger sett.
- 1.1.26 Assuming a licence for standard forestry operations within 20 m of the active badger sett is obtained, the following methodology will be followed:
- Tree felling allowed under this licence is within 20 m of a non-main sett within the open season (July to November, inclusive).
  - The Agent / ECoW named on the badger licence will be present before felling to re-check all the vegetation to be removed for any ecological constraints, including newly dug badger setts.
  - A 20 m buffer area from the sett entrance will be marked on the ground using brightly coloured rope, or similar, to prevent access by heavy machinery and all workers will be briefed of its purpose.
  - Trees within protection zones will be felled and extracted by hand (including the use of a chainsaw) or by a harvesting machine operating from outside of the protection zones. Timber will be processed and stacked outside of the protection zones.
  - All trees will be felled away from the setts with a ‘soft-felling’ method appropriate to the type of woodland followed in order to avoid impact damage to sett entrances, tunnels and chambers. No forestry plant (e.g. harvester, forwarder) will be operated within the 20 m buffer zone of the sett entrances.
  - All sett entrances within the protection zones will be marked with canes, and preferably numbered. At the end of each working day all sett entrances and paths will be checked to ensure they are not blocked. Where shrubs exist within the exclusion zone, these will be left in situ in order to maintain some degree of cover around the setts.
  - The Agent / ECoW will check the sett entrances every morning and at the end of the day to ensure no damage has occurred.
  - Work will be restricted to daylight hours no earlier than 9 am and no later than 5 pm (varying throughout the year) so as to avoid disturbing the natural behaviour of badgers.
  - Fires are not permitted within 50 m of any sett entrance.
  - All reasonable precautions will be taken to ensure that disturbance is kept to a minimum and any works do not damage any part of a badger sett or injure or kill badgers.
  - Within one month of works being completed, the licence holder will send a licence return to SNH licensing team or to licensing@snh.gov.uk with the dates on which the works were

<sup>5</sup> Environmental Statement (2014) Tangy III Wind Farm. (SSE)

undertaken and confirming the terms of the licence were met together with at least one photograph clearly showing the sett following completion of the works.

