



**SCOTTISH  
BADGERS**

**Response from Scottish Badgers in relation to  
a consultation document issued by  
Scottish Executive in relation to Proposals for a New Approach to  
Delivering Public Transport Infrastructure Developments**

**Prepared on behalf of Scottish Badgers by**

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## **Introduction**

Scottish badger is an umbrella organisation representing the views of badger groups/networks and other individuals working to protect the welfare of Scotland's badgers, their setts and habitat.

## **Background to response**

The Eurasian badger *Meles meles* is present throughout Scotland in varying densities and occurs in many types of habitat from montane to urban and even industrial sites. It is therefore important that this be recognised on many levels and that all measures to protect the welfare of badgers, indeed all of our flora and fauna, are taken. It has become abundantly clear that in relation to badgers this is not happening where development takes place, and there are far too many anomalies being reported from around Scotland to have any faith in the current system.

## **Response**

We have opted to answer question 1 – 5 in the consultation document. We have also commented on several points. The most important aspect of protecting our biodiversity is that we know what impact will take place on species before any decision is taken to proceed with a project.

### **Q1 Are there any other transport works beyond rail, tram, guided bus ways and inland waterway developments that should be within scope and if so why?**

**A1** We are concerned that roads are not delivering the promised mitigation to reduce the impact in relation to badgers and that the proposal for a new approach could be used to improve this situation. By including roads the responsibility of the promoter to consult and publicise proposals with relevant statutory and non-statutory bodies and affected parties would be a step in the right direction. It would remove the “them and us” culture currently affecting many projects and inclusion and participation in the decision making process would greatly improve the situation. Planning Policy Statement 9 in England makes the following points

Councils are required to have survey information before them at the time they consider planning applications. They should not grant planning permission, and make the requirement to carry out a survey a planning condition.

Councils are encouraged to consider attaching appropriate planning conditions or entering into planning obligations to secure the long-term protection of badgers.

Clearly before we make a decision about a particular development we must know what is on the ground. Too often decision are made on insufficient evidence of what the environmental impact will be and promoters talk about evolving mitigation plans and have not resolved the problem before permission is granted. We would therefore

like to see roads included within the remit of the new approach to Parliamentary consideration of the right infrastructure.

**Q2 What reasons exist for lengthening or indeed shortening the 6 month minimum designated statutory pre-application period between the promoter publicising initial proposals and presenting an application for an order to the Scottish Ministers?**

**A2** The 6 month minimum designated statutory pre-application period between the promoter publicising initial proposals and presenting an application for an order to the Scottish Ministers seems reasonable in most instances. However we reiterate the point made in our answer to question 1 that decisions are made on insufficient evidence of what the environmental impact will be and promoters talk about evolving mitigation plans having not resolved the problems anticipated before permission is granted. Any new approach must ensure that the promoter has sufficient time to identify environmental impacts and that they must produce, along with their application, an Environmental Impact Statement and more importantly their plans on how they intend to mitigate the impact on species and habitat.

**Q3 What process should apply to enable a promoter, without a statutory right, to enter land to conduct preliminary investigations?**

**A3** It is imperative that promoters have access to land to assess the impact of the proposed development. We have seen, during the course of investigations of the tram and rail links to Edinburgh Airport, a situation develop where the promoter has tried to investigate the impact on badgers but where entry to some land has been refused. This has resulted in a wholly inadequate picture of the importance to badgers the land might have and we assume the promoter has struggled to properly assess the impact of the developments on the badgers and have struggled to date to produce a satisfactory badger mitigation plan. The proposed issue of a certificate of fitness strikes us as a suitable remedy although it should only be issued when there is a reasonable prospect of delivering their proposal. A promoter to gain access to land should not use the certification process in any speculative way.

**Q4 What documentation should be supplied by the promoter in support of the application? Is there sufficient information contained within the proposal?**

**A4** We agree with the proposed documentation but would extend the requirement for an environmental statement that it should clearly detail information about protected species and habitat and include plans on how the promoter intends to reduce the impact and plans to mitigate for species such as badgers.

**Q5 What are the implications of reducing the time period for objections from 60 to 42 days.**

**A5** We believe there should be no reduction in the time period for objections. Many prospective objectors need time to prepare their objection and whilst the promoters time is dedicated to the proposal this is not the case for others who may wish to raise objections and may have to do this in conjunction with their daily lives and business. We realize that the early involvement through the statutory 6 month minimum period should prepare objectors but the final study of the proposal, analysis, preparation and submission of an objection takes time. We have found under the private bill process that unless you clearly state in your objection detailed points of conflict then they will



not be considered at a later stage. It is unlikely that an objector from the private sector will have the knowledge of legislation and procedures to effectively take part in the process and must have the time to consult and seek advice.

### **Comment**

Referring to the consultation document, in paragraph 4.46 reference is made that the promoter should cover the costs of the Scottish Executive in mounting the examination and that it is expected that parties to the examination would meet their own costs. There should be some investigation into the prospect of financial aid to the bona fide objector. We gave evidence to a Private Bill Committee in relation to trams. Our witness was not legally trained although an expert in her own field. However it was left to an untrained person to prepare the examination questions for both our own witness and those of the promoters' witnesses and to cross examine the promoters witnesses at the oral hearing. The promoters' witnesses had been schooled and led on the day by Queens Council. One can clearly see that this was a disadvantage to the objector and had they been able to employ the services of a suitably qualified person they may have been much better prepared to present their evidence to the committee. The Scottish Executive should consider a means of creating a fair playing field by making free advice and council available to objectors.

Ian Hutchison

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